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A GENERAL AND UNIFORM SYSTEM OF PUBLIC SCHOOLS

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Purpose of this paper

It is the purpose of this paper to examine the meaning of the ninety-one year old requirement of the North Carolina Constitution that the General Assembly "provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free. . .", as the General Assembly and the North Carolina Supreme Court have interpreted it, and to explore some possible implications to be drawn from its proposed deletion from the Constitution.

The constitutional mandates

The Constitution of North Carolina, as ratified by the people in 1868, contained (among others) the following provisions concerning the public schools:

ARTICLE I.

(1) "Sec. 27. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."

ARTICLE IX.

(2) "Section 1. Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools, and the means of education, shall forever be encouraged."

(3) "Section 2[.] The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years."

(4) "Section 3[.] Eash [sic] County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least four months in every year; and if the Commissioners of any County shall fail to comply with the aforesaid requirement of this section, they shall be liable to indictment,[.]"[1]

The first two provisions quoted above have never been amended; no proposal for their amendment has ever been submitted to the people; and the Constitutional Commission recommends that they be retained without change.

The third provision quoted above (Article IX, Sec. 2) was amended in 1876 by the addition of the following sentence:

"And the children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination made in favor of, or to the prejudice of either race."

No other proposal to amend this section has ever been submitted to the people of the State. The Constitutional Commission decided on 13 December 1958 to recommend that this section to amended by the deletion of the words set out in brackets in the following text:

"The General Assembly

[at its first session under this Constitution,][2]

shall provide by taxation and otherwise for

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[1]Certain variations will be noted between the texts above quoted and those found in prints of the Constitution in general use. The above texts are copied from the original, enrolled Constitution of 1868, the text of which has not passed through the hands of editors and typesetters for ninety years without the introduction of slight unauthorized changes.

[2]Deletion of this phrase was decided upon by the Commission prior to 13 Dec. 1958.

[a general and uniform system of]

public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years. [And the children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination made in favor of, or to the prejudice of either race.]"

It is also recommended by the Commission that this section, as amended, become Section 2 of Article VII (the education article) in the Commission's Third Draft Report, dated 30 December 1958.

The fourth provision quoted above (Article IX, Sec. 3), has been amended only once, in 1918, when the constitutional school term was lengthened from four months to six months. The only other proposal to amend this section on which the people have ever voted was defeated in 1914; it would have made the same increase in the length of the school term which was later effected by the 1918 amendment. The Constitutional Commission decided prior to 13 December 1958 to recommend the deletion of the whole of Article IX, Sec. 3, including the provision that

"Eash [sic] County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least six months in every year. . . ."

The literal effect of the recommended changes in these two sections is to omit from the Constitution (1) the specific requirement that "one or more Public Schools shall be maintained" in each school district; (2) the mandatory minimum six month school term; (3) the "general and uniform system" standard for the free public schools which the General Assembly is now directed to provide for; and (4) the requirement of racial segregation in the

public schools (held invalid by the North Carolina Supreme Court in Constantian v. Anson County, 244 N.C. 221 (1956).

In evaluating the significance of these provisions, and particularly the requirement of "a general and uniform system of Public Schools," it is important to note the interpretations which the General Assembly and the Supreme Court of North Carolina have placed on them.

The legislative interpretation

The interpretation given the "general and uniform system" mandate and its cognate provisions by the General Assembly can best be understood from the legislative actions taken to implement it.

From 1868 until 1899, the General Assembly fulfilled its understanding of the constitutional requirement for "a general and uniform system of Public Schools" by enacting laws authorizing the counties and cities to establish public schools and to levy taxes for their support. The burden of financing the public schools fell almost entirely upon the local governments and special taxing districts.

In 1899, the General Assembly appropriated to the public schools $100,000 for each year of the ensuing biennium, the money to be divided according to school population. In 1901, a similar annual fund was appropriated for distribution by school population and also an "equalization fund" of $100,000 a year, to be distributed among the counties on the basis of need. This equalization fund grew from $100,000 a year in 1901 to nearly $6,500,000 in the fiscal year 1930-31.

