

Public Money for Private Education: The Ghost of 1970

by Robert H. Longstaff, Affiliated Consultant

INTRODUCTION

When Gov. John Engler and the Michigan Legislature agreed to eliminate property taxes as the financial base for public education, the battle over the greater issue of education reform was joined, and with it an issue thought put to rest in 1970: the question of state aid to nonpublic schools. The drive for such aid, which advanced behind the fear that religious schools would die without it, dominated politics in 1970. The issue was bitterly debated in the legislature, and it had an effect in the gubernatorial race of that year. "Parochiaid," as it was called, was settled when voters approved a constitutional amendment in the November 1970 election that prohibits state aid to private schools.

Now the issue has surfaced again as part and parcel of the schools of choice debate. "Broad" choice would include all schools, public or private, and, as the great majority of private schools are church-run, it would include parochial schools too.

This paper recollects the 1970 debate as a frame of reference for the current discussion and also muses on whether charter schools may be the private-school funding vehicle of the 1990s.

PAROCHIAID IN 1970

The Legislation and the Ballot Question

The movement toward allocation of state money for the support of nonpublic schools began in the late 1960s, stimulated by the Michigan chapter of a national organization, the Citizens for Educational Freedom. The group had organized a 1968 letter blitz to legislators urging the use of public funds for nonpublic schools. Because most of the money was to have been directed toward parochial schools, the issue assumed the parochiaid label.

The first bill introduced in the legislature to provide public funds for nonpublic schools was sponsored by state Representative J. Bob Traxler, a

Democrat from the strongly Catholic town of Bay City. It failed to win legislative approval. But it must have attracted the interest of Gov. William G. Milliken, who in 1970 proposed the allocation of state funds to pay part of the salaries of private-school lay teachers who taught secular subjects. He proposed that for two years \$22 million be so appropriated in each, and then in the third year the amount be raised to cover 75 percent of lay teachers' cost. The measure had the strong support of House Speaker William Ryan, a Detroit Democrat often referred to as "Bishop Ryan" because of his Catholic ties.

At first blush it appeared to be a stroke of political genius. Milliken was facing his first statewide election on his own (he had assumed office when George Romney went to Washington to join the Nixon cabinet), and Catholic Democrats from the Detroit area and throughout the state might provide him a margin of victory.

As it turned out, it was not easily accomplished. Parochiaid was hotly contested. Opponents argued that it violated separation of church and state. Supporters insisted that if state aid were denied, all Catholic schools in Michigan would close.

The legislature finally adopted the school aid bill—including the \$22 million in parochiaid—but with a caveat that the \$22 million could not be distributed to nonpublic schools until the Michigan Supreme Court had ruled on the constitutionality of the use of public money for private schools.

Organizations formed on both sides of the issue. The Council Against Parochiaid, led by the Michigan Education Association (MEA), started a petition campaign in behalf of a constitutional amendment to ban the use of public funds for nonpublic schools. Included in the council, besides the MEA, were the Methodist Church Conference, the Council to Advance Public Education, Americans United for Separation of Church and State, the Trade Unions Leadership Council, and

several associations representing public school boards, school administrators, and principals.

Aligned with the Michigan Catholic Conference on the other side were the Michigan Association for Non-Public Schools, Christian Reform schools, and the Michigan Federation of the Council for Educational Freedom.

While the Council Against Parochialism was busy gathering signatures to put its anti-parochialism amendment on the ballot, the "silly season" of politics began, setting off all sorts of political high jinks involving some high-ranking state officials.

Michigan Attorney General Frank J. Kelley attacked the petition drive conducted by the Council Against Parochialism, saying that the petitions were fatally flawed because they did not specify which article and section of the constitution were to be amended. The issue ultimately went to the Michigan Court of Appeals, which overruled Kelley and, in effect, ordered the question onto the ballot.

