



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

Thursday, November 13, 2014

11:00 a.m.

Statehouse Room 018

Agenda

*Note: if you wish to make comments during the meeting
please turn on and speak into your microphone.*

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of September 11, 2014
- IV. Presentations
 - Article VI, Section 2 (Thorough and Efficient Clause)
Justice Paul E. Pfeifer
Supreme Court of Ohio
 - Article VI, Section 1 (Ohio School and Ministerial Land)
Robert R. Cupp, Chief Legal Counsel
Ohio Auditor of State
- V. Committee Discussion
 - Article V, Section 2 (School Funds)
 - Future topics for consideration
- VI. Adjourn



THE SUPREME COURT *of* OHIO

Paul E. Pfeifer

Senior Associate Justice



Jan. 2, 1993 - Paul E. Pfeifer became the 146th Justice of the Supreme Court of Ohio. His current terms ends on Jan. 1, 2017.

Justice **Paul E. Pfeifer** grew up on his family's dairy farm near Bucyrus. He still resides just down the road. As a teenager, he raised purebred Yorkshire hogs to finance his college education. Those years taught him the value of hard work, determination and clean overalls.

Justice Pfeifer's first job after graduating from OSU's law school was as an assistant attorney general trying eminent-domain cases associated with the building of Ohio's highway system. Traveling the state gave him an appreciation for Ohio's county courthouses, architectural jewels that are the crossroads of life in our towns and cities. He always tries to keep in mind how the Supreme Court's decisions might affect the people seeking justice in county courthouses every day.

In 1972, he became a partner in the law firm of Cory, Brown & Pfeifer, where he practiced – primarily as a trial and tax lawyer – for 20 years. He also served several years as an assistant county prosecutor.

Justice Pfeifer served in both houses of the Ohio General Assembly, including one term in the House of Representatives and four terms in the Senate. He held a variety of leadership posts in the Senate, and served as chairman of the Senate Judiciary Committee for 10 years. His proudest legislative accomplishment was crafting the legislation creating the Ohio Tuition Trust Authority.

Justice Pfeifer was first elected to the Supreme Court in 1992. For him, the most inspiring thing about the Court is that every voice gets heard, from that of the widow fighting for her husband's workers' compensation benefits, to those of corporations battling over tens of millions of dollars.

He began his fourth Supreme Court term in January 2011. At Justice Pfeifer's side was his wife, Julie, whom he first met when their steers were tied across from each other at the Crawford County Fair "more years ago than it would be polite to mention." Together, they have two daughters, Lisa and Beth, a son, Kurt, four granddaughters and one grandson.

Because of his career in state government, Justice Pfeifer has one foot in the capital city, but the other always remained firmly planted in his hometown, where he has his own farm now. He raises Black Angus cattle, and enjoys the time spent outdoors doing chores. He says there is clarity to life in the country, where there is no pomp and circumstance, just the green fields of Crawford County, a gaggle of grandkids who call him "Papa" and a herd of Angus that know him as the guy with the hay.

COURTROOM CAREER

The Supreme Court of Ohio, Associate Justice, elected 1992, 1998, 2004, 2010

Cory, Brown & Pfeifer, Partner, 1973-1992

Crawford County Prosecuting Attorney's office, Assistant Crawford County Prosecuting Attorney, 1973-1976

Ohio Attorney General William B. Saxbe's office, Assistant Ohio Attorney General, 1967-1970

LEGISLATIVE CAREER

The Ohio Senate (26th District, elected 1976, 1980, 1984, 1988)

Assistant President Pro-Tempore, 1985-1986

Minority Floor Leader, 1983-1984

Ten years as Senate Judiciary Committee Chairman

The Ohio House of Representatives (15th District, elected 1970)

Judiciary Committee member

State Government Committee member

BUSINESS INTERESTS

Raises Angus cattle on his Crawford County farm

EDUCATION

Juris Doctor, The Ohio State University, 1966

Bachelor of Arts, Economics, Political Science and History, The Ohio State University, 1963

PERSONAL

Born in 1942 in Bucyrus, Ohio

Wife, Julia; three children; five grandchildren

Member, Grace United Methodist Church, Bucyrus, Ohio

In the 1990s, the Supreme Court of Ohio dealt with the school funding issue through a series of cases known as *DeRolph v. State*. In each of the decisions the Ohio Constitution's Thorough and Efficient Clause was scrutinized and discussed at length.

Section 2, Article VI of the Ohio Constitution states:

§ 6.02 Schools funds

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

In *DeRolph I*, Justice Andy Douglas wrote a concurrence, part of which covered the history of public education in Ohio. In particular, Justice Douglas quoted from the debates of the 1850-51 constitutional convention. That portion of Justice Douglas's concurrence is attached here. Those debates, which are well worth reading, reveal the importance our forebears placed on education.

Justice Pfeifer also wrote concurrences in two of the *DeRolph* cases. Both are attached.

The cases are:

***DeRolph v. State* (1997), 78 Ohio St.3d 193.** (bottom of pages numbered 78 – 94; 1 - 5)

***DeRolph v. State* (2000), 89 Ohio St.3d 1.** (bottom of pages numbered 63-67)

1 valuation in the district was approximately \$90 million. The R.C. 133.06 debt
2 limits restrict the district to nine percent of the district's total assessed
3 valuation except under specified conditions. Thus, a new complex was not an
4 option. Accordingly, the school board proposed to renovate Glenford,
5 Thornville, Somerset, and the junior/senior high complex to meet the district's
6 needs. To achieve that goal, the board put a \$6.5 million bond issue before the
7 voters in May and August 1993. The issue failed. The board placed another
8 bond issue before the voters in November 1993 for \$6.3 million (5.26 mills),
9 which would not have been nearly enough for the district to take care of its
10 facilities needs. That issue failed as well. The trial court found that the
11 facilities in Northern Local "had not changed in the past 20 years."

12 III

13 Constitutional Guarantees Related to Public Education

14 The history of some of Ohio's constitutional provisions relating to
15 education is simply fascinating. Some of the history is set forth below to

1 emphasize the important role education has played in the development of our
2 state and nation.

3 Following the Revolutionary War, the Confederate Congress, in the
4 Land Ordinance of May 20, 1785, provided for the surveying and sale of lands
5 in what was then known as the Western Territory. That territory, as described
6 in the ordinance, included lands that would eventually become Ohio. In the
7 Land Ordinance, Congress reserved one thirty-sixth of every township in the
8 Western Territory expressly for the maintenance of public schools, stating:
9 “There shall be reserved the lot No. 16, of every township, for the maintenance
10 of public schools within the said township.” 1 Laws of the United States 563,
11 565. Since the townships under the congressional survey were to be six miles
12 square, this meant that a section of every township measuring one mile square
13 would be devoted to educational use. Spayde, Lewis & Jollay, Baldwin’s Ohio
14 School Law (1984) 2, Section 1.03. “It was the intention of Congress in
15 making this generous grant that these lands, approximately 704,488 acres in all,
16 intelligently managed, would support the public schools of the state in

1 perpetuity, so that there would be no need to tax the citizens for the cost of
2 operating the public school system.” *Id.*

3 Following the enactment of the 1785 Land Ordinance, a group of land
4 speculators incorporated to form the Ohio Company of Associates. See,
5 generally, IV Dictionary of American History (1940) 162-163. This group,
6 represented by Reverend Manasseh Cutler, contracted with Congress for the
7 purchase of a large section of the public lands northwest of the Ohio River. *Id.*
8 The terms of the negotiated agreement stipulated support for public education,
9 requiring that lot No. 16 of each township was to be given perpetually to the
10 purposes stated in the Land Ordinance of 1785, *i.e.*, the maintenance of public
11 schools. The agreement also included a provision that not more than two
12 complete townships of good land were to be given perpetually to the purposes
13 of a university. See, generally, Swan, Land Laws For Ohio (1825) 15-25
14 (documenting provisions of law leading to the acquisition of lands by the Ohio
15 Company of Associates). The provisions of this agreement formed the basis
16 for other land purchases in the Ohio country. *Id.* at 26 *et seq.*

1 In 1787, the Confederate Congress enacted the Northwest Territory
2 Ordinance to provide for the government of the territory and the eventual
3 establishment of states northwest of the Ohio River. The Northwest Territory
4 Ordinance of 1787 provided, as an article of compact between the original
5 states and the inhabitants of the territory northwest of the Ohio River, that:
6 “Religion, morality, and knowledge being necessary to good government and
7 the happiness of mankind, schools and the means of education shall forever be
8 encouraged.” Section 14, Article III, Northwest Territory Ordinance of 1787.
9 1 Laws of the United States 475, 479. The means of forever encouraging the
10 schools had been set forth in the Land Ordinance of 1785, in which lot No. 16
11 of every township was reserved for the maintenance of public education.

