

# Courts and history are clear on school funding

“KNOWLEDGE and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools...”



**Doug Hall**

These words have been in Part 2, Article 83, of the New Hampshire Constitution since it was approved by the voters and took effect on June 2, 1784. But, they have been under attack by those who do not support public education.

Just this year, our Legislature considered a constitutional amendment that would alter the state constitution so that “the 1784 word ‘cherish’ shall be replaced by the 2024 word ‘cherish.’”

A dictionary definition is not the only thing that proves what the founders meant, however. Their actions speak louder than even the words they placed in the constitution.

Ten days after the constitution took effect, the Legislature established a committee to “revise the laws of this state and prepare such bills as they may judge necessary for that purpose.” This was an enormous task.

In 1789, the committee proposed “An Act for the Better Regulation of Schools within this State; and for Repealing the Laws Now in Force Respecting Them.”

To fully understand the new law, it is important to know what it replaced.

The prior provincial law required all but the smallest towns to have public schools, but it was silent regarding how much was to be spent on them. Spending decisions were left up to each town’s board of selectmen.

The new law provided that “the select men of the several towns & parishes within the state be, and they hereby are, empowered and required to assess annually the Inhabitants of their respective towns...” an amount set by the Legislature for schools in each town. The key word is “required.” The Legislature was not willing to leave school funding up to local voter sentiment or the discretion of town authorities as the previous provincial law had done. They were appalled at the poor schools in many towns.

In order to drive this point home, the law dictated that any selectmen who failed to raise the legislatively mandated funds by taxation “shall forfeit and pay the full sum, which they shall be so found delinquent in assessing ... which sum shall be paid out of the goods and estate of such Select men.” Ouch!

These words clearly established their no-nonsense approach. Deciding on the funding of schools in each town was now the state legislature’s responsibility, not a local one. Towns could still decide how to spend those funds.

In 1789 the President (now Governor) of New Hampshire was John Sullivan. He had been the Secretary of the Constitutional Convention and a member of the committee to bring old laws into conformity with the new state constitution. John Pickering was President of the State Senate, also a member of the Constitutional Convention.

Sullivan, Pickering, and many others were responsible for both the language in Part 2, Article 83, and the

first law on schools under that provision, which proves what the founders meant by “cherish.”

Every few years through the 1800s, the Legislature passed a law increasing the amount each town must raise for its schools. The Legislature remained in full control.

What happened to change this? In 1834 a New Hampshire Supreme Court decision found it was not unconstitutional for towns to raise more for their schools than the amount the Legislature had ordered. This allowed “local control,” but only on the upside.

Few towns raised more until later in that century. Hanover, for example, first raised more than was ordered by the Legislature only in 1898.

The last time the Legislature increased the amount it required each town to raise was 1905. In 1906, two-thirds of the money raised for schools throughout the state was what the Legislature had ordered. Seeing that many towns were deciding to raise and spend a bit more, the Legislature stopped passing laws increasing the amount required.

There is an irony here. The 1993 Claremont I decision of the New Hampshire Supreme Court was simply a reminder to the Legislature that its 1834 decision did not mean the state’s responsibility for schools had diminished. It simply restated what the founders had meant and understood.

More recently, when the Superior Court set a minimum amount of state financial responsibility for each student in last year’s ConVal decision, it was establishing a clear standard for what it would take to fulfill the founders’ goals. It could not be clearer that the courts understand the founders’ intent for the state to fund education.

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