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EDUCATION VOUCHERS, TAX CREDITS, and TAX DEDUCTIONS

Unhappy with public schools, some support school "choice"

There is growing interest in school "choice" – allowing students to attend the school of their choice, even if that school is private. Tuition costs make this option difficult or unavailable to those who cannot afford private school tuition. Using public funds for private schools is being debated around the country. This public financial support for private schools could be in the form of tax credits, tax deductions, or education vouchers.

Education Vouchers

An education voucher is a fixed sum of money from the government that can be used toward private school tuition.

Proposed voucher systems vary a great deal. Some proposals would give vouchers to all students who then have the option of using that voucher at a public or private school of their choice. Some proposals would limit vouchers to specific school districts, or certain students, such as Wisconsin's program for low-income students in Milwaukee. Some voucher plans allow any private school to receive funds while others require schools to meet certain criteria to be eligible for funds. Some proposals rely on market approaches and others depend on a highly regulated system with provisions for disseminating school information, transportation, and admission policies.

No states have implemented a voucher program, although two cities have: Milwaukee and Cleveland. Last year, the Commonwealth of Puerto Rico passed a voucher bill allowing aid to private and religious schools which was later struck down by their Supreme Court.

Education Tax Deductions

An education tax deduction is a fixed sum of money that may be deducted from a taxpayer's taxable income.

Minnesota has allowed an education tax deduction since 1955, which is currently \$1,625 for students in K-6 and \$2,500 in grades 7-12. The estimated annual cost to the state in terms of foregone revenue is \$14.5 million.

Iowa has a tuition tax credit equal to 10 percent of the first \$1,000 that the taxpayer has paid for tuition and non-religious textbooks for each dependent in grades kindergarten through 12.

Arizona passed a tax credit of up to \$500 for taxpayers donating money to charities that provide private school tuition assistance to low-income students. The plan has already been challenged by a coalition of state education groups.

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Are vouchers and tax credits constitutional?

The Illinois legislature passed a tax credit program in November 1997, but Governor Jim Edgar vetoed the bill in January, 1998.

The Lemon v. Kurtzman¹ decision in 1971 established a three-part test for determining whether government actions violated the establishment (establishment of religion) clause. The Lemon guidelines require a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and no excessive entanglement between the state and religion. If a program violates any of the tests, it will be deemed unconstitutional.

The 1983, the US Supreme Court 5-4 decision in Mueller v. Allen² upheld Minnesota's income tax credit for educational expenses, including private school tuition, even though the vast majority of expenses were claimed by religious school parents. Justice Rehnquist cited five reasons for allowing the tax credit:

- 1) The benefits would contribute to the public welfare by promoting education, thus meeting the test of a tax deduction;
- 2) The credits would benefit church schools only indirectly, as the parents would receive the tax relief eliminating any government partiality toward religion;
- 3) The class benefiting is broad;
- 4) The law provided equity for parents of children in private schools because those parents bear a greater financial burden in educating their children;
- 5) The law did not establish any particular religion.³

In 1992, the Wisconsin Supreme Court upheld Milwaukee's voucher program, but because the private schools were nonsectarian, religion was not an issue. In July 1995 the program was expanded to include religious schools. In March 1996 the Wisconsin Supreme Court deadlocked 3-3 over the expansion to religious schools issue. In June 1998 Wisconsin's high court ruled 4-2 that Milwaukee's voucher program could be expanded to religious schools, stating that the program has a secular purpose and will not have the primary effect of advancing religion and will not lead to excessive entanglement between the state and private schools. With the ruling, observers predict the Milwaukee program will jump from 1,500 students to 15,000; 81 religious schools have already registered to participate.

In Ohio, a Franklin County Common Pleas Court held that the Cleveland scholarship program does not violate the federal or state constitution even though it allows state funds to flow to religious schools. Because funds are given to parents directly, who then choose the school, religious schools benefit only indirectly.⁴

Based on previous court challenges, voucher plans are most likely to survive state constitutional challenges under the following conditions:⁵

- The state constitution does not prohibit expenditure of public moneys for any form of private schooling.

¹ *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105 (1970)

² *Mueller v. Allen*, 463 U.S. 388 (1983)

³ Snyder, K. Alan. *Crafting a Court-proof Education Voucher*. The Heritage Foundation. May 30, 1985.

⁴ Walsh, Mark. *Court Clears Cleveland's Voucher Pilot*. Education Weekly. August 7, 1996.

⁵ Frank Kemerer and Kimi Lynn King. *Are School Vouchers Constitutional?* Phi Delta Kappan. Dec. 1995.

- The provision against establishment of religion in the state constitution does not foreclose the expenditure of public money on private sectarian schooling.
- Funding is given to students' parents rather than to the schools.
- The voucher program gives parents a wide range of public and private schools from which to choose.
- The public purpose of the program - to improve educational opportunities for families - is clearly delineated.
- Sufficient accountability measures are included to ensure that the public purpose is being served.
- The state is not promoting sectarian interests and does not create a financial incentive to attend private schools.

Oregon Constitution

Section 5, Article I of the Oregon Constitution provides:

No money shall be drawn from the Treasury for the benefit of any religious (sic), or theological institution, nor shall any money be appropriated for the payment of any religious (sic) services in either house of the Legislative Assembly.

This wording is more explicit than the federal Constitution in forbidding government support for or "establishment" of religion.

Based on Oregon case law and the opinions of the Oregon Attorney General, it is likely that a school voucher system that included religious schools that received money from the state, either directly or indirectly, would violate section 5, Article 1. However, it would be possible to structure a voucher system that is valid under the Oregon Constitution, if money went only to private, non-religious schools or to the students attending those schools.

Oregon voters turn down vouchers

Oregonians voted against a voucher initiative in 1990 by a margin of nearly 2 to 1.⁶ In 1994, voucher proponents failed to obtain enough signatures to place an initiative on the ballot.

Policy Issues

If state policymakers consider vouchers or tax credits or tax deductions, a number of policy issues.

- How much should be allowed for the scholarship/credit/deduction?
- What form should the assistance take, grants, tax deductions, or tax credits?
- Should the program be phased-in starting with 5-year-olds, or implemented for all students at once?
- Will religious schools be included?
- How will public schools be able to estimate average daily membership for their funding purposes?
- How will this affect the school funding formula?
- Who will administer the funds to private schools?
- Will there be any accountability in the system? Will any school be eligible?
- Will schools be allowed to discriminate in their admissions based on sex, religion, IQ, physical or mental disability, or other special needs?
- Will vouchers lessen the pressure for public school systemic reform?

⁶ Results according to the Secretary of State's Office: 351,977 yes; 741,863 no.

References

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