12 The Land Ordinance of 1785 and the Northwest Territory Ordinance of
13 1787 set the stage for the development of the Northwest Territory into
14 stabilized promised lands. The plan for stabilization revolved around a means
15 of public education. Hyman, *American Singularity* (1986) 23-24, states that:

1 “Visions of the West as a nursery of republican virtues over a vast
2 continent whose very boundaries were still unknown in 1787 excited
3 Confederation congressmen in New York City and the framers of the
4 Constitution in Philadelphia. Fee-simple ownership by large numbers of
5 smallholders would transform the frontier, where civilization was at risk, into
6 settlements where morality and laws (including the responsibilities to repay
7 debts) would be honored and national cohesion maintained. Publicly supported
8 education, a topic of the 1785 and 1787 statutes, would create literate, free
9 farmers who would staff the governments sketched in the 1787 law. Because
10 settlers derived their titles to land and attendant property from the nation, these
11 unservile land-busters and their children, whose right to education was also a
12 statutory duty of government, would be linked in grateful loyalty to the nation
13 and to the new state they had conceived.

14 “This goal of linkage makes understandable why the Northwest
15 Ordinance implanted commitments to public education in the territorial
16 chrysalis of future states. In planning the republic, most supporters of the

1 Constitution and the ordinance espoused not-yet Federalist ‘loose construction-
2 internal improvement’ doctrines and policies. In addition to advocating roads,
3 turnpikes, canals, and forts, such supporters gave priority to various forms of
4 public education, all aiming to make the frontier quickly interdependent with
5 the dismayingly distant East. * * * Therefore, the 1787 Ordinance is known
6 for its Article III, on schools: ‘Religion, morality, and knowledge being
7 necessary to good government and the happiness of mankind, schools and the
8 means of education shall forever be encouraged.’” (Footnote omitted.)

9 On November 1, 1802, delegates assembled in Ross County, Ohio, for
10 the purpose of establishing a state government and constitution for Ohio. The
11 delegates expressed their views on the fundamental importance of education by
12 adopting, as part of the Ohio Constitution of 1802, two significant provisions.
13 Specifically, Section 3, Article VIII of the Ohio Constitution of 1802 repeated
14 the requirement of the Northwest Territory Ordinance that schools and the
15 means of instruction must forever be encouraged. Section 3, Article VIII of the
16 Ohio Constitution of 1802 provided, in part: “But religion, morality and

1 knowledge, being essentially necessary to good government and the happiness
2 of mankind, schools and the means of instruction shall forever be encouraged
3 *by legislative provision*, not inconsistent with the rights of conscience.”

4 (Emphasis added.) In addition, the delegates at the 1802 Constitutional
5 Convention agreed to the following language contained in Section 25, Article
6 VIII of the 1802 Ohio Constitution: “That no law shall be passed to prevent
7 the poor in the several counties and townships within this state from an equal
8 participation in the schools, academies, colleges and universities within this
9 state, which are endowed, in whole or in part, from the revenue arising from
10 donations made by the United States, for the support of schools and colleges;
11 and the doors of the said schools, academies and universities, shall be open for
12 the reception of scholars, students and teachers, of every grade, without any
13 distinction or preference whatever, contrary to the intent for which said
14 donations were made.” Clearly, given the munificent land grants by Congress
15 in support of public education, the framers of the 1802 Ohio Constitution had
16 great expectations that Ohio’s public school system, aided by legislative

1 provision, would be adequate to afford an outstanding education (not just a
2 rudimentary education) to the entire population.

3 Ohio's second Constitutional Convention occurred in 1850-1851.

4 Similar to the provisions of Section 3, Article VIII of the Ohio Constitution of

5 1802, Section 7, Article I of the Ohio Constitution of 1851 provides, in part:

6 "Religion, morality, and knowledge, however, being essential to good

7 government, it shall be the *duty of the General Assembly to pass suitable laws,*

8 to protect every religious denomination in the peaceable enjoyment of its own

9 mode of public worship, and *to encourage schools and the means of*

10 *instruction.*" (Emphasis added.) Additionally, underscoring the importance of

11 intellect and instruction, the delegates to the 1850-1851 Ohio Constitutional

12 Convention devoted an entire Article of the Constitution (Article VI) to the

13 subject of public education.

14 Section 2, Article VI of the Ohio Constitution, which has remained

15 unaltered since its adoption in 1851, provides: "The general assembly shall

16 make such provisions, by taxation, or otherwise, as, with the income arising

1 from the school trust fund, will secure a thorough and efficient system of
2 common schools throughout the State; but no religious or other sect, or sects,
3 shall ever have any exclusive right to, or control of, any part of the school
4 funds of this State.” The debates from the 1850-1851 Constitutional
5 Convention provide some insight into the purpose of Section 2, Article VI of
6 the Ohio Constitution.

7 The delegates to the 1850-1851 Ohio Constitutional Convention clearly
8 viewed education as the duty of government and the right of all people
9 regardless of their station in life. During the convention there were heated
10 debates over the subject of education. For example, on Wednesday, December
11 4, 1850, the convention considered a report of the standing committee on
12 education. II Report of the Debates and Proceedings of the Convention for the
13 Revision of the Constitution of the State of Ohio, 1850-51 (1851) (“Debates”)
14 at 10. The report recommended adoption of three sections, one of which
15 provided: “The General Assembly shall make such provision by taxation and
16 other means (in addition to the income arising from the irreducible fund) as

1 will secure a thorough and efficient system of Common Schools, free to all
2 children in the State.” *Id.* at 11. During the debates concerning this section of
3 the report, William Sawyer of Auglaize County rose to propose an amendment
4 that free public education be provided to white children only. *Id.* The
5 proposed amendment did not fare well at the convention. James Taylor of Erie
6 County rose to address the proposal. Portions of his stirring speech are entirely
7 worthy of quotation here. Directing his comments to the racist inclinations of
8 Mr. Sawyer, Taylor stated:

9 “I confess, sir, that I am surprised. I did not expect that a motion of this
10 kind would be made by any gentleman on this floor. I did not, on the other
11 hand, suppose that any proposition to extend the political rights of the colored
12 citizens of Ohio would be adopted; but I had supposed that a knowledge of the
13 law of self-preservation would have suggested to the gentleman from Auglaize
14 [Mr. Sawyer] and to every gentleman upon the floor, that it would be good
15 policy to give to all within the reach of our laws a good moral and intellectual
16 training. I knew that this Convention was not prepared to increase the political

1 rights of the black man; but I had hoped that all were willing to provide against
2 his becoming the pest of society, by being deprived of all opportunities for
3 education. Shall we not secure protection to ourselves and our children by
4 relieving the colored population of Ohio, from the absolute necessity of
5 growing up in vice and ignorance? Shall we, by the adoption of the
6 amendment of the gentleman from Auglaize, constitute a class who will
7 become the inmates of our poor houses, and the tenants of our jails? I think it
8 must be clear to every reflecting mind that the true policy of the statesman is to
9 provide the means of education, and consequent moral improvement, to every
10 child in the State, the offspring of the black man equally with that of the white
11 man, the children of the poor equally with the rich. * * *

12 * * *

13 * * * Education will tend to make men moral and useful members of
14 society, therefore let us provide for the education of every child in this state.”

15 Debates at 11.

16 William Bates of Jefferson County stated:

1 “View this question as you will -- as a matter of morality or of political
2 economy, a question of right or expediency, the State would materially suffer if
3 a provision to exclude any class of children from the benefits of common
4 schools, should be engrafted in the new Constitution. The experience of the
5 past has shown that morality and virtue keeps pace with education and that
6 degradation and vice are the inevitable results of ignorance. Good policy,
7 humanity, and above all, the spirit of the Christian religion, demands that we
8 should provide for the education of every child in the State.” Debates at 13.

9 Following Mr. Taylor’s and Mr. Bates’s statements and others, a motion
10 was made to amend the section of the report to provide for a set amount of
11 annual expenditures for the purpose of securing a thorough and efficient system
12 of common schools available to all children in the state. Debates at 13. While
13 this proposal was not adopted, it drew many statements reflecting how strongly
14 the delegates felt about the importance of education. For example, consider the
15 eloquent speech of Samuel Quigley of Columbiana County, a physician:

1 “The third section of the report directs the Legislature to make full and
2 ample provision for securing a thorough and efficient system of common
3 school education, free to all the children in the State. The language in this
4 section is expressive of the liberality worthy [of] a great State, and a great
5 people. That this is an age of improvement and progress is admitted by all who
6 are acquainted with the great and important transactions of the present century.
7 That a spirit of education is increasing in our beloved country is known from
8 common observation, and should not only be hailed, but cherished with delight.