In 1931, the General Assembly assumed on behalf of the State the duty of financing the constitutional six month school term from State revenues, appropriating $16,500,000 a year for that purpose for the 1931-33 biennium. This appropriation was the first legislative acknowledgment of a duty on the part of the State to support the public schools directly from the State

Treasury, rather than by attempting to equalize the burden between the counties. State support of the statutory seventh and eighth months of the school term came in 1933; state support of the statutory ninth month followed in 1943.

The current state appropriation for the nine months school term is $151,341,796 for the fiscal year 1958-59. (This is in addition to appropriations for textbooks, vocational education, etc.) The nine month school fund is apportioned among the 174 administrative school units by the State Board of Education under standards which are somewhat complex, but which have the net effect of requiring approximately a per capita distribution, based on average daily school attendance. In addition to financial support, the State establishes standards for and certifies public school teachers, prescribes courses of study and school textbooks, fixes the length of the school term, and in many other ways seeks, through legislative enactments and through rules and regulations of the State Board of Education, to provide a "general and uniform system of [free] Public Schools" for all the children of the State.

The judicial interpretation

The Supreme Court of North Carolina has in a score or more of cases said that the requirements of Article IX, Secs. 1, 2, and 3 are positive mandates to the General Assembly and the counties. See, for instance, Constantian v. Anson County, 244 N.C. 221, 225 (1956); Mebane Graded School District v. County of Alamance, 211 N.C. 213, 223 (1937); Marshburn v. Brown, 210 N.C. 331, 338 (1936); Julian v. Ward, 198 N.C. 480, 482 (1930); and Board of Education of Duplin County v. State Board of Education, 114 N.C. 313, 320 (1894).

The Court said in Marshburn v. Brown, 210 N.C. 331, 338 (1936):

"It is the mandate of the Constitution of this State that the General Assembly shall provide by taxation and otherwise for a general and uniform system of public schools wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years. This constitutional mandate contemplates that the system of public schools which it is the duty of the General Assembly to provide for all the children of the State, shall be a State system, to the end that every child in the State between the ages of six and twenty-one years, without regard to the county in which such child shall reside, shall have an opportunity at least to attend a school in which standards set by the State are maintained. When provision has been made by the General Assembly for a State system of public schools, as contemplated by the Constitution, it is the duty of the board of county commissioners of each county in the State to maintain in each school district in its county one or more schools for a term of at least six months in each year. Adequate buildings and equipment are manifestly required for the maintenance and operation of these schools. * * * It is therefore the duty of the board of county commissioners of each county in the State to provide for the construction and equipment of adequate school buildings in each district of its county."

With particular reference to the mandate for "a general and uniform system of Public Schools," the Court said in Lane v. Stanley, 65 N.C. 153, 157-58 (1871):

"It will be observed that it is to be a 'system'; it is to be 'general,' and it is to be 'uniform.' It is not to be subject to the caprice of localities, but every locality, yea, every

child, is to have the same advantage and be subject to the same rules and regulations."

In 1890 the Supreme Court, in Greensboro v. Hodgin, 106 N.C. 182, 186, held (1) that the General Assembly could not require that all the taxes paid by the citizens of Greensboro for state and county school purposes must be spent on the schools of that city, and (2) that the distribution of state and county school funds must be made pro rata, according to school population. Said the Court in that opinion:

"The second section of that article [IX] provides that 'the General Assembly, at its first session under this Constitution, shall provide, by taxation and otherwise, for a general and uniform system of public schools, wherein tuition shall be free of charge to all children of the State between the ages of six and twenty-one years.' Thus, the Legislature is required to promote popular education by devising and establishing a plan--a scheme--consisting of necessary and well-appointed constituent parts, and the whole organized into a complete system of public schools. Such system must be general--not local--not limited to one or more places or localities in the State; it must extend and prevail throughout its borders; and so, also, it must be uniform in all material respects as contemplated by the Constitution--that is, the system cannot be so regulated by statute that it will apply and operate as a whole in some places, localities and sections of the State, and not in the same, but in different ways, in other places, localities and sections. An essential requirement of the provision above recited is that the system, whatever it may be, in whatever manner constituted, must be general and uniform as a whole, and therefore so in all its material parts, the purpose being to extend

to all the children within the prescribed ages, wherever they may reside in the State, the same opportunity to obtain the benefits of education in free public schools--certainly to the extent that the State itself shall supply means to support such schools. The provision declares that tuition in such schools 'shall be free of charge to all the children of the State between the ages of six and twenty-one years'--not to one child more or less than another, nor to children in one place or locality more than another." [Emphasis added.]

And on the specific point of the degree of discretion which the General Assembly would enjoy in the absence of the mandates in question, Mr. Justice Barnhill said in Coggins v. Board of Education, 223 N.C. 763, 767 (1943):

"The establishment and operation of the public school system is under the control of the legislative branch of the government, subject only to pertinent constitutional provisions as to uniformity, sec. 2, Art. IX, and length of term, sec. 3, Art. IX."

Effect of the Pearsall Amendment on the mandate for "a general and uniform system of Public Schools".

It may be argued that the adoption of the Pearsall Amendment (now Article IX, Sec. 12 of the Constitution) in 1956 deprived the public school system of its "general and uniform" character, and that consequently that phrase is inconsistent and at variance with the Pearsall Amendment. Some expressions in the cases quoted above (all of which were decided prior to the adoption of the Pearsall Amendment) may be thought to lend weight to that argument. But this is not the only conclusion which can be reached, and it may be entirely at variance with the intention of the people in adopting that Amendment.

> It should be remembered that the Pearsall Amendment reads in part: "Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local option whereby any local option unit, as defined by the General Assembly, may choose by a majority vote of the qualified voters in the unit who vote on the question to suspend or to authorize the suspension of the operation of one or more or all of the public schools in that unit." [Emphasis added.]

This Amendment (which the Constitutional Commission recommends be retained with only slight editorial change) by its own terms offers, not an exception whereby legislative provision for some public schools need not conform to the "general and uniform system" standard, but authority for the legislature to provide procedures for the voters of a local option unit to close one or more schools in that local option unit and thereby eliminate those schools from the system entirely. As for the schools which are closed, no standard is or could be relevant to them. But as for all the schools in the State which remain open, they remain every one a part of the "general and uniform system of Public Schools" for which the General Assembly must "provide by taxation and otherwise. . . ." Under this view, the significance of the phrase "general and uniform system" is not diminished at all by the Pearsall Amendment. Of course as a matter of physical fact, the closing of a school under the provisions of the Pearsall Amendment will make the public school system less general than at present, because there will be no school where once there was one; but that does not alter the duty of the General Assembly with respect to the schools which are not closed.

It is worthy of note that the Pearsall Amendment does not give the General Assembly the authority to close a single school. That authority rests

solely with the voters in the local option unit -- another indication that the Amendment was not intended to relieve the General Assembly of any part of its present obligation to provide for "a general and uniform system of Public Schools".

Perhaps some considerable light is shed on this question by the decision of the State Supreme Court in Board of Education v. Board of Commissioners, 174 N.C. 469 (1917). There, this question was before the Court: were high schools, which the counties were authorized (but not required) by general state law to establish and levy taxes to support, a part of the "general and uniform system of Public Schools," in view of the fact that not all counties had exercised their authority to establish high schools? If they were not a part of that system, a county tax for their support was invalid.

The Supreme Court had no difficulty in holding that the existing high schools were a part of the constitutionally required "general and uniform system", even though such schools did not exist in some counties. The Court said:

> "The term 'uniform' here clearly does not relate to 'schools,' requiring that each and every school in the same or other districts throughout the State shall be of the same fixed grade, regardless of the age or attainments of the pupils, but the term has reference to and qualifies the word 'system' and is sufficiently complied with where, by statute or authorized regulation of the public-school authorities, provision is made for establishment of schools of like kind throughout all sections of the State and available to all of the school population of the territories contributing to their support." Id. at 473.