Along the way, Kelley issued opinions for the State Board of Education, which held that shared-time programs and auxiliary services would be eliminated if the anti-parochialism amendment were adopted. Enacted in 1965, the auxiliary services law permitted public schools to provide to students in parochial schools such services as speech correction, remedial reading and assistance for disturbed children.

State Superintendent of Public Instruction John W. Porter and Governor Milliken issued statements putting forth a litany of potential—and disastrous—effects if the anti-parochialism amendment came to be. In addition, they said, the proposed amendment would ban dual enrollment, end driver education courses for nonpublic school students, put the property tax exemption for nonpublic schools in jeopardy, prohibit athletic contests between public and nonpublic school teams, and might ban parochial schools from receiving police, fire, and other public services. Later they modified their positions, saying that the results would not be quite so dire as they first said.

Kelley came up with a later opinion that said the property tax exemption for parochial schools would not be affected and that public and nonpublic schools still could engage in athletic contests.

At about the same time, the Michigan Catholic Conference issued a news release saying that "nearly all of Michigan's five hundred fifty Catholic schools will close next June if Proposal C [the anti-parochialism amendment] is approved by the voters November 3." The release was issued October 1, obviously timed to motivate sympathetic voters to get to the polls to vote against the amendment.

The 1970 Election

As the parochialism drama unfolded—after adoption by the legislature of the \$22 million for nonpublic schools—it took a strange twist in the race for governor between Milliken and his opponent, state Senator Sander M. Levin, a Berkley Democrat.

Levin had voted against including \$22 million parochialism in the school aid bill, and he was clear that he was opposed to the idea of parochialism. His stance endeared him to the Michigan Education Association and appeared to be the prime reason for that teachers' union to endorse him over Milliken for governor.

But as the gubernatorial campaign progressed, Levin announced he—like his opponent—opposed the adoption of the constitutional amendment that would ban parochialism. That appeared to put Levin on the side of private schools, as was Milliken, and in opposition to the MEA, which was the major proponent of the amendment.

Levin argued he was being consistent—that he strongly supported auxiliary services and had voted in the legislature for them, and that he was certain the ban would cause them to be abolished. Levin said he opposed the amendment so that auxiliary services could continue. This caused the flame that the MEA carried for Levin to flicker and fade.

However, the Michigan Federation of Citizens for Educational Freedom appreciated the consistency of Governor Milliken and distributed thousands of pamphlets supporting his election.

Meanwhile, nearly one million leaflets were distributed to Catholic, Lutheran, and Christian Reform churches by the Michigan Association of Non-Public Schools. Parochial school students were used to get many of the pamphlets into the hands of voters. The leaflets raised the specter of

popular auxiliary services and athletic contests between public and nonpublic schools being eliminated by the anti-parochial amendment. The timing of the distribution, probably coincidental, may have helped Milliken because it came at about the time Levin appeared to be vacillating on the proposed amendment.

The role of the state supreme court cannot be overlooked in the parochial drama. The high court was asked by both Milliken and the legislature to rule on the constitutionality of the use of \$22 million in the state School Aid Act to help pay salaries of lay teachers in private schools, and the court delivered one of its swiftest decisions ever. It received briefs from interested parties August 15 and issued its opinion September 14. The detail of the opinion followed in early October.

The use of \$22 million for parochial-school teacher salaries was constitutional, the court said in a four-to-two decision (the seventh justice did not participate). Justice Thomas M. Kavanagh, who authored the majority opinion, said it was a mistaken impression that the federal courts had denied all forms of public aid to nonpublic schools; they have struck down state educational programs only when they involve religious instruction or religious exercises in public schools. The real tests, Justice Kavanagh wrote, are whether the legislation has a secular, not religious, purpose and whether the legislation is "neutral" in that it neither advances nor inhibits religion. In the case of the \$22 million in parochial funds in the School Aid Act, the Michigan Supreme Court concluded that the state's purchase of the services of certified lay teachers to teach secular subjects was a legitimate and secular purpose that neither advanced nor inhibited religion.