9 “Science has dispelled the darkness from our land which for ages
10 benighted the inhabitants of the old world, and gave the tyrant power to sway
11 an iron sceptre over their subjects, and by discouraging instruction and keeping
12 them in ignorance, perpetuated their servitude -- continued them in degradation
13 -- shackled with despotic chains, not knowing that they were men capable of
14 being free and governing themselves. This condition of things has become
15 changed -- intelligence, the truth of divine revelation -- liberty of conscience --
16 self-government -- freedom of the press -- free and fair discussion, together

1 with freedom of thought, have brought our free citizens from under the
2 dominion of tyranny, declaring and demonstrating to the world that great truth,
3 that men are born free and equal and capable of governing themselves. Had not
4 knowledge been shed upon the human understanding, all would have remained
5 in the darkness of heathenism, and governed by superstition and fanaticism, our
6 country would have still borne testimony to savage cruelty; the banks of our
7 majestic Ohio would have been the theatre of the war dance and deeds of
8 savage cruelty.

9 “* * *

10 “Intelligence is the foundation-stone upon which this mighty Republic
11 rests -- its future destiny depends upon the impulse, the action of the present
12 generation in the promotion of literature. Will we not, are we not, as patriots,
13 bound in solemn duty to use our energies, our influence to forward this greatest
14 of interests to present and future generations; and especially will the great State
15 of Ohio fall short in so mighty an enterprise -- so essential and indispensable a
16 duty? * * * Arouse, then, citizens of Ohio, to your best interests, and show

1 that you are not only able to compete in agriculture, in public improvement, in
2 commerce -- yes, and in the battlefield, with other States, but also in
3 intelligence.” Debates at 14-15.

4 One of the delegates (William Hawkins of Morgan County) provided
5 particularly clear insight into the concept of a “thorough and efficient” system
6 of public education. He was “opposed to too great minuteness in the detail of
7 our Constitution” concerning the specifics of education, but observed, “[W]e
8 are warranted by public sentiment in requiring at the hands of the General
9 Assembly *a full, complete and efficient system of public education.*”
10 (Emphasis added.) Debates at 16. He stated: “Enjoin upon the Legislature the
11 duty of establishing an efficient system [of education], and we shall have done
12 our duty.” *Id.*

13 Following these and other discussions, the report was recommitted to the
14 standing committee on education. Debates at 18. Its revised report
15 recommended adoption of the following:

1 “The General Assembly shall make such provisions, by taxation or
2 otherwise, as, with the income arising from the school trust funds, will secure a
3 thorough and efficient system of common schools throughout the State, and
4 place the means of instruction in the common branches of education, for a
5 suitable portion of the year, within the reach of all the children therein, of
6 suitable age and capacity for learning; Provided, that no religious or other sect
7 or sects, shall ever have any exclusive right to, or control of any part of the
8 school funds of this State.” Debates at 698.

9 John Larwill of Wayne County moved to amend the first line of this
10 section by striking the word “shall” and inserting the word “may.” *Id.* at 699.

11 The proposed amendment was rejected without discussion. Mr. McCormick of
12 Adams County then moved to amend the same section by striking out the
13 words “a suitable portion,” and substituting in lieu thereof the words “at least
14 six months.” *Id.* This and other proposals concerning the length of the school
15 year were rejected upon a majority consensus that such matters are to be left for
16 the legislature to determine. Debates at 699 *et seq.*

1 The eventual product of the debates was the current version of Section 2,
2 Article VI, mandating that the General Assembly “shall make such provisions,
3 by taxation, or otherwise, as, with the income arising from the school trust
4 fund, will secure a thorough and efficient system of common schools
5 throughout the State.” As the Supreme Court of West Virginia recognized in
6 reviewing the debates surrounding the adoption of Section 2, Article VI of the
7 Ohio Constitution:

8 “There was no explicit definition of the words ‘thorough and efficient’
9 that appeared in the final committee report which the 1851 Ohio Convention
10 adopted. The tenor of the discussion, however, by those advocating the entire
11 education section as it was finally adopted, leaves no doubt that excellence was
12 the goal, rather than mediocrity; and that education of the public was intended
13 to be a fundamental function of the state government and a *fundamental right*
14 of Ohioans.” (Emphasis added.) *Pauley v. Kelly* (1979), 162 W.Va. 672, 685,
15 255 S.E.2d 859, 867.

1 DeRolph v. State.

2 PFEIFER, J., concurring. I join the majority of this court in concluding
3 that the current school funding system violates the Thorough and Efficient
4 Clause of the Ohio Constitution. The School Foundation Formula and related
5 statutes do not adequately smooth out the unconscionable funding inequities
6 that exist between school districts in this state. These disparities in funding are
7 direct evidence of a system that is inefficiently designed and administered.

8 Even within a single county, disparities can be remarkable. For example,
9 the actual tax yield per pupil per operating mill in Cuyahoga County ranges
10 from \$581.57 in Cuyahoga Heights to \$21.06 in East Cleveland. In 1994, the
11 year from which these figures were taken, it required over twenty-seven mills
12 in East Cleveland to yield what one mill yielded in Cuyahoga Heights.

13 In Trumbull County, the property valuation per pupil ranges from
14 \$194,649 in Lordstown Local to \$42,297 in McDonald Local. In Clermont
15 County, the property valuation per pupil ranges from \$254,365 in New
16 Richmond to \$33,283 in Felicity-Franklin. New Richmond received more state

1 aid per pupil than over sixty school districts with lower property valuation per
2 pupil.

3 In Cuyahoga Heights and Independence, taxpayers paid an average of
4 twenty-two mills in 1993 and were able to spend an average of \$11,891 per
5 pupil. In East Cleveland, Lakewood City and Olmsted Falls, taxpayers paid an
6 average of over seventy-eight mills in 1993 and were able to spend an average
7 of only \$5,564 per pupil. Thus, on average, residents of Cuyahoga Heights and
8 Independence paid less than one third the millage paid in East Cleveland,
9 Lakewood City and Olmsted Falls but were able to spend over twice as much
10 per pupil.

11 These disparities were not caused by a lack of commitment to education.
12 The residents of East Cleveland, Lakewood City and Olmsted Falls have taxed
13 themselves heavily but are handicapped by their low property base. A system
14 of funding that relies heavily on property taxes while producing such
15 disparities and further exacerbates the disparities by providing state funds to
16 wealthy school districts cannot be considered thorough and efficient.

1 The majority opinion examines a constitutional mandate and determines
2 that the present funding structure fails to meet that mandate. It does neither
3 more nor less than the syllabus law sets forth.

4 In contrast, the minority would require us to forgo addressing the issue
5 before us. They would defer the determination of this vital constitutional
6 standard to the General Assembly. This approach would severely limit the
7 constitutional authority of this court and would, in the long term, harm both the
8 legislative and judicial branches of government.

9 Moving to the merits, the minority would do nothing. They would
10 require us to ignore coal bin classrooms, free-floating asbestos fibers, leaking
11 roofs, and arsenic-laced water and determine that the current system complies
12 with the Thorough and Efficient Clause. A fair reading of the minority opinion
13 leaves one with great difficulty imagining a system that would violate the
14 minority's understanding of the Thorough and Efficient Clause. In short, the
15 minority gives a "dead letter" interpretation to the Thorough and Efficient
16 Clause.

1 The concept of providing free compulsory education for every citizen,
2 while a constitutional mandate, is nevertheless an ongoing experiment. Public
3 education is a constantly evolving process.

4 The delegates to the constitutional convention of 1850-1851 added the
5 Thorough and Efficient Clause to the Constitution due to their distinct
6 disappointment with the General Assembly's treatment of education at that
7 time. They intentionally rejected more specific language in favor of the more
8 fluid term "thorough and efficient." They expected the measure of "thorough
9 and efficient" to expand as time passed and the state matured. The delegates
10 placed on their and each subsequent generation the burden of constantly
11 evaluating whether the constitutional standard was being met. We honor their
12 foresight by giving life and meaning to their language.

13 The General Assembly has long been aware that the current funding
14 structure is constitutionally flawed. It has been impossible to adequately
15 address the problem because wealthy school districts have staunchly defended

1 the status quo. This decision rejects the status quo and requires the General
2 Assembly to act.

