



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, OCTOBER 8, 2015

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:40 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Brooks, Coley, Cupp, Curtin, Sawyer, and Taft in attendance.

Approval of Minutes:

The minutes of the March 12, May 14, and July 9, 2015 meetings of the committee were approved.

Reports and Recommendations:

Chair Readler then recognized Shari L. O'Neill, counsel to the Commission, who provided the second reading of the reports and recommendations for Article VI, Section 1, and Article VI, Section 2.

Article VI, Section 1 (Funds for Religious and Educational Purposes)

Ms. O'Neill said that Article VI, Section 1, dealing with the funds deriving from the sale or other disposition of lands or other property granted or entrusted to the state for educational or religious purposes, dates back to Northwest Ordinance, and helped establish the importance of education to the state. She said the provision related to tracts of land in each township that were set aside for educational or religious purposes. Ms. O'Neill indicated that the current version of the section allows the General Assembly the discretion to use or dispose of funds deriving from these lands, with some lands still providing revenue to local school districts for educational

purposes. Ms. O'Neill said the report and recommendation concludes that the committee recommends that Article VI, Section 1 be retained in its current form.

Upon motion by Senator Tom Sawyer, with a second by Representative Bob Cupp, the committee then voted unanimously to issue the report and recommendation for Article VI, Section 1.

Article VI, Section 2 (School Funds)

The committee then turned its attention to the second reading of the report and recommendation for Article VI, Section 2. Ms. O'Neill indicated that this section requires the General Assembly to act to secure a "thorough and efficient" system of public education across the state, and that it was the first of many similar provisions to be placed in state constitutions nationwide. Ms. O'Neill noted that the report and recommendation indicates this historical background as well as outlining the litigation history surrounding the "thorough and efficient" requirement. She said the report and recommendation sets forth the committee's conclusion that the provision should be retained in its current form.

Upon motion by committee member Roger Beckett, which was seconded by committee member Edward Gilbert, the committee voted unanimously to issue the report and recommendation for Article VI, Section 2.

Article VI, Section 3 (Public School System, Boards of Education)

The committee then heard a first reading of a report and recommendation for Article VI, Section 3, dealing with local boards of education. Ms. O'Neill indicated that this section provides for the organization, administration, and control of the state's public schools, specifically allowing city school districts the ability to determine for themselves the number of members and organization of the district board of education. Ms. O'Neill stated that the report and recommendation describes the history of the provision as dating to the 1912 Constitutional Convention, as well as discussing the history of litigation surrounding the provision. Ms. O'Neill said the report and recommendation indicates the committee concludes that Article VI, Section 3 should be retained in its current form.

Committee Discussion:

Chair Readler then asked the committee for comments and discussion regarding the report and recommendation, first recognizing Governor Bob Taft. Gov. Taft said he would like to delay moving forward on the report and recommendation until there is resolution of litigation involving the Youngstown School District. He said one of the arguments in that litigation relates to whether Article VI, Section 3 was violated, thus, the outcome of that case could affect the committee's recommendation about the section.

Sen. Sawyer commented that there also is pending in the General Assembly a bill related to the topic, specifically House Bill 70, and that it would be his preference to hold off on moving forward with the report and recommendation for that reason.

Mr. Gilbert raised that he would like to see the report and recommendation include a mention of charter schools. Chair Readler added that he is aware of a recent Ohio Supreme Court case involving charter schools, which case might be included in the report and recommendation.

At the conclusion of this discussion, the committee agreed to postpone a second reading of the report and recommendation for Article VI, Section 3 until more information is available from these sources.

Presentation:

Article VI, Section 4 (State Board of Education)

Chair Readler then turned the committee's attention to Article VI, Section 4, relating to the state board of education. After describing the section, Chair Readler recognized William L. Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, who appeared before the committee to advocate for a return to an all-elected membership for the state board of education.

