



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD  
THURSDAY, NOVEMBER 13, 2014

#### **Call to Order:**

Chairman Readler called the meeting of the Education, Public Institutions, and Local Government to order at 11:10 a.m.

#### **Members Present:**

A quorum was present with committee members Readler, Gilbert, Brooks, Macon, Sykes, and Taft in attendance.

#### **Approval of Minutes:**

The minutes of the September 11, 2014 meeting of the committee were approved.

#### **Topics Discussed:**

##### *Article VI, Section 2 (Thorough and Efficient Clause)*

Justice Paul Pfeifer, of the Ohio Supreme Court, presented on Article VI, Section 2, and the impact of the *DeRolph* litigation as it relates to the "thorough and efficient" clause. Justice Pfeifer explained that he is the only justice still at the Supreme Court who sat on all four *DeRolph* cases, giving him a unique perspective on that era. In addition, when the case started in the trial court, he was in the legislature, and even before that he had been part of an ad hoc group seeking equitable education funding. He stated that he did not believe all of the decisions regarding education should be left to the legislature, but rather that the constitution should provide duties, or at least a minimum level or bar of acceptable education, that the legislature require be provided to all students in Ohio.

Justice Pfeifer explained the *DeRolph* cases determined Ohio was failing to meet the standards set out in the Ohio Constitution. He said that the decision to take the case was controversial at the time, as some justices felt it was a political, not a justiciable, question. He said that although then-governor George Voinovich initially was taken aback by the Court's finding that Ohio's

school funding system was unconstitutional; he quickly rose to the challenge and was able to do positive work in improving schools. Justice Pfeifer stated that the court never intended to tell the legislature what to do, as that was not their place, but rather to tell the legislature that what they were currently doing was not enough.

Justice Pfeifer stated that having language regarding education in the Ohio Constitution served a worthy purpose. He stated that although he had not thought about alternative language (to replace the “thorough and efficient” clause), he cautioned against continuing to use that specific language and thought that the committee could come up with a new way of articulating the minimum standard that the legislature would have to meet. The challenge was in trying to define what “thorough and efficient” meant. The fourth time the Court wrestled with the question, it finally concluded that it should release jurisdiction as litigation was not proving to be the answer to the problem, and because the lion’s share of school districts had improved their facilities by that point. Prior to *DeRolph*, the state had contributed literally nothing to educational facilities, but by the end there was significant funding. Justice Pfeifer said, however, that if the question came up today, given the Court’s current make-up, the Court probably would not vote to take the case.

He said the case also demonstrated that there is no area of law for any elected official that is beyond reach when citizens think the official has not met the duties of office. He concluded that the “thorough and efficient” clause serves a worthy purpose and he does not advocate removing it.

Justice Pfeifer then took questions from the committee members. Governor Taft stated that he concurred with the statements that Justice Pfeifer made during his testimony, and inquired as to whether Justice Pfeifer had any thoughts regarding new language that could replace the thorough and efficient clause.

Justice Pfeifer stated that he had not given any thought to new language, but stated that he would not be opposed to more modern language to replace it, and thought that the committee would be capable of drafting new language. He said that the issue that was not in the case is the problem of most urban districts, which is that the dropout rate is high and children are not being educated. But, he admitted, there are so many factors other than funding involved, such as poverty and the child’s home life. Justice Pfeifer said he does not think that a constitutional provision necessarily is the right way to deal with those issues.

Dr. Macon then asked Justice Pfeifer to clarify whether he thought the words “equity” or “equality” should or could be added to the provision. Justice Pfeifer said he would not be opposed to language requiring the state to provide a basic level of funding for schools, and then for the state to provide that. He said that it is possible to determine what a minimum level of funding is required to provide a basic education. Justice Pfeifer also stated that this standard belongs in the Ohio Constitution, but that the legislature should decide what is required to achieve this standard.

Vice Chair Gilbert then asked Justice Pfeifer if he thought the Supreme Court should issue an advisory opinion regarding Article VI, Section 2. Justice Pfeifer stated that he would not be opposed to that idea, and, in fact, had made a proposal to the Judicial Branch and Administration of Justice Committee on this point.

