

**OFFICIAL JOURNAL
of the
CONSTITUTIONAL CONVENTION
of the
STATE OF TEXAS**

NINETEENTH DAY
(Tuesday, February 12, 1974)

REPORT OF THE
COMMITTEE ON EDUCATION

The Honorable Price Daniel, Jr., President
Constitutional Convention of 1974

Sir:

We, your Committee on Education, to whom was referred Article VII of Constitutional Convention Proposal 1, have had the same under consideration and beg to report back with the recommendation that it do pass.

The proposal was reported from committee by the following record vote: 13 Yeas, 7 Nays, 1 Present-Not voting.

Respectfully submitted,

/s/
KUBIAK
Chairman

Date Submitted: February 11, 1974

The Honorable Price Daniel, Jr.
President, Texas Constitutional Convention

The Committee on Education submits herewith its report containing recommended provisions for maintaining a high level of educational quality in the secondary and higher levels of education. The proposal is intended to replace in its entirety Article VII (Education) of the present constitution.

The committee has attempted to provide an Article VII which is consistent with the United States Constitution and proper standards for determining items of constitutional magnitude. Provisions believed to require extensive analysis and susceptible to varying treatment depending on differing circumstances were left to legislative discretion. Every attempt was made to put the provisions of Article VII into language having one plain meaning so that the average citizen of this state can easily understand its contents.

Although a multitude of amendments and proposals were considered, the committee was in general accord regarding the issues involved. Serious consideration was given to the language of ensuring quality education, altering the present Permanent University Fund, the separation of Prairie View A&M University from The Texas A&M University System, and the use of the state ad valorem property tax to finance certain improvements

at designated colleges and universities. At the end of deliberations on each section, the committee was in general agreement with the committee report and no minority reports are attached.

The report was adopted after consideration was given to recommendations of the Constitutional Revision Commission, suggestions by persons who testified before the committee in public hearings, delegates who submitted proposals, and the many citizens who have contributed to the work of the committee.

During its work the committee utilized the services of the following staff members and advisors: Carnegie Mims, Brad Duggan, Mel Waxler, Bruce Henderson, and Becky Beaver.

The committee believes this proposal provides a much improved constitutional framework for education in Texas and urges its adoption by the Constitutional Convention.

/s/
KUBIAK
Chairman

Date Submitted: February 11, 1974

BE IT PROPOSED BY THE COMMITTEE ON EDUCATION,
That there be a new article on education
to read as follows:

ARTICLE VII
EDUCATION

Sec. 1. SUPPORT OF FREE PUBLIC SCHOOLS.
A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature shall provide for a system of free public schools through the secondary level that will furnish each individual equal educational opportunity.

In distributing state support of the free public schools, the legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the state as a whole.

Sec. 2. PROHIBITION OF DISCRIMINATION.
No funds, bonds, revenues, or other property set apart or appropriated for the support of public education shall be restricted in any way on the basis of race, sex, religion, or national origin.

Sec. 3. PERMANENT AND AVAILABLE SCHOOL FUNDS. (a) The Permanent School Fund consists of all funds, securities, land, mineral income derived therefrom, and other property heretofore or hereafter set apart or dedicated to the support of public free schools. The Permanent School Fund shall not be expended or diverted, but the income derived therefrom shall belong to the Available School Fund. The lands set apart to the Permanent School Fund may be sold or exchanged as may be provided by law. All money belonging to said fund, including the proceeds of the sale of any land, shall be invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent School Fund and state taxes dedicated to support the free public schools.

February 12, 1974

(c) The Available Fund shall be appropriated by the legislature to support the free public schools. The State Board of Education shall set aside from the Available School Fund a sufficient amount to provide free textbooks, and other instructional materials authorized by law, as may be required in educational programs.

Sec. 4. COUNTY PUBLIC SCHOOL FUND. The County Public School Fund of each county consists of all property transferred to that county for education of scholastics in that county.

Sec. 5. STATE BOARD OF EDUCATION. The legislature shall provide by law for a State Board of Education composed of elected members.

Sec. 6. SCHOOL AND COMMUNITY JUNIOR COLLEGE DISTRICTS. The legislature by general law shall provide for school and community junior college districts.