Mr. Phillis began by describing the history of the state superintendent of schools and the state board of education. He said that the superintendent role was created by constitutional provision in the 1912 Constitutional Convention, with the enabling legislation to be assigned to the governor's office. In 1953, voters passed a constitutional amendment establishing a state board of education and superintendent of public instruction to be appointed by the board, a measure that Mr. Phillis interpreted as indicating an intention to separate the state education agency from the governor's office. Mr. Phillis said after the amendment was adopted the legislature determined that one member of the board would be elected from each congressional district. Mr. Phillis continued by noting that, throughout the period from 1956 to 1991, the state board engaged only three state superintendents, and that there was a mutually cooperative relationship between the Ohio Department of Education and the local education community, a situation he said is not happening today.

Mr. Phillis continued that, in 1991, the governor took over the role of selecting the state superintendent, and began the process of trying to change the elected board to an appointed board. He said at that time it was argued that the state board had too many members, and legislation was enacted to reduce the membership of the board to 11 members, one for each group of three senate districts. Mr. Phillis said changes occurring as a result of the *DeRolph* litigation then created a hybrid board in which eight members were appointed, with 11 members being elected. Mr. Phillis said that this change resulted in several developments: a rapid turnover in state superintendents compared to previous years; the board and superintendent being unduly encumbered by partisan politics; and a strained relationship with local school districts. Mr. Phillis said that the culture of the Ohio Department of Education "seems to have changed from a public school district advocacy and support role to an adversarial role toward school districts."

Mr. Phillis then said he advocates for a state board of education that would consist of one elected member from each congressional district or some other district configuration; function without regard to partisan labels and politics; select a superintendent independent of the governor or

other state officials; demand that professional education staff members have appropriate qualifications; and demand total transparency and accountability of the superintendent and Ohio Department of Education staff.

Mr. Phillis then entertained questions from the committee.

Rep. Cupp asked, when the provision on the state board was adopted in 1953 delegating to the General Assembly the responsibility for the powers and duties of the board and superintendent, why the amendment was crafted so that the General Assembly made those decisions rather than specifying if it was going to be an elected board. Mr. Phillis answered that he understands that there was considerable opposition from some quarters to the concept of a state board of education, and that the reason may have been to dissipate some of the opposition to the amendment. Mr. Phillis said the amendment as currently written allows the General Assembly to do whatever it wants to, and that in some states the provision allows the state to put together an alternative department of education and leave the constitutional superintendent with nothing to do. He said his advocacy would be for a provision which would separate the superintendent's office from the governor's office and bring it under an independently-elected board. He said that would be in line with the intent of the amendment, and that, by analogy, local boards are not under the city council or mayor, except in Cleveland.

Representative Michael Curtin then referenced Mr. Phillis's recommendation that an elected state school board be based upon representatives from each congressional district. Rep. Curtin asked, with State Issue 1 on the ballot (creating an independent redistricting commission for state legislative districts) and likely to pass, whether it would make sense to change the recommendation to allow board membership to be based on state senate districts rather than on congressional districts. Mr. Phillis answered that he has no objection to Rep. Curtin's suggestion; he is not necessarily sold on using congressional districts. Rep. Curtin said he would be reluctant to embrace a proposal to elect by congressional districts until Ohio has districts that look rational. He said, assuming a favorable vote on State Issue 1, he would not be reluctant to support a proposal to have state board members to be elected from, say, three state senate districts. He said, that way, there is a grouping of several regions of Ohio that have similar interests. Mr. Phillis said the original recommendation was to use court of appeals districts (there were nine at the time), and that this is another grouping that might be considered.

Mr. Beckett suggested that it might be useful to connect the state board of education with the board of regents. He said, in the past, there was a much clearer separation between K-12 education and higher education, but that distinction is being reduced with high school students taking college courses and other similar activity. He said the board of regents is created by the legislature, not the constitution, and that, in many ways, this section of the constitution requires that this distinction remain. He asked whether Mr. Phillis thinks that the inclusion of this section of the constitution is doing anything to limit the ability of the state to create a more effective system that would comprise K-16, rather than just K-12. Mr. Phillis answered that, at one point in time, the state board had responsibilities to higher education. He said that up until the time of Governor Rhodes, the state board of education had responsibilities for technical schools and community colleges, which seemed to work very well. He said he would have favored the state

board assuming greater responsibilities, rather than creating the state board of regents, but that is just his opinion.