With no other questions from the committee, Justice Pfeifer concluded his testimony.

*Article VI, Section 1 (Ohio School and Ministerial Land)*

Chairman Readler invited testimony from former Ohio Supreme Court Justice Robert R. Cupp, Chief Legal Counsel for the Ohio Auditor of State, regarding Article VI, Section 1. Mr. Cupp prepared a written report for the committee regarding School and Ministerial Lands. He explained that while some of the committee members may see this as an obsolete provision, there is still a use for it as the oversight of school lands.

Mr. Cupp provided a brief history of the provision, indicating that initially these lands were managed by township trustees, but over time questions arose about the competency of their management and, in 1914, the auditor of state was designated as supervisor of the lands, a situation that existed until 1985, when these duties were transferred to the Director of Administrative Services. Then, in 1988, legislation went into effect that transferred supervision of the lands to the Board of Education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature is out there, but the most recent transfer was in 2009 to the Upper Scioto School District in Hardin County. He said the land has a current market value of \$2.5 million and is leased out for farming. The school district derives \$247,000.00 in annual revenue from this lease.

Chairman Readler thanked Mr. Cupp for his report and stated that while he previously thought Article VI, Section 1, might be an obsolete provision, Mr. Cupp's testimony and report show that there is some continuing role for Section 1 to play in the future.

Having no questions from the committee, Mr. Cupp concluded his testimony.

*Committee Discussion*

The committee then discussed the testimony of both Justice Pfeifer and Mr. Cupp. Vice Chair Gilbert thought the committee should bring in an expert who could testify about the impact that the "thorough and efficient" clause has on the minority community, and what would happen if that language were changed or removed. Vice Chair Gilbert suggested that the committee should reach out to the black caucus to see if they knew of anyone who could speak to the committee about these issues at the next meeting.

Dr. Macon asked Governor Taft about his experience regarding the *DeRolph* cases and the thorough and efficient clause. Governor Taft responded that by the time he became governor, *DeRolph* had been decided and his administration sought to comply with the court's ruling.

Dr. Macon then asked Governor Taft if there was any discussion within his administration as to clarifying the language. Governor Taft stated that he and his administration looked to the

language of the court, and focused on the deplorable conditions and the discrepancies between schools. Governor Taft stated that this was the main focus, prioritizing school funding for facilities and updating buildings. Governor Taft also stated that while they may not have completely changed the school funding formula, they did seek to increase it so that the benefit would go to the poorest (in both property wealth and income) communities.

Commission member Brooks also stated that she would like to hear from someone who could testify as to what impact changing (or not changing) the thorough and efficient language would have on the minority community.

Sen. Sawyer commented that he was involved with school funding as it related to imposition of property tax in the early 1980s and that problems with funding and taxation have been problematic ever since. Rep. Sykes stated that the legislature has been reluctant to raise taxes to fund schools and has relied upon the constitutional provision to support decisions that raise enough revenue to fund the schools. Chair Readler suggested it might be helpful to have a speaker address the committee about the property taxation system and how it relates to school funding.

#### *Report and Recommendation Process*

Executive Director Hollon then addressed the committee to explain how the staff and the committee will work together to prepare reports and recommendations to the full Commission, and provided an example from another committee. Director Hollon added that this committee's report may be longer than the example provided because of the unique history and litigation relating to the education articles in Ohio's Constitution.

Chair Readler suggested that it might be possible for the committee to begin to entertain a draft report and recommendation on Article VI, Section 2.

#### **Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:25 p.m.

#### **Attachments:**

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Justice Paul E. Pfeifer
- Prepared remarks of Justice Paul E. Pfeifer
- Biographical sketch of former Justice Robert R. Cupp
- Prepared remarks of former Justice Robert R. Cupp

**Approval:**

The minutes of the November 13, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the January 15, 2015 meeting of the committee.

  
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Chad A. Readler, Chair

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Edward L. Gilbert, Vice-Chair