
POLITICS AND PUBLIC EDUCATION

Edgewood v. Kirby and the
Reform of Public School
Financing in Texas

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Preface

The issue of public school financing in Texas presents problems that are extremely difficult to resolve. But the resolution of those problems is critically important for the future of the citizens of Texas. In recent years state officials have been confronted with the issue repeatedly, but have not been able to find a broadly acceptable way of settling the conflicts over serious concerns that the school finance issue raises. One purpose of this book is to bring together in one place these various chapters in the recent crisis in school funding in Texas.

Our primary interest, however, is in politics. The school funding issue involves all three branches of Texas government at work on difficult and controversial problems of great importance to the citizens. By watching the government attempt to address the issue, we think, one can learn much about the nature and operation of Texas government. To that end, we have attempted throughout this book to explain the rules and customs which lead officials in all three branches to act or not act as they do in order to show the effects of the political system on governmental decisions.

Three people have been especially helpful in this project. Deborah Pancoast generously allowed us the benefit of her technical expertise. Catherine J. Webking spent a rare weekend off reading the manuscript and providing useful suggestions and corrections. Donna Mellen also read the work and led us to make some big changes and some small changes that have made the book much better than it would otherwise have been. Thanks.

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Chapter One

Public School Financing in Texas

The Constitution of the state of Texas gives the Legislature the responsibility of providing education for the citizens of Texas. Consider how that goal had been met in two Texas school districts in 1988. The Richardson Independent School District, made up of the Dallas suburb of Richardson and part of the city of Dallas, was renowned for the quality of its public schools. Professionals would often choose to move to the area so that their children could go to school there. The schools had top notch libraries, curriculum materials, audio-visual equipment, and computers. The teachers were well qualified, about half had master's degrees, and well paid. The community's average family income was \$51,000. The people cared about the quality of education, and their caring paid off. 85 percent of the district's graduating high school seniors went to college.

660 miles away was a school district that was in the same state, but in another world. The San Elizario Independent School District served the citizens of the poor, rural town of San Elizario in El Paso County. The people there cared about education too, for they knew that education was the tool that helps people escape poverty. But their caring wasn't enough. The district could not afford the buildings, libraries, or equipment to rival the facilities in Richardson. Teachers rummaged through thrift stores looking for cheap books to bring the children to read. Science experiments were few and unsophisticated because there no was equipment to do more. San Elizario could not even afford that great Texas institution, high school football. Teachers were paid 20 percent below the state average, and 26 percent less than in Richardson because the district could afford no more. The result was that fewer than 15 percent had master's degrees and turnover was high as teachers constantly looked for better paying jobs in better circumstances. 15 percent of San Elizario's graduating high school seniors went to college.

The differences between the San Elizario and Richardson school districts were many. But for the inequalities in the facilities and teacher pay, the critical difference was in funding.

Richardson spent about \$4,200 per student, while San Elizario spent only about \$3,000 per student. The amount spent in each district was a result of decisions made in Austin and in the district. The first, and most fundamental, decisions were made in Austin by the Texas Legislature. In fulfilling its constitutional mandate, the Legislature had created a school finance system that included both state funding and funds raised by local property taxes in each school district. It is up to the school district to decide the level at which to tax its citizens, and, therefore, the level at which schools are funded. Education was important in Richardson, and so the property tax rate was set above the state average at 95.9 cents per \$100 of property value. That made the tax on an \$80,000 house \$704 per year. But education was important in San Elizario too, indeed, and if tax rate is the standard of judgment, more important than in Richardson. In San Elizario the tax rate was \$1.27, or 32 percent higher than in Richardson. The annual tax on an \$80,000 house was \$954. So in San Elizario they tried harder, but fell far short.¹

The problem was not willingness to sacrifice: people in both Richardson and San Elizario were willing to sacrifice to provide education to the children of their communities. The problem was that the state's system of funding public education created a situation where the quality of education available depended upon the value of property in a school district. The children of Texas who lived in poor school districts simply could not obtain education of the same quality as the children of Texas who lived in school districts where there was more valuable property. In 1989 the Texas Supreme Court ruled that this situation had to change because the Texas Constitution required the state to treat all Texas children equally.

