

Non-public Schools and Home Education

A Position Statement with History

By Ernest A. Whiteside

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The 1963 Constitution of Michigan, Article 5, Section 3, states (in part) that, “Leadership and general supervision over all *public education*, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all *public education*, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.”

This constitutional mandate explicitly limits the Board of Education to supervision of “public education.” So why does the Board of Education, on their web page state that this “provision of the State Constitution means, in effect, that the State Board has many direct supervisory duties in connection with local school districts and community colleges and indirect coordinating duties for the four-year state colleges and universities. Specific state laws and court decisions have detailed the Board's responsibilities *and extended its supervisory powers over nonpublic education?*”

In recent years, it has become popular to espouse the belief that our earliest founders instituted “public education” as a function of the state. The founders were deeply suspicious of government and sought to protect institutions of learning from state regulation and oversight. The generation of Americans that published the Declaration of Independence (1776), the Articles of Confederation (1777) and then enacted the Northwest Ordinance (1787) were NOT intent upon instituting a state regulated “public education” system.

The Northwest Ordinance of 1787 is the basis for all laws, constitutions and states that were, or ever will be, formed in the Northwest Territory. The six articles of compact between the thirteen original states and the people and states of the territory, are “forever unalterable” unless by an act of the United States Congress. The original ordinance was enacted under what is referred to as the Confederate Congress, because the United States was established and governed under the Articles of Confederation. On August 7, 1789 the Northwest Ordinance was amended so as to adapt the same to the present Constitution of the United States.

Article III of the Northwest Ordinance of 1787 states (in part), “Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” This article of the compact is as much in force today as it was in 1787. The constitutions of Michigan written in 1835 and 1850 did not retain this language but the 1908 convention choose to insert these words as Section 1 of the article for education. This sentence from the Northwest Ordinance is also retained as Article VIII, Section 1 of the Constitution of Michigan of 1963.

The United States Congress of 1787, in the Northwest Ordinance, expressed a concern that the future laws, constitutions and states may be tempted to discourage the teachings of “religion, morality and knowledge” that were contrary to the views of the governing class. European nations had struggled for centuries to suppress the teaching of “religion, morality and knowledge” that were not in compliance with the official position of the state and our founders were determined that this would NOT happen in the United States.

“Schools and the means of education,” in 1787 were private and were often parochial. It was these private and parochial schools that the drafters of this ordinance sought to protect from government molestation. The founders did NOT intend for the states to establish schools and provide the means of education that would compete with these private and parochial schools.

To encourage is to give the support of one’s approval. Encourage is synonymous with advocate, countenance or favor and antonymous with discourage. The drafters may just as well have written, “shall forever be advocated, countenanced and favored” or “shall never be discouraged,” as have written, “shall forever be encouraged;” the meaning is the same. Congress understood very well how to draft language that would create a mandate for the state to establish schools and provide means of education and did NOT do that.

The governing generation of the early 1800s was more “progressive” and in 1809 judicial districts created schools and levied taxes to support them. Twenty years later, the Territorial Council divided the districts into school districts and gave the State the right to supervise them. To be “progressive” in the early 1800s meant to support the idea that government should play an active and leading role in the establishment of infrastructure such as roads, canals, schools and hospitals. Those who held to the old ideas of strictly limiting government were the “conservatives” of their day.

A generation later, in 1835, the convention in Detroit, drafted a constitution for the State of Michigan under the provisions of the Northwest Ordinance. Article X, Section 3 of the Constitution of Michigan of 1835, stated (in part) that, “the legislature shall provide for a system of Common Schools.” The constitution established common schools, libraries and a university. It also established a perpetual fund for the support of schools to be created from the sale and lease of lands and funding for libraries from “fines”.

Question: Did the establishment of state operated public schools discourage, by competition, the very teachings of “religion, morality and knowledge” that were intended to be protected by the Northwest Ordinance articles of compact? Did state funded FREE schools have the effect of displacing the non-public “schools and means of education” that were in existence in 1787 with “public” schools where the teachings of “religion, morality and knowledge” are regulated by the state and, in effect, suppressed and/or discouraged?

The answer, while it may render public education, as we know it, unlawful under the provisions of the Northwest Ordinance, which are also expressed in our current state constitution, may be a moot point. The public school system is established and it is unlikely that any court will find its establishment and operation to be unlawful.

What is clearly an abomination of law is the move to extend the state's regulatory power to the non-public schools and even to home education. All provisions of law and acts of the state that work to compel attendance or regulate non-public school and home education do, by their very nature, discourage the RIGHT of Michiganders to choose for themselves teachings of "religion, morality and knowledge". Nothing discourages more, the maintenance, or establishment, of non-public schools and means of education than regulation by the state.

It is my intention to utilize my candidacy and, if elected, my seat on the State Board of Education, to oppose the regulation of non-public schools and means of education.

- I will oppose every effort by the state to impose upon non-public schools and home educators, by regulation, mandates or restrictions regarding the "religion, morality and knowledge" imparted by them.
- I will oppose every form of mandate to compel our children to attend public or non-public schools or to define what constitutes a home education.
- I will work to establish fair standards for the admission of students who have been enrolled in non-public schools and home education programs into public primary, secondary or higher education programs.

The Constitution of Michigan of 1835 stated that, "No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries." A clear descendent of this intention can be found in the Constitution of Michigan of 1963, Article VIII, Section 2, which states (in part), "No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students." If the state should ever support, with public monies, non-public schools, it would, in effect, gain the power to regulate them and would also, in many cases, be compelling the taxpayers to support theological or religious seminaries.

It is my intention to utilize my candidacy and, if elected, my seat on the State Board of Education, to support the intentions of the law that no public monies should ever be used to fund non-public schools or home education programs. In doing so,

- I protect taxpayers from being compelled to support theological or religious seminaries, and more importantly,
- I empower non-public school, secular and parochial, to teach “religion, morality and knowledge” free from government oversight and regulation.

The 1963 constitution also added these words, “Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.” Public schools must provide an environment where people of all religions, creeds and races feel welcome and are able to learn. Public schools must NOT become, in effect, seminaries for religious practice. Sincere worshippers of every faith have the opportunity to pray in their homes both before and after the school day. Prayer in public schools is not necessary for the practice of any religion and is antagonistic toward those who are non-religious or who have religious beliefs contrary to those who invoke the prayers.

It has become popular for the Christian right to invoke the name of God at every corner, but this was not the case when the Northwest Ordinance was enacted or when the constitutions of 1835 and 1850 were enacted. In the early 1800s the temperance movement was at a fever pitch and a spirit of revivalism had spread across the land. The convention of 1908 inserted these words as a preamble to the Constitution of Michigan, which survive in the 1963 constitution, “We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.” No modern reader would ever suspect that such expressions of gratitude to Almighty God had ever been absent from our constitution.

In 1892, Francis Bellemy composed this pledge; “I pledge allegiance to my Flag, the Republic for which it stands, one nation, indivisible, with liberty and justice for all.” Perhaps you notice that the pledge did NOT include the words “under God”. The words, “under God,” were not added until 1954, but who living today would ever believe it? The first coins of the United States did NOT include the words “In God We Trust,” the motto was mandated to be on all currency in 1955.

It is my intention to utilize my candidacy and, if elected, my seat on the State Board of Education, to oppose the propaganda of the religious extremists and restore a religiously neutral environment to our public schools. Our public schools must not become theological or religious seminaries and the practice of “religion” in the education environment must be reserved to non-public schools and home education programs.

Finally, the drafters of the 1835 constitution wisely avoided the funding of public schools by taxation; they created the perpetual trust. Had future governments administered the trust wisely and instituted public schools that exercised prudence in their spending, the state budget would be reduce by about 39% and a vigorous non-public school system would attract a healthy percent of the students away from the public schools further reducing the cost.

A public school system that was restricted to the means of the perpetual trust would not offer anything more than a basic education focused on fundamental academics. Non-public schools would attract students that could afford the value-added extracurricular programs such as day-care and sports. It is the public appetite for unlimited access to FREE services and the unscrupulous nature of politicians that has placed our public education system in financial jeopardy. Only now is it obvious that government cannot leave a perpetual fund alone. The state borrowed away all of the value of the perpetual fund long ago and now all government, including public education, is funded by incurring debt and then collecting taxes to repay the debt. The taxpayers of the state cannot afford to provide a FREE education to EVERY youth in the state and especially cannot afford to provide FREE value-added extracurricular programs in competition with non-public schools.

It is my intention to utilize my candidacy and, if elected, my seat on the State Board of Education, to limit public schools to providing a “basic” education focused on fundamental academics and leaves the providing of value-added extracurricular programs to non-public schools and private enterprise.

My candidacy for the State Board of Education is a long shot. No third-party candidate has ever gotten more than 8% of the votes needed to win an election and most are lucky to get even 3%. I do not expect to be elected, but I am prepared to serve if elected. I will declare my candidacy an unqualified success if some eighty or ninety thousand of you have the opportunity to vote for a candidate that clearly supports the protection of non-public schools and home education programs and clearly supports a return to the principles of limited government in the administration of the public school system.

Ernest A. Whiteside is a 2004 Libertarian candidate for Michigan State Board of Education. He opposes most school choice initiatives, such as vouchers and tax credits, because they extend the regulatory reach of the state. He supports limiting laws, regulations and the oversight of the State Board of Education to public schools only. He supports tax subsidized, basic, quality, public schools for those who cannot afford an education until the free market makes them unnecessary.

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