Rep. Cupp said he recalls that, in addition to every governor wanting to run the system, the elected board had its own difficulties in that they ran in congressional districts which became bigger and bigger, that candidates had to run on a nonpartisan ballot, and that nobody knew who they were. He said that if the public had a question or complaint they didn't go to the state board because they didn't know who that was. He said it was a question of accountability; if the districts are so big, the board members are unknown. He wondered how to ensure a system that has more accountability to the public. Mr. Phillis commented that members of the public often don't know the public officials who represent them, but that in the past, when he was a local school superintendent assisting with putting together state vocational school plan, the board members were visible. He said he doesn't have an answer, but he thinks the problem applies overall, and that people aren't necessarily engaged in political activity unless there is some tough problem they have personally. He said he would advocate for a larger board rather than a smaller one.

Rep. Cupp followed up by stating that people do know there are state legislators even if they don't know who they are. He said there is an accountability issue here. He said the court of appeals districts plan may work, but a problem is that the Third Appellate District has 17 counties, and is a geographically large area. He said the one-man-one-vote rule doesn't apply to appellate judicial districts, but may apply to board members.

Sen. Sawyer commented that he is never introduced as a former member of the state board of education. He noted that, when he is asked about the offices that he has run for, he says that was the hardest one, for the reason that the district is so big, and the position is so little known. He said he ran for it when he had just come out of Congress, so everyone knew him, he was able to raise a good deal of money, and he knew how to campaign. He said in his state board district everyone knew who the board member was for a brief period of time, but he left because he went to the state senate when a new district opened up. He said he agrees that a larger state board makes for smaller districts and a greater attachment to the districts and the constituents.

Committee member Paula Brooks stated that whether the state board is elected or appointed, she is having a hard time grasping why that is the fundamental issue. She said she has not met a state school board member as a county commissioner. She said regardless of whether a board is elected or appointed, she doesn't see the progress in getting children what they need to participate in a demanding world economy. She said she doesn't understand the gist of what he is recommending and why elected officials would be better than appointed officials.

Mr. Phillis said his perspective is from half century of work in public education. He said having worked in a state agency, observing the operation of an elected board versus a hybrid board, his conclusion is that education needs to be operated by people who are solely or primarily interested in education.

Ms. Brooks continued that she is afraid that, in politics, people who are getting elected are looking to the next office. She said she thinks the board needs people who are intelligent and understand developmental assets. She said she doesn't see eye to eye with him on this.

Mr. Phillis said he believes that the elective process works when it comes to mayors, city councils, and commissioners, and it should work when it comes to education. He said boards should be independent of partisan politics and bickering. He said, after observing the two ways the board has operated, a board needs to be independent of politics to the extent possible. Mr. Phillis recalled the comments from a board member from Dayton who, after serving a couple of terms, was defeated. Mr. Phillis said that person felt that although he lost the race, he was grateful for the chance to serve because of his interest in public education, and that he recognized he never would have been appointed to the job because he lacked the political connections that would have facilitated an appointment.

Gov. Taft commented that Minnesota and Wisconsin have no state board of education, wondering if Ohio really needs a state board at all. He said the governor and the legislature spend a lot of time and effort on education. He said the state board is not a policy-making body; rather, the policy is made in General Assembly by committees on education in conjunction with the governor. He wondered what the state board adds to this process. Mr. Phillis said it has been noted that the board was created to take the heat off of governors and legislators when unpopular decisions must be made, such as consolidating school districts or implementing controversial statewide initiatives in education. He said, as a result, the governor and the legislature may value having a state agency to handle such issues.