Sec. 7. FIRST CLASS COLLEGES AND UNIVERSITIES. The legislature shall provide for a system of higher education of the first class.

Sec. 8. PERMANENT UNIVERSITY FUND, ITS ADMINISTRATION, ITS INVESTMENTS: AVAILABLE UNIVERSITY FUND AND ITS EXPENDITURE. (a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of The Texas A&M University System and The University of Texas System. In pursuance of such trust, the Board of Regents of The University of Texas System shall have authority to sell, lease, exchange and otherwise manage the assets of the fund as provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the fund. In making each and all investments, the Board of Regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to

speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The Board of Regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of The Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the legislature for the support and maintenance of Texas A&M University in the County of Brazos. Out of the other two-thirds of the Available University Fund, the legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the legislature for the support and maintenance of The University of Texas at Austin.

Sec. 9. THE TEXAS A&M UNIVERSITY SYSTEM; THE UNIVERSITY OF TEXAS SYSTEM; PERMANENT UNIVERSITY FUND BONDS OR NOTES.

(a) The Board of Directors of The Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for The Texas A&M University System 10 percent, and for The University of Texas System 20 percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than 30 years from their respective dates.

(c) Institutions now included in The Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without

February 12, 1974

permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the boards are severally authorized to pledge the whole or any part of the respective interests of The Texas A&M University System and The University of Texas System in the Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this section shall be approved by the Attorney General of Texas and when so approved shall be incontestable. This section shall be self-enacting.

Sec. 10. STATE HIGHER EDUCATION ASSISTANCE FUND. (a) There is hereby established the State Higher Education Assistance Fund to which is appropriated from the state treasury each fiscal year an amount equal to the state's official estimate of the money that will become a part of the Available University Fund in the same fiscal year. The legislature may appropriate additional funds to the State Higher Education Assistance Fund.

(b) Funds derived from the appropriation to the fund shall be allocated to the state public senior institutions and systems of higher education that were in existence at the time of adoption of this constitution, or such other institutions or systems as may be by law placed or created under the control and supervision of a governing board of an institution in existence at the time of adoption of this constitution, other than those institutions included in The University of Texas System and The Texas A&M University System. The allocation of funds shall be pursuant to equitable formulas, based on statewide needs devised by an agency or department as authorized by the legislature.

(c) The State Higher Education Assistance Fund may be used only for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) paying the principal of and interest on any bonds or notes issued pursuant to this authority.

(d) The governing board of each such institution of higher education is fully authorized to pledge all or any part of the fund allocated or to be allocated to the institution, to secure bonds and notes or refunding bonds and notes issued for one or more of the aforesaid purposes at the respective institutions; and the governing board of an institution to which funds have been allocated or will be allocated may use all or any portion of such funds not pledged to secure bonds and notes or refunding bonds

and notes for any of the purposes specified herein for said institution. Bonds or notes shall be issued in amounts as may be determined by the respective governing boards of the participating institutions and shall mature serially or otherwise not more than 30 years from their respective dates of issue. Bonds and notes issued pursuant to this authority shall be secured by the full faith and credit of the state.

(e) From the date on which they become eligible to participate in the fund established in this section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

Sec. 11. COORDINATING BOARD. The legislature shall provide by law for a Coordinating Board, Texas College and University System.

TRANSITION SCHEDULE

(This subsection of Section 9 will most likely need to be in the Transition Section of the new constitution.)

"(e) Provided, however, that nothing herein shall be construed as impairing any obligation heretofore created by the issuance of any outstanding notes or bonds under prior constitutions by the respective boards, but any such outstanding notes or bonds shall be paid in full, both principal and interest, in accordance with the terms of such contracts."

(The following Section 3 of the proposed transition schedule would apply to Section 10 of this Article VII.)

Sec. 3. VALIDITY OF ISSUED AND UNISSUED BONDS. (a) All bonds or other evidences of indebtedness validly issued by or on behalf of the state or any agency or political subdivision thereof under authority previously granted by the Constitution of 1876, as amended, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions notwithstanding the repeal of such authority by virtue of the adoption of this constitution. The state and any such agency or political subdivision, as the case may be, shall continue to provide for source or sources of payment in accordance with the terms of such bonds or other evidences of indebtedness, whether from taxes or otherwise, until such bonds or other evidences of indebtedness are paid in full.