3 The solution to the problem before us cannot come exclusively from the
4 legal or political system. The General Assembly cannot write a statute, and we
5 cannot write an opinion, that requires parents to love their children, to provide
6 proper nutrition for their children, to challenge and nurture their children, to
7 read to their children, or to do any number of other things that are vitally
8 important to the growth and educational development of their children. We can
9 require the General Assembly to comply with the Constitution of this state by
10 implementing a funding scheme that secures “a thorough and efficient system
11 of common schools throughout the state.” Neither the plain language of the
12 Ohio Constitution nor our collective consciences allow us to do otherwise. We
13 have accepted our constitutional duty and dispatched it as best we could. We
14 are confident the General Assembly will do likewise.

PFEIFER, J., concurring. Two very different constitutional interpretations and consequential courses of action are again laid out by the members of this court.

There is, of course, the simple and efficient alternative constitutional interpretation offered by Chief Justice Moyer and Justices Cook and Lundberg Stratton. Despite the state's failure ever to advance this theory, my dissenting colleagues continue to argue that Section 2, Article VI of the Ohio Constitution has no discernible meaning, or if it has meaning, it is up to the General Assembly rather than this court to interpret its meaning and decide upon compliance.

In doing so, the dissenters pay no heed to *Cincinnati City School Dist. Bd. of Edn. v. Walter* (1979), 58 Ohio St.2d 368, 384, 12 O.O.3d 327, 336, 390 N.E.2d 813, 824, where this court stated that “the issue concerning legislation passed by the General Assembly pursuant to Section 2, Article VI of the Ohio Constitution presents a justiciable controversy.” In the dissenters’ view, this court is unable to interpret the phrase “thorough and efficient” and should therefore not even try. But, see, *id.*, 58 Ohio St.2d at 383, 12 O.O.3d at 336, 390 N.E.2d at 823 (“We wish to state clearly at the outset that this court has the authority, and indeed the duty, to review legislation to determine its constitutionality under the Constitution of Ohio and to declare statutes inoperative.”). Instead, my dissenting colleagues would essentially throw up their hands in dismay at the difficulty of interpreting two rather common words: “thorough” and “efficient” are, after all, used every day by both common and uncommon people.

Their approach strikes at the core of constitutional law, that courts are the final arbiters of what the Constitution means, which was decided long ago. See *Marbury v. Madison* (1803), 5 U.S. (1 Cranch) 137, 2 L.Ed. 60. See, also, *Walter*, 58 Ohio St.2d at 383, 12 O.O.3d at 336, 390 N.E.2d at 823 (“The doctrine of judicial review is so well established that it is beyond cavil.”).

They quote one college professor, a legal encyclopedia, and a second-year law student. They do not, however, mention *Marbury* or any of the hundreds, perhaps thousands, of cases decided in this country, in which judges have declared federal or state legislation to be unconstitutional. They essentially state that the Thorough and Efficient Clause is little more than an aspiration, even if it is part of Ohio's Constitution.

It is a very tidy solution—simple, efficient and inexpensive. Unfortunately, it would turn two hundred years of constitutional jurisprudence, dating back to *Marbury v. Madison*, on its head. It also would allow the General Assembly to continue to disregard the section of the Constitution that mandates a “thorough and efficient” education system. See *Miller v. Korns* (1923), 107 Ohio St. 287, 297-298, 140 N.E. 773, 776.

Despite the protestations of my dissenting colleagues and some members of the General Assembly, this court's decision in *DeRolph v. State* (1997), 78 Ohio St.3d 193, 677 N.E.2d 733, is binding legal authority in this state. Subsequent to the announcement of this court's March 24, 1997 *DeRolph* decision, the General Assembly has slowly embarked on a course of action that addressed some well-documented deficiencies in Ohio's system of public education, but only marginally confronted the constitutional shortcomings that are at the core of this case. Specific and detailed guidance is apparently required, and now possibly is even desired by the General Assembly.

“The general assembly shall make such provisions * * * as * * * will secure a thorough and efficient system of common schools throughout the state.” Section 2, Article VI, Constitution of the State of Ohio.

The first step toward constitutional compliance is monumental. It requires acceptance of the fact that the simple declaration of Section 2 was intended by the framers to, and therefore does, require a specific and ongoing duty to act.

Presumably, a respect for the Ohio Constitution and for this court's duty to interpret it will help foster that realization.

The second step, setting statewide minimum educational requirements, while subject to continued revision, is seemingly in place and not the subject of dispute in this case. The State Department of Education and the General Assembly have determined what constitutes a basic education. This court has not been a part of that discussion. The reason that *DeRolph* is here is not because the state does not know what it takes to provide a basic education, but because some children are not receiving what the state has determined that they need. For example, setting minimum requirements for the availability of basic modern textbooks and computers does not meet the mandate of Section 2, Article VI when those standards are simply not met for many school children. It is the duty of the state to ensure actual compliance with its own standards.

Assessing the cost of those basic requirements is where the state continues to stumble. Compliance with minimum requirements would necessarily entail a certain threshold minimum cost. Here the state did understand this court in *DeRolph* and undertook the task of determining minimum cost. However, new programming and other new mandated local school expenditures were not included in the calculation. The incomplete minimum cost in dollar value, having been determined, was then fractionally reduced and *then* complete compliance was deferred for several years. Finally, no provision was made to update this financial cost measurement for each biannual budget.

The bedrock constitutional challenge undertaken in this case focuses on the horrible funding inequities that persist between school districts in Ohio due to the state's heavy reliance on local property taxes in formulating the school foundation formula. That was the constitutional tripwire in *DeRolph I* and could not have been set forth more forcefully by this court. It is in conquering this

colossus that the General Assembly decided to polish up the existing formula, declare victory, and call in their legal team without attempting the climb.

Local property taxes raise such a mountain of money that it is not realistic to expect total replacement. That is not what the Constitution requires, nor was it suggested by this court. What is required is an immediate good faith effort to comply with the Constitution.

Getting there is fourth grade math. First, determine an honest per-pupil current minimum operating cost. Next, determine the minimum property tax millage rate that every school district in Ohio will be expected to collect in support of the minimum operating cost. Finally, fill the gaps by adopting a minimum state school foundation formula that lifts every school district and school student in this state to the minimum dollar target beginning this next school year. Those simple steps, properly completed, will bring the state to the threshold of constitutional compliance. It is not a very high place.

There will still be room for a supplemental education budget that allows legislators to provide, on a rational basis, extra state funds for all the special needs of children in circumstances that merit targeted funding.

Tracking in tandem with these school-funding issues are the considerable school facilities deficiencies. While the school building problems are much easier to visualize, they are somewhat harder to fit into a mold of constitutional compliance or noncompliance. Unfortunately, school facilities have become so desperate that Ohio has been ranked at or near the bottom of the nation by outside observers of these conditions. It is the shame of low rankings rather than the hammer of this litigation that has prompted legislative action.

Is the state's commitment large enough, fast enough, or certain enough? Certainty is a constitutional impossibility, given a constitutionally mandated two-year budget cycle. The dollar amount is large, but so is the documented need. Section 2, Article VI would appear to be met by a plan that commits the state to a

timely path of remediation and includes a method for constant review of the need and for acceleration of assistance when warranted.

This case is not about high standards. It is about a constitutionally required foundation of basic educational opportunity. The difficulty lies not in building that foundation, but in sustaining *a democracy* without it.

MOYER, C.J., dissenting. The sole issue now before us, as it was in *DeRolph v. State* (1997), 78 Ohio St.3d 193, 677 N.E.2d 733 (“*DeRolph I*”), is whether the Ohio General Assembly has violated the words and intent of the Ohio Constitution that require it to “make such provisions, by taxation or otherwise, as * * * will secure a thorough and efficient system of common schools throughout the State.” Section 2, Article VI of the Ohio Constitution. In *DeRolph I* a majority of this court held that Ohio school-financing laws then in place did not comply with this constitutional provision.

I, along with Justices Cook and Lundberg Stratton, dissented, recognizing that the General Assembly had in fact established a statewide school system in which schools were open, teachers were teaching, buses were running, and all Ohio children had available to them an opportunity to learn. Our dissent was based on our conviction that resolution of issues of the level and method of school funding is dependent upon judgments regarding the quality of education to be provided by the state. It was further grounded on our firm belief that constitutional history, precedent, and logic warrant the conclusion that those qualitative judgments should be committed to the will of the people as expressed in the election of representatives to the General Assembly and local school boards and in the determination of voted taxation issues to support the schools. In short, the determination of what constitutes minimum levels of educational opportunity to be provided to Ohio’s children is committed by the Ohio Constitution to

Robert R. Cupp

Justice Robert R. Cupp was born in rural Allen County and grew up on his family's farm. He earned his political science degree with high distinction from Ohio Northern University in 1973 and his law degree from Ohio Northern's Pettit College of Law in 1976. As a student at ONU, he served as president of the Student Senate.

