



Texas Education: Original Intent of the Texas Constitution

by The Honorable
Kent Grusendorf
Senior Fellow

Key Points

- Although most people think the first Texas charter schools came after the reform bill in 1995, charter schools were common in Texas long before what we now call “public” schools even came into existence.
- Much like schools established in 1854 and continued in 1876, modern programs for expanded educational choice, such as voucher systems, reflect a similar desire for individual or family choice unfettered by governmental control.
- A reasonable analysis of original intent establishes that our founders did intend to empower parents and communities to make decisions relative to the education of their students.

Texas is once again in the middle of another round of legal and legislative debate over education funding. This is nothing new. A similar struggle over education delivery and funding has existed since Texas was a part of Mexico.¹ Let us look back in time.

The Constitution of the Republic of Texas in 1836 simply required the Texas Congress “... as soon as circumstances will permit, to provide by law a general system of education.”² Fredrick Eby, a UT professor and proponent of government-run schools, in his 1925 education history book wrote:

There is no evidence that any of these men had in view a state-endowed, state-supported, and likewise state-controlled system for the training of the young. The First Congress in 1837 was strangely silent on the subject of popular education. It concerned itself with chartering several private institutions.³

Although most people think the first Texas charter schools came after the reform bill in 1995, charter schools were common in Texas long before what we now call “public” schools even came into existence. Although today, Texans have no private school options within the “public free school” system, Texans did have such options before and after the current Texas Constitution was adopted.⁴ Public education, as we know it today, evolved over decades. As Billy Walker, past executive director of the Texas Association of School Boards (TASB), said, “public education floundered in chaos for half a century after the [civil] war.”⁵

The current Texas Constitution of 1876 was the result of great debate and contention.⁶ In fact, there was more debate over the education issue than any other item before the convention.⁷ Negative reaction to the highly centralized “radical school system,” established by the carpetbaggers during reconstruction, was the driving force for using the 1845 Constitution as a starting point when drafting a new constitution in 1875—as opposed to using the Radical Republican Constitution which was in place at the time.⁸

Since the 1845 Constitution was the basis for the 1876 rewrite, we should examine the intent of words used at those times. Of particular interest is the use of the two terms “public schools” and “free schools” in those debates. The first section of the Texas Constitution of 1845 imposed upon the Legislature the duty of making “suitable provision for the support and maintenance of public schools.” The second section which follows immediately upon that declaration requires that the Legislature “shall, as early as practicable, establish free schools throughout the state and shall furnish means for their support by taxations of property. ...”

Critical to understanding original intent is the fact that “public” did not mean government-operated schools as we think of the term today; instead it only meant “open to the public” like a restaurant or store which is open to the public. And “free” meant that poor students were entitled to attend regardless of ability to pay.

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Billy Walker, a legal scholar who is quoted by the Texas Supreme Court throughout *Edgewood III*, noted that “the vast majority of schools in the late 1850s were private, the education provisions operated most typically as an early voucher system with parents selecting their children’s educational facilities and the state disbursing a per capita amount to the school, whether public (usually municipally controlled) or private.”⁹

In the mid-1800s, Walker continued, the “idea of a general system of taxation for financing state-supported and state-operated schools still violated the thinking of most Texans, who construed ‘public’ schools as mentioned in the constitution, to indicate both private and community education enterprises. ... Although few citizens actually supported the idea of state-financed public schools, the concept did have its proponents. ... This philosophical battle explains to a large extent the vacillating course that Texas school finance followed in the 19th century.”¹⁰

Another consideration is noted by Chuck DeVore: “Delegates expressed the view, common in the day, that the education of children was the primary responsibility of parents. Further, as might be expected in the times, many white property owners didn’t support the idea of their taxes going to finance the education of black children. Lastly, as was more common in the South than in the nation at large, Texans were suspicious of powerful central government.”¹¹

Concerning the constitutional term “public” and “free” with respect to schools, Eby wrote:

It has been seen that the constitution required the legislature to make provision for two types of schools, ‘public’ and ‘free.’ ... This particular difference is due to the fact

that this article of the constitution was a compromise agreed upon by the various sociological groups which held quite divergent opinions as to education. ... One of the methods of compromise may be seen in the plan adopted in New York of distributing state funds among the various private and denominational schools.¹²

He continues:

The first section of the new constitution [of 1845] required the establishment of ‘public schools.’ This indicated the adoption of a general policy of assisting the people in their private and community enterprises. It did not propose free tuition for all ... general taxation for popular education ... or a state-owned [system]. ... On the contrary the advocates of private and church schools fully expected the state to assist in promoting their particular enterprises. ... The second section [of the 1845 Constitution] provided for ‘free schools’ by taxation on property. The private and church school advocates favored this policy as a wise charity for the education of the orphaned and indigent. ... tuition would be paid by the state and that they would attend the existing [private] institutions.¹³

Eby points out that even back in 1925, when he wrote his book, the two terms “free” and “public” had come to mean something different than what they did in 1875. “For the first [public] no special funds are fixed; for the second [free], one-tenth of the annual revenue is positively reserved.”¹⁴ So, neither term required government-owned and operated schools as we think of “public schools” today. In reading the constitutional language and debates, it is confusing unless you understand the context in which these terms are used.

Under the 1845 Constitution, the 1854 law:

... represents the views of ... three divergent types of school organizations: a system of public schools, pauper schools, and private schools enjoying the bounty and support of the state. ... Throughout the entire state and with but few exceptions the people resorted to the use of private schools which under the law [1854] could be designated ‘common schools.’ ... No state system of public schools was possible under the conditions. ...

People soon learned that public free school meant *free* only to those who confessed themselves paupers. ...”¹⁵

The system as finally developed in 1858 was simple in the extreme. ... Those parents who desired could form a school and could secure their own teacher and receive the state apportionment for their children. Those wishing to patronize one of the existing private schools were permitted the same privilege.¹⁶

So, both a “public” school system and a “free” school system could be private schools, or community schools under the total control of parents.

During September and October, 1875, the most contentious and highly volatile issue of constitutional debate in Austin was education. All education resolutions were sent to the education committee consisting of 15 members. This committee failed to reach consensus and sent both majority and a minority reports to the floor of the convention. The full convention also failed to reach agreement and the issue was then sent to a Select Committee of seven members. That committee also failed to reach agreement, and also issued both majority and minority reports.¹⁷ Each time the education issue reached the floor, it attracted serious and contentious debate.

Given the friction and varying views regarding education, the word “efficient” appears to have been part of the compromise. Data on the actual constitutional debates are very limited. However, it appears that one of the greatest issues was that of taxation, if any, and how much. As will be seen, only a small minority seemed supportive of actually allowing government to control and run schools.¹⁸

Like the 1845 compromise, the 1876 compromise included both the free and public school language; however, in 1876 they merged the two terms together into the same phrase. “... the Legislature of the State to establish and make suitable provision for the support and maintenance of an *efficient system of public free schools*.”¹⁹

Our present Texas Constitution produced what become known as the Community School System:

Community Schools were similar to today’s charter schools but with much less regulation. Surprisingly, Texas actually had private school voucher and charter school systems in place in the late 19th and early 20th centuries.

The method of school organization adopted in the new law [of 1876] was as simple and as loose as it could possibly be. ... (1) It gave to parents the greatest latitude in determining for themselves the kind of education they desired for their children and the character of teacher they wished to employ. (2) There was no restriction to the number of children necessary to constitute a school community. ... (3) The parents could enjoy the use of the state school fund, together with the minimum of state interference. Moreover, it lodged the responsibility of educating the children upon the parents, where, as they believed, it belonged Additionally, students were not restricted by geographic boundaries.²⁰

These Community Schools were similar to today’s charter schools but with much less regulation. Surprisingly, Texas actually had private school voucher and charter school systems in place in the late 19th and early 20th centuries. Few Texans are aware of this fact.²¹

Proponents of the Reconstruction Era, top-down, centralized, government-run system were disappointed with the Constitution’s language saying the community school system “destroyed districting” and played “fast and loose with the very foundation” of their preferred state-controlled system.²² But things did improve from their perspective because incorporated towns “especially after the year 1880 ... turned away from private schools which furnished facilities chiefly for the well-to-do, in order to establish public free schools open equally to all children.”²³ However, Community Schools survived for decades afterwards.

