



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION

#### OHIO CONSTITUTION ARTICLE VI, SECTION 1

#### FUNDS FOR RELIGIOUS AND EDUCATIONAL PURPOSES

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The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article VI, Section 1 of the Ohio Constitution concerning funds for religious and educational purposes. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The Commission recommends that no change be made to Article VI, Section 1 of the Ohio Constitution and that the provision be retained in its current form.*

#### **Background**

Article VI, Section 1 reads as follows:

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

Article VI of the Ohio Constitution concerns education, and Section 1 deals more specifically with lands provided to the state for educational and religious purposes.

As originally adopted in the 1851 constitution, Article VI, Section 1 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 or religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

## *School Lands*

School lands provided by the federal government to Ohio and other states played an important role in the development of public education in this country, and school lands supported education in virtually all the new states beginning with Ohio in 1803.<sup>1</sup>

The history of school lands dates to the days before statehood, when the Confederation Congress, through the Land Ordinance of 1785,<sup>2</sup> reserved in every township in the survey of the land tract in the eastern portion of the state (which was known as the Seven Ranges) a one-mile square section for the maintenance of public schools.<sup>3</sup> The Northwest Ordinance,<sup>4</sup> enacted in 1787 by the Confederation Congress and reaffirmed by the first United States Congress in 1789,<sup>5</sup> established a path to statehood for Ohio and the other states that were carved from the Northwest Territory. It also continued the commitment to public education by providing, in part, that “[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”<sup>6</sup> The founders’ emphasis on the value of education, and particularly on its relationship to religion and morality, is recognized as stemming from the view that the establishment of a new nation required “an educated, moral, sober citizenry in the new states that would have the stability and civil responsibility of a republican society.”<sup>7</sup>

In the 1802 Enabling Act, Congress moved Ohio along the path to statehood by enacting legislation to “enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government and for the admission of such State into the Union \* \* \*.”<sup>8</sup> It also contains an unusual provision offering the new state one “section, number 16, in every township” or other equivalent lands.<sup>9</sup> The 1802 Constitutional Convention made a counteroffer<sup>10</sup> that, in turn, was accepted by the federal government. This resulted in Ohio ultimately gaining control of 704,204 acres (or 2.77 percent of its land area) of federally-donated land to support public schools.<sup>11</sup>

The importance of education to the new state was reflected in the 1802 constitution, which followed the Northwest Ordinance in providing, in Article VIII, Section 3, that “religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

After statehood, the General Assembly leased much of this land, with some leases being as long as 99 years and renewable forever. In 1826, however, Congress permitted land sales with the consent of township residents.<sup>12</sup> And in 1827, the General Assembly adopted legislation providing that proceeds from the sale of school lands were to be deposited in the Common School Fund and earmarked for the benefit of schools within the townships.<sup>13</sup>

Because of concerns about the local stewardship of the school lands, the General Assembly in 1914 and 1917 transferred supervision of the school (and ministerial) lands to the Auditor of State. In 1985, the General Assembly transferred supervision to the Director of Administrative Services, and in 1988, the General Assembly transferred supervision of all remaining monies to

the Board of Education in each school district that had been allotted these lands, with title held in trust by the State of Ohio.<sup>14</sup>

### *Ministerial Lands*

In addition to allocating land to support education, the federal government allocated land in Ohio to support religion by providing that section 29 of certain land purchases be used to support religion.<sup>15</sup> The granting of real property for religious purposes has been identified as 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.”<sup>16</sup> Ohio’s “ministerial lands,” which totaled 43,525 acres, represented only a small part of the total land originally granted to Ohio by Congress.<sup>17</sup>

The Confederation Congress (in the Ohio Company’s First Purchase in 1787) and the United States Congress (in the Symmes Purchase in 1794) reserved section 29 for the purpose of religion in what are today Washington, Meigs, Gallia, Lawrence, and Athens counties (from the Ohio Company’s First Purchase), and in Butler, Hamilton, and Warren Counties (from the Symmes Purchase). In addition, the Ohio Company on its own reserved section 29 from its Second Purchase in what are now Hocking and Vinton Counties.<sup>18</sup> “ ‘Ministerial land,’ as these lands have since been termed, are found nowhere in the United States, except within these three parts of the state of Ohio.”<sup>19</sup>

In 1833, Congress allowed the sale of lands that had been granted to the state for the support of churches and religious societies, with the proceeds to be placed in a trust fund and interest thereon paid to local schools and religious societies.<sup>20</sup>

The 1851 constitution addressed these issues by adopting a provision, Article VI, Section 1, which addressed both educational and ministerial lands and provided that the proceeds from the sale of lands granted for educational or religious purposes must be applied to the objects of the original grants.