On election day the amendment was adopted with a margin of 338,098 votes out of nearly 2.5 million cast. The amendment reads:

No public monies or property shall be appropriated or paid or any other 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 non-public pre-elementary, elementary or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, sub-

sidy, 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 non-public school or at any location or institution where instruction is offered in whole or in part to such non-public school students. The Legislature may provide for the transportation of students to and from any school.

The following spring, in 1971, the Michigan Supreme Court declared that state aid to nonpublic schools is unconstitutional. The court held that the people had decided the issue when they amended the constitution. Parochial was no longer valid.

Private and parochial schools did draw part of the \$22 million allocated in the state aid bill. About \$9.5 million of it was distributed in the period between the supreme court's first ruling, that parochial was valid, and the people's adoption of the anti-parochial amendment. Then the tap was turned off.

SCHOOLS OF CHOICE

In the narrow sense, having schools of choice means giving students within a public school district the choice of which school they wish to attend, and this concept is embodied in Public Act 118 of 1991, which requires all districts with more than one school building serving the same grade level to develop an intradistrict choice plan. In a broad sense, it means giving students the choice of all schools—public and private (including parochial).

The Governor's Position: Charter Schools

Governor Engler, as part of his preliminary projections on reforming education, has suggested the concept of *charter* schools. He wants to bypass the centralized public school bureaucracies and deliver money directly to the individual school buildings, where education is accomplished. Charter schools are a close cousin to but more autonomous than public schools granted "empowerment" (the capacity to act independently within certain guidelines established by a board of education). Charter schools could be created by a group of teachers, administrators, parents or even public institutions such as universities or community colleges, and "deregulated" and freed of direct public administrative control. (Schools

granted only empowerment—sometimes also called site-based decision making—are not so free; they operate within the rules and parameters set by their local board of education, which operates within parameters set by state laws and regulations.)

Charter school advocates seek decentralization and empowerment of the teacher at the level closest to the student—the building level. Each school building, under this concept, could develop its own educational programs with the cooperation of parents and even students. Carried to its fullest extent, it could mean hire-and-fire power for the building principal and probably merit pay for teachers to stimulate higher performance. In the view of many observers, charter schools could work equally well in the existing public school system or in a broad choice system.

Other Views

Organizations such as TEACH Michigan, a group promoting full “education choice,” and the Mackinac Center, a conservative think tank based in Midland, agree that public schools are mired in the mud of bureaucracy, but they have a broader reform concept in mind. They support another constitutional amendment to erase the ban on state aid to nonpublic schools and to permit vouchers from the state to pay for education at any school, public or private.

These two organizations would apply the free enterprise system to education. Students and their parents would be “consumers,” and they could shop for the school—public or private—that suits them. Competition among schools would stimulate improvement in all schools and lead to excellence.

Paul DeWeese, president of TEACH Michigan, declares:

We believe that before any significant reform is going to take place we have to eliminate the current state constitutional prohibition against allowing parents to use their own tax dollars to support their children in local nonpublic schools.

Lawrence Reed, president of the Mackinac Center, advocates “consumer choice” and a voucher plan that would extend public funds to nonpublic schools as ways to accomplish the “death of

monopoly of public schools.” In a booklet published by the Mackinac Center, *Education Choice for Michigan*, Reed calls existing schools a “one size fits all” variety. He sees schools of choice as a way of allowing teachers to teach. He writes:

Liberated from the bureaucracy that now smothers their initiative, stimulated by competition and challenged by the opportunity for personal rewards, teachers would take a more prominent role in improving the schools. Entrepreneurship in schooling would expand both the supply of schools and their diversity. Taxpayers would have greater assurance that their investment in education would show positive results and not simply declining performance and rising demands for more money.

The problem in public education, Reed asserts, is not funding or even equity in funding; the problem is that “we deliver education the same way we deliver the mail—by way of bureaucratic monopoly.”

Obviously, teacher unions are not embracing schools of choice in its largest context. They see schools of choice as an attempt to restrict—or even eliminate—unions.