Since the Texas Supreme Court's 1989 ruling in *Edgewood v. Kirby* the issue of public school finance has troubled all three branches of state government, spurred extensive public discussion, and excited powerful passions on all sides of the several important issues it raises. Twice the Legislature has passed and the governor has signed legislation to reform the system. Three times, on two entirely different grounds, the Supreme Court has ruled that the system remains unconstitutional. Plan after plan has been proposed to pass laws or change the Constitution only to fail for violating some firmly believed in principle of quality education or good government. Rarely do political disputes involve such important issues and principles on all sides.

The problem of public school financing in Texas is not new. The struggle that has tied up the state's government since 1989 has its roots in principles, political decisions, and accidents from the past which have created the circumstances and taught the political beliefs which shape the current debate. Texans have always believed that education is important for human beings and citizens. Texans have also always believed that their state government should have as little control of local affairs and should take as little from Texans in taxes as possible. This chapter establishes the background for the current debate by showing how these beliefs were acted on over Texas history to create the system of public school finance which The Supreme Court ordered changed.

Early Public Education in Texas

From the first of its seven constitutions, Texas has dedicated itself to the principle of public education. But also from its beginning as a state Texas has had difficulty in finding the funds to meet its educational aspirations. Texas's first Constitution, the 1827 Constitution of Coahuila and Texas, which was adopted when Texas was still part of Mexico, contained this provision:

In all of the towns of the States, there shall be established a competent number of common schools in which there shall be taught, reading, writing, and cyphering; the catechism of the christian religion; a short and simple explanation of this Constitution, and the general one of the Republic; and the rights and duties of man in society, and that which can most conduce to the better education of youth.²

The passage suggests an understanding that the states were required to create schools because of the importance of education for human beings and citizens, but there was no mention of funding. In fact, because of low funding few schools were actually established, a fact which embittered the people. Nowhere did the issue stir up greater resentment than among the new Anglo settlers.

The settlers received land grants from the Mexican government that led them to form communities segregated from the indigenous population. The Mexican government passed legislation requiring these newly formed settlements to establish and fund schools, and one city block was to be set aside for the purpose of education. But the aspirations of the settlers exceeded what the government was willing and able to provide. Stephen F. Austin, for instance, offered various proposals to establish public schools and colleges in the "colonies" inhabited by the settlers. Organizations were formed to advocate more extensive educational assistance from the government. Official inaction was perceived by the settlers as neglect because, according to the 1836 Declaration of Independence, the Mexican government was "possessed of almost boundless resources" that could have been used to further education. Historians have since argued that the charge "was unjust and almost groundless" and that the State of Texas and Coahuila "had done the best it could for the development of schools in Texas."³ Nonetheless, the importance of education was one of the reasons offered for seeking independence.

Yet the Republic didn't do much better. The only reference to education in the 1836 Constitution of the Republic of Texas was a brief and ambiguous sentence that called for the passage of legislation to create a system of education "as soon as circumstances permit." When Mirabeu B. Lamar became president in 1838 he took the initiative to establish a school system, declaring that it was in the interests of the Republic and its citizenry for children to receive a formal education. To pay for a quality education he suggested various funding sources, among them endowments, the appropriation of public land, and "the imposition of taxes." The Congress responded by appropriating a small amount of the vast public lands to education, but

no funding system for schools was established and no money was appropriated. In the absence of a substantial government supported school system, an extensive system of 132 private schools, many with religious affiliations, was formed during the Republican period.

The State of Texas and the 1845 Constitution

The 1845 Constitution was written in order to move Texas from an independent nation to a state within the United States. This third of Texas's constitutions included a more detailed and positive view of public education than had the first. Section X outlined state education, and is significant in various ways. By declaring that knowledge is "essential to the preservation of the rights and liberties of the people" it clearly indicates the principle that education is a highly important state function.

