



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

---

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

FOR THE MEETING HELD  
THURSDAY, MARCH 12, 2015

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

Chairman Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:30 a.m.

#### **Members Present:**

A quorum was present with committee members Readler, Gilbert, Coley, Cupp, Curtin, Macon, Sawyer, Taft, and Talley in attendance.

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

The minutes of the January 15, 2015 meeting of the committee were approved.

#### **Presentations:**

*“Article VI, Section 2 (School Funds)”*

*Darold Johnson  
Legislative Director  
Ohio Federation of Teachers*

The committee welcomed Darold Johnson, legislative director for the Ohio Federation of Teachers. Mr. Johnson provided written comments indicating the preference of his organization that the current language in Article VI, Section 2 of the Ohio Constitution, be retained. He said the Ohio Supreme Court in the *DeRolph* cases defined what thorough and efficient means, noting an article from Rutgers University outlining a similar experience in New Jersey.

Mr. Johnson entertained questions from the committee at the conclusion of his remarks.

Vice-Chair Edward Gilbert asked whether New Jersey had expanded “thorough and efficient” to define anything else or to include early childhood education. Mr. Johnson said that he was not

aware that had happened. He said that his group's parent organization, the American Federation of Teachers, does support early childhood education.

Committee member Dr. Larry Macon asked how much discussion has occurred in Mr. Johnson's organization regarding the "thorough and efficient" clause. Mr. Johnson said that there was a lot of discussion when they thought changes in the provision were being contemplated. He said the organization developed its rationale based upon those conversations.

Dr. Macon asked whether the organization had come up with any alternatives to "thorough and efficient," to which Mr. Johnson answered that because civil rights already exist in federal law, and in federal constitutional amendments, and because case law in this area is settled, the feeling is that the Ohio Constitution should only be changed in order to reflect changes that would be for the purpose of correcting problems for which there are no other options.

Dr. Macon wondered whether it would suffice for the committee to change the language to include "equitable" or "equal." Mr. Johnson said that "through and efficient" is better than "equitable" or "equal" because *DeRolph* has defined the phrase and is a benchmark. Removing "thorough and efficient" would cause a bigger loss than would be gained from including the word "equitable."

Committee Member Sen. Bill Coley asked whether keeping the current constitutional language would permit a system whereby people could select their own educational resources, in the same way the state allows welfare recipients to make their own nutritional selections. Mr. Johnson said that the constitution allows a lot of flexibility right now.

Chair Readler summed up some of the history of the section, indicating that "thorough and efficient" has been open to conflicting meanings and has been used by courts to impose their own views, which, in his opinion, upsets the balance of power. He also noted that the concerns in 1851, when this provision was adopted, were not the same as they are now. He asked why the American Federation of Teachers prefers court involvement.

Mr. Johnson answered that the three branches of government are equal and do have the ability to affect policy. He said sometimes the courts will move the boundaries beyond where people want them to go, but courts are consistent and willing to do the hard work to move past partisanship in many instances. He said that the four *DeRolph* decisions occurred because the legislature wasn't doing what the court had ordered it to do, and courts have a function of ensuring that schools are thorough and efficient.

Mr. Readler noted that the New Jersey litigation went on for 25 years, and the court there even ordered the legislature to raise taxes to fund public schools. Mr. Readler asked whether Mr. Johnson believes that was a good development. Mr. Johnson said that his comments are on the process. He said Ohio's justices are elected, and the public has a way to seek redress if it doesn't like a judicial decision.

Mr. Gilbert asked whether Mr. Johnson's view is that the clause should not be removed, and Mr. Johnson agreed this was what he is advocating. Mr. Gilbert commented that making a change to

“thorough and efficient” would involve more court activity and litigation, rather than less, so the better course would be to leave it alone because the meaning is settled at this point. Mr. Johnson agreed with Mr. Gilbert’s assessment.

Committee member Rep. Mike Curtin said the U.S. Constitution and the state constitution are full of aspirational language, and that “thorough and efficient” is one example of this. He said there was a high level debate in 1851 before this language was adopted, and the drafters knew that every generation would work through what the expectations would be. Rep. Curtin said “thorough and efficient” is not an invitation for courts to meddle. The fact that Ohio had one episode of litigation [*DeRolph*] that lasted 10 years is not enough to say that the language is not acceptable. Like the concept of due process in the U.S. Constitution, “thorough and efficient” is a concept that evolves with the law. He said that the job of legislators is to reinterpret what expectations are and what means the state has to achieve them. He said no sum of money was set for a reason. Rep. Curtin said the committee should keep the language because it has served the state very well. He applauded *DeRolph* as having set the standard.

Mr. Johnson then concluded his remarks.

#### *“Summary of Presentations on School Funds”*

*Steven H. Steinglass*  
*Senior Policy Advisor*

Steven H. Steinglass, Senior Policy Advisor, briefly summarized the prior presentations and discussion that occurred with regard to Article VI, Section 2 (School Funds). He indicated that the committee could take one of several options: repeal the section, keep it without change, or adopt one of the proposals that were presented. Additional questions include whether early childhood education should be included, and whether education should be defined as a fundamental right.

Mr. Steinglass said changing the language would result in litigation, which would result in a lot of effort and expense in order to re-define the new language. He said if there is a change, it could be given a later effective date so as to allow school districts to prepare. He also said “thorough and efficient” is an elastic clause that each generation can examine and define for itself.