Justice Cupp was defeated in his bid for reelection in 2012 by Justice William M. O'Neill.

Prior to his election to the Supreme Court of Ohio in November 2006, Justice Cupp served on the Ohio Court of Appeals, 3rd Appellate District, which comprises 17 counties in northwest and west central Ohio. He was selected presiding judge of the court in 2005 and administrative judge in 2004.

Much of Justice Cupp's 30-year legal career has been committed to effective public service. Before becoming a judge, Justice Cupp served 16 years as a member of the Ohio Senate, beginning in 1985 and ending in 2000 with the advent of Ohio's legislative term limits. Before his election to the General Assembly, Justice Cupp served as a Lima city prosecutor and assistant director of law from 1976 to 1980 and twice was elected Allen County commissioner, serving from 1981 through 1984 and 2001 through 2002.

Additionally, Justice Cupp engaged in the private practice of law in Lima for more than 25 years and is a member of the Allen County and Ohio State Bar Associations. He co-authored the book, [Legal] Ethics and Discipline in Ohio, published by the Ohio State Bar Foundation in 1977.

In the Senate, Justice Cupp served as president pro tempore, the second-highest Senate leader, from 1997 through 2000. As chairman of the Civil Justice Subcommittee, and a 10-year member of the Judiciary Committee, he focused on civil and criminal justice issues. As a member of the Education Committee, he worked extensively on education and school finance improvement issues. As Chairman of the Commerce and Labor Committee, he worked to improve the state's workers' compensation system. Additionally, he served at various times on the Joint Legislative Ethics Committee and the Finance, Agriculture, Ways and Means, State and Local Government, and Legislative Information Systems Committees.

Justice Cupp twice received the Ohio State Bar Association's Distinguished Service Award. He also received the Ohio Association of Elected Officials' Robert E. Hughes Memorial Award in recognition of his outstanding contribution to the improvement of Ohio's election process. He is the recipient of the State 4-H Alumni Award.

In addition to his judicial service, Justice Cupp served as a member of the Ohio Commission on Dispute Resolution and Conflict Management by appointment of the late Chief Justice Thomas J. Moyer. He has been a visiting professor at Ohio Northern University, his alma mater, teaching judicial process and leadership. He is a past president of the 13-county Black Swamp Area Boy Scout Council; a member of the Lima Rotary Club (Paul Harris Fellow) and a past member of the board of trustees of the Higher Learning Commission of the North Central Association, serving as NCA president from July 2008 to June 2009.

Following his term on the Supreme Court, Justice Cupp joined the Ohio Auditor of State's office as chief legal counsel.

He and his wife Libby have two grown sons, Matthew and Ryan, and two grandchildren.



Dave Yost • Auditor of State

Summary Memorandum Regarding **OHIO SCHOOL AND MINISTERIAL LANDS**

FEDERAL LAND GRANTS TO THE STATE OF OHIO - Background.

Attached to this memorandum are pages 56 through 61 of the Ohio Auditor of State publication, "The Official Ohio Lands Book," written by Dr. George W. Knepper, (1st paperback edition 2002), which explains the background of what are known as the Ohio school lands and ministerial lands. (Attachment 1.) Other sections of the Official Ohio Lands Book list and explain the existence, use, purpose, and disposition of other lands donated to the State of Ohio by the federal government. The Ohio Lands book can be accessed online through the website of Auditor of State Dave Yost at: <https://ohioauditor.gov/publications/OhioLandsBook.pdf>

DUTIES OF THE AUDITOR OF STATE.

The Auditor of State was designated and empowered as the "Supervisor of School and Ministerial Lands" by the Ohio General Assembly in 1917 through the enactment of H.B. 192, known as The Garver Act (107 Ohio Laws 357).¹ Significant responsibility, however, for the local administration of such lands remained with the trustees, clerk, and treasurer of the township in which the lands were located.²

¹ **Section 9 of the Act** reads in part, "By virtue of his office, the auditor of state shall be the state supervisor of school and ministerial lands, hereinbefore and hereinafter designated state supervisor, and as such shall have general charge of and supervision over the lands appropriated by Congress for the support of schools and purposes of religion as hereinafter provided."

² **Section 12 of the Act** reads, "The trustees, clerk and treasurer of the civil township in which such land or the major part thereof is situated shall, under the direction of the state supervisor, and as hereinafter provided, have local charge and management of all lands in

The Auditor of State retained these responsibilities until August 1, 1985, when the legislature enacted House Bill No. 201 (116th G.A.) and thereby transferred most of the duties relating to school and ministerial lands to the Director of the Ohio Department of Administrative Services.

Further changes were made by state legislature with the enactments of H.B. 497 and H.B. 549 (117th G.A.). Consequently, on June 29, 1988, the general charge, supervision, management, and all remaining monies of school lands were transferred from the Director of the Ohio Department of Administrative Services to the board of education in each school district that held an allotment of these lands.

Congress in 1968 authorized the release of the school lands and ministerial lands to be sold by the State of Ohio with the requirement that revenue resulting from such sales to be used for the support of education “as the Legislature of the State of Ohio in its discretion shall deem appropriate.”³

Ohio voters then amended the Ohio Constitution at the May, 1968, election to utilize this opportunity. Thus, Article 6, Section 1 of the Ohio Constitution now provides, “The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this State for educational and

this state appropriated by Congress for the support of schools or for purposes of religion * * *.”

³ Public Law 90-304, approved May 13, 1968, provided: “That the Legislature of the State of Ohio may sell all or any part of the lands heretofore reserved and appropriate by Congress for the use of schools within that State and may use the proceeds from the sale of such lands for educational purposes, as the Legislature of the State of Ohio in its discretion shall deem appropriate.”

“Sec. 2. That the Legislature of the State of Ohio may sell all or any part of the lands heretofore reserved and appropriate by Congress for the support of religion within the Ohio Company’s and John Cleeves Symmes’ purchase in the State of Ohio and may use the proceeds from the sale of such lands for educational purposes, as the Legislature of the State of Ohio in its discretion shall deem appropriate.”

religious purposes, shall be used or disposed of in such manner as the General Assembly shall prescribe by law.”

In consequence of the constitutional amendment, the Ohio General Assembly through S.B. 167 (108th G.A.) enacted in 1969 made it the policy of the State of Ohio “to sell the [school and ministerial] land and to use the revenue for the support of public education.”⁴ R.C. 501.14

CURRENT DUTIES AND PROCEDURE

The procedure to implement the policy of the State of Ohio to sell the school and ministerial lands and to use the resulting revenue to support public education is found in Ohio Revised Codes sections 501.01 *et seq.*⁵

When deeds are requested for the transfer of school lands to the local school board in the district to which the lands have been allocated, the Auditor of State’s Office follows the same process and procedure that it follows for the execution of any deed which transfers state-owned real property. That process requires, first, that the entity or person requesting a deed provide supporting documents for their ownership interest. Next, the deed is drafted by the Auditor of State’s Office and transmitted to the Ohio Attorney General’s office for its approval. Once approval is obtained, the unexecuted deed is returned to the Auditor of State for the Auditor’s signature. It is then sent by the Auditor of State first to the Governor and then to

⁴ R.C. 501.14 states: “In the leasing of all of the lands which were reserved and given to Ohio for the support of schools and religion, which by a congressional act, Public Law 90-304 , approved May 13, 1968, were released to Ohio to be sold and the revenue to be used for the support of education, it is the state's policy to sell the land and to use the revenue for the support of public education.

⁵ R.C. '501.041 is scheduled to sunset on December, 31, 2016, pursuant to S.B. No. 171, (129th G.A.) relating to state boards and commissions and the Sunset Review Commission.

the Secretary of State for their respective signatures. Once each official has signed, the executed deed is returned to the Auditor of State for delivery to the grantee.

The Auditor of State's Office maintains a "record copy" of school and ministerial land deeds issued by the State of Ohio for the period 1994-present. This is accomplished by creating and executing two originals of each deed in the procedure referenced above. One executed deed is sent to the grantee(s) with instructions to have it recorded in the county in which the land is located and to report back to the Auditor of State the volume and page number of the deed book in which the county recorder has recorded it. The duplicate original is kept by the Auditor of State as the record copy.

Those school and ministerial records which date from the late eighteenth century through 1994 have, by agreement between the Auditor of State and the Ohio Historical Society, been sent to the ODH administered state archives for holding.⁶ The state archive is better equipped to provide appropriate storage conditions for the records. An occasional call to view the records is received by the Auditor of State's office. Those requests are forwarded to the state archives. A copy of the applicable record retention schedule is attached. (Attachment 2.)