But it was not until 1854 that a comprehensive school law was passed by the Legislature. Part of the reason for the nine year wait was a lack of state revenue. The Lamar administration had ended with the Republic \$3.7 million in debt and short of currency. In addition, private schools, fearful of the competition and lost revenue that would arise from the public schools, lobbied to halt implementation. Combined with these problems was an issue of how to interpret the Constitution. Section 2 of Article X ordered the Legislature to "establish free schools throughout the State." Debate centered over the definition of "free schools," with some arguing that the State was empowered to tax in order to make it possible that no students would pay tuition, while others argued it would be impossible to create absolutely free schools. Thus, in its first attempt as a state to fund education, Texas found itself in what would become the familiar position of balancing a desire to provide education for its students with a desire to minimize state expenditures.

In the compromise that resulted from these various concerns, the 1854 school law established funding of public schools by the state, although at a low level, to be supplemented not by local taxes, but by student tuition. A Special School Fund of \$2 million invested in U. S. bonds at 5 percent interest would generate revenue that would be distributed on a per capita basis to the schools. The money could be spent by the schools in only two ways. The first priority went toward teacher salaries, and any surplus could be applied toward the payment of tuition of those unable to pay the full tuition. Though the funding was meager, it represented the first effort on the part of the state to pay for educating its citizens, a major step in public education in Texas.

Education Funding, 1861-1876

When Texas seceded from the Union it adopted its fourth Constitution. This document was a replica of the 1845 version, with the new Article X prepared in that vein. But the costs of

waging war required the appropriation of all State revenues toward the effort, and led to the closure of all public schools. \$1.7 million from the Special School Fund was lent to railroad companies that ultimately defaulted on the loans. Another \$1.28 million of the Fund was used by the military. By the end of the war the fund was depleted, and education had been set back severely.

The 1866 Constitution, Texas's fifth, was drafted at the outset of the era of Reconstruction as part of the state's effort to seek readmission into the Union. The Constitution lasted only a short time as it was replaced by martial law by the Radical Republicans in the U. S. Congress, and it contained little new on education funding for the general population. As in the past, a permanent fund was established and interest from the fund was to be distributed to school districts. However, Section 7 of Article X was original because it explicitly authorized the Legislature to levy an educational tax to be "exclusively appropriated for the maintenance of a system of public schools for Africans and their children." Inclusion of the Section reflected efforts to comply with the passage of the Thirteenth and Fourteenth Amendments to the National Constitution. It was also the first piece of segregation legislation in Texas.

The 1866 Constitution did not meet the requirements for reconstruction laid down by the radical Republicans in the U. S. Congress. And so it was replaced in 1869 by a Constitution, Texas's sixth, which was characterized by its creation of much more centralized power than the state had seen before or has seen since. Education was no exception. Administratively, the formation of public schools was more centralized than ever with considerable statewide authority granted to the newly created State Superintendent and strong local oversight granted to District Boards of Directors. School funding was also revolutionary in design. Not only was more money available for instruction, but heretofore unused methods to raise money were mandated. The income from a permanent fund was again a major fixture. In addition, one-fourth of the annual revenue from general taxes, and proceeds from a \$1.00 poll tax on voters between 21-60 years of age was available. And in the most controversial measure, certain school districts were granted the authority to levy school taxes in order to build schools and "insure the education of all the scholastic inhabitants of the several districts."

Under the previous constitutions, legislation implementing systems of public education had often failed to live up to constitutional mandates. But the education law passed in 1870 went beyond the extensive requirements of the 1869 Constitution. The State Superintendent was granted the authority to distribute proceeds from the permanent fund, and all school district Boards of Directors were ordered to levy an ad valorem tax, or property tax, of one percent. The citizens of Texas reacted to the new tax with great hostility. A report to the State Superintendent declared that the new school system could be a success, "notwithstanding the prejudice and strong opposition of a large portion of the people." Several cases of violence were described in the report. An 1871 taxpayers convention passed a resolution that declared the one percent tax "illegal and void" and urged the public "not pay such portions of the tax now demanded as we here show to be illegal."⁴ The clash between the desire for education and the desire to keep taxes low had begun in earnest.

