

BRIEFING PAPER NO. 13

EDUCATION

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EDUCATION

Education has been defined as the means by which a community prepares its human resources to meet its goals.^{1/} Public education is the publicly funded system by which this preparation is effectuated, reflecting the values, ideals and goals of the society as a whole. In recognition of this, the United States Supreme Court has stated that "education is perhaps the most important function of state and local governments."^{2/} When considering any constitutional provision on education, the delegates should be guided by their sense of the Commonwealth's goals and the role of education in realizing these goals.^{3/} This paper will discuss

^{1/} Conference of Micronesian Education, EDUCATION FOR WHAT? p. 18 (1974).

^{2/} Brown v. Board of Educ., 347 U.S. 483, 493 (1954), quoted in San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 29 (1973).

^{3/} A subcommittee of the Conference for Micronesian Education determined that the national goals for the people of the Marianas were, in order of priority:

1. Adoption of a Western life-style and material goods to provide security and comfort
2. Preservation of a sense of identity and recognition by others through the preservation of:
 - (a) land
 - (b) language
 - (c) religious heritage as a means of social unity.
3. A voice in community decision-making and participation in political choices.

the principal forms of constitutional provisions dealing with education that are available for consideration by the Convention.

I. BACKGROUND AND GENERAL CONSIDERATIONS

A. Relevant Provisions of the Covenant and the United States Constitution

Neither the Covenant nor the United States Constitution expressly addresses the subject of education.^{4/}

B. Background

The Commonwealth has for some time operated a free system of compulsory education^{5/} as part of the

4/ Here, as elsewhere, there are restrictions on action by the Commonwealth arising from generally applicable provisions of the U.S. Constitution. For example, if the Convention provides for the raising of revenue for school financing, such fiscal measures must comport with the strictures of the Fifth and Fourteenth Amendments. See BRIEFING PAPER NO. 10: TAXATION AND FINANCE § I(A). Another example is the Constitutional restriction on aid to church-run schools. See § II(G) below.

5/ The Mariana Islands District Code requires school attendance by all children between six and fourteen years of age, or until graduation from the eighth grade. MARIANA ISLANDS DIST. CODE tit. 10 ch. 10.04, § 10.04.020 [hereinafter cited as MIDC]. As of June 30, 1975, there were nineteen elementary and secondary schools in the Commonwealth, serving a total of almost 5000 students. Dep't of State, 28th ANNUAL REPORT, TRUST TERRITORY OF THE PACIFIC ISLANDS 1975 appendix 22, pp. 211-12 (1976). Of the total enrollment, approximately 10% attend non-public schools. Id.

Trust Territory educational system. The Trust Territory Department of Education and the Micronesia Board of Education perform the function of formulating policy and exercising control over the entire educational system.^{6/} The duties of administration and execution of Board policies are delegated to a director of the Department of Education, who is selected, with the assistance of the Board, by the high commissioner.^{7/}

In addition to territory-wide organization, the Trust Territory educational system is divided into two levels of administration, district and community. The districts, which correspond to the political districts of the Trust Territory,^{8/} have their own district boards of education and district directors, who also are

6/ TRUST TERRITORY CODE tit. 41, ch. 1, §§ 3, 7-8 (Supp. 1975) [hereinafter cited as TTC]. The Trust Territory Code specifically empowers the Board to define educational objectives, formulate policies, evaluate past and current expenditures, recommend budgets, assist in the selection of the director of the Department of Education, establish a financial support plan for each district, assist in certification of teachers, and adopt territory-wide curriculum and standards. The Department of Education also supervises all non-public schools. TTC tit. 41, ch. 1, § 20 (1970).

7/ TTC tit. 41, ch. 1, §§ 7, 8 (Supp. 1975).

8/ Under the Trust Territory system, the Northern Mariana Islands comprise one district.

appointed by the high commissioner.^{9/} The community boards of education are organized in accordance with local laws and regulations.^{10/} They are, however, subordinate to the Micronesia and district boards, and apply the educational policies of the latter boards at the local level.

C. General Policy Considerations

Although education is of vital importance to the future of the Commonwealth and its citizens, there is no need for elaborate constitutional treatment of this issue. Education may be one of the most important services provided by the government. Nevertheless, it does not concern the structure of government itself and thus, in theory at least, does not warrant extensive constitutional treatment.^{11/}

^{9/} TTC tit. 41, ch. 1, § 10 (1970). The district director is a member and the executive officer of the district board, which numbers five members. The Trust Territory Code provides details of composition of the board, method of appointment, length of term, filling of vacancies, organization, meetings, expenses and duties. TTC tit. 41, ch. 1, §§ 10-13 (1970).

^{10/} TTC tit. 41, ch. 1, § 14 (1970).