In a concurring opinion, Chief Justice Clark expressed the matter somewhat more concisely:

> "When the Legislature authorized the establishment of four high schools in each county, it enacted a uniform system. At first, probably, but few counties could comply to the full extent. The enactment has been in force many years, and now all but four counties out of 100 have, each, prescribed four high schools. Certainly, the system cannot be overthrown and destroyed because one or more counties have not complied with the statute. That is not a defect of invalidity in the statute, but the fault of the counties which have not complied with the law." Id. at 475.

It would seem equally true that the closing of some schools by action of the voters of a local option unit or units would not deprive the remaining schools of their character as part of "a general and uniform system" -- a system available to all except as they vote to reject it.

The potentialities

Suppose the General Assembly and the people of the State should accept the recommendation of the Constitutional Commission and vote to eliminate from the Constitution the "general and uniform system" standard for the public schools, and the requirement that "one or more Public Schools shall be maintained [in each school district], at least six months in every year . . . ." What might be the effect of that action upon the range of the legislature's authority and discretion with respect to the public schools?

Clearly the General Assembly could continue the present system exactly as it is today. It could do so if the whole education article were stricken from the Constitution.

But suppose the General Assembly should at some time wish to make substantially different provision with respect to the public schools. The Supreme Court of North Carolina has said:

"The establishment and operation of the public school system is under the control of the legislative branch of the government, subject only to pertinent constitutional provisions as to uniformity, sec. 2, Art. IX, and length of term, sec. 3, Art. IX." Coggins v. Board of Education, 223 N.C. 763, 767 (1943).

To the limitations mentioned by the Court (which are recommended for deletion) there should be added the rather uncertain and hard-to-enforce requirements of equal treatment found in the Fourteenth Amendment of the United States Constitution and the prohibition against "exclusive or separate emoluments or privileges from the community but in consideration of public services", now Article I, Sec. 7 of the State Constitution.

But within the boundaries fixed by these vague limitations and the requirement that such schools as are provided for be "public" and "free" to all children between six and twenty-one, what might the General Assembly do?

(1) Could it provide that there shall be only one public school in each county?

(2) Could it provide that state school funds be apportioned to the counties in proportion to the respective contributions of the counties to the State's General Fund?

(3) Could it provide that the State will support a school term of only five, four, or three months throughout the State?

(4) Could it provide that the State will support a nine month school term in County X, a seven month term in County Y, and a five month term in County Z?

(5) Could it provide affirmatively that there shall be schools of different levels of quality in different counties?

(6) Could it provide that the level of state support, the requirements for teacher certification, the curriculum, and the textbooks used shall be one thing in County X, another in County Y, and yet another in County Z?

(7) Could it sidestep the Pearsall Amendment and on its own authority close the public schools of a school district or county whenever it might see fit to do so?

(8) Aside from the coldly legal implications of the recommended amendments, what would be the wider policy implications of striking, or proposing to strike, from the Constitution mandates put there ninety-one years ago and never touched since except to strengthen them -- mandates which are widely considered to be the foundation stones of the present public school system? And what convincing answer can be given those who ask why the deletion of these mandates is now thought necessary?

To raise the questions is not to imply that any legislature would ever attempt to take any of the indicated actions. They are raised merely to point up the potential range of unrestrained authority which the proposed amendments may very well confer upon the General Assembly. And it is appropriate to recall the reasons why the mandates for "a general and uniform system of Public Schools," with "one or more Public Schools" being maintained in every school district "at least six months in every year", are in the Constitution. What Mr. Justice Seawell wrote in Bridges v. Charlotte, 221 N.C. 472, 482 (1942) with special reference to the requirement for "a general and uniform system of Public Schools" may be said for all:

> "It is no doubt written into the fundamental law so that it may survive political indifference and so that the humblest citizen, speaking for himself and those in like right, may demand its performance."