Requests to obtain a deed for transferring school or ministerial lands are rare. Copies of deeds relating to ministerial lands and to school lands are attached to this memorandum as examples. (Attachment 3.)

⁶ R.C. '149.31, provides: "(A) The Ohio historical society, in addition to its other functions, shall function as the state archives administration for the state and its political subdivisions. It shall be the function of the state archives administration to preserve government archives, documents, and records of historical value that may come into its possession from public or private sources. * * * *".

At the time of transfer of the school and ministerial lands administration and oversight from the Auditor of State to the Ohio Department of Administrative Services in 1985, existing school lands consisted of four farms totaling 1,232 acres under two year leases, as well as several small parcels in Columbiana County under lease for 99 years, renewable forever. The locations of the four school land farms were in Hardin County, Marion Township (R9E, T4S, S16-640 acres); Ross County, Green Township (R21, T9, S15-312 acres); Marion County, Big Island Township (R14E, T5S, S15-160 acres); and Franklin County, Madison Township (R21, T11, S16-120 acres).

Auditor of State records indicate that ownership to all or a portion of the school land in Big Island Township in Marion County, and Marion Township in Hardin County have since been transferred to private individuals or entities.⁷ The land in Madison Township, Franklin County, and in Green Township, Ross County, may still be in state title.

OHIO HISTORICAL SOCIETY'S ROLE

The records transferred to the state archives administered by the Ohio Historical Society (OHS) in 1994 from the State Auditor's Office were entered into their card catalog. A number of these record series are also included in their Online Collections Catalog, and OHS continues to add the records to the catalog. These catalogs are not databases that provide access to the actual record. Rather, they inform researchers that OHS holds the record. Researchers can then visit OHS in person or send in a request by mail or email for copies. The Online Collections Catalog is available through OHS's website at <http://collections.ohiohistory.org/>

⁷ The Big Island Township, Marion County transfer is dated August 12, 2008, and recorded in Deed Vol. 1061, Page 316 of the Deed Records of Marion County, Ohio. The Marion Township, Hardin County transfer is dated May 11, 2009, and is recorded in Deed Vol. 484, Page 566 of the Deed Records of Hardin County, Ohio.

starweb/l.skca-catalog/servlet.starweb?path=l.skca-catalog/skacatalog.web. A copy of a catalog record is attached. (Attachment 4.)

For some record series, OHS has created finding aids, which are more detailed inventories, to assist researchers. The finding aids are available to researchers at the Ohio History Connection. A copy of a page from a finding aid is attached. (Attachment 5.)

This Summary Memorandum was prepared by:

Robert R. Cupp, Chief Legal Counsel, Ohio Auditor of State Dave Yost
Cory Hadocy, Deputy Legal Counsel, Ohio Auditor of State Dave Yost

Attachment 1.
AOS Lands Memorandum

THE OFFICIAL
OHIO LANDS BOOK



Written by
Dr. George W. Knepper

Cover art by Annette Salrin

This book is a publication of
The Auditor of State

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Dave Yost • Auditor of State

Dear Ohioan,

As Auditor of State, I take great pride in Ohio's rich history and the path Ohioans have taken to get us to where we are today. The Ohio Lands Book walks you through this amazing journey.

This book presents a comprehensive history of the development of the land that comprises our diverse state, including how boundaries were drawn and land divided. You also will learn about the people who have contributed to the growth and progress of our state, from prehistoric times to 1803 when Ohio became the 17th member of the Union to today's state that we now call home.

I hope you enjoy this history of the great state of Ohio!

Sincerely,

A handwritten signature in blue ink that reads "Dave Yost".

Dave Yost
Ohio Auditor of State

FEDERAL LAND GRANTS TO THE STATE OF OHIO

In addition to its grants to groups and individuals, the federal government made substantial land grants to the State of Ohio in support of specific purposes. These grants involve many interests. The principal ones are described briefly herein.

School Lands

Among the Founding Fathers' generation were leaders who believed an educated public was necessary to sustain a self-governing republic. Even before adoption of the Constitution of 1787, the Confederation Congress had provided real support for public schooling by providing, in the Land Act of 1785, that section 16 (one square mile) in every survey township, be set aside for the "maintenance of public schools within said township."⁸

The ordinance regards the township as a surveying unit, a six mile square containing 36 one mile square sections numbered in a prescribed sequence. Section 16 is located close to the center of the township. Civil townships, on the other hand, are political units of local government within counties. In states surveyed under the federal rectangular system, survey townships and civil townships usually have the same boundaries, but there are many exceptions.

The Northwest Ordinance of 1787 identified characteristics to be found in a well-ordered, democratic society, but it made no provision, beyond encouragement, for support of public schooling. In the enabling act of 1802, however, Congress offered three positions which, if accepted by delegates to the 1802 constitutional convention, "shall be obligatory upon the United States." The first proposition was that section 16 in every township, "and where such section has been sold, granted, or disposed of," equivalent land closest to section 16, "shall be granted to the inhabitant of such township for the use of schools."

Convention delegates responded with a counterproposal. The United States should donate one thirty-sixth (2.77%) of the land area of Ohio for the

8) By 1920, 73,155,075 acres of public land had been given by the federal government to the public land states in support of public schooling.

The United States government ultimately granted 704,204 acres to Ohio for the support of public schooling. Each township received **section 16** whenever possible, or another section in lieu of it. Early land grants sometimes interfered with the availability of section 16, so it was not uncommon for a substitute section to be assigned. Downtown Columbus, for example, is situated in Range 22, Township 5, Section 16 (according to Matthew's Survey) which should have been reserved for support of public schools. However, the Refugee Grant overlapped this section 16, and it was therefore unavailable for schools, but was available to claimants of the Refugee Grant. Thus township 5's schools were assigned Section 15 in Township 11, Range 21 (Matthew's Survey), which is located next to Township 11's school section, now located in Madison Township, Franklin County, near Groveport.

A Township

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

*Congress reserved **section 16** near the middle of each township for the use of public schools.*

The Virginia Military District, the Connecticut Western Reserve, and the United States Military District all received school lands, but these lands were not located within either the Virginia Military District or in the Western Reserve because neither tract was developed under federal jurisdiction. Virginia Military District school lands (105,600 acres) are located in Morrow, Wayne, Holmes, Ashland, Richland and Crawford counties. Western Reserve lands are located in Holmes and Tuscarawas counties (56,000 acres) and in Williams, DeFiance, Paulding, Putnam, Henry, and Van Wert counties (37,724.16 acres). In all, the Connecticut Western Reserve was granted 93,724.16 acres.

United States Military District school lands totaled 72,000 acres and are located in Guernsey, Coshocton, Muskingum, Licking, Morrow, and Delaware counties. The Donation Tract, the Two Mile Square reserve, the Moravian Tracts, and the French Grants were granted school lands either within the tracts, or adjoining them.

support of public schools. Also, the United States should give the state not less than three percent of the net proceeds derived from public land sales in Ohio for constructing roads within the state, and should donate one survey township (23,040 acres) for an institution of higher learning. Finally, the Ohio legislature should be given control of the donated lands, in trust, for the purposes Congress intended when making the Grant.⁹ Congress accepted these bold counterproposals on March 3, 1803, thereby appropriating public land to honor its commitment to Ohio.

On April 15, 1803, Ohio's first state legislature provided for leasing and administering school lands. Initially lands were to be leased for seven to fifteen years. The lessee was obligated to clear and fence the property, plant 100 apple trees, and perform other duties. In 1817, in what proved to be an unfortunate move, the legislature allowed school lands to be leased for 99 years, renewable forever. Some legislators wanted to sell school lands, and on February 1, 1826, Congress permitted sales with the provision that the township's inhabitants must vote their consent. The legislature complied with this mandate and, on January 20, 1827, enacted the voting, appraisal, and conveyance procedures to be followed. Proceeds from the sale of school lands were to be deposited in the Common School Fund, and interest on the principal paid to the schools within the original surveyed townships.

The Ohio Constitution of 1851 (still the basic law of Ohio, although much amended) provided in Article VI, Section I for protection of the principal of all funds received from the sale or other disposition of the lands granted or entrusted to the state for educational or religious purposes. This article was amended in 1968, and the trust monies were then dispersed for educational purposes.

Until 1914, school lands were administered by trustees of the original surveyed townships. Often their stewardship was sloppy, a problem that went back to the earliest days of statehood. In 1838, for example, Samuel Lewis, the state's first Superintendent of Common Schools, issued the "First Annual Report

9) Miami University became the beneficiary of the grant of a township to support higher learning.

from this department for the State of Ohio.” Lewis rode on horseback over much of the state gathering information. His report chronicled abuses by township trustees including misdirecting tax monies ostensibly collected for school purposes, and leasing school lands to favorites under excessively generous terms. Later generations would call the latter abuses “sweetheart deals.”