(b) Any bonds or other evidences of indebtedness previously authorized to be issued by or on behalf of the state or any agency or political subdivision thereof but unissued on the effective date of this constitution may be validly issued subject to all applicable terms and conditions under the authority previously granted by the Constitution of 1876, as amended, notwithstanding the repeal of such authority by virtue of the adoption of this constitution. Any such unissued bonds or other evidences of indebtedness may be issued bearing any rate of interest within the limits permitted by the Constitution of 1876, as amended, until the legislature, by law,

February 12, 1974

hereafter removes such limits or authorizes new limits.

SECTION-BY-SECTION ANALYSIS OF COMMITTEE PROPOSALS

A. Introduction

The committee began its work with the version in Constitutional Convention Proposal Number 1 which was identical to the Constitutional Revision Commission recommendations for Article VII. After witness testimony, staff memoranda, and extensive intracommittee discussion, the committee proceeded to vote on amendments to Proposal 1, section by section, and additional proposals. When every section was completed, the committee staff and the staff of the Committee on Style and Drafting recommended some structural changes, which were approved by the committee.

Two sections of the original Constitutional Convention proposal were deleted. Proposed Section 3, relating to aid to nonpublic schools, was considered redundant considering Article I, Section 7 of the proposed constitution and the United States Constitution. Proposed Section 4, relating to the Dedicated School Tax, was referred to the Finance Committee which also has jurisdiction over this section. Three sections were added to Proposal 1. New Section 2 prohibits financial discrimination based on race, sex, religion, or national origin in public education. New Section 4 provides for the continuation of the County Public School Fund. New Section 11 provides for the Coordinating Board for higher education.

Section 1 establishes a policy of state support for public education through the secondary level. Section 2 prohibits financial discrimination in public education. Section 3 establishes the Permanent and Available School Funds and requires free textbooks and other authorized instructional materials be provided for from the available funds. Section 4 maintains the County Public School Fund. Section 5 establishes an elected State Board of Education. Section 6 requires the legislature to provide for school and community junior college districts. Section 7 defines a state policy for higher education. Section 8 establishes the Permanent and Available University Funds. Section 9 provides for The Texas A&M University System, The University of Texas System, and Permanent University Fund bonds and notes. Section 10 establishes a Higher Education Assistance Fund. Section 11 provides for a Coordinating Board for higher education.

The revised Article VII was then submitted to the committee for approval as a whole, which it received by a majority of the committee membership.

B. Section-by-section Analysis

Sec. 1. SUPPORT OF FREE PUBLIC SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature shall provide for a system of free public schools through the secondary level that will furnish each individual equal

educational opportunity.

In distributing state support of the free public schools, the legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the state as a whole.

COMMENTS

Section 1 requires the legislature to provide for a system of free public schools through the secondary level that will furnish each individual an equal educational opportunity. It further provides that the quality of education made available shall be based only on the wealth of the state as a whole, insofar as the quality of education is a function of financial resources.

Two areas in which the committee report and Constitutional Revision Commission proposal agree, but vary substantially from the Constitution of 1876 are:

(1) the reference to furnishing equal educational opportunity to each individual in the free public school system;

(2) the provision requiring the legislature to ensure that the quality of education made available in the free public school system be based on the wealth of the state as a whole.

Equal educational opportunity is assured by requiring the state to guarantee that the quality of a person's education be dependent on the wealth of the state as a whole, rather than the tax resources of the local school districts. The inclusion of this provision results primarily from two elements which contribute greatly to the inequities in public school financing: (a) disparities in local spending per pupil caused by the differences in taxable wealth of school districts, and (b) the failure of the Minimum School Foundation Program to compensate for the differences in the taxable wealth of school districts. There is no intent in the language proposed by the committee to prohibit local enrichment by individual school districts.

The committee report differs from the Constitutional Revision Commission's recommendations in four specific areas:

(1) the committee report deletes the Constitutional Revision Commission reference to making "suitable provision for and equitable support and maintenance of an efficient system of free public schools" and substitutes language making provision solely for a "system of free public schools."