Billy Walker’s analysis: “The Community system of schools established in 1854 and continued in 1876 maximized liberty by granting state support to almost unlim-

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ited parental choice and control. Modern programs for expanded educational choice, such as voucher systems, reflect a similar desire for individual or family choice unfettered by governmental control.”²⁴

An interesting footnote in the history of that time is that “the first president of the Texas State Teachers' Association ... [Dr. Crane] was strongly biased in favor of the New York State plan of school organization which permitted the use of state funds for the support of private and denominational institutions of learning.”²⁵ TSTA's first president was a private school choice proponent. However, TSTA now strongly opposes private school choice.²⁶

Private schools remained a part of the public free school system in Texas for quite some time. “Some developments of minor significance appeared during these years, [circa 1907] among them the decline of private schools. The marked improvement in the character of the town schools lessened the prejudice against them, and even the wealthier people began to send their children to these rather than to the private schools.”²⁷

Clearly by any reasonable analysis of original intent, our founders did intend to empower parents and communities to make decisions relative to the education of their students. In fact, during the 1875 constitutional debate related to the issue of centralized control over education, one delegate, Mr. Sansom, said: “I do not hesitate to say that I believe there could not be found a dozen members of this Convention who would affirm their belief in the existence of such power in the State.”²⁸

Yet today, most Texans think the original intent of our Texas Constitution was just the opposite. ★

Appendix:

Documentation of the existence of Community Schools well into the 20th century:

“Community schools arose in Texas in opposition to a post-Civil War centralized school system.”²⁹ Charter school type community schools were around well into the 20th century as follows: “A school district was formed to include Fairdale by the Sabine County Commissioners Court on July 11, 1904. However, ‘free community schools’ were established by the state prior to that time. ...”³⁰ Old Glory, Texas and surrounding areas appear to have had community schools through the 1920s. “With consolidation of five community schools, a building was erected at Old Glory in 1930 to serve an enrollment that peaked at 280 in 1936-1937. ...”³¹ Marlin Texas: “Marlin had private schools before the county was organized, and it was not until 1923 that public schools were available.”³² “When the course of the Galveston, Harrisburg & San Antonio Railroad, came through Cibolo and Schertz into San Antonio in 1877, it brought economic development and growth with it. During this time, children in the Green Valley, Cibolo Valley, Lower Valley and Schertz areas attended schools established under the community school system. Under the community school system, Lower Valley School was established in 1877 (closed in 1966) and Green Valley School was established in 1887 (closed in 1955).”³³ “Before schools were formally organized, Deaf Smith County pioneers provided an education for their children in private homes. Community schools sprang up as the area developed. From 1893 through the mid-40s some 50 schools were scattered throughout the county.”³⁴ “The first tax-supported school opened in 1880 under the name of “Bryan Grade School,” and its first graduates completed the 10th Grade School four years later. Private schools joining the educational system included Allen Academy in 1899 and Villa Maria Ursuline Academy for girls in 1901.”³⁵