^{11/} Wheeler, Introduction, in SALIENT ISSUES OF CONSTITUTIONAL REVISION p. xi (J. Wheeler ed. 1961).

affairs of government and politics.^{13/} On the other hand, education is only one of the services (albeit an important one) that a government provides its citizens. It can be argued, therefore, that the most efficient and responsive system of education for the Northern Marianas can arise only from the full interplay of political and governmental decision-making that shapes a democratic society.^{14/}

III. SPECIFIC ISSUES FOR DECISION

The constitutions of every state and the Commonwealth of Puerto Rico make some mention of education, although the range of such reference varies considerably. A great number of states devote an entire

13/ Legislative Reference Bureau, HAWAII CONSTITUTIONAL CONVENTION STUDIES, ARTICLE IX: EDUCATION (PUBLIC EDUCATION) p. 54 (1968) observed:

Because it plays such a crucial role in developing the minds of the nation's youth, it is believed that education should be as far removed as possible from government and politics. It should not be subjected to the pressures and patronage of politics.

14/ Id. pp. 55, 71.

creating confusion.^{17/} Language capable of generating problems is more easily amended in a statute than in a constitution. Since there is little danger that the legislature will overlook or decide to omit education from statutory treatment, the Constitution actually can do little to strengthen any system once it is devised. The argument opposing this alternative is that education is simply too important to leave to the legislature without some constitutional guidance, and the predominant state practice reflects this view.

Second, a full article specifically devoted to education can be provided in the constitution. The arguments supporting and opposing this option are essentially those outlined above. However, the more detailed and specific the constitutional treatment

^{17/} For example, the Illinois constitution of 1870 guaranteed a "thorough and efficient system of free schools." ILL. CONST. art. VIII, § 1 (1870), quoted in G. Braden & R. Cohn, THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS p. 399 (1969). The issue of whether the Illinois system was indeed "thorough and efficient" generated litigation, id. p. 400, and the word "thorough" was dropped in the new version. ILL. CONST. art. X, § 1. See also N.J. CONST. art. VIII, § IV, pt. 1, which retains the "thorough and efficient" wording. This wording was the basis for a major recent court decision with respect to school finance that ultimately forced New Jersey to change its system of taxation for education purposes. Robinson v. Cahill, 69 N.J. 449, 355 A.2d 129 (1976).

article to the subject,^{15/} reflecting the importance placed on education and the belief that the educational system plays a critical role in the development and future of a state, commonwealth or territory.^{16/} While the constitutional document obviously cannot ensure quality education, it may be possible to maximize the potential for reaching that goal through constitutional mandate. At the very least, the constitution expresses the aspirations of the people in those areas deemed fundamental.

Accordingly, the delegates to the Northern Marianas Constitutional Convention should consider several alternatives with respect to a constitutional provision on education. First, such a provision can be omitted entirely from the Constitution. Those who support this view would argue that an effective educational system can be devised by the legislature of the Northern Marianas, and that a constitutional provision at best is superfluous and at worst has the potential of

15/ E.g., HAWAII CONST. art. IX; ILL. CONST. art. X; LA CONST. art. VIII; N.C. CONST. art. IX; TEX. CONST. art. VII. The Model State Constitution also devotes an article to education. National Municipal League, MODEL STATE CONSTITUTION art. IX (6th rev. ed. 1968) [hereinafter cited as MODEL CONST.].

16/ Although the proposed constitution of Guam did not devote an entire article to education, it was one of the topics discussed extensively at the constitutional convention. FIRST CONSTITUTIONAL CONVENTION OF GUAM 1969-1970 pp. 391-471.

becomes, the more likely the Constitution will become a roadblock to change when the passage of time proves current solutions to be unworkable or unwise.

A third option is to create an article addressing a broad classification of socially oriented programs, for example, health, education and welfare.^{18/} This format may be desirable if the provisions relating to these programs are not lengthy or numerous and can adequately, if not logically, be interrelated.^{19/}

A fourth option would address education only in the bill of rights and include only fundamental principles, such as a guarantee of primary education to all citizens.^{20/}

^{18/} E.g., ALAS. CONST. art. VII.

^{19/} For example, some confusion has arisen regarding whether schools for the mentally incompetent fall under those constitutional provisions guaranteeing free education. G. Braden & R. Cohn, THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS p. 400 (1969). Under a "health, education and welfare" article, educational institutions having responsibility in the health and welfare fields can ideally be covered without cumbersome cross-referencing or overlap.

^{20/} E.g., GUAM CONST. § 5(r) (proposed); P.R. CONST. art. II, § 5; VIRGIN ISLANDS CONST. art. II, § 12 (proposed). The Supreme Court of the United States rejected the argument that education is a "fundamental right" protected by the U.S. Constitution. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973). This, however, does not preclude the Commonwealth Constitution from affording protection of its own.

If the decision is made to treat education in the Constitution, the following discussion addresses the possible forms that such treatment might take. The education articles of the state constitutions vary substantially in their scope and detail. The starting point for all the articles, however, is the provision of free and non-sectarian education by the state. Some constitutions go no further than this.^{21/} Others do so only to the extent of assigning general responsibility to a board of education or superintendent of schools,^{22/} or including a higher education provision.^{23/} The more detailed constitutions invariably include sections relating to school funding^{24/} and the management of the

^{21/} AMERICAN SAMOA CONST. art. 1, § 15 (proposed); P.R. CONST. art. II, § 5; VT. CONST. ch. II, § 64.

^{22/} E.g., S.C. CONST. art. XI.