The MEA maintains that Public Act 25 of 1990 already contains the necessary elements of education reform. The law is intended to improve the quality of education by requiring what amounts to an annual education report card in each school district. It also creates the mechanism for development of school improvement plans that could include empowerment of individual buildings, a locally developed core curriculum, and individual school accreditation. (The praise of P.A. 25 is that it includes essential elements of reform and provides direction toward excellence in education, without having to reinvent the wheel. The complaint is that the legislature has not provided adequate funding to get the job done.)

Another complaint about broad choice is that the plan might lead to more segregated schools or to schools in which students with learning or other difficulties are concentrated. State Rep. Lynn Jondahl, an Okemos Democrat and announced candidate for his party’s gubernatorial nomination, raised the specter of the return to segregation in speaking at the annual convention of the Michigan

unit of the National Association for the Advancement of Colored People. He argued that schools of choice would “legitimate having good schools and bad schools.” He told the convention that “*choice* and *voucher* are the code words for elitist education, for separatist education.”

Choice advocates deny these contentions, saying that minority parents and parents of children with difficulties or impairments are just as interested in their children’s education as are other parents, and that choice and vouchers will give them alternatives and education mobility.

The *Detroit News*, a major Michigan newspaper with a conservative leaning, endorses the broad form of schools of choice. Thomas J. Bray, the News’s editorial page editor, wrote in an opinion column that “Some who oppose choice will be tempted to play the tired old race card—summoning up scary images of ‘those people’ pouring into ‘our schools.’ (Detroit opponents already are warning of ‘our people’ pouring into ‘those schools.’)”

Another influential newspaper, the *Detroit Free Press*, agrees with the governor that more options for parents and students, such as charter schools, are a good idea as long as they are restricted to public schools. “Any attempt to broaden the definition of ‘choice’ to include nonpublic schools would be a diversion that could wreck the reform process,” the Free Press said in an editorial.

CONCLUSION

So far, Governor Engler appears to be limiting his idea of choice and charter schools to public education, and if he does, the parochial fight can be avoided. The following are among the options for choice within the public school system:

- School empowerment and site-based decision making
- Chartered schools to give teachers and principals even more power
- State aid that follows the student, either in the form of vouchers or through direct payment to the school
- Reduction in state regulations
- Endorsement and support for privatizing certain services, such as food, janitorial, and transportation

Such changes would meet the governor’s requirement of stimulating competition among schools and bypassing the school bureaucracy. And it might be viewed by broad-choice advocates as a reasonable first step toward eventually removing the anti-parochial language from the constitution and extending state aid to all schools, public and private. If he goes further, however, and advocates a school-choice plan that includes—or potentially could include—aid to private schools, he is certain to run into stiff opposition.

If the legislature is willing to undertake a massive revision of laws pertaining to schools, choice can work within the public school system, and the issue of extending state aid to nonpublic schools can be avoided. The people who favor choice basically are seeking a strong curriculum, programs of high quality, and good, experienced teachers. They see choice as diversity—if the same curriculum is taught in the same standardized way by teachers who may not deviate in programming, there is no choice.

It is conceivable, however, that the people may demand, or may be asked, to vote in 1994 on whether the anti-parochial amendment inserted in 1970 should be stripped from the state constitution.

One scenario would have the legislature calling a special election in the spring of 1994 to allow the people to decide on an increase in the state sales tax to help finance the cost of replacing revenue lost from the local property tax (the state constitution now sets a state sales tax maximum of 4 percent). At the same time, and in keeping with the oft-used “let-the-people-decide” legislative compromise of putting controversial issues on the ballot, a second ballot question could ask the people to decide on eliminating the anti-parochial language so that private and parochial schools could be included in a schools of choice plan.

Robert H. Longstaff recently retired as editor of the Bay City Times. Before that, he observed Michigan government and politics firsthand for twenty years as a member of the state capitol press corps, serving several years as capitol bureau chief for Booth Newspapers.

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