This substitution was made to dispense with all superfluous language. "Equitable," as has been discussed, is similar in meaning to "equal educational opportunity"; and "provide for" encompasses "support and maintenance."

(2) Following the language providing for a system of free public schools, the committee report adds to the Constitutional Revision Commission recommendation "through the secondary level."

Addition of this language merely defines the extent to which the legislature is mandated to support free public schools.

(3) The committee report deletes the language requiring state supported educational programs to "recognize variations in the backgrounds, needs, and abilities of all students."

This language was deleted for two reasons: (a) once again the committee was

February 12, 1974

seeking to dispense with language that it considered superfluous, and (b) the fear that language of this sort might lock the legislature into a specific school finance plan was prevalent.

(4) The committee report deletes wording allowing the legislature to "take into account the variations in local tax burden to support other local government services."

Even though the language is permissive and not mandatory, the sentiment prevailed that including the language might have the effect of penalizing those areas which exercise frugality.

Incorporation of the clause "equal educational opportunity" was consistent with the committee and Constitutional Revision Commission's belief that the legislature should be required to correct the inequity of educational opportunity as discussed in decisions by both the three-judge federal court and the Supreme Court of the United States (see *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)).

The committee discussed using the word "equitable" in place of the phrase "equal educational opportunity" for fear that "equal educational opportunity" might mean equal dollars, identical programs, and, thus, an onslaught of litigation. However, the feeling prevailed that (a) "equal educational opportunity" did not mandate equal dollars and identical programs, and that (b) "equitable" and "equal" were so conceptually similar in definition that if used together the language would be superfluous.

There was some further committee concern that providing equal educational opportunity to each "individual" might result in confusion regarding the definition of "individual." Its impact upon continuing adult education (the person of 40 desiring to complete his high school education) was offered as a case in point. The committee decided, however, that interpretation of "individual" in context with "free public schools through the secondary level" would not exclude adult elementary and secondary instruction.

Sec. 2. PROHIBITION OF DISCRIMINATION. No funds, bonds, revenues, or other property set apart or appropriated for the support of public education shall be restricted in any way on the basis of race, sex, religion, or national origin.

COMMENTS

Section 2 forbids any support for public education to be restricted in any way on the basis of race, sex, religion, or national origin. The committee does not intend for this section to prohibit or prevent recruitment and financial assistance programs. Because a question was raised in this regard, an attorney general's opinion was requested for clarification.

Sec. 3. PERMANENT AND AVAILABLE SCHOOL FUNDS. (a) The Permanent School Fund consists of all funds, securities, land, mineral income derived therefrom, and other property heretofore or hereafter set apart or dedicated to the support of free public schools. The Permanent School Fund shall not be expended or diverted, but the income derived therefrom shall belong to the

Available School Fund. The lands set apart to the Permanent School Fund may be sold or exchanged as may be provided by law. All money belonging to said fund, including the proceeds of the sale of any land, shall be invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent School Fund and state taxes dedicated to support the free public schools.

(c) The Available Fund shall be appropriated by the legislature to support the free public schools. The State Board of Education shall set aside from the Available School Fund a sufficient amount to provide free textbooks, and other instructional materials authorized by law, as may be required in educational programs.

COMMENTS

Section 3 defines the composition of both the Permanent and Available School Funds, allows the legislature to appropriate the Available School Fund in a manner consistent with the requirements of Section 1, retains the provision in the Constitutional Revision Commission proposal and the Constitution of 1876 for free textbooks, and like the Constitutional Revision Commission's recommendation adds a new provision for free instructional materials.

Subsection (a) identifies the composition of the Permanent School Fund and provides specifically for the sale or exchange of Permanent School Fund lands. Subsection (a) further authorizes the state board to invest all money belonging to the fund, including proceeds from the sale of any fund lands.

Subsection (b) is almost identical to Subsection (b) of the Constitutional Revision Commission's proposal which identifies and defines the composition of the Available School Fund.