### **Amendments, Proposed Amendments, and Other Review**

By 1968, the practice of state payments to religious organizations was recognized as problematic under the Establishment Clause of the First Amendment to the United States Constitution, and Congress acted to limit the use of sale proceeds to educational purposes only, subject to the discretion of the General Assembly.<sup>21</sup> Ohio voters subsequently approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.<sup>22</sup> Thus, Article VI, Section 1 was altered to provide that funds arising from these lands would not be restricted to school or religious purposes, but “shall be used or disposed of in such manner as the General Assembly shall prescribe by law.” In the May 7, 1968, election, the voters approved an amendment proposed by the General Assembly to this section by a vote of 847,861 to 695,368, or 55 percent to 45 percent.<sup>23</sup>

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section.<sup>24</sup>

## **Litigation Involving the Provision**

There has been no significant litigation involving Article VI, Section 1.

## **Presentations and Resources Considered**

On November 13, 2014, the committee heard a presentation by former Ohio Supreme Court Justice Robert R. Cupp, who was at that time chief legal counsel for the Ohio Auditor of State.<sup>25</sup> Mr. Cupp explained that while some may consider Article VI, Section 1 as an obsolete provision, the section remains necessary as the state still possesses some “school lands” as referenced in the provision.

Mr. Cupp provided a brief history of the provision, indicating that these lands first had been managed and supervised by township trustees, then by the auditor of state, and later by the director of the Department of Administrative Services. However, in 1988, legislation went into effect that transferred supervision, management, and all remaining monies of school lands to the board of education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature remains under state title, but the most recent transfer by the state took place in 2009 to the Upper Scioto School District in Hardin County. He said the Hardin County property has a current market value of \$2.5 million and is leased by the school district for farming. The school district derives \$247,000.00 in annual revenue from this lease.

## **Action by the Education, Public Institutions, and Local Government Committee**

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted on October 8, 2015 to issue a report and recommendation recommending that Article VI, Section 1 be retained in its current form.

## **Presentation to the Commission**

On November 12, 2015, on behalf of the Education, Public Institutions, and Local Government Committee, committee Chair Chad A. Readler appeared before the Commission to present the committee’s report and recommendation, by which it recommended retention of Article VI, Section 1. Chair Readler explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article VI, Section 1 in its current form.

## **Action by the Commission**

At the Commission meeting held December 10, 2015, Chad Readler moved to adopt the report and recommendation for Article VI, Section 1, a motion that was seconded by Governor Bob Taft. A roll call vote was taken, and the motion passed by a unanimous affirmative vote of 23 members of the Commission.

## Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VI, Section 1 should be retained in its current form.

## Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on November 12, 2015, and December 10, 2015, the Commission voted to adopt this report and recommendation on December 10, 2015.

/s/ Charleta B. Tavares  
Senator Charleta B. Tavares, Co-Chair

/s/ Ron Amstutz  
Representative Ron Amstutz, Co-Chair

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## Endnotes

<sup>1</sup> See generally Jon A. Souder & Sally K. Fairfax, *State Trust Lands: History, Management, and Sustainable Use* (1996); Sean E. O'Day, *School Trust Lands: The Land Manager's Dilemma Between Educational Funding and Environmental Conservation, A Hobson's Choice?*, 8 N.Y.U. Envtl. L.J. 163 (1999). For a compendium of the various legislative enactments relating to the creation and preservation of Ohio school lands in the early 1800s, see *A Compilation of Laws, Treaties, Resolutions, and Ordinances, of the General and State Governments, which Relate to Lands in the State of Ohio; including The Laws Adopted by the Governor and Judges; The Laws of the Territorial Legislature; and the Laws of this State, to the Years 1815-16*, Published in Pursuance of Resolutions of the General Assembly, passed January 22, 1825. (1825).

<sup>2</sup> General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 1774-1789, at 375.

<sup>3</sup> See generally Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 220 (2<sup>nd</sup> prtg. 2011).

<sup>4</sup> Northwest Ordinance of 1787, as reprinted in Act of Aug. 7, 1789, ch. 8, 1 Stat. 50 et seq. It may be found online at: Journals of the Continental Congress, 1774-1789, 32:334 (Worthington C. Ford, et al., eds., 1904-37); Ordinance of 1787: The Northwest Territorial Government, Act of July 13, 1787, <http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim> (last visited May 12, 2015), and additionally is available at: The Avalon Project, *Northwest Ordinance; July 13, 1787*, Lillian Goldman Law Library, Yale Law School (2008), [http://avalon.law.yale.edu/18th\\_century/nworder.asp](http://avalon.law.yale.edu/18th_century/nworder.asp) (last visited Aug. 31, 2015).

<sup>5</sup> Northwest Ordinance, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50, 51.

<sup>6</sup> Ordinance of 1787, *supra*, at Section 14 (Compact), Article III.

<sup>7</sup> Matthew J. Festa, *Property and Republicanism in the Northwest Ordinance*, 45 Ariz. St. L.J. 409, 460 (2013). See also Alexandra Usher, "Public Schools in the Original Federal Land Grant Program" 5 The Center on Education Policy (Apr. 2011), [http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?\\_nfpb=true&\\_ERICExtSearch\\_SearchValue\\_0=ED518388&ERICExtSearch\\_SearchType\\_0=no&accno=ED518388](http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED518388&ERICExtSearch_SearchType_0=no&accno=ED518388) (last visited Apr. 27, 2015), citing P.W. Culp, D.B.

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Conradi, and C.C. Tuell, *Trust land in the American west: A legal overview and policy assessment* 4-8 (Cambridge MA: Lincoln Institute of Land Policy 2005).

<sup>8</sup> Ohio Enabling Act, ch. 40, Sec. 7, 2 Stat. 173, 175 (1802),  
[http://www.ohiohistorycentral.org/w/Enabling\\_Act\\_of\\_1802?rec=1490](http://www.ohiohistorycentral.org/w/Enabling_Act_of_1802?rec=1490) (last visited Apr. 27, 2015)  
<http://research.archives.gov/description/299949> (last visited Apr. 27, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> *Propositions From the Ohio Constitutional Convention to the Congress of the United States, Relating to the Admission of Ohio, Ordinance and Resolution Passed in Convention, Nov. 29, 1802*, as reprinted in Daniel J. Ryan, *From Charter to Constitution, Ohio Archaeological and Historical Publications*, Volume 5, Ohio St. Archaeological and Hist. Soc. 78 et seq. (1897),  
[http://publications.ohiohistory.org/ohj/browse/displaypages.php?display\[\]=0005&display\[\]=1&display\[\]=164](http://publications.ohiohistory.org/ohj/browse/displaypages.php?display[]=0005&display[]=1&display[]=164)  
(last visited May 5, 2015).

<sup>11</sup> George W. Knepper, *The Official Ohio Lands Book* (2002). See also Steinglass & Scarselli, *supra*.

<sup>12</sup> Knepper, *supra*.

<sup>13</sup> *Id.* at 58.

<sup>14</sup> *Id.* at 58-59.

<sup>15</sup> See generally William E. Peters, *Ohio Lands and Their Subdivision* 340-357 (2<sup>nd</sup> ed. 1918).

<sup>16</sup> Knepper, *supra*, at 59.

<sup>17</sup> *Id.* at 60.

<sup>18</sup> Peters, *supra*, at 362-364.

<sup>19</sup> *Id.* at 364.

<sup>20</sup> Steinglass & Scarselli, *supra*.

<sup>21</sup> *Id.* at 220-21, citing Public Law 90-304 (May 13, 1968).

<sup>22</sup> *Id.* at 221.

<sup>23</sup> Source: Ohio Secretary of State's website; May 7, 1968 Primary (Official Results),  
<http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1960-1969Results/68priconst.aspx> (last visited May 5, 2015).

<sup>24</sup> Ohio Constitutional Revision Commission (1970-77), *Recommendations for Amendments to the Ohio Constitution, Final Report, Index to Proceedings and Research*, 53 (June 30, 1977),  
<http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 5, 2015).

<sup>25</sup> On November 4, 2014, Mr. Cupp was elected state representative for the Fourth District (Allen County) for a term beginning January 6, 2015. Upon being sworn as state representative, Representative Cupp was selected to serve as a legislative member of the Ohio Constitutional Modernization Commission.