The End of Reconstruction and the Start of Education Reform

The withdrawal of Federal troops from the South by President Rutherford B. Hayes in 1876 ended Reconstruction and led to the rejection of many of its governmental practices in the South. In Texas, the foundation for change was laid in the September 6 to November 24, 1875 constitutional convention held in Austin. Reaction to the spirit of the 1869 Constitution and the governorship of Radical Republican E. J. Davis under it charged the convention. With regard to education, the convention was particularly concerned about the taxes that had been levied under Davis's administration. So serious were these concerns about taxes that they sometimes were combined with arguments traced from the American colonists' religious traditions and arguments about individualism to lead to the conclusion that the state should make no provision for public schools. Delegate Richard Sansom, in perhaps the most extensive speech on education delivered at the convention, made the point:

The power to tax for the support of the public free schools implies the power to control the children of the State for educational purposes. . . . [The State does not derive a right to educate children] from Heaven, for the Great Ruler of Heaven holds the father directly responsible for the maintenance and education of his children, and to the end that he may fulfill these great duties, directly devolves upon him the authority to control them.

Strong as those concerns were, however, Texans remained convinced that it was important to provide a quality education to their citizens, as Henry Cline argued in the convention:

I am for contributing enough for the education of the poor children so that we may cheapen the administration of the laws. . . . Let us be charitable to those around us. Let us contribute our means if we have to sting ourselves for the benefit of the poor children. . . . Let us at once - for one time - rise above the feeling of self and self-interest.⁵

Article VII of the 1876 Constitution, the seventh and current Constitution of Texas, represents a retrenchment from the extensive support for public education provided under its predecessor. But, despite the general mood of the state to avoid centralized power and expensive government, the Constitution still commits the state to the education of its citizens. It requires the state Legislature to provide and maintain "an efficient system of public free schools, " since "the general diffusion of knowledge" is "essential to the preservation of the rights and liberties of the people." In place of the powerful State Superintendent of Education, a Board of Education whose major duty was to collect reports and dispense information, was created. Greater control over the schools was returned to local officials and the hated local tax was rescinded. Funding was therefore derived from the interest accrued by the Permanent School Fund, the poll tax, and a maximum of one-quarter of the state's general revenue.

In less than a decade it was clear that the Constitution did not provide adequately for the state's educational needs. The student population had grown significantly: in 1877 there were 170,000 students enrolled in the public schools, and by 1884 the number had swelled to 311,134. At the same time, the state was largely rural so that the state's vastness meant that despite the large total student population, the student population in any particular area was likely to be small. A dearth of qualified teachers plagued many schools, resulting in low quality education. And the Board of Education did not have the power to instigate change. Conditions worsened when, in 1879, despite the increasing costs of education, the portion of the State's revenue dedicated to education was lowered from one-quarter to one-sixth.

With state spending on education inadequate, the only place to turn to improve the schools was to local taxation. Cities had long been permitted to tax their citizens for the support of education, but the Constitution forbade rural areas from doing the same. As the passion against the Davis administration waned and the principle of the importance of education began to assert itself against the desire to minimize taxes, the Legislature and voters approved a constitutional amendment in 1883 to allow the rural districts to tax themselves for the support of education.

The constitutional amendment was followed by the 1884 School Law. Passed by a special session of the Texas Legislature, it stabilized education in the State and set the basic pattern for the operation of schools today. The legislation represented two major developments. First, the role of State government in education was increased. For example, the position of Superintendent of Schools was re-authorized, and minimum curriculum standards were created. Second, the law conferred considerable authority on local officials. It established local Boards of Trustees, authorized their elections, and granted them the power to form school district boundaries. In effect, the law created a two tier system of education districts that would have a lasting impact on the funding of education. It permitted the formation of Independent School Districts (ISD) which would have the authority to tax property within the district for the maintenance of schools. People in wealthier property areas, particularly in the cities, quickly took advantage of the law and formed districts which excluded poorer neighborhoods. Most students were still served by Common School Districts (CSD), which were formed by county commissioners to oversee education in areas not included in ISDs.