Subsection (c) evoked considerable discussion as to whether free textbooks and other instructional materials should be "approved" or "authorized" by law. The committee adopted "authorized" so that the legislature would establish the procedures for approval but not be responsible for approving free textbooks and instructional materials itself. The adopted language provides for the appropriation of the Available School Fund by the legislature and authorizes the state board to set aside from the fund "a sufficient amount to provide free textbooks and other instructional materials."

Wishing to permit legislative definition of instructional materials, the committee placed commas before and after "and other instructional materials." Free textbooks having already been defined required no such attention.

Much committee discussion revolved around the question of whether or not the Available School Fund should continue to be distributed on the per scholastic formula. Those in favor argued that (a) the legacy of per scholastic distribution should be maintained and used as the base from which to seek equal educational opportunity, and that (b) failure to include the per scholastic provision would surely defeat the proposed constitution in the 85 budget balanced school districts across the state. Opponents of the

February 12, 1974

per scholastic provision were quick to point out that the per scholastic formula was based on attendance which gave some school districts more than others and offset the move toward equal educational opportunity. Opponents further argued that inclusion of the provision would tie the hands of the legislature in responding to the inequities discussed in the Rodriguez case. The opposition viewpoint prevailed, and the per scholastic distribution provision was not included.

Sec. 4. COUNTY PUBLIC SCHOOL FUND. The County Public School Fund of each county consists of all property transferred to that county for education of scholastics in that county.

COMMENTS

Section 4 provides for the County Public School Fund of each county. This section considerably shortens and simplifies Article VII, Sections 6 and 6b of the Constitution of 1876.

The County Public School Fund is given constitutional recognition in order to guarantee that the property of each county in the fund will be used for the benefit of those counties. This section protects the counties from any future attempt by the legislature to divest the counties of title to their property in the fund.

Sec. 5. STATE BOARD OF EDUCATION. The legislature shall provide by law for a State Board of Education composed of elected members.

COMMENTS

Section 5 establishes a State Board of Education. This section makes two substantial changes in Article VII, Section 8 of the 1876 Constitution: the requirement that members be elected is included, and the six-year limit on tenure of office is not included.

The committee retains a section in the constitution providing for a State Board of Education because of the amount of interest focused on education as a result of the Rodriguez case. The committee, recognizing the essential role of the State Board of Education, defeated a motion to delete this section. Twenty-five other states include in their constitutions a provision establishing a state board of education.

This section provides that each member shall be elected. The committee believes that elected members are more representative of the people than appointed members. The committee defeated motions to define the districts from which members are to be elected. This provision gives the legislature flexibility to adjust the boundaries of the districts in the future.

This section leaves to the legislature the determination of the tenure, responsibilities, and duties of the membership. The committee believes that for the board to be responsive to the needs of the people, the legislature must have flexibility in determining the function of the board.

Sec. 6. SCHOOL AND COMMUNITY JUNIOR COLLEGE DISTRICTS. The legislature by general law shall provide for school and community junior college districts.

COMMENTS

The legislature has delegated much of the fiscal and administrative responsibility for the everyday operation of the public schools below the college level to the various independent school districts. A list of legislative authority over school districts proposed in the Constitutional Revision Commission document has been deleted in order to give the legislature the broadest flexibility in providing for school and community junior college districts. The listing of specific powers could be interpreted narrowly by the courts and thus might restrict some future action the legislature may find necessary.

Community junior college districts are not mentioned in Article VII, Section 3 of the 1876 Constitution, but the Texas Supreme Court has interpreted that section to include such districts (see *Shepherd v. San Jacinto Junior College District*, 363 S.W.2d 742 (Tex. 1962)). Therefore, specific mention of community junior college districts in this reworded provision conforms with existing law.

Sec. 7. FIRST CLASS COLLEGES AND UNIVERSITIES. The legislature shall provide for a system of higher education of the first class.

COMMENTS

Section 7 revises Article VII, Section 10 of the 1876 Constitution. That section directs the legislature to provide for the maintenance of a university of the first class to be located by a vote of the people of this state. The people voted to locate the university at Austin. Section 10 also states that the legislature shall provide for the maintenance of an agricultural and mechanical department of the first class. Section 13 of Article VII located that department in Brazos County, which is now known as Texas A&M University at College Station, and made it a branch of The University of Texas.