Endnotes

- ¹ Frederick Eby, Ph.D., *The Development of Education in Texas* (1925) "In no other state has the struggle of such diverse traditions and ideas been so prolonged and bitter."
- ² *Republic of Texas Constitution 1836*.
- ³ Eby, *The Development of Education in Texas* (1925).
- ⁴ Billy Walker, Executive Director Texas Association of School Boards (TASB), *Intent of the Framers in the Education Provisions of the Texas Constitution of 1876*. "In 1876, the historical balance between private-school and public-school interests was maintained as a compromise measure, and the community system was allowed to exist in some Texas counties until 1909," 670.
- ⁵ Walker, *Intent of the Framers in the Education Provisions of the Texas Constitution of 1876*, cited in *Edgewood III*, 640.
- ⁶ No subject was more controversial or more extensively debated. *West Orange Decision* (2006).
- ⁷ Constitutional Convention Journal (1875).
- ⁸ Constitutional Convention Debate Records (1875).
- ⁹ Walker, *Intent of the Framers in the Education Provisions of the Texas Constitution of 1876*, 639.
- ¹⁰ *Ibid*, 634-635.
- ¹¹ Chuck DeVore, "An interesting factoid from Texas' public education history," blog post, Texas Public Policy Foundation (14 Mar. 2014).
- ¹² Eby, *The Development of Education in Texas* (1925).
- ¹³ *Ibid*.
- ¹⁴ Eby, *The Development of Education in Texas* (1925) 108.
- ¹⁵ *Ibid*.
- ¹⁶ *Ibid*.
- ¹⁷ Constitutional Convention Journal (1875).
- ¹⁸ Constitutional Convention Debates (1875).
- ¹⁹ *Texas Constitution*, Article 7 Section 1.
- ²⁰ Eby, *The Development of Education in Texas* (1925).
- ²¹ Parker and Weiss, "Litigating Edgewood: Constitutional Standards and Application to Educational Choice," *The Review of Litigation* Volume 10, Number 1 (UT Law Publications: 1991).
- ²² Eby, *The Development of Education in Texas* (1925).
- ²³ *Ibid*.
- ²⁴ Walker, *Intent of the Framers in the Education Provisions of the Texas Constitution of 1876*, 670.
- ²⁵ *Ibid*.
- ²⁶ Texas State Teachers Association, TSTA statement on school vouchers, *Waxahachie Daily Light* (24 Aug. 2012).
- ²⁷ Eby, *The Development of Education in Texas* (1925).
- ²⁸ Constitutional Convention Debates (1875).
- ²⁹ A.W. Garrett, "Community Schools in 19th-Century Texas," *The Educational Forum* 65(1), 22-30.
- ³⁰ From a History of Fairdale, Sabine County, Texas, www.toledo-bend.com.
- ³¹ txcourthouseforsale.com/history.htm (accessed 6 June 2014).
- ³² www.kossercafe.com/marlinhistory.html.
- ³³ www.scuc.txed.net.
- ³⁴ www.texashistory.unt.edu.
- ³⁵ www.bryantx.gov.

About the Author

The Honorable Kent Grusendorf is the Senior Fellow in the Foundation's Center for Education Freedom.

Grusendorf was born near Abilene in Stanford, Texas, grew up in Waco and went to Arlington to attend college with only a band scholarship and \$90 in his pocket. He spent most of his professional life in Arlington as a businessman and successful entrepreneur. Three months after graduating from college he started his own business, in the aerospace industry, and has been an independent businessman ever since. In 1986 he and friends started a bank, now known as Southwest Securities FS Bank, where he served as Chairman of the Board through much of the banking crisis of the 1990s.

He represented Arlington for 20 years, 1987-2007, in the Texas Legislature where his primary interest and focus was education. In his freshman term, due to his prior service on the State Board of Education, he was viewed as a leader on education issues. Through his appointments, by three governors and three House Speakers, to the House Public Education Committee and various Select Committees, he played a significant role in crafting legislative responses to the *Edgewood I*, *Edgewood II*, *Edgewood III*, *Edgewood IV*, and *West Orange Cove* school finance court decisions.

On the national level he was first appointed to the Southern Regional Education Board (SREB) by Governor Clements. He was reappointed to the SREB by Governors Bush and Perry and also served on the SREB's Executive Committee. Grusendorf also served a term as Chairman of the American Legislative Exchange Council (ALEC) Education Task Force. During his last two terms in the Texas Legislature he served as chairman of the House Public Education Committee. During his tenure in the Texas Legislature he carried education accountability/improvement initiatives for four governors: Clements, Richards, Bush, and Perry.

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