^{23/} E.g., ALAS. CONST. art. VII; MAINE CONST. art. VIII. For a discussion of higher education, see II(H) below.

^{24/} See, e.g., FLA. CONST. art. IX, § 6; MONT. CONST. art. X, § 10; OKLA. CONST. art. XIII, § 1a.

school fund,^{25/} in addition to numerous miscellaneous provisions.^{26/}

The following discussion analyzes each of the major provisions and the arguments supporting and opposing their inclusion in the Constitution of the Northern Marianas.

A. Provision of Public Education

The most austere of the education articles provide for a "system of free public schools open to all children in the state."^{27/} This type of provision usually declares the right of persons to an education,

^{25/} IND. CONST. art. VIII, §§ 4 & 5 (investment of the fund); KY. CONST. § 185 (interest on the fund).

^{26/} CAL. CONST. art. IX, § 7.5; COLO. CONST. art. IX, § 16; OKLA. CONST. art. XIII, § 6; UTAH CONST. art. X, § 9; WYO. CONST. art. VII, § 11 (textbook systems); KAN. CONST. art. VI, § 5 (local public schools); LA. CONST. art. VIII, § 4 (full faith and credit to private schools); W. VA. CONST. art. XII, § 6 (school districts); ARK. CONST. art. XIV, § 3; WIS. CONST. art. X, § 4 (annual school tax).

^{27/} MODEL CONST. art. IX, § 9.01; see also ALAS. CONST. art. VII, § 1; MAINE CONST. art. VIII, § 1; AMERICAN SAMOA CONST. art. I, § 15 (proposed); P.R. CONST. art. II, § 5.

mandates that it be non-sectarian, compulsory, and free of cost^{28/} and implicitly delegates responsibility for its operation to the government. The argument favoring this simplicity is that it maximizes the flexibility that the legislature enjoys in determining what governmental body will oversee the educational system, in establishing and using funds to finance the system, in protecting the rights to education of certain identified segments of the population, and in providing the basic rules governing the educational process.^{29/} Those opposed to a simple "provision-of-education" article are usually supportive of a particular policy that they feel will be more enduring if included in the constitution. Examples are New Mexico's special mention of equal educational rights of those of Spanish descent^{30/} and Utah's mandate^{31/} that the metric system be taught in the public schools.

28/ E.g., P.R. CONST. art. II, § 5.

29/ These rules might include: number of days of compulsory attendance; investment of school funds; institutions for the handicapped; textbook systems; and specified mandatory instruction (e.g., English).

30/ N.M. CONST. art. XII, §§ 8, 10.

31/ UTAH CONST. art. X, § 11.

B. Equal Education Opportunity

In addition to guaranteeing free education, several state constitutions include a provision mandating that the educational opportunity for all citizens of the state be equal,^{32/} that the public school system be "uniform"^{33/} or that no segregation by race, religion or ancestry exist.^{34/}

Such a provision is arguably unnecessary since the United States Supreme Court has held that segregation on the basis of race is violative of the United States Constitution. In Brown v. Board of Education of Topeka^{35/} the Court rejected the argument that separate but equal facilities satisfy the Fourteenth Amendment of the

^{32/} E.g., LA. CONST. art. VIII, preamble; S.D. CONST. art. VIII, § 1.

^{33/} IDAHO CONST. art. IX, § 1; IND. CONST. art. VIII, § 1; N.M. CONST. art. XII, § 1; ORE. CONST. art. VIII, § 3; WYO. CONST. art. VII, § 1.

^{34/} E.g., HAWAII CONST. art. IX, § 1.

^{35/} 347 U.S. 483, 495 (1954).

Constitution.^{36/} The guarantee of equal educational opportunity is further guarded by the Civil Rights Act of 1964.^{37/}

Those who support inclusion of an equal educational opportunity provision argue that while the Supreme Court has banned segregation, schools have a long way to go in providing equal educational opportunity to those "educationally disadvantaged" -- children whose backgrounds have provided less intellectual stimulus than "average" backgrounds. Constitutional reference, then, gives official recognition to the proposition that the task is incomplete and encourages the legislature and the educational system to devise methods of opening educational opportunity to all.

36/ The companion case of Brown, Bolling v. Sharpe, held that racial segregation in public schools also violates the due process clause of the Fifth Amendment. 347 U.S. 497, 500 (1954). In Bolling, the due process challenge arose in the context of the educational system of the District of Columbia, to which the Fifth Amendment, but not the Fourteenth, applies. By virtue of the Covenant, both the Fifth and Fourteenth Amendments apply to the Commonwealth of the Northern Mariana Islands. COVENANT art. V, § 501.

37/ The Court has recently held that the Act, 42 U.S.C. § 1981, prevents private schools from discriminating racially among applicants. Runyon v. McCrary, 96 S. Ct. 2586 (1976).

Those who oppose inclusion of such a provision argue that "equal educational opportunity" is evolving to an extent that makes it virtually impossible to draft any meaningful provision. Even if such a provision could be drafted, it would only enunciate policy and the real task of fleshing out the policy belongs to the legislature and the courts. Since protection against discrimination is afforded generally by the bill of rights, special mention of equal educational opportunity may be superfluous.^{38/}

C. Vesting Administrative Authority

The issue with respect to administrative authority is whether the Constitution should mandate either centralized (Commonwealth) control over education or decentralized authority in local subdivisions of the Commonwealth or school districts.