In 1914, the Auditor of State became responsible for leasing mineral rights on school lands, and in addition to his other duties, the Garver Act of 1917 made him Supervisor of School and Ministerial Lands. The Auditor retained supervisory control until August 1, 1985, when the legislature transferred most of these duties to the Director of Administrative Services.¹⁰

On June 29, 1988, legislation went into effect that transferred the general charge, supervision, management, and all remaining monies of school lands from the Director of Administrative Services to the Board of Education in each school district that had been allotted these lands. Title to them is now held in trust by the State of Ohio, through the General Assembly, as per a March 3, 1803 Act of Congress.

The Auditor of State maintains the record copy of School and Ministerial Land deeds issued by the State of Ohio. Final certificates for such lands, as well as lease records, are located in the State of Ohio Archives, Ohio Historical Center.

Ministerial Lands

In the early years of the American Union, some states still taxed their citizens for the benefit of religion. This was a holdover from English and other European traditions where one denomination constituted a state church and received its support and other perquisites from the state. In America, however, religious diversity undercut that practice as it became apparent that there would be no agreement on whose religious practices would prevail, let alone earn

10) At the time of transfer, four school land farms totaling 1,232 acres were under two year leases, while several small lots in Columbiana County were under lease for 99 years, renewable forever. The four school land farms were located in Hardin County, Marion Township (R9E, T4S, S16-640 acres); Ross County, Green Townships (R21, T9, S15-312 acres); Marion County, Big Island Township (R14E, T5S, S15-160 acres); and Franklin County, Madison Township (R21, T11, S16-120 acres).

Some 99-year leases renewable forever are still in effect in Marietta and in Hamilton County's Delhi and Green townships. Persons occupying these lands do not own them, which presents a title problem. To clear this problem, persons pay the back rent and receive a deed from the State of Ohio. The back rent on some parcels has been as low as five cents a year because the original 1805 rent formula is still in effect.

In 1833, Congress authorized Ohio to sell ministerial lands. Money from the sale was invested, and churches within the original surveying township received the interest and rent money until 1968, when the constitutionality of such church-state relationships was challenged. Congress then authorized the remaining ministerial funds to be dispersed for schools. In May, 1968, Ohio voters approved a constitutional amendment that directed any future ministerial income be used solely for educational purposes.

public tax support. Congress' grant of ministerial lands in Ohio (such grants limited to the Ohio Company Purchase and the Symmes Purchase) was therefore somewhat of an anomaly.

Both the Ohio Company's First Purchase and the Symmes Purchase provided that section 29 of each township be set aside for the support of religion. Monies realized from the leasing or sale of section 29 were to be distributed to the township's churches on a pro rata basis according to each denomination's membership. As with school lands, township trustees were in charge of administering these lands. After Ohio emerged as a state, the Ohio General Assembly became the trustee of ministerial lands. The legislature enacted laws permitting 99-year leases, renewable forever. Income from ministerial lands, therefore, was severely limited.

Ohio's ministerial lands totaled 43,525 acres. In the Ohio Company First Purchase, ministerial lands were located in Washington, Meigs, Gallia, Lawrence, and Athens counties. When the original survey was made, it was dis-

covered that Marietta was within a ministerial section, and the federal government would not permit the sale of section 29 in Marietta. Congress did not set aside section 29 in the Ohio Company's Second Purchase (parts of Vinton, Morgan, Hocking, and Athens counties), but on January 7, 1796, the Ohio Company set aside section 29 in each of the ten surveying townships located in this tract. Congress treated section 29 lands in the Symmes Purchase as it did those in the Ohio Company lands through a contract with the Board of Treasury. Ministerial lands in the Symmes Purchase are located in parts of Hamilton, Butler, and Warren counties.

Ministerial lands are yet another evidence that Ohio's experience with federal lands is unique.

Congress made no other provision for the support of religion elsewhere in the public domain. Some small, specific mission grants were made in a few western states based on the historic presence there of continuous religious activity.

Canal Lands

Canals opened the interior of Ohio to national and world markets. In 1825 the state commenced construction on the Ohio and Erie Canal and the Miami Canal, later extended into the Miami and Erie Canal. It was an enormous

undertaking for a relatively poor state to handle. Ohio followed the lead of New York State, which had just completed its Erie Canal, and sold state-backed bonds in eastern money markets to finance construction of these two through



The old Miami and Erie Canal, built between 1825-1845, St. Marys, Auglaize County, Ohio, ca. 1940-1949.

Attachment 2.
AOS Lands Memorandum



for **Contractors/Vendors** for **Government Entities** for **State Employees** for the **Public**

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Series
Authorization No: 070-0057 **Agency:** AUD **Division:** ADMN **Section:** 0007 **Revision:** 2

Agency Series No.: 070-LE-01 **Record Series Title:** Land Deeds/Purchase of Land Records
Record Series Description: Land deeds documenting the purchase or sale of land by all divisions of the State of Ohio. These documents evidence the vesting of any right, title, or interest in real property belonging to or used by the State of Ohio and include appraisals, encumbrances, fund transfers, plans, resolutions, Attorney General opinions, contracts and any other original documents related to the acquisition of real property by the State of Ohio. Included in this record series are the field notes, maps, records, documents, papers, and implements relating to or used in the survey of the public lands within the state, which were delivered to the executive of this state by the surveyor of the United States at Detroit, by order of the government of the United States, the records of field notes and other records of papers which have been added thereto, the records of deeds and other records or papers relating to the public lands originally deposited with the governor or secretary of state, and the records, maps, plats, papers, documents, and implements relating to the public lands in the Virginia military district in this state, from the United States land office at Chillicothe.

Agency Web Link:

Confidential Description **Vital Description**

Media	Retention Period	Retention Justification	Method of Disposal
Machine Readable	Permanent	ORC 117.49, 117.50, 117.51 & 501.03	Permanent
Paper	Transfer to State Archives after the imaged copy has been checked for accuracy and completeness	ORC 117.49, 117.50, 117.51 & 501.03	Archives

Approvals:

Created		Date: 4/1/2013
Approved	Marty Meeks, Records Officer	Date: 4/1/2013
Approved	Bunnie Jones, Record Administrator	Date: 4/9/2013
Approved	Fred Previts, State Archivist	Date: 4/23/2013
Approved	Martin Meeks, State Auditor	Date: 4/23/2013

Notes:

Note Date	Note Description	User
<hr/>		



for **Contractors/Vendors**

for **Government Entities**

for **State Employees**

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Series
Authorization No: 10700073 **Agency:** AUD **Division:** **Section:** **Revision:** NA

Agency Series No.: GAR-BLM-01 **Record Series Title:** Lease Records of Lands or Buildings

Record Series Description:

Agency Web Link:

Confidential Description

Vital Description

Media	Retention Period	Retention Justification	Method of Disposal
Unknown	Fulfill the requirements of O.R.C. 117.49. Retain 2 years after expiration of lease, then destroy.		Unknown

Approvals:

Approved Marty Meeks, Records Officer **Date:** 9/14/2001
Created Marty Meeks, Records Officer **Date:** 9/14/2001

Notes:

Note Date	Note Description	User
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**Attachment 3.
AOS Lands Memorandum**

March 9, 2009



Bricker & Eckler
ATTORNEYS AT LAW
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VIA U.S. CERTIFIED MAIL

Office of Auditor of State
Attention: Legal Counsel and Administration
88 East Broad Street, 5th Floor
Columbus, Ohio 43215

**Re: Upper Scioto Valley Local School District
Congressionally Appropriated Lands/Hardin County
Request for Deed of Title**

Dear Office of the Auditor of the State of Ohio:

Our law firm represents the Upper Scioto Valley Local School District of Hardin County, Ohio (the "School District"). The School District is the beneficial owner of 640 acres of certain federally appropriated lands in Hardin County totaling 640 acres (the "Property"). These are "school and ministerial lands" governed by Chapter 501 of the Ohio Revised Code. Our purpose in writing today is to request your assistance in connection with the School District's efforts to obtain documentary evidence of its interest in this Property. Specifically, we are requesting that a deed be issued for these lands so as to facilitate the School District's anticipated leasing arrangements for the Property.