Subsequent to the formation of The University of Texas at Austin and Texas A&M University at College Station, the legislature created community colleges and institutions of higher education throughout the state. Rather than leave the impression that the legislature may maintain these institutions at a level less than first class, this provision requires the legislature to maintain all colleges and universities on a first-class basis.

Sec. 8. PERMANENT UNIVERSITY FUND, ITS ADMINISTRATION, ITS INVESTMENTS; AVAILABLE UNIVERSITY FUND AND ITS EXPENDITURE. (a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of The Texas A&M University System and The University of Texas System. In pursuance of such trust, the

February 12, 1974

Board of Regents of The University of Texas System shall have authority to sell, lease, exchange and otherwise manage the assets of the fund as provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the fund. In making each and all investments, the board of regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The board of regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of The Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the legislature for the support and maintenance of Texas A&M University in the County of Brazos. Out of the other two-thirds of the Available University Fund, the legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the legislature for the support and maintenance of The University of Texas at Austin.

COMMENTS

Section 8 defines the Permanent and Available University Funds, provides for the investment of the Permanent University Fund, and provides for the distribution of the

Available University Fund. This section shortens and simplifies Sections 11, 11a, 12, and 15 of Article VII of the Constitution of 1876 and provides for the division of the Available University Fund between Texas A&M University in the County of Brazos and The University of Texas at Austin. This division is currently statutory.

The Permanent University Fund cannot be appropriated and spent; only the income from the fund may be appropriated and spent. The Permanent University Fund provides a permanent source of assured financial support that has been essential in making Texas A&M University and The University of Texas outstanding institutions of higher education.

This section provides that the Permanent University Fund is to be held in trust for the people of Texas. The authority of the Board of Regents to sell, lease, exchange, and otherwise manage the land and assets of the fund gives the board greater flexibility in managing the fund than does the Constitution of 1876.

The authority to invest the Permanent University Fund is increased so that the fund may be invested with more flexibility. Article VII, Section 11a of the Constitution of 1876 prohibits the Board of Regents from investing the fund in the stock of a corporation which has not paid dividends for the past five consecutive years and which is not listed upon an exchange registered with the Securities and Exchange Commission. This section does not retain these restrictions.

This section retains all other limitations on the investment authority of the Board of Regents of Article VII, Section 11a of the Constitution of 1876. The fund shall own not more than five percent of the voting stock of any one corporation, and not more than one percent of the fund may be invested in the securities of any one corporation. The Board of Regents shall follow the standard of a reasonable and prudent man in managing the fund, and the board shall make full disclosures of its investments. These restrictions protect the interests of the people of Texas in the fund but do not interfere with the flexibility required for wise and effective management.

Article VII, Section 11a of the Constitution of 1876 does not allocate the Available University Fund between Texas A&M University and The University of Texas. Section 8 provides that after the legislature shall appropriate one-third of the Available University Fund to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of The Texas A&M University System, and out of the one-third any remainder shall be appropriated for the support and maintenance of Texas A&M University in the County of Brazos. Out of two-thirds of the Available University Fund, the legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Regents of The University of Texas System, and out of the two-thirds any remainder shall be appropriated for the support and maintenance of The University of Texas at Austin. The words "in the County of Brazos" are used instead of the words "at College Station" because Texas A&M University extends beyond

February 12, 1974

the limits of College Station; the committee did not want to exclude any part of Texas A&M University that is in Brazos County but outside of College Station.

The committee defeated a proposal to authorize use of the Available University Fund for the purpose of recruiting and granting financial assistance to Texas residents attending institutions in The Texas A&M University System and The University of Texas System because the legislature may appropriate part of the fund specifically for this purpose. In addition to or in the absence of a specific line item appropriation by the legislature for this purpose, the governing boards of the two universities may allocate part of the fund for recruiting and granting financial assistance.

The committee also defeated an amendment to provide that any amount of the Available University Fund above \$35 million would be put into the State Higher Education Assistance Fund. The committee rejected this motion because the future value of the Available University Fund is so speculative that placing a ceiling on the fund is not justifiable.