#### **Committee Discussion:**

Chair Readler then invited the committee members to discuss their views on Article VI, Section 2, and wondered what the committee’s consensus was about whether to change it.

Committee member Mr. Bob Taft said that *DeRolph* had an impact on his term as governor. He said they increased spending and improved facilities at that time, and other governors continued that work. Governor Kasich is now considering “thorough and efficient” and the *DeRolph* definitions as he works on his education budget. Mr. Taft said the language is hard to understand, but each new generation can read-in its own understanding of what it means. He said

it is hard to imagine changing it without there being a lot of resulting litigation. He said creating education as a “fundamental right” could crowd out other priorities of society, including healthcare, daycare, or other needs. He continued, saying the question of determining the quality of education has been a big debate over time, but it is best processed through the legislature rather than through the courts. He said the concept of “fundamental right” invites court involvement. Mr. Taft said “thorough and efficient” has taken on sacrosanct status, and his inclination is to leave it alone as it gets interpreted and reinterpreted through the generations.

Sen. Coley said that he seconds Mr. Taft’s comments. He added that “we must be pragmatists,” as our society has become more partisan and ideological. He said “thorough and efficient” has true meaning for most people, with certain gradations of interpretations, but that everyone collectively decided to bring schools up to a certain standard. Sen. Coley said that a compelling reason is needed to change along with consensus to change. He feels the committee does not have a compelling reason or consensus, so his vote is to leave the provision alone.

Vice-chair Gilbert said he agrees with the comments of Mr. Taft and Sen. Coley, particularly Sen. Taft, but his question for Mr. Steinglass is whether early childhood education must be in the constitution in order to be effectuated, rather, couldn’t the legislature just handle that. Mr. Steinglass said that the constitution does not need a reference to early childhood education in order for the General Assembly to fund it, and that the same is true for higher education.

Vice-chair Gilbert asked Director Hollon what is the next course of action for the committee if it wants to vote on retaining Article VI, Section 2. Director Hollon said that once the committee decides on a course of action, the staff will draft a report and recommendation, and that, in this instance, the committee should decide whether it wants a report and recommendation on this section alone, on Section 1 and 2, or on the entire article.

Dr. Macon asked if there are problematic aspects of the various proposals.

Mr. Steinglass then described alternatives 1 and 2.

Dr. Macon said he agrees with his colleagues on maintaining the “thorough and efficient” clause, but he also would like to expand and clarify what that is. He wondered if Mr. Steinglass could help him understand, at a later time, what has been defined in the cases. Mr. Steinglass said he would talk to Professor Charlie Wilson and get some research on this for Dr. Macon.

Sen. Coley commented that it would be good to be able to allow a marketplace for educational alternatives under the Constitution.

Mr. Steinglass said that the phrase “common schools” is understood to mean “public schools,” and that a 100 percent voucher system might be taking things too far under Article VI, Section 2. He said within a narrow area the state has some discretion, and how that is exercised is up to the General Assembly.

Sen. Coley said additional items might crowd out other items and interfere with having a balanced budget. He said there are already issues with limited resources. Sen. Coley concluded that he is in favor of leaving the provision as is.

Vice-chair Gilbert said that while he believes it would be good to have more language to explain the meaning of “thorough and efficient,” the reality is the only ones who would win from trying to do this would be lawyers.

Vice-chair Gilbert then moved to retain Article VI, Section 1 and Section 2 as they are. Motion was seconded, and a roll call vote was taken.

The motion unanimously passed.

Director Hollon asked whether the committee wanted a report and recommendation on both sections together, and Chair Readler agreed that one report and recommendation for those two provisions would be acceptable.

Mr. Taft said he would like the committee to have a discussion about Article VI, Section 3, relating to boards of education, specifically whether there should be a change in the way individuals obtain seats on the boards. Director Hollon suggested that Sections 3 and 4 seem to go together and could form the basis of one report and recommendation.

Sen. Coley said he would like to review Sections 5 and 6, commenting that they are phrased more like legislation and they may need some revision.

Chair Readler said that after the committee concludes its review of Article VI, it might then review Article VII, Public Institutions.

Rep. Curtin said that he would like to add a topic if the committee agrees, and that is the earmarking of revenues for K-12 education. While he recognizes a provision regarding the net proceeds from the lottery is in the constitution, he wonders what other states do in regard to earmarking revenues for education. He said the highest constitutional obligation is education, and that he has introduced legislation on this topic.

Sen. Coley said the legislature has many priorities and all of them are important. He said casino revenues currently go to education.

Mr. Steinglass pointed out that Article XV, Section 6a, concerning the state lottery, has been assigned to this committee for review.

Vice-chair Gilbert said he would like further information from Mr. Steinglass about having education consist of “0 to 12” as opposed to “K to 12”.

Mr. Steinglass pointed out that the earmarking provision only says “K to 12.”

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 11:10 a.m.

**Attachments:**

- Notice
- Agenda
- Roll call sheet
- Prepared remarks of Darold Johnson

**Approval:**

The minutes of the March 12, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

*/s/ Chad A. Readler*

---

Chad A. Readler, Chair

*/s/ Edward L. Gilbert*

---

Edward L. Gilbert, Vice-chair