Our basis for this request is found in Section 501.03 of the Ohio Revised Code. This statute generally outlines a procedure whereby the State Auditor furnishes to the board of education of the relevant school district "copies of deeds . . . and other papers and documents" in the possession of the State Auditor relating to the appropriated lands, and "when authenticated by the certificate and signature of the auditor of state, under the official seal of the auditor of state, [such deeds and other documents] shall be received as competent evidence and shall have the same force and effect as the originals." To the extent that the foregoing provides authority for the State Auditor's Office to present a deed for the Property to the School District, we respectfully request the issuance of such a deed. We request that the deed be issued to and in the name of the Board of Education of the Upper Scioto Valley Local School District.

Having possession of a deed to the Property would facilitate the School District's disposition of interests in the Property. Presently, pursuant to its authority under ORC Sections 501.01, 501.04, and 501.07, the School District is contemplating one or more agreements with a lessee (or lessees) of the Property, and we anticipate that this party may require evidence of the School District's interest in the Property in connection with its due diligence as a potential lessee with a potential long-term interest in the Property.

Office of Auditor of State

March 9, 2009

Page 2

In the event that the requested deed cannot be produced and issued, we would request, in the alternative, that the State to furnish to the School District copies of any pre-existing deeds or other land records in the State's possession that would serve as evidence of the School District's interest in and beneficial ownership of the Property or as evidence of the nature of the Property as federally appropriated lands.

Thank you in advance for your prompt attention to this matter.

Yours truly,



Todd O. Reutzel

TOR:sm

cc: Rick Rolston, Superintendent
Upper Scioto Valley Local School District



Mary Taylor, CPA
Auditor of State

April 14, 2009

Mr. Todd O. Reutzler, Esq.
Bricker & Eckler
Attorneys at Law
100 South Third Street
Columbus, OH 43215-4291

RE: Governor's Deeds

Dear Mr. Reutzler:

The Auditor of State is pleased to send you the enclosed Governor's Deed which conveys certain state land.

GRANTEE	COUNTY	VOLUME/PAGE
Board of Education of the Upper Scioto LSD	Hardin	Various 18, Page 21

You will need to record the deeds in the Office of the County Recorder. Please send the County recording information, (date recorded, the book, page or microfiche number) to the Auditor of State. A return card is enclosed for your convenience.

Should you have any questions or need additional information, please call me at my direct number at 728-7183.

Sincerely,

MARY TAYLOR, CPA
Auditor of State

A handwritten signature in black ink that reads "Vicki L. Porter".

Vicki L. Porter
Executive Secretary

Governor's Deed

State of Ohio

KNOW ALL MEN BY THESE PRESENTS: THAT,

WHEREAS, Pursuant to the provisions of Sections 501.03, 501.04 and 501.07 of the Ohio Revised Code, the Office of the Auditor of the State of Ohio has authorized the issuance of a deed conveying unto the Board of Education of the Upper Scioto Valley Local School District, County of Hardin, Ohio, all right, title, and interest the State of Ohio may have in the herein described real estate;

WHEREAS, Pursuant to the provisions of Chapter 501 of the Ohio Revised Code, the Board of Education of the Upper Scioto Valley Local school District is the beneficial owner of a 640 acre tract of School Land, being all of Section 16, Congressional Lands, Marion Township, Hardin County, Ohio, and

NOW, THEREFORE, THE STATE OF OHIO, BY TED STRICKLAND, GOVERNOR, under and pursuant to the power and authority conferred by Sections 501.03, 501.04 and 501.07 of the Ohio Revised Code, and in consideration of the mutual benefits derived therefrom, does hereby remise, release, and forever quitclaim unto the Board of Education of the Upper Scioto Valley Local School District, their heirs and assigns forever, all right, title and interest, including the mineral rights appurtenances thereto, the following described real estate:

Situated in the State of Ohio, County of Hardin, and Township of Marion
being all of Section 16, congressional lands.

TO HAVE AND TO HOLD said premises with all the privileges and appurtenances thereunto belonging to the Board of Education of the Upper Scioto Valley Local School District, its heirs and assigns forever.

IN TESTIMONY WHEREOF, I, **TED STRICKLAND, GOVERNOR**, for and in the name of the State of Ohio, have signed this deed at Columbus, Ohio, and have caused the same to be countersigned by the Secretary of State and the Great Seal of the State of Ohio to be hereunto affixed this 6th day of April, Two Thousand and Nine (2009).



THE STATE OF OHIO

BY: Ted Strickland
TED STRICKLAND
GOVERNOR

COUNTERSIGNED

BY: Jennifer Brunner
JENNIFER L. BRUNNER
SECRETARY OF STATE

DRAFTED AND PREPARED

BY: Mary Taylor
MARY TAYLOR
AUDITOR OF STATE
PURSUANT TO SECTIONS
501.03, 501.04 AND 501.07
(O.R.C.)

Recorded in Volume 18, Page 21 New Deeds Various State Lands

Land Office, Auditor of State

Data For Parcel 281600010000

Base Data

Parcel: 281600010000
Owner: USV BOARD OF EDUCATION
Address: CR 35

MARION

[+] Map this property.

Mailing Address

Mailing Name: USV SCHOOL
Address: PO BOX 305
City State Zip: MCGUFFEY OH 45859

Owner Address

Owner Name: USV BOARD OF EDUCATION
Address: CR 35
City State Zip: UNAVAILABLE

Geographic

City:
Township: MARION
School District: UPPER SCIOTO VALLEY

Legal

Legal Description: S16 640.00A
Neighborhood: 2800 MARION TOWNSHIP
Legal Acres: 160
Tax District:
Net Annual Tax: 11778.2

Land Use: 110 AGRICULTURAL VACANT LAND "QUALIFIED FOR CAUV"
Number of Cards: 1
Range Township Section: 0-0-0
Map Number/Routing Number: /

Title Information

Date	Survey Book/Page	Official	Deed Volume/Page	Section	VMS	Out/In Lot Num	Description	Transfer Description
5/11/2009	/	OR	484/566	16		/	NW1/4 - SCHOOL SECTION	

Valuation

	Appraised (100%)	Assessed (35%)
Land Value:	\$2,050,400.00	\$717,640.00
Building Value:	\$0.00	\$0.00
Total Value:	\$2,050,400.00	\$717,640.00
CAUV Value:	\$913,940.00	\$319,880.00
Taxable Value:		\$319,880.00

Notes

Notes: Linked PINs: 281600020000, 281600030000, 281600040000

Attachment 4.
AOS Lands Memorandum

Full Record

Collection. Governor's deeds, official record copy, 1837-1977. [State Archives Series 4401]

Summary

Creator

Ohio. Auditor of State

Extent (quantity/size)

106 v.

Location/Public Access Data

BV5211GD- BV5316GD

Subjects

Public lands -- Ohio / Public land sales -- Ohio / Deeds -- Ohio

Scope and Content

Contains copies of Governor's deeds of original land sales in Ohio. Each record includes location of land office, date of original purchase, name of original purchaser, description of land, date of governor's deed, Governor's signature, and Secretary of State's signature. Some of the records provide details about subsequent transactions involving the land in question.

Includes indexes.

Archival Arrangement

Arranged chronologically.

Attachment 5
AOS Lands Memorandum

STATE ARCHIVES RECORDS PRELIMINARY ACCESSION LIST

Department: Auditor of State			RG no.	
Division: General land records - Administration			Series: 4401	
Series Title: Governor's deeds - official record				
copy, 1837-1977			Prepared JS/95	
Container Numbers			RECORDS DESCRIPTION	DATES
Vol	Fold	Item		
BV5211GD			Various State Lands, vol. 1	1881-84
BV5212GD			" " " vol. 2	1884-89
BV5213GD			" " " vol. 3	1889-94
BV5214GD			" " " vol. 4	1894-1903
BV5215GD			" " " vol. 5	1903-12
BV5216GD			" " " vol. 6	1912-21
BV5217GD			" " " vol. 7	1921-26
BV5218GD			" " " vol. 8	1926-43
BV5219GD			" " " vol. 9	c.1943-57
BV5220GD			" " " vol. 10	c.1953
BV5221GD			Swamp Lands - Incapable of Being	
			Drained, vol. 1	1854-84
BV5222GD			Swamp Lands - Permanent Residence,	
			vol. 2	1854-79
BV5223GD			Swamp Lands - Drained, vol. 3	1854-90
BV5224GD			Ohio Lands - Various Counties and	
			Cities: Lewiston, Mercer Co., Loramie,	
			Reservoir Lands, Islands of Miami, and	
			Maumee Rivers, Act of 1864	c.1864-85
BV5225GD			C & S Turnpike, Section 16,	
			Miscellaneous Tracts, Board of Public	
			Works, vol. 5	1837-45
BV5226GD			Reservoir Lands, vol. 1 - part 1	1958
BV5227GD			" " vol. 1 - part 2	1958