The funding of schools was also affected. The three-pronged funding formula of 25 percent of the State's revenue, interest from the Permanent School Fund, and poll tax revenues, as established in the 1876 Constitution was returned. Funds were not to be used "for the support of any sectarian school." The money was to be appropriated such that "each race" would be funded on a proportioned basis. However, in no case, the legislation stated, could "any school consisting of partly white and partly colored children receive any aid from the public school fund."

The section of the bill with the most far reaching consequence implemented the 1883 amendment by granting to the voters in the Common School Districts the authority to tax themselves for building construction and/or maintenance of schools. Whenever twenty or more taxpayers wished to propose a tax, they could apply for an election to be conducted by the county. The maximum amount of the tax was set at twenty cents per one hundred dollars of

property value, and no more than one election could be held each scholastic year. The 1883 constitutional amendment and the 1884 legislation passed under it made it clear that Texas intended to be dedicated to the principle that education is of critical importance to its citizens. One scholar makes the point well:

The new amendment and the law now established the right of taxation on all property for the education of all the children of the community. Education was no longer regarded as a public or private charity, but as a necessary function of government and the natural right of every child. At last after forty years of rabid opposition the majority of the people of Texas accepted the doctrine of a political and educational philosophy which had been regarded with deep aversion and fought with desperate bitterness.⁶

The Problem of Equalizing School Funds

The law extended to local districts the authority to levy taxes, but few localities chose to do so. One reason was structural: for fear of extravagance by progressive and minority voters, the law was written so that a tax required approval by an extraordinary majority of two-thirds of the voters. Only property owners were entitled to vote in these elections, and absentee landlordism was permitted, meaning that people who owned land in the district could vote even if they did not reside there. People who could vote on whether to tax themselves when they would receive no benefit from the tax because it would be spent in an area other than where they lived would, of course, vote against the tax. For the 1885-86 school year there were 3,299 districts, of which only 73, or slightly more than 2 percent, had passed local taxes. The amount of revenue generated by these taxes was slightly less than \$265,000. Two years later, only 126 of the 4,052 districts, or about 3 percent, levied local taxes totalling \$307,545. In 1904 most of the then over 7,000 CSDs still did not levy local taxes, as compared to the approximately 90 percent of the 381 ISDs which did. In the early twentieth century the picture began to change as people came to see public education as more and more important. Changes in the laws and the Constitution began to produce real changes in educational funding, and by 1910 nearly half of all school districts were collecting local taxes.⁷

As the system of public education developed, so did the problem of unequal funding. It first appeared as a difference between urban and rural school districts. At the turn of the century the student population in cities and towns was 157,681; in the rural districts, 571,536. For each rural child, \$4.37 was spent for education, while \$8.35 was spent for each urban child. City students spent 162 days in school; rural students spent 98. And the value of school property in the cities was nearly twice that of the rural property. The reasons for the disparity are varied. Generally, rural dwellers were more distrustful of government, and therefore more likely to oppose taxation. Also, city property was of greater value than rural property. Finally, rural residents were more prone to believe that the Permanent School Fund was sufficiently large to

cover the necessary costs of education for all Texas children. Some liked to point with pride to the fact that the state's fund was the largest of its kind in the United States. Only upon closer examination could one see that Texas had more children to educate and that local taxes were lower than in other states, so that the size of the fund did not translate into well-funded schools. Certain legal barriers also fostered differences between urban and rural districts. Cities were able to raise bonds in order to build schools, but rural school districts had no such authority. Cities could levy school taxes up to 50 cents per \$100 of valuation, while rural districts were limited to taxes of up to 20 cents.