It is difficult to determine from the language of state constitutions the degree to which the states attempt to maintain a centralized educational system or delegate the authority to local subdivisions. Most constitutions are either silent on the subject or merely

^{38/} See BRIEFING PAPER NO. 7: BILL OF RIGHTS.

name a state supervisor who, although having ultimate authority and responsibility, may in fact delegate all or most of policy making to the individual school districts, towns or counties. The extent to which the delegates to the Constitutional Convention prefer one approach over the other should be reflected in clear Constitutional delegations, either to the Commonwealth government or to some local administration. Any decision to vest authority in local jurisdictions must be consistent with the delegates' resolution of the entire question of local government for the Northern Marianas.^{39/} If the delegates have no strong preference, however, the Constitution probably should be silent on this issue, leaving the legislature free to adopt its own approach and vary that approach over time without the need for constitutional amendment.

Proponents of a centralized system assert that it has four principal advantages over a decentralized system. First, a centralized system is more efficient in that it can assess the needs and resources of the entire Commonwealth and can allocate the resources so as

^{39/} See BRIEFING PAPER NO. 5: LOCAL GOVERNMENT.

to maximize their usefulness.^{40/} The experience of the majority of states in having a localized system should not be overemphasized since the Commonwealth's size and corresponding needs do not always match those of the states. Services for handicapped children and others requiring special education can be provided throughout the Commonwealth. Second, a centralized system is fairer since no vested interest exists in one school district at the expense of another. Thus, the needs of each school can be met fairly with minimal suspicion that any favoritism exists. Third, the Commonwealth is better able to incorporate the latest developments in the field of education in addition to providing a richer curriculum for all students in the Commonwealth. A decentralized system's strong affiliation with localities may result

40/ The Book of the States, which surveys the latest developments in government, found in 1966:

Most states have taken steps toward consolidation of small, inefficient school districts. And most states have made attempts to provide a uniform, minimal level of educational opportunity, by distributing funds on an equalizing basis to local school districts.

Council of State Governments, BOOK OF THE STATES, 1966-67 p. 275 (1966). The latest edition of the Book of the States confirms the trend by showing the states and the District of Columbia moving from over 71,000 districts in 1951-52 to 16,178 in 1974-75. Only seven states showed an increase, and six made no change at all. Council of State Governments, BOOK OF THE STATES, 1976-77 p. 325 (1976).

in parochialism in the teaching methods and subject matter. Fourth, fiscal administration and planning is more effective through a central governing body. The Commonwealth government will be the principal (if not the only) assessor and collector of taxes; it will receive and disburse the substantial amount of federal aid available under the Covenant. These resources can be channeled more effectively and fairly into the schools if administered by the Commonwealth government.

Proponents of a decentralized system urge four advantages of that type of organization. First, local coordination of the schools brings the educational process closer to the people and thus encourages public participation. This is especially important in the area of adult education programs, since school attendance is not compulsory and is only to be achieved if the educational process is made more attractive. Second, local control of the educational process is traditional in the United States, and that arrangement has generally resulted in a high quality system.^{41/} Third, a

^{41/} See San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 49-53 (1973). Certainly much of this control is attributable to the fact that public education in the United States is financed mainly by means of property taxes imposed by local school districts. Delaware, Hawaii and North Carolina are the only states that centralize school financing,

decentralized educational system encourages experimentation, flexibility and adaptation to community needs.^{42/} There is no need for the educational structures on Tinian and Rota to be identical to that of Saipan. Fourth, while it may be true that much of the financial management is to be coordinated by the central government, there is no reason why the Commonwealth cannot allocate funds and leave planning, coordination and policy-making to the local governments or school districts.

A third option open to the delegates to the constitutional convention allows combining the best aspects of the two systems discussed above. While a

[Footnote continued]

although even these states permit supplementary local financing. The Supreme Court, 1972 Term, 87 HARV. L. REV. p. 57, at 105 (1973).

42/ There are at least two aspects to this flexibility. First, the system can be divided into those units that are most efficient and appropriate for the policy goals the Commonwealth seeks to attain. For example, the subdivisions could correspond to the individual islands, municipalities, or autonomous school districts. Second, flexibility may be necessitated by the evolving concept of education. In past years education has been quite conventional in scope with emphasis limited to the fundamentals of mathematics, reading and writing. Many educators see a new trend of early introduction of vocational or practical elements into the primary school curriculum. House Comm. on Resources and Development, A REPORT TO THE CONGRESS OF MICRONESIA, ECONOMIC DEVELOPMENT IN THE TRUST TERRITORY OF THE PACIFIC ISLANDS, 4th Cong., p. 71 (1972).

number of combinations can be drafted, one possible system would place the primary responsibility in the Commonwealth, but provide for an advisory board composed of local educators and community leaders. This formula would allow consistent and efficient administration and fiscal planning, but would ensure local representation and input. Another system would allow the Commonwealth government to retain residual and ultimate authority for education throughout the Commonwealth but would delegate to the local subdivisions considerable authority to make policy decisions and pursue their implementation.