Mr. Phillis continued that it seems to him that state officials would want a state agency to provide leadership and coordinate education efforts, providing leadership for education. He commented that the state superintendent used to bring all the local superintendents to Columbus annually to rally for education, and to create some understanding about state policy. But, he said, one governor instructed the state superintendent to keep them out of Columbus. He said "we have lost that relationship between state board and community by having this appointment process."

Gov. Taft said he is a strong believer in local boards and local control, there is accountability between local boards and local legislators; they really know each other, which is a strong channel of communication, with much accountability. He said members of the state board do not have a strong platform to influence state policy because they don't have a strong presence. Mr. Phillis said he disagrees with that statement.

Rep. Cupp said states have an all-elected or all-appointed board, but our hybrid board is not working well, noting that "we clearly have something that isn't working properly now." He said one of the values of separating the state board from the executive branch is that there is greater continuity in education policy instead of a philosophical swing every few years. He said there have been about four different swings over about 10 years, resulting in so many changes that teachers and administrators aren't sure what they are supposed to do. He asked whether continuity is a virtue of an elected board.

Mr. Phillis said history shows that there were only three superintendents from the 1950s to the 1990s, versus a revolving door now. He said, with all due respect to legislators' and governor's roles in education, the state board can provide some necessary continuity and consistency. He said what we have now is an untenable flow of different policies and rules that prevent local superintendents and boards from operating with effectiveness and efficiency. He said the local perspective on changes to testing or teacher evaluation procedures can be that someone is setting a stage to cause public school districts to fail. He said a strong state board can be a help to the rest of state government as well as to the local communities, and can be a buffer.

Sen. Sawyer said it is a role provided by both the state board and the Department of Education. He added this role is also played by the board of regents for higher education. He said he liked the use of the word "buffer" for this role, and that such a board tempers and sustains continuity and maintains consistency over time. He said the board provides policy leaders in the legislative and executive branch with a touchstone. He noted that the buffer role is critically important. Because of this, he said he prefers a larger number of board members from smaller districts.

Chair Readler commented that the constitution is fairly limited, indicating the first question before the committee would be to determine what is the point of having the state board. He added that there is an established part of education that survives from election to election. He said taking politics out of education is a noble, possibly unachievable goal, but adding another body to a host of political players, adds to politicization rather than removes it.

Mr. Phillis said the decision to have a state board was a good idea, but a superintendent attached to the governor's office means every time the governor changes there is a new superintendent. He said education policy needs to have an opportunity to work, or for people to determine that it doesn't work, so a state board of education that is independent of the rest of the political process provides some continuity, and an aura of professionalism. He said the nature of professionals under the governor's office is different than those in the buffer zone. He said the nature of the type of person that comes to the Department of Education is different when the governor is in control of those appointments.

Chair Readler characterized Mr. Phillis' position as being that Ohio needs a state board to protect it from the governor and the legislature. He said he is not clear on these different roles, and removing the state board would mean more local control.

Mr. Phillis said jumping from one policy to the next creates some issues, emphasizing the need for continuity.

Chair Readler then thanked Mr. Phillis, commenting that this discussion kicked off a lot of ideas for the committee to work on. He said the committee will continue to discuss the topic at its next meeting, and asked committee members if, in addition to hearing from current or past state school board members, they had suggestions for other speakers.

Next Steps:

Mr. Beckett said he is interested in not losing this connection with higher education, and would like to hear from someone from the state board of regents, or from another state that has a different system (K-16).

Sen. Sawyer mentioned John Carey, chancellor of the Ohio Department of Education, who he said has been through the whole spectrum of this topic. Sen. Sawyer commented that the state doesn't effectively have a board of regents, but rather has a "department of higher education" that is being bureaucratized.

Ms. Brooks said Linda Stern Kass is someone who is a champion of early learning.

Rep. Cupp said the committee could rely on representatives from national organizations such as the Education Commission of the States, the National Conference of State Legislatures, or the Council of State Governments, who might give an overview of what other states are doing.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:20 a.m.

Approval:

The minutes of the October 8, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the January 14, 2016 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair