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THE SCHOOL FINANCE LANGUAGE OF THE EDUCATION ARTICLE: THE CHIMERICAL MANDATE

by MALCOLM S. KAMIN*

INTRODUCTION

For the past several years, a court-made revolution has been taking place in the field of school finance. In 1971 the Supreme Court of California decided the now famous case of *Serrano v. Priest,*[1] enunciating the principle that it was unconstitutional for a state to base its system of school financing upon local property taxes when there were great inconsistencies in the amount of taxable property from school district to school district. Thus, it was held that citizens in the poorer districts, having less to spend on education than those in the richer districts, were being denied equal protection of the law. This decision was followed in numerous jurisdictions.[2]

In March of 1973, however, the United States Supreme Court pulled the rug out from under the fledgling revolution in educational financing. In *San Antonio Independent School District v. Rodriguez,*[3] the Court held that the State of Texas did not violate the 14th amendment to the United States Constitution by basing its school finance system largely upon local property taxes from districts of unequal wealth.

While the *Rodriguez* case would seem to mark the end of attempts by federal courts to restructure school financing methods, it certainly does not mark the end of the activities of state

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[1] Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

[2] Among others: Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280 (W.D. Tex. 1972), *rev'd*, 93 S. Ct. 1278 (1973); Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972); Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972); Sweetwater County Planning Comm. v. Hinkle, 491 P.2d 1234 (Wyo. 1971). *Contra*, Spano v. Bd. of Educ., 68 Misc. 2d 804, 328 N.Y.S.2d 229 (Sup. Ct 1972).

For the most complete discussion of the rationale underlying *Serrano* see COONS, CLUNE & SUSERMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970). For the most complete discussion of the problems involved in the *Serrano* decision see *Symposium — Serrano: Public School Finance*, 2 ILL. L.F. 215 (1972).

[3] San Antonio Independent School Dist. v. Rodriguez, 93 S. Ct. 1278 (1973).

courts in this area. Although the *Rodriguez* reasoning is likely to be determinative where state courts have only their state equal protection clauses to rely upon, the question is more complex where the state constitution has an article dealing with education. The state constitution may contain an independent basis for reaching a *Serrano*-like result, without resort to equal protection principles.[4]

The new Illinois constitution is particularly intriguing in this regard. The Education Article of the 1970 Constitution provides — *"The State, has the primary responsibility for financing the system of public education."*[5] This single sentence was the total response of the Sixth Illinois Constitutional Convention to the massive problems confronting school finance.[6]

The first public attempts to grapple with the meaning of this sentence are reflected in the report of the Finance Task Force of the Governor's Commission on Schools.[7] In attempting to restructure the state's system of educational finance, the Task Force was required to seek direction from the school finance language of the new constitution. A majority of the Task Force (over strong dissent) decided that the language was merely hortatory, an exhortation to greater efforts by the state, but not a legally binding mandate that state school appropriations surpass local levies. Thus, the Task Force recommended continued reliance on local property taxation to finance schools. The dissenters asserted that the constitutional language was not hortatory, but they failed to establish a substantive basis for such a conclusion.[8]

The Task Force anticipated judicial construction of the constitutional language. They did not have long to wait. On September 25, 1973, the Illinois Supreme Court decided the case of *Blase v. State of Illinois*.[9] The plaintiffs in *Blase* (the Mayor of Niles, Illinois, a Chicago School Board member, and the Superintendent of the Cook County Educational Service Region)

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[4] *See* Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972), relying in part upon the state constitutional requirement of a "thorough and efficient" system of education.

[5] ILL. CONST. art. X, § 1 (1970).

[6] Had *Serrano* been decided prior to the convention (Dec. 1969-Sept. 1970), the convention certainly would have spent more time examining the problems. The total amount of time spent in debating the subject before the full convention on three different occasions could not have exceeded three hours.

[7] FINANCE TASK FORCE, GOVERNOR'S COMM'N ON SCHOOLS, A NEW DESIGN: FINANCING FOR EFFECTIVE EDUCATION IN ILLINOIS, FINAL REPORT (1972). (For a different approach to school financing, containing little discussion of the constitutional language, see SUPERINTENDENT OF PUBLIC INSTRUCTION'S ADVISORY COMM., SCHOOL FINANCING REFORT, ILL. (1973)).

[8] FINANCE TASK FORCE, GOVERNOR'S COMM'N ON SCHOOLS, A NEW DESIGN: FINANCING FOR EFFECTIVE EDUCATION IN ILLINOIS, FINAL REPORT, at 166-69 (1972).

[9] Blase v. State, No. 45273 (Ill. Sup. Ct., Sept. 25, 1973).

had sued the state seeking to require it to provide not less than 50% of the funds needed to operate elementary and secondary public schools. The court, relying upon the record of the proceedings of the convention of 1970, held that the language was merely hortatory — "that the sentence was intended only to express a goal or objective, and not to state a specific command."[10]

In holding that the final sentence of the first section of the new Education Article is hortatory, the court omitted further construction of the language and thereby failed to shed any light on its substantive meaning. Even if the sentence only states an unenforceable goal, it is still necessary to determine what that goal is; for every attempt to structure or restructure the system of school financing in Illinois should be measured against the goals stated in the Education Article of the 1970 Constitution.

This article will seek to explore the debates and the history of the Sixth Illinois Constitutional Convention from which the school finance language evolved. If this analysis yields an understanding of the substantive meaning of the sentence, it should be of aid to those who seek to continue the fight against inequality in educational opportunity.[11]

THE EDUCATION ARTICLE — SECTION 1

An understanding of the school finance language of the 1970 Constitution begins with an examination of section 1 of the new Education Article, to which the school finance language was appended. Section 1 provides:

> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.[12]

It seems fair to say that this section is as utopian and idealistic in scope as any in the new constitution, including the

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[10] *Id.*

[11] The author, having served on the Education Committee of the Illinois Constitutional Convention, recognizes the difficulty of maintaining pure objectivity in analyzing and reporting debates, both on and off the record, in which he took part. In the hope that this article will have some historical as well as critical value, subjective impressions will occasionally be recorded, where conversations or perceived motivations or intentions are *dehors* the record. It is hoped that the reader will also recognize the author's involvement in and commitment to the work of the Education Committee and forgive his occasional subjectivity and hyperbole.

[12] ILL. CONST. art. X, § 1 (1970).

Preamble.[13] To fully appreciate the section's potential, it must be compared to the first section of article VIII of the old constitution.

The Education Article of the 1870 Constitution called for the general assembly to provide "a thorough and efficient system of free schools, whereby all children of the state may receive a good common school education."[14] Although this language sounds like a "mere" mandate, an expression of sentiment rather than a judicially enforceable limitation on legislative power,[15] the Illinois courts have nevertheless used the language to strike down certain acts of school boards. Thus, the requirement of "efficiency" has been used to prevent a school district from splitting itself into noncontiguous parts to avoid encompassing a poor area[16] as well as to render teachers' strikes illegal.[17] "Free" has been employed to strike tuition charges.[18] "All children" has been utilized in place of the equal protection clause to prevent racial segregation.[19] And the meaning of "common school" has been considered as a possible limitation upon the establishment of free high schools and junior colleges.[20]

As spelled out in the 1970 Education Committee's first report to the convention,[21] the committee plainly intended to enlarge the scope of state responsibility in the field of education beyond the dimensions indicated by the Constitution of 1870. Thus, the words "educational development . . . to the limits of their capacities," which are indicative of an augmented state responsibility are to be contrasted with the old concept of the "common school," which limited state responsibility to eighth

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[13] We, the People of the State of Illinois — grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors — in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity — do ordain and establish this Constitution for the State of Illinois.
ILL. CONST. Preamb. (1970).

[14] ILL. CONST. art. VIII, § 1 (1870).

[15] For a more complete discussion of mandates and limitations see Kamin, *Constitutional Abolition of Ad Valorem Personal Property Taxes: A Looking Glass Book*, 60 ILL. B.J. 432 (1972).

[16] People *ex rel.* Leighty v. Young, 301 Ill. 67, 133 N.E. 693 (1921).

[17] Bd. of Educ. v. Federation of Teachers Local 886, 46 Ill. 2d 439, 264 N.E.2d 18 (1970); Bd. of Educ. v. Redding, 32 Ill. 2d 567, 207 N.E.2d 427 (1965).

[18] Segar v. Bd. of Educ., 317 Ill. 418, 148 N.E. 289 (1925); People v. Moore, 240 Ill. 408, 88 N.E. 979 (1909).

[19] People *ex rel.* Longress v. Bd. of Educ., 101 Ill. 308 (1882).

[20] Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504 (1929); Russell v. High School Bd. of Educ., 212 Ill. 327, 72 N.E. 441 (1904).

[21] REC. OF PROC., SIXTH ILL. CONST. CONV., *Committee Proposals*, Vol. VI at 223-89 (1969-70) [hereinafter cited as *Committee Proposals; Member Proposals; Verbatim Transcripts*].

grade or, at the most, high school. This new provision requires state concern with more than just "common school education." Illinois must now be concerned with "educational development" wherever it may be found.

The words "limits of their capacities" was an expansion of the state's responsibility in another way, as well. Not only do the limits of individual capacities establish the goals of the state within the accepted school system, but the 1970 Constitution recognizes that persons with physical and mental handicaps are educable and should be educated to the limits of their own capacities. Moreover, the state's concern should not cease after high school. Even where the state does not provide "free" education, the new Education Article indicates the state must furnish a "system" which offers every individual educational development to the limits of his capacity, regardless of his relationship to established "schools."

In a similar vein, 1970 schools should be of "high quality," not merely the "good" schools of 1870. And the reference to "educational institutions and services" seeks to extend the state's responsibilities beyond the walls of "schools." Higher education establishments, libraries, pre-school programs, adult and continuing education, indeed support for educational activity wherever it may be found, are all potentially within the state system of institutions and services which now extend beyond traditional limits.

An examination of the Education Committee report underlying its first proposal reveals that the committee understood the first sentence of section 1 to be hortatory language, not directly enforceable by the courts. The committee recognized that the proposed language of section 1 was of a type more appropriate to a preamble, where the broad purposes behind a constitution are disclosed.[22] Thus, the language establishing the educational objectives of the state was recognized as precatory, expressly designating a goal, albeit an unobtainable one.

In contrast, the language which the committee intended to express a clear limitation upon state action was that which mandates a free education through the secondary level. The second sentence of the second paragraph was intended to be a limitation in the same way the courts had enforced similar language under the 1870 Constitution. It would therefore be clearly unconstitutional for the General Assembly to require students to pay tuition for elementary or secondary education. The last sentence of the second paragraph was added to insure that the requirement of free education through this secondary level could not be inter-

[22] Note 13 *supra*.

preted as a limitation upon the General Assembly's power to provide free education beyond the secondary level.

It is also fair to say that the convention apparently understood and agreed with the Education Committee's proposal and report for section 1. Through second reading, the convention made only one substantive change in the body of the Education Committee's original proposal.[23] The committee's intention that education be "the paramount" goal of the state was softened to "a fundamental" goal.

On third reading, however, one additional change was made. The school financing sentence was added. This language was not the product of any committee, and thus had no detailed committee report to explain its purposes. Consequently, any understanding of the school financing sentence requires an examination of its evolution in the course of the convention.

THE DEVELOPMENT OF THE SCHOOL FINANCING LANGUAGE

The procedure adopted for the initial introduction of an idea to the 1970 Illinois Constitutional Convention was by way of member proposal. For the first few months of the convention, delegates were permitted to put any idea in proposal form for submission to the appropriate committee. There were only four member proposals directed toward educational financing.

Member proposal No. 32 by Delegate Knuppel provided for a state-wide income tax for educational purposes only. School districts would be prohibited from levying a property tax for educational purposes except for "building purposes," *i.e.*, for operating expenditures as distinguished from capital expenditures.[24]

Member proposal No. 434, submitted by your author, was to the same effect as proposal No. 32, except that it did not require a specific source of state funds; nor did it draw the appropriate distinction between operating expenditures and capital expenditures.[25]

Member proposal No. 519, by Delegate Leahy, was somewhat more complicated. It required the General Assembly to appropriate sufficient funds to enable any school district, after adding the state money to its own local levy, to expend as much per pupil as the average expenditure of the wealthiest districts

[23] *Committee Proposals*, vol. VI at 325-34 sets forth the committee's suggested changes on style and drafting.

[24] *Member Proposals*, vol. VII at 2854.

[25] *Id.* at 3044. This proposal was for an entire education article, as drafted by the Welfare Council of Metropolitan Chicago. The relevant financing language provided: "Funds for the public schools shall be appropriated by the General Assembly and no local governmental unit may levy taxes or appropriate funds for educational purposes."

i.e., the average expenditure of the upper 25% of districts in each class, when measured by per pupil expenditures. The Leahy proposal expressly permitted any school district to spend whatever it desired, on the theory that such a course of action would serve only to increase the level of expenditure of the upper 25%.[26]

The final member proposal, No. 570, was by Delegate Netsch. This called for the state to assure "equal educational opportunity to every child" and went on to provide:

> The State has the primary duty to finance the public school system. The State may provide for the establishment of local school districts as it deems necessary for purposes of administration and operation, or financing, or both.[27]

All member proposals were submitted on or before March 3, 1970, and were thereafter transmitted to the Education Committee.

The committee initially concentrated its efforts on developing a basic statement of goals, establishing the State Board of Education and the question of aid to parochial schools. Education Committee Proposal No. 1, covering these subjects, was filed with the convention on April 14, 1970,[28] and debated on first reading between April 22 and May 6. Little was said about school financing at that time.

Throughout the latter part of May and into June and July, the Education Committee interviewed witnesses on the subject of school financing. The committee itself was divided. Some thought that the constitution should be silent on the subject of school financing. Others who believed it was necessary to address the problem, strongly disagreed over what to say. The catalyst which precipitated action by a majority of the committee members was the sudden announcement on Saturday, July 18, that no committee reports could be filed after Wednesday, July 22.[29] Since the Education Committee believed that it was the only substantive committee still meeting, there was a general feeling that the deadline was an attempt to stifle further discussion of educational financing. Thus, the desire to get a report to the floor, and thereby air the issue, superseded the importance of resolving differences within the committee. Accordingly, the report was filed on the day of the deadline after a 6-5 vote in committee, but was not reached for debate until August 4.

Education Committee Proposal No. 2 was a variation of the

[26] *Id.* at 3077-78.
[27] *Id.* at 3100-01.
[28] *Committee Proposals*, vol. VI at 223-89.
[29] *Verbatim Transcripts*, vol. IV at 2849-51.

Welfare Council proposal. The committee proposal provided:

> To meet the goals of Section 1, substantially all funds for the operational costs of the free public schools shall be appropriated by the General Assembly for the benefit of the local school districts. No local governmental unit or school district may levy taxes or appropriate funds for the purposes of such educational operation except to the extent of ten percent (10%) of the amount received by that district from the General Assembly in that year.[30]

As the committee report for proposal No. 2 explained, the majority had come to the conclusion that the only way to achieve anything approximating equal educational opportunity through an enforceable constitutional limitation was to require the state to provide substantially all of the financing and to prohibit wealthy local school districts from taking much advantage of their local tax base. The theory supporting the proposal was that the wealthier districts would be forced to seek increased state expenditures for all students, in order to continue the local levels of expenditure to which they had become accustomed. The difficulty of framing a constitutional limitation on power as distinguished from a hortatory statement was stressed in debate.[31]

Before debating the majority proposal, two amendments were advocated by members of the Education Committee minority. Delegate Clyde Parker proposed a formula calling for the General Assembly to appropriate and distribute on a per pupil basis an amount equal to 90% of the total cost of public education, as determined by the new State Board of Education. Local districts would be permitted to decide by referendum whether to tax locally to achieve 100% of their necessary budgets.[32] Delegate Bottino would have limited local expenditures to 50%, thus requiring the state to pay at least 50% of the costs.[33] Both formula proposals were rejected with little debate.

Although the majority proposal was understood as a formula approach, calling for 90% state financing of education, it was not truly such an approach. The proposal required that the state provide substantially all school financing. Under such circumstances, the state would have to make a determination that the money it was furnishing was substantially all that was necessary to provide the "high quality" education called for in the first paragraph of section 1. It followed that the state need not

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[30] *Committee Proposals*, vol. VI at 291-323, see also note 25 *supra*.

[31] *Verbatim Transcripts*, vol. IV at 3537.

[32] *Id.* at 3547-48.

[33] *Id.* at 3550-51. It always struck the author as peculiar that Delegates C. Parker and Bottino offered the only language calling for a specified percentage of state financing, yet they signed the minority report to Educational Committee Proposal No. 2, stating: "The minority does not favor the incorporation of state financing requirements in the Constitution." See *Committee Proposals*, vol. VI at 304.

have required nor expected any level of local expenditure. The majority proposal was also defeated; the vote was 69-38.[34]

Although the majority proposal was unsuccessful in generating enough votes for passage, it was successful in eliciting a convention response which reflected the attitude of delegates toward the subject of school financing. The debate on the school finance issue on first reading suggested that the convention was far from ready to force the majority solution upon the citizens of suburbia. If the limitation on local spending were eliminated, there was substantial sentiment for the first sentence of the committee proposal. However, the president of the convention would not allow the question to be put to the delegates at that time. He ruled an attempt to divide the question out of order.[35] It was also obvious that the delegates were of a negative persuasion regarding any formula approach to school financing, be it as great as 90% state financing or as little as 50% state financing.

On second reading, on August 13, Delegate Netsch proposed as a new section 4 of the Education Article the first sentence of her member proposal; "The State has the primary duty to finance the system of public educational institutions and services."[36] In explaining the proposal she said:

> I concede that the language I have put down is, in the Convention's usual fashion, hortatory. I do not believe that it states a legally enforceable duty on the part of the State through the General Assembly or otherwise. I do not intend that it states a legally enforceable duty.[37]

In response to a question of whether the "primary duty" language created the same problem as the rejected "paramount" language of section 1, Delegate Netsch made it clear that " 'primary' is intended to modify whose duty, rather than which of the State's duties is first among equals."[38] In response to another question, her position was further clarified: "it is at the state's level that the responsibility lies, not at the local level."[39] In order to further clarify the language, the proposal was amended to substitute the word "responsibility" for the word "duty."[40]

In the course of the debate on the Netsch proposal, the convention discussed a substitute proposal by Delegate Bottino, similar to the proposal he had offered on first reading. This

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[34] *Verbatim Transcripts*, vol. IV at 3570.
[35] *Id.* at 3567.
[36] *Verbatim Transcripts*, vol. V at 4145.
[37] *Id.*
[38] *Id.* at 4146.
[39] *Id.* at 4147.
[40] *Id.*

proposal called for the General Assembly to provide "substantial parity of educational opportunity throughout the state . . . " and that local school districts would be limited to raising 50% of the funds for education.[41] Both the Bottino and Netsch proposals were then rejected by the convention, Bottino on a voice vote and Netsch by a vote of 47-38.[42]

Third reading for the Education Article occurred on August 31, 1970, three days before the convention adjourned. Delegate Netsch again offered the same language that had been defeated eighteen days earlier.[43] This time she had sixty-eight signed "co-sponsors."[44] But the various co-sponsors had different ideas about what they were sponsoring.

Delegate Netsch began by explaining that this was the same proposal as submitted earlier, and that "it [was] intended primarily to state the commitment of this Convention that the State should be assuming a greater responsibility for the financing of the public school system."[45]

At this point, Delegate Pughsley, one of the principal co-sponsors, interjected her impression that Delegate Netsch's use of the word "greater" was a substitution for "primary," and if so, she wanted to withdraw from sponsorship of the amendment. Delegate Pughsley explained that her understanding of "primary" meant "total responsibility."[46] She withdrew her objection after being assured that the word "primary" was still in the proposal as drafted.

Delegate Netsch then went on to explain that her proposal sought to put the convention on record indicating the opinion of the delegates that real estate taxes were carrying too much of the education burden, causing enormous inequality of spending among school districts. She said:

> It is not a legally obligatory command to the State legislature. I think it is useful, because I think it is something that can be pointed to every time the question of appropriation from the State to the school districts is at issue . . . That the people of this State also share the feeling that the State should be paying a larger share of that burden.[47]

At this point in the debate, your author proposed an amendment (the Kamin amendment) providing:

> The State shall undertake to provide substantially all funds for the

[41] *Id.* at 4145.
[42] *Id.* at 4148.
[43] *Id.* at 4500.
[44] *Id.* at 4501.
[45] *Id.* at 4500-01.
[46] *Id.* at 4501.
[47] *Id.* at 4502.

> financing of the free public schools from revenues other than real property taxes.[48]

It was explained that this amendment, while hortatory, sought to remedy some of the vagueness of the Netsch amendment. I summed up discussions with the Netsch amendment co-sponsors as follows:

> There were some who thought that it, in fact, creates a legal standard and that a local property taxpayer might well be able to make out a case in court to the effect that his property taxes are too great, since the State has not yet undertaken the primary responsibility for financing the system. There were others who suggested that . . . it is, in fact, no direction to the state to increase financial aid.[49]

The Kamin amendment sought to eliminate some of the uncertainties of the Netsch amendment by attempting to make it clear that the state should provide financing from its revenues, other than real property taxes, and that the financing was for the free public schools as distinguished from other educational services. In addition, the proposal sought to provide a higher standard of hortatory objective by calling for *substantially all* funds to come from the state.[50]

The debate on the Kamin amendment revealed the depth of confusion over the meaning of the Netsch proposal. Thus, Delegate Raby condemned the Kamin amendment because it was a mere hortatory statement.[51] It is clear that he thought that the Netsch amendment was not hortatory, which possibility I confirmed.[52]

Delegate Connor, on the other hand, opposed the Kamin amendment because it specified a "change in a historic pattern of financing education in this State." To Delegate Connor, the Netsch amendment did not really call for any change, since he placed his emphasis on the word "responsibility." "How they go about delivering on that responsibility is up to the State. It could delegate it to the local communities. If not done properly, it would be done through State alternatives."[53] Thus, Delegate Connor thought of "responsibility" in the supervising or policy-making sense, which was already spelled out in the first part of section 1. The "previous question" was then moved and debate on the Kamin amendment was parliamentarily curtailed. The amendment was later defeated.[54]

Further debate on the Netsch amendment was limited. Dele-

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[48] *Id.*
[49] *Id.*
[50] *Id.* at 4501, 4503, 4505.
[51] *Id.* at 4504.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 4505.

gate Bottino confirmed his thinking that the language was hortatory.[55] Delegate Pughsley declared that the state has the basic responsibility to educate its future citizens. Delegate Friedrich, speaking in opposition to the amendment, stated that the language might not be hortatory and that his understanding indicated that the state had to pay over half of the cost of state education.[56]

With no further debate, the Netsch amendment was adopted by a vote of 65-28 and the third paragraph was appended to section 1.[57]

CONSTRUING THE SCHOOL FINANCIAL LANGUAGE

It is well established that the proceedings of a constitutional convention should not be employed to construe clear and unambiguous language.[58] On the other hand, convention proceedings may be examined to determine the meaning of provisions which are "thought to be doubtful."[59] The court in the *Blase* case apparently thought the meaning of the school financing language was doubtful, for they resorted to the convention proceedings without even pausing to consider what the language meant on its face.[60] However, it is difficult to argue that the school financing language on its face is not sufficiently ambiguous to justify resort to the convention proceedings. Virtually every word is ambiguous. What is "The State"? Is it any one branch of government or all three? Does "primary" mean that financing education is the principle responsibility of the state as distinct from its other responsibilities or does "primary" mean that it is the "state," as distinct from some other governmental unit, which has the principle responsibility for financing education? Does "responsibility" mean undertaking action and thus appropriating money, or merely supervising policy?

If the foregoing terminology could be construed to import, in effect, that the "General Assembly must raise at least 50% of the cost of financing the system of public education," what costs and what system are referred to? Does "financing the system" mean all costs or only operating costs? Does "system" of public education mean just the public elementary and secondary schools or does it include other institutions as well?

All of these questions are raised by the language of section

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[55] *Id.* at 4506.
[56] *Id.*
[57] *Id.*
[58] People *ex rel.* Watseka Tel. Co. v. Emmerson, 302 Ill. 300, 134 N.E. 707 (1922).
[59] People *ex rel.* Keenan v. McGuane, 13 Ill. 2d 520, 527, 150 N.E.2d 168, 172 (1958).
[60] Blase v. State, No. 45273 (Ill. Sup. Ct., Sept. 25, 1973).

1 on its face. Unfortunately, the convention proceedings, as set forth earlier, render little guidance for resolving them. As previously noted, the school financing language of the new constitution was a floor amendment with no explanatory written report. The principal sponsor, Delegate Netsch, said little to resolve the substantive ambiguities. Since she clearly considered her proposal to be hortatory, she apparently was not as concerned with the precision of the language as she might have been if she had intended to state a legally binding limitation on state power. She did assert, although on second reading when her language was rejected, that "primary responsibility" meant "State" responsibility as distinguished from "local" responsibility and was not a ranking of the state's responsibilities. Beyond this assertion, she failed to truly clarify the meaning of her words.

It seems clear that Delegates Pughsley and Connor understood "primary" in a different sense from Delegate Netsch.[61] Yet they both co-sponsored the proposal.[62] There is nevertheless no way to poll the delegates to determine whose understanding they relied upon in casting their votes. The inescapable conclusion is that the record of the proceedings concerning the school financing language is almost as ambiguous as the language itself. There simply is no definitive "intent" to be gleaned from the debates.

Indeed, one must question the Illinois Supreme Court's reliance upon the debates to determine the "hortatory" nature of the language. This author knows of no authority for the proposition that the expressed intent of the principal sponsor of an amendment of necessity becomes the intent of the body adopting the amendment. And while this principle has plausibility if there is no debate on the subject beyond that of the sponsor, it is implausible where other co-sponsors express an intention different from that of the principal sponsor.

Since it is clear that Delegate Pughsley thought the language was more than hortatory,[63] as did Delegate Raby,[64] and since your author and Delegate Friedrich acknowledged the possibility that the language was not hortatory,[65] it is not clear that the convention relied upon Delegate Netsch's explanations alone.