D. Structure of Administrative Authority

After the administrative authority over the educational system has been vested in either centralized or decentralized fashion, it is necessary to consider who shall be responsible in each "district" or over the entire system.

Many state constitutions designate a superintendent of schools as having ultimate authority over the school system.^{43/} This position is analogous

^{43/} E.g., IND. CONST. art. VIII, § 8; ORE. CONST. art. VIII, § 1; WIS. CONST. art. X, § 1; WYO. CONST. art. VII, § 14. This authority could extend to higher education should such extension be desired. See § II (H) below.

to the district director of education mentioned in the Mariana Islands District Code ^{44/} and in the Trust Territory Code. ^{45/} Other states charge a multi-member body -- the board of education or a public corporation -- with the authority. ^{46/} Preference of one alternative over the other largely depends on the amount of faith one has in single authority, one's distrust of the ability of a group to come speedily and effectively to agreement and the necessity of representation of diverse sections of the population.

The third approach combines a superintendent with a board of education; this structure has been adopted by a number of states ^{47/} as well as by the Trust

^{44/} MIDC tit. 10, ch. 10.04, § 10.04.020 (1975).

^{45/} TTC tit. 41, ch. 1, § 10 (1970). The Trust Territory treatment, however, is purely statutory. The majority of states have left to the legislature the details of the educational infrastructure.

^{46/} E.g., HAWAII CONST. art. IX, §§ 2-3; ILL. CONST. art. X, § 2; ICWA CONST. art. IX, pt. 1, § 1. There are some disadvantages to the creation of multi-member bodies charged with the responsibility of carrying out governmental policies. See BRIEFING PAPER NO. 2: THE EXECUTIVE BRANCH OF GOVERNMENT § II(B) (2) (c).

^{47/} E.g., MICH. CONST. art. VIII, § 3; VA. CONST. art. VIII, § 6.

Territory.^{48/} The precise lines of responsibility of each should be defined if this approach is utilized. For example, the board of education can serve primarily a policy-making function while the superintendent can be charged with the administrative responsibility of carrying out those policies.^{49/}

1. Method of selection

Some constitutions prescribe the selection procedure for the board of education^{50/} and the

^{48/} TTC tit. 41, ch. 1, § 10 (1970) provides:

The District Director of Education shall be a member and executive officer of the District Board and shall be appointed by the High Commissioner. The remaining four board members shall be residents of the district and shall be appointed by the District Administrator with the advice and consent of the District Legislature.

^{49/} Virginia's constitution describes the powers and duties of the board of education, including effectuating policy as set forth in the constitution. VA. CONST. art. VIII, § 5(e). The duties of the superintendent are not constitutionally provided but are as "shall be prescribed by law." VA. CONST. art. VIII, § 6.

^{50/} VA. CONST. art. VIII, § 4 (nine members selected by the governor, subject to confirmation by the legislature); W. VA. CONST. art. XII, § 2 (nine members selected by the governor, "by and with the advice and consent of the Senate . . .").

superintendent of schools.^{51/} The delegates to the constitutional convention may either leave the method of selection to legislative discretion^{52/} or provide that these posts be filled through:

- . . . legislative appointment;
- . . . executive appointment;
- . . . election;
- . . . appointment by the other position (either the board of education or the superintendent);
- . . . a combination of the above.

2. Tenure

Some state constitutions, particularly those prescribing the selection process, also provide for the term of office of the board of education^{53/} or the

^{51/} VA. CONST. art. VIII, § 6 (appointed by the governor, subject to confirmation by the legislature); W. VA. CONST. art. XII, § 2 (appointment by the board of education); WYO. CONST. art. VII, §§ 1 & 14 (appointment by legislature).

^{52/} Puerto Rico, for example, has no constitutional provision mentioning the government body in the educational system.

^{53/} VA. CONST. art. VIII, § 4 (four years).

superintendent.^{54/} The majority of the states, however, leave the matter to the legislature. The argument for constitutional provision is that it imparts certainty and autonomy to a crucial function of the government. The argument against so providing is that the educational system's needs and priorities are subject to change, and statutory provision will serve the same function without the need for frequent constitutional amendment.

E. School Finance

Rather than leave education as one of the governmental functions covered by the article on taxation and finance, most state constitutions that have an article on education also include separate finance provisions.^{55/} This may reflect a determination by the states that their educational systems require a certain degree of autonomy.

^{54/} VA. CONST. art. VIII, § 6 (term coincident with that of the appointing governor); WIS. CONST. art. X, § 1 (four years).

^{55/} E.g., ARK. CONST. art. XIV, § 2; COLO. CONST. art. IX, §§ 3-5; CONN. CONST. art. VIII, § 4; MONT. CONST. art. X, § 10; N.M. CONST. art. XII, §§ 2-4, 7; N.C. CONST. art. IX, §§ 6 & 7; OKLA. CONST. arts. XI, §§ 2-3, 6 & XIII, § 1a.

Unlike the often uniform general education articles found in the constitutions, the school finance provisions are fairly dissimilar in that they address different aspects of school finance and fiscal administration and do so in varied degrees of detail. For example, most provide for a permanent school fund to be used only for purposes of formal public education,^{56/} and some place specific limitations on the uses of this fund.^{57/} Other constitutions go further and address the fund's composition,^{58/} investment of and interest on the fund,^{59/} school taxes^{60/} and assign responsibility for school finance.^{61/}

^{56/} E.g., IDAHO CONST. art. IX, §§ 3-4; IND. CONST. art. VIII, §§ 2-7; IOWA CONST. art. IX, pt. 2, §§ 2-5; KY CONST. § 184; ORE. CONST. art. VIII, § 2. For a discussion of state aid to church-run schools, see § II(G) below.

^{57/} COLO. CONST. art. IX, § 3 ("No part of this fund . . . shall be transferred to any other fund . . ."); N.D. CONST. art. VIII, § 154 (fund to be allocated among school districts in proportion to the number of school age children in each); ORE. CONST. art. VIII, § 4 (allocation in proportion to the number of children resident therein between ages of four to twenty years).

^{58/} COLO CONST. art. IX, § 5; IND. CONST. art. VIII, § 2; N.M. CONST. art. XII, § 2; N.C. CONST. art. IX, § 6; OKLA. CONST. art. XI, § 2; S.D. CONST. art. VIII, § 2; W. VA. CONST. art. XII, § 4.

^{59/} IND. CONST. art. VIII, § 4; KY. CONST. § 185; N.M. CONST. art. XII, § 7; OKLA. CONST. art. XI, § 3 & 6; S.D. CONST. art. VIII §§ 11-12.

^{60/} ARK. CONST. art. XIV, § 3; KAN. CONST. art. VI, § 6; TEX. CONST. art. VII, §§ 2-3; WIS. CONST. art. X, § 4; WYO CONST. art. VII, § 9.

^{61/} COLO. CONST. art. IX, § 4 (county treasurers); CONN. CONST. art. VIII, § 4; IOWA CONST. art. IX, pt. 2, § 6.

Thus, the delegates to the Constitutional Convention have a number of options regarding a school finance provision. First, they may omit entirely any such provision and leave the matter to legislative determination. Ten states,^{62/} in addition to the Virgin Islands, American Samoa and Puerto Rico, do not address the finance issue in their constitutions, other than prohibiting aid for sectarian purposes.^{63/} This option leaves the legislature free to construct a finance system that responds efficiently to current demands and resources.

A second option would be to include a constitutional mandate that the educational system be funded out of general revenues. This approach has the advantage of allowing school finance to respond to the current fiscal status of the Commonwealth, which is probably the most efficient method of funding governmental functions.

^{62/} Alaska, Hawaii, Illinois, Massachusetts, Michigan, New Hampshire, New York, Pennsylvania, South Carolina and Vermont.

^{63/} E.g., P.R. CONST. art. II, § 5.

A third option is to provide for a fund that will be used only for educational purposes. This approach ensures that a permanent means of financing the educational system for the Northern Marianas will be created and kept intact. The disadvantages of the fund approach are that it may be difficult for the Commonwealth to create an adequate fund in the early years of self-government and that, from year to year, the resources of the fund may not match the requirements of the educational system. Furthermore, it may be premature for the Commonwealth, with so little experience in managing its own fiscal affairs, to create a fixed method of financing its educational system in its first Constitutional Convention.

However, if the delegates are inclined to provide for a fund in the Constitution to finance the educational system for the Northern Marianas, they may wish to consider the following types of provisions most commonly included in state constitutions:

1. Revenues earmarked for the permanent fund

While some states simply provide that a permanent educational fund shall exist,^{64/} many constitutions designate the sources of the fund.^{65/}

These usually consist of monies specifically earmarked by the government,^{66/} estates or property that escheat to the government,^{67/} grants or gifts,^{68/} sales of land,^{69/}

^{64/} E.g., CONN. CONST. art. VIII, § 5; FLA. CONST. art. IX, § 6; IDAHO CONST. art. IX, § 3; R.I. CONST. art. XII, § 2.

^{65/} There is a general discussion of the advantages and disadvantages of earmarking in BRIEFING PAPER NO. 10: TAXATION AND FINANCE § II(D).

^{66/} E.g., COLO. CONST. art. IX, § 5; N.C. CONST. art. IX, § 6; OKLA. CONST. art. XI, § 2; ORE. CONST. art. VIII, § 2(1)(a); WASH. CONST. art. IX, § 3; WIS. CONST. art. X, § 2; WYO CONST. art. VII, § 2.

^{67/} E.g., COLO CONST. art. IX, § 5; N.D. CONST. art. VIII, § 153; ORE. CONST. art. VIII, § 2(1)(b); S.D. CONST. art. VIII, § 2; WASH. CONST. art. IX, § 3; WIS. CONST. art. X, § 2; WYO. CONST. art. VII, § 2.

^{68/} The constitution may state that such grants either be designated for educational purposes, or it may include all grants that are either so specified or undesignated. E.g., COLO. CONST. art. IX, § 5; N.M. CONST. art. XII, § 2; N.C. CONST. art. IX, § 6; ORE. CONST. art. VIII, § 2(1)(c) & (d); S.D. CONST. art. VIII, § 2; WASH. CONST. art. IX, § 3.

^{69/} E.g., N.M. CONST. art. XII, § 2; OKLA. CONST. art. X, § 2; S.D. CONST. art. VIII, § 2; WASH CONST. art. IX, § 3.

federal grants of land or funds^{70/} and fines collected
for breach of penal laws.^{71/}

2. Investment of the fund

Some constitutions establish guidelines for the
investment of the school fund.^{72/} A decision to specify
guidelines generally reflects both distrust of certain
investments and a preference of some investments over
others. For example, Oklahoma establishes a heirarchy
of securities for school fund purposes with "preference
to be given to the securities in the order named."^{73/}
Most constitutions, however, are less structured and
range from broad delegation to the legislature,^{74/} to

70/ E.g., N.C. CONST. art. IX, § 6; N.D. CONST. art. VIII,
§ 153; WASH. CONST. art. IX, § 3; WYO. CONST. art. VII, § 2. .

71/ E.g., IOWA CONST. art. IX, pt. 2, § 4; N.D. CONST. art.
VIII, § 154; WIS. CONST. art. X, § 2; WYO. CONST. art. VII,
§ 5.

72/ E.g., IND. CONST. art. VIII, § 4; KY. CONST. § 185; MINN.
CONST. art. VIII, § 4; NEV. CONST. art. XI, § 3; N.M. CONST.
art. XII, § 7; OKLA. CONST. art. XI, § 6; S.D. CONST. art.
VIII, §§ 11-12; WYO. CONST. art. VII, § 6.

73/ OKLA. CONST. art. XI, § 6.

74/ WYO. CONST. art. VII, § 6.

legislative control within certain limits,^{75/} to a listing of investment options. The latter are almost always governmental bonds.^{76/}

3. Distribution of fund income

Those constitutions containing provisions pertaining to a permanent school fund and its investment often include a provision directing that the fund's income be distributed in a certain manner. In this respect, the options of the Convention delegates are basically four. First, they can omit any reference to fund income distribution, implicitly leaving the matter to the legislature.^{77/} Second, they may specifically

75/ E.g., N.M. CONST. art. XII, § 7 (legislature by a three-fourths vote of its elected members may determine investment provided:

- (a) not more than 50% of the fund be invested in corporate stocks and bonds;
- (b) not more than 10% of voting stock be acquired; and
- (c) stocks must be of a U.S. corporation that has paid dividends for 10 consecutive years, and which is listed on a national stock exchange).

76/ These may be either state or federal bonds. MINN. CONST. art. VIII, § 4; NEV. CONST. art. XI, § 3; N.M. CONST. art. XII, § 7; OKLA. CONST. art. XI, § 6; S.D. CONST. art. VIII, § 11; WYO. CONST. art. VII, § 6.

77/ For example, both the Idaho and New Mexico constitutions contain school fund provisions but do not direct the distribution of the funds' income. IDAHO CONST. art. IX, § 4; N.M. CONST. art. XII, § 7.

provide that the legislature will supervise and plan the distribution throughout the educational system. Several states use this method, which effects essentially the same result as the first option.^{78/} Third, the delegates can draft a provision that will provide distribution to the subdivisions of the educational system (i.e., municipalities or school districts)^{79/} and delegate to the legislature the authority of supervising the distribution.^{80/} This method designates the recipients but leaves the specifics to the legislature. The fourth option envisions a provision that not only names the recipients of the income but also states the proportions of income to be received.^{81/}

^{78/} E.g., MICH. CONST. art. IX, § 11; UTAH CONST. art. X, § 3; VA. CONST. art. VIII, § 8.

^{79/} See § 11(C) above.

^{80/} E.g., IND. CONST. art. VIII, § 4 (counties); KY. CONST. § 186 (school districts); TEX. CONST. art. VII, § 5 (counties); WIS. CONST. art. X, § 5 (cities and towns); WYO. CONST. art. VII, § 8 (counties).

^{81/} IOWA CONST. art. IX, pt. 2, § 4 (in proportion to school age children resident within the school districts); N.D. CONST. art. VIII, § 153; OKLA. CONST. art. XI, § 3; ORE. CONST. art. VIII, § 4.

F. School Taxes

About one-third of the state constitutions^{82/} make some reference to school taxes, although only a very few devote a specific provision to the subject.^{83/}

Because the Covenant empowers the Commonwealth to impose local taxes "as it deems appropriate . . .,"^{84/} the option of specifically mentioning school taxes in the Constitution is available to the Convention delegates. Of course, a general grant of taxing authority to the legislature would permit the collection and expenditure of tax revenue for schools, as well as for other government services. If it is decided to include a specific reference to school taxes in the constitutional document, however, such reference may take a number of forms.

^{82/} Arkansas, California, Florida, Georgia, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, North Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

^{83/} E.g., TEX. CONST. art. VII, § 3; W. VA. CONST. art. X, § 10; WIS. CONST. art. X, § 4.

^{84/} COVENANT art. VI, § 602.

