

The Supreme Court of Texas and School Finance

By Bill Hobby

What if the Governor of Texas proposed to close the public schools next month because she disapproved of the way we paid for them?

What if your legislator said that your children could not go to school next month because of the way state funds are divided among the 1100 school districts in the state?

Would you not think that those public officials had taken leave of their senses? You would, and you would be right. But that is exactly what nine members of the Supreme Court of Texas said last month.

The Supremes once again held the state's school finance system unconstitutional. They had previously said the earlier system was unconstitutional and needed to be changed. The Legislature changed the system and made it fairer.

The Supremes said that the changes still did not satisfy the Constitution. Fair enough. They are elected to make those decisions, and I do not quarrel with their judgement.

But what is deeply offensive is their threat to close the public schools if the Legislature does not in the next few weeks take some unspecified action that might or might not be acceptable to the Supremes.

Public education was paramount in the minds of the drafters of the Texas Constitution. The word "education" is not in the federal Constitution, but it is established as a right in many state constitutions.

The Texas Constitution makes the state the equalizer of educational opportunity. Given the notorious complexity of school finance and the fierce emotions that naturally surround the subject, the task of equalizing is not easy. Four acrimonious legislative sessions were required last year to pass the current law.

Our system of paying for public schools combines state dollars with local property tax dollars and, by its very nature, gets out of balance from time to time. That is why the Legislature has had to change the system about every four years during the last two decades.

Argument about the "fairest" way to pay for public schools is just about the oldest political issue in Texas. There are fashions in school finance and governance as surely as there are in clothes.

For example, much talk is heard these days about a "voucher system", whereby the state would give each family a voucher for the cost of education and the parents would decide where their child would go to school. In this way, say the voucher proponents, competition and accountability would be introduced into our public schools.

It is an idea that should be tried on a pilot basis so we can see if it works. But it is not a new idea. Texas had just such a system a century ago, and it must not have been all that successful or it would not have been changed.

Twenty years ago there was less state regulation of education in Texas than in most states, and our school system was unsatisfactory. So, beginning in the 1970s, the role of the State in supervising public education was greatly expanded--in an effort to "reform" our schools. Today, the "reformers" want less regulation, not more. Fashions change.

From time to time, fashion dictates that the size of the State Board of Education be increased or decreased, or that it be elected rather than appointed, or the other way around.

In 1984, when House Bill 72 was passed, it was fashionable to urge that the principal should be the academic leader of each campus. That idea was largely a reaction against football coaches who often became principals or superintendents after a few losing seasons on the field.

By 1990, fashion had changed again, and "site-based management" had become the buzzword. In other words, committees were in, and individual leadership was out.

(None of this matters very much. Laws and regulations have very little to do with what actually goes on in the classroom.)

Fashions in finance change, too. For the nine Supremes to threaten to close the schools if the Legislature does not conform to whatever they think the newest fashion is must set some sort of record for judicial arrogance.

That is the sort of behavior we associate with federal, not state, judges.

Clearly, these nine judges need to be replaced by new ones who have not yet mistaken themselves for God.

Written in 1991.