It almost seems that the school financing language of the new

[61] *Verbatim Transcripts*, vol. V at 4501.
[62] *Id.* at 4504.
[63] *Id.* at 4501. It is significant in this regard to note that Delegate Pughsley voted against adoption of the entire Education Article on second reading, saying "I do not feel the education article, the committee, now the convention, addressed itself to the serious educational problems of the State of Illinois." See *Verbatim Transcripts*, vol. V at 4149. The only difference between the Education Article as passed on second reading and that finally adopted was the addition of the school financing language.
[64] *Verbatim Transcripts*, vol. V at 4504.
[65] *Id.* at 4504, 4506.

constitution is thus an appropriate subject for Justice Frankfurter's waggish canon of construction "when the legislative history is doubtful, go to the statute,"[66] even though it was the ambiguity of the section which justified the initial examination of the debates.

A construction of the language in the context of the entire Education Article and the rest of the 1970 Constitution can be made. As will be seen, that construction of necessity yields the result that the language is hortatory, even if Delegate Netsch had not said so.

The key to the construction of the educational financing language is the Local Government Article, article VII. In section 1, school districts are expressly excluded from the definition of "units of local government." Thus, it must be recognized that school districts are "the State," as distinct from "units of local government." Since school districts are creations of the General Assembly, as part of the state "system of public educational institutions," called for in article X, the financing language cannot reasonably be interpreted to affect taxing by local school districts. Rather, the language in this context can only be read to mandate that the state *not* rely upon units of local government to finance education.

Further, the language cannot be read as only addressing itself to the financing of elementary and secondary education. As spelled out above,[67] the "system of public educational institutions and services" called for in section 1 of article X is open-ended. If university and other services for which tuition is charged were greatly expanded, the General Assembly could appropriate 100% of elementary and secondary educational costs and still not be financing 50% of the system. On the other hand, by providing free college and graduate education, the state could theoretically finance more than half of the educational costs in the state, and not appropriate anything for elementary and secondary education.

Thus, the goal is not that the state provide any fixed level of financing for education. Rather, "primary responsibility" must mean that Illinois should provide that level of financing which insures the high-quality system called for in the second paragraph of section 1.

In other words, Illinois will have met its responsibility to finance education only when it has financed a system capable of meeting the goals announced in the rest of section 1. Since those goals are acknowledgedly hortatory, it follows that the last

[66] Greenwood v. United States, 350 U.S. 366, 374 (1956).
[67] *See* pages 334, 335 *supra*.

sentence is hortatory as well; for it is extremely doubtful that the concept of "high-quality education" is capable of judicial definition, much less judicial enforcement. Such a construction not only furnishes a reasonable meaning to all of the words of the final sentence of section 1 of the Education Article, but also accords with other provisions of the 1970 Constitution.

CONCLUSION

Admittedly, the mandate as thus stated seems more of a prayer than a command. Yet, from an historical viewpoint, it is an appropriate supplication. The convention recognized the problems of inequality in educational opportunity and the inequities in financing education through real estate taxes. The convention delegates, like the Supreme Court in *Rodriguez*, deplored the situation, but were unable to develop a workable solution to impose upon the Illinois General Assembly.

Ironically, the very presence of the school finance language may constitute an impediment to court reform of educational financing. If the Illinois school financing system is further challenged in the courts,[68] the new equal protection clause in the Illinois Bill of Rights,[69] together with the "efficient system" language of the Educational Article, should compel a *Serrano*-like result. Such a result could fail to materialize solely because an Illinois court reasons that the convention, having addressed itself to school finance in the last sentence of section 1 of article X, did not intend any other provisions of the new constitution to control school financing. That would be a strong blow to the advocates of equal educational opportunity. Yet, such reasoning is not beyond the range of possibility.

Hopefully, such a case will not be necessary. If the legislature and the new State Board of Education will take the school financing language for what it is — the statement of a pressing problem and the urgent prayer for a fair solution — then they will act to equalize educational opportunity and the tax burdens of educational financing without further judicial intervention.

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[68] The *Blase* case did not address itself to the general constitutionality of the Illinois school financing system. The attack was limited to the requirement of the school financing language.

[69] ILL. CONST. art. I, § 2 (1970).

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