Sec. 9. THE TEXAS A&M UNIVERSITY SYSTEM; THE UNIVERSITY OF TEXAS SYSTEM; PERMANENT UNIVERSITY FUND BONDS OR NOTES. (a) The Board of Directors of The Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for The Texas A&M University System 10 percent, and for The University of Texas System 20 percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than 30 years from their respective dates.

(c) Institutions now included in The Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the boards are severally authorized to pledge the whole or

any part of the respective interests of The Texas A&M University System and The University of Texas System in the Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this section shall be approved by the Attorney General of Texas and when so approved shall be incontestable. This section shall be self-enacting.

COMMENTS

Section 9 authorizes the Board of Directors of The Texas A&M University System and the Board of Regents of The University of Texas System to issue negotiable bonds and notes. This section makes three substantial changes in Article VII, Section 18 of the Constitution of 1876: the authorized uses of bond proceeds are increased; the constitutional limit on bond sales is raised from 20 percent to 30 percent of the value of the Permanent University Fund; and each institution now included in either The Texas A&M University System or The University of Texas System is entitled to participate in the bond proceeds.

Article VII, Section 18 of the Constitution of 1876 authorizes the use of Permanent University Fund bond proceeds for the purpose of constructing, equipping, or acquiring buildings or other permanent improvements. The committee recognizes that there are other necessary programs that can be financed by the issuance of bonds and that there is no reason to authorize the use of bond proceeds solely for additional buildings. Therefore, the committee has authorized additional uses for the bond proceeds.

The committee considered an amendment to include financial assistance to economically deprived students as an authorized use of the bond proceeds. This amendment was defeated because the committee did not feel that the issuance of bonds was a satisfactory method of obtaining funds for this purpose.

An amendment requiring prior legislative approval of all Permanent University Fund bond issues was also defeated. The committee believes that such a limitation would restrict the flexibility of the Board of Regents in planning the bond issues.

Section 9 raises the constitutional limit on bond sales to 30 percent of the value of the Permanent University Fund. The Texas A&M University System's share is 10 percent of the value of the Permanent University Fund, and The University of Texas System's share is 20 percent. This increase is necessary because of the continuing need for additional buildings, the increase in the authorized uses of the bond proceeds, and the fact that all institutions now included in both systems are entitled to participate in bond proceeds.

The committee rejected a proposal to leave open the possibility of other institutions joining either of the two systems and participating in the bond proceeds. The committee did not want to grant the legislature the authority to increase the number of participating institutions.

The committee defeated an amendment that would permit the governing board of Prairie View A&M University to issue Permanent University Fund bonds or notes. The

February 12, 1974

committee was not opposed to the idea of Prairie View A&M University being separate from The Texas A&M University System, but the committee did not believe that there was any need to make Prairie View A&M University a separate institution and permit it to participate in the Permanent University Fund proceeds. The Board of Directors of The Texas A&M University System has continually reserved a greater amount from bond proceeds for use at Prairie View A&M University than Prairie View A&M would have received had it been a participant in the Higher Education Tax Fund.

Section 9 retains a provision from Article VII, Section 18 of the Constitution of 1876 providing that institutions participating in the Permanent University Fund shall not receive any general revenue funds for acquiring permanent improvements, except in extraordinary circumstances. This provision prevents any pressure from being exerted on the legislature to appropriate general revenue funds for construction to institutions receiving constitutional funding.

This section contains a self-enacting clause so that during the transition period, the high ratings of the outstanding Permanent University Fund bonds will not be impaired.

Sec. 10. STATE HIGHER EDUCATION ASSISTANCE FUND. (a) There is hereby established the State Higher Education Assistance Fund to which is appropriated from the state treasury each fiscal year an amount equal to the state's official estimate of the money that will become a part of the Available University Fund in the same fiscal year. The legislature may appropriate additional funds to the State Higher Education Assistance Fund.

(b) Funds derived from the appropriation to the fund shall be allocated to the state public senior institutions and systems of higher education that were in existence at the time of adoption of this constitution, or such other institutions or systems as may be by law placed or created under the control and supervision of a governing board of an institution in existence at the time of adoption of this constitution, other than those institutions included in The University of Texas System and The Texas A&M University System. The allocation of funds shall be pursuant to equitable formulas, based on statewide needs devised by an agency or department as authorized by the legislature.