Many states simply refer to legislative power to levy taxes for the benefit of schools.^{85/} Other constitutions mandate that the legislature assess taxes for educational purposes,^{86/} and some allow taxation but specify maximum tax rates.^{87/} Another option -- that of specifying the taxes to be levied -- is followed by only one state, Texas.^{88/}

G. Aid to Church-Run Schools

A majority of states forbid aid to church-run schools.^{89/} This proscription is based on the establishment clause of the First Amendment of the United States Constitution, which bars the federal government or the states from passing laws that aid one or all

85/ E.g., MINN. CONST. art. IX, § 6; MISS. CONST. art. VIII, § 201; S.D. CONST. art. VIII, § 15; WASH. CONST. art. IX, § 2.

86/ E.g., LA. CONST. art. VIII, § 13; N.C. CONST. art. IX, § 2; TEX. CONST. art. VII, § 3; VA. CONST. art. VIII, § 2; WIS. CONST. art. X, § 4; WYO. CONST. art. VII, § 9.

87/ E.g., ARK. CONST. amend. 11; CAL. CONST. art. IX, § 6; GA. CONST. art. VIII, § 12; MICH. CONST. art. IX, § 6; UTAH CONST. art. X, § 3.

88/ TEX. CONST. art. VII, § 3.

89/ E.g., ALAS. CONST. art. VII, § 1; COLO. CONST. art. IX, § 7; MICH. CONST. art. VIII, § 2; MINN. CONST. art. VIII, § 2; P.R. CONST. art. II, § 5; TEX. CONST. art. VII, § 5.

religions or prefer one religion over another.^{90/}
Throughout the years,^{91/} and quite recently,^{92/} the
Supreme Court has interpreted the establishment clause
to mean that the government may not pay public funds to
church-run schools unless the schools prove that the
religious and secular curricula are separable, and that
the governmental aid only supports the latter.^{93/} In
those schools where the proof suggests that the religious
function is "excessively entangled" with the secular
teaching, no public aid whatsoever can be sustained.^{94/}

90/ Everson v. Board of Educ., 330 U.S. 1, 15-16 (1947).

91/ E.g., Lemon v. Kurtzman, 403 U.S. 602 (1971); Tilton v. Richardson, 403 U.S. 672 (1971); Board of Educ. v. Allen, 392 U.S. 236 (1968); Bradfield v. Roberts, 175 U.S. 291 (1899).

92/ Roemer v. Board of Pub. Works, 96 S. Ct. 2337 (1976) (upholding yearly state grants to colleges with religious affiliation).

93/ The Supreme Court recently said, "neutrality is what is required. The State must confine itself to secular objectives, and neither advance nor impede religious activity." Roemer v. Board of Pub. Works, 96 S. Ct. 2337, 2345 (1976). For an analysis and history of the intricate legal questions presented by the establishment clause, see Choper, The Establishment Clause and Aid to Parochial Schools, 56 CALIF. L. REV. p. 260 (1968).

94/ Lemon v. Kurtzman, 403 U.S. 602, 615-16 (1971); accord, Roemer v. Board of Pub. Works, 96 S. Ct. 2337, 2347-48 (1976).

The delegates to the Constitutional Convention have three options regarding such a provision. First, it may be omitted and the matter left to be aligned with past and future Supreme Court pronouncements. Second, the delegates can draft a provision retaining the thrust of the current Northern Marianas and Trust Territory Code provisions: only aid to the non-religious functions of schools will be permitted.^{95/} Third, the delegates can conceivably ban all aid to any non-public school, regardless of the purpose to which the aid would be put. While having a severe effect on non-public schools, such a solution would conserve the revenues available for public schools and promote the Commonwealth educational system. The opposing argument is that the drastic nature of the ban, in addition to alienating religious and other private institutions that serve vital roles in the community, would effectively strangle institutions that do and can serve an effective function in the school system.

^{95/} MIDC tit. 6, ch. 6.34, § 6.34.020-.030; TTC tit. 41, ch. 1, § 19 (1970).

H. Higher Education

Some state constitutions include provisions specifically addressing their institutions of post-secondary education.^{96/} Most of these, however, concern colleges and universities already in existence and the provisions deal with them by name.^{97/} Some constitutions include simply an "endorsement" of higher education, encouraging "qualified persons . . . to acquire further education, locally and abroad, both general and technical . . ."^{98/} Other constitutions make no mention of higher education.^{99/} Because a proclamation formally establishing the Northern Marianas Community College has been signed by the resident commissioner,^{100/} constitutional recognition of higher education in the Northern Marianas may be appropriate.

^{96/} E.g., CAL. CONST. art. IX, §§ 9-10, 12-13; MASS. CONST. ch. V, § I; MICH. CONST. art. VIII, §§ 4-7; TEX. CONST. art. VII, §§ 10-18; WIS. CONST. art. X, § 6.

^{97/} Wisconsin is an example of a state whose higher education provision is only spelled out in general terms. WIS. CONST. art. X, § 6.

^{98/} AMERICAN SAMOA CONST. art. I, § 15 (proposed).

^{99/} E.g., Puerto Rico, South Carolina, South Dakota, Vermont, Virginia, West Virginia and the Model State Constitution.

^{100/} Marianas Variety News and Views, Aug. 25, 1976, p. 2, col. 1.