The first legislation designed to address the problem of inequality in funding for public schools in Texas was passed in 1915. Following the leadership of populist Governor James E. "Pa" Ferguson, who campaigned in 1914 on a platform that stressed greater funds for rural schools, the Texas Legislature passed in 1915 legislation that attempted to end the disparity in funding between urban and rural areas by increasing state funding of rural districts and raising limits on their taxing authority. The legislation appropriated \$1 million for the biennium for rural aid. In order to qualify for the money, a district had to tax at the new maximum legal rate of 50 cents per \$100 of property value.

From 1915-1949 various things were done in attempts to improve school financing, but none resulted in fundamental change. In 1918 a constitutional amendment was passed allowing a statewide property tax to raise money to pay for free textbooks. Another amendment in 1920 abolished the property tax limits in the Constitution and left it up to the Legislature to establish limits. But the key feature of the state's financing system remained in place. With few exceptions, state funds continued to be distributed to school districts on a per capita basis, which did nothing to address the differences in funding between the wealthier urban districts and the poorer rural ones. At the same time, the trend that began in 1883 continued, with the state providing a continually smaller share of education funds and the local districts a larger one. Thus, a system that had begun as one in which education was financed wholly by the state in order to provide for the general diffusion of knowledge came to depend more and more on local resources rather than the resources of the whole state.

Funding Separate Schools for the Races

Even greater inequalities resulted from racism. From the time Texas became a Republic in 1836 to the end of the Civil War education in Texas was understood to apply only to "whites," a category which included people of Mexican descent. Money was not appropriated for the instruction of black children. Immediately following the Civil War religious missionaries began educating the freed slaves. Soon Reconstruction and changes in the national Constitution forced the state to establish schools for them. The 1866 Constitution created separate schools. The 1869 Constitution made no such provision, however, and the resulting mixed schools angered whites. The 1876 Constitution re-established segregation, and although the funding for

the separate schools was drawn from the same fund created in the 1884 school law, the distribution was decidedly unfair to blacks.

Statistics from the 1934-35 school year show the inequality. The average annual salary for a teacher in the white schools in major cities was \$1,516.37. For a teacher of black students it was \$1,049.90, or about 70 percent of what the white teacher earned. The difference in the rural communities was even greater. The average annual salary for a teacher of whites was \$877.57; for the teacher of black students, \$455.40, or about 51 percent of the white teacher. Equally revealing are the property value statistics for the white and black school systems. The value of property per student in the white schools was \$161.06, but in the black schools it was only \$48.71. The per student value of furniture in the white schools was \$12.82; in the black schools, \$4.05. The per student value of equipment used to teach science in the white schools was \$1.38; in the black schools, 27 cents. The per student value of library books in the white schools was \$2.69; in the black schools, 51 cents. The per student value of transportation equipment in the white schools was \$1.78; in the black schools, 7 cents.⁸

Although they were counted officially as white, students of Mexican descent were also segregated into what were referred to as the "Mexican schools." The official reason offered for this was that Mexican American students needed special attention because Spanish was often their first language, and placing them in classes with Anglos would create too many difficulties for both the students and the teachers.⁹ But other, unofficial, factors played a more important part in the creation and maintenance of this situation. In South Texas, where Mexican American children were used as field laborers, placing the students in separate schools permitted the Mexican American children to leave school at harvest time without disrupting the education of the Anglo children. More insidiously, some made a concerted effort to keep the Mexican American population uneducated in order to assure a supply of cheap, docile labor that would keep South Texas agriculture profitable. Paul Taylor, in his seminal study of the area during the late 1920s and 1930s, quotes a farmer whose opinion reflected the time.

I am for education and educating my own children, but the Mexicans, like the whites, get some education and then they can't labor. They think it is a disgrace to work. The illiterates make the best farm labor? Yes, that is exactly it. Do people here want them to go to school? No, they don't.

Racism was also an important factor, as is made clear by these statements from a white farmer, who was a school trustee, and two school superintendents:

I don't believe in mixing. They are filthy and lousy, not all, but most of them. The reason [for separation] is because of their filth. As a class they are dirty. When I first came to this school the Mexicans had lice and odor. We did not want them in the same school.¹⁰