(c) The State Higher Education Assistance Fund may be used only for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) paying the principal of and interest on any bonds or notes issued pursuant to this authority.

(d) The governing board of each such institution of higher education is fully authorized to pledge all or any part of the fund allocated or to be allocated to the

institution, to secure bonds and notes or refunding bonds and notes issued for one or more of the aforesaid purposes at the respective institutions; and the governing board of an institution to which funds have been allocated or will be allocated may use all or any portion of such funds not pledged to secure bonds and notes or refunding bonds and notes for any of the purposes specified herein for said institution. Bonds or notes shall be issued in amounts as may be determined by the respective governing boards of the participating institutions and shall mature serially or otherwise not more than 30 years from their respective dates of issue. Bonds and notes issued pursuant to this authority shall be secured by the full faith and credit of the state.

(e) From the date on which they become eligible to participate in the fund established in this section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

COMMENTS

Section 10 provides for assistance to those public senior institutions and systems of higher education in the state which are not part of The University of Texas System or The Texas A&M University System. This section revises Article VII, Section 17 of the 1876 Constitution and a similar proposal recommended by the Constitutional Revision Commission in Article VII, Section 10 of its proposed document.

The purpose of this section is to provide an annual appropriation for the benefit of institutions outside the University of Texas and Texas A&M Systems that is equal to the amount appropriated to the Available University Fund. Section 8 of this article defines the Available University Fund to include the net income from the Permanent University Fund and is dedicated by Section 8 for the use and benefit of the University of Texas and Texas A&M Systems. This section equalizes the State Higher Education Assistance Fund with the Available University Fund and by doing so results in a stronger commitment for academic excellence at those institutions which do not benefit from the Permanent University Fund income. Since the adoption of the 1876 Constitution the number of institutions of higher education has increased far beyond the expectations of the drafters of that document. This section reflects an understanding of the needs of higher education as they exist today and a continuing commitment on the part of the state to meet those needs.

Another significant difference from the 1876 Constitution is the source of funds for the support of the participating institutions. Section 10 provides a more flexible source of funding in that appropriations for the State Higher Education Assistance Fund are to be drawn from the state treasury. The present constitution and the Constitutional Revision Commission proposal would continue the dependence on a

February 12, 1974

statewide ad valorem tax. Section 10 would eliminate the only state ad valorem tax required by the present constitution after the tax for Confederate pensions and the State Building Fund expires in 1976 as provided by Article VIII, Section 1-e of the 1876 Constitution. The effect will be to allow the legislature the flexibility to use a more equitable funding source for higher education and avoid dependence on a tax source which places unequal burdens on individual counties because of different local tax valuations.

Participating institutions in the Higher Education Assistance Fund include only those senior colleges and universities now in existence and those created in the future that are under the control and supervision of an existing governing board for higher education. The provision would allow the governing boards of participating institutions to pledge all or any part of their respective shares in the fund for the purposes specified in Paragraph (c). In addition to the acquisition of land and the construction of permanent improvements, allowable expenditures would include the repair and rehabilitation of existing permanent improvements, the acquisition of library books and materials, and the purchase of capital equipment. Governing boards of participating institutions could also issue bonds or notes for the purposes specified in the section.

The last paragraph, Subsection (e), continues a similar restriction in the 1876 Constitution and the Constitutional Revision Commission proposal that prohibits participating institutions from receiving general revenue funds for the purposes specified in this section except in circumstances involving loss because of fire or natural disaster.

Sec. 11. COORDINATING BOARD. The legislature shall provide by law for a Coordinating Board, Texas College and University System.

COMMENTS

The Coordinating Board serves a vital function in the area of post-secondary education. In consideration of the board's significant role, the committee believes the board deserves the stature that accompanies constitutional recognition.

Some concern was expressed that giving the board a place within the constitution would tie the hands of the legislature in moving, as have other state legislatures, toward the establishment of an educational superboard. Approval of a superboard for education would in any case require a constitutional amendment since the concept of a superboard would preempt Section 5 of proposed Article VII providing for the State Board of Education.