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Article IX:
Education

(Lower Education)

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(Higher Education)

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE IX, EDUCATION	v
PART I. LOWER EDUCATION	
<u>Chapter</u>	
1 INTRODUCTION	3
State Responsibility for Public Education	3
Terminology and Specificity	3
Definition and Organization	4
2 BACKGROUND	6
Public Education in Hawaii	6
General Constitutional Provisions	8
Specific Constitutional Provisions	9
Article IX of the Hawaii State Constitution	13
3 CENTRALIZED VERSUS DECENTRALIZED STRUCTURE	17
Constitutional Provisions	17
Some Arguments for a Decentralized School System	19
Some Arguments for a Centralized School System	20
Recommendations for Decentralization in Hawaii	23
4 GOVERNANCE	26
Features of Educational Organization	26
Separated Administration of Education	30
Integrated Administration of Education	35
Recommendations for Governance in Hawaii	45
5 EQUAL EDUCATIONAL OPPORTUNITY	49
The Concept of Equal Opportunity	49
Equal Educational Opportunity in Hawaii	52
A Constitutional Provision on Equal Educational Opportunity	53
An Educational Bill of Rights	57

	<u>Page</u>
6 PUBLIC AID TO NONPUBLIC SCHOOLS	59
The First Amendment and the U.S. Supreme	
Court	60
Characteristic Constitutional Provisions	63
Hawaii's Constitutional Provisions	65
Spears v. Honda	66
FOOTNOTES	69

Appendices

A The State Department of Education: September 1972	74
B State Constitutions Providing for the Selection of	
Chief State School Officer, State and/or Local	
Board of Education	86
C Constitutional Provisions Regarding State and Local	
Chief School Officer	89
D Constitutional Provisions Relating to the Financing	
of Education	92
E Constitutional Restriction on Public Funds for	
Nonpublic Schools	94

PART II. HIGHER EDUCATION

Chapter

1 INTRODUCTION	99
Part I. Background	99
Part II. Constitutional Provision for Higher	
Education	101
Autonomy	104
Part III. Relationship with Legislative and	
Executive Branches	106
Relationship with the State Budget Office	107
Relationship with Private Institutions of	
Higher Education	107
Relationship with the Proposed Department of	
Life-Long Learning.	108

	<u>Page</u>
2 MANAGEMENT FOR HIGHER EDUCATION	111
Part I. Governance and Governing Boards	111
Constitutional Provisions for Boards of	
Higher Education	111
Functions of Boards of Higher Education	112
Types of Governing Boards of Higher Education	114
Methods of Board Selection.	120
Membership on the Board	121
Part II. Public Funding and Higher Education	126
Education Amendments of 1972	126
Hawaii and the Education Amendments of 1972	128
State Constitutional Conflict	129
Federal Constitutional Conflict	130
Hawaii's Constitutional Provisions	132
Part III. Tuition Policy and Higher Education.	137
Higher Education and Equal Education	
Opportunity	141
FOOTNOTES	144
APPENDIX (Constitutional Provisions Relating to State	
Boards of Higher Education)	149

Article IX EDUCATION

PUBLIC EDUCATION

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution.

BOARD OF EDUCATION

Section 2. There shall be a board of education composed of members who shall be elected by qualified voters in accordance with law. At least part of the membership of the board shall represent geographic subdivisions of the State. [Am HB 4 (1963) and election Nov. 3, 1964]

POWER OF THE BOARD OF EDUCATION

Section 3. The board of education shall have power, in accordance with law, to formulate policy, and to exercise control over the public school system through its executive officer, the superintendent of education, who shall be appointed by the board and shall serve as secretary to the board. [Am HB 421 (1964) and election Nov. 3, 1964]

UNIVERSITY OF HAWAII

Section 4. The University of Hawaii is hereby established as the state university and constituted a body corporate. It shall have title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes, to be administered and disposed of according to law.

BOARD OF REGENTS; POWERS

Section 5. There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have power, in accordance with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. [Am HB 253 (1964) and election Nov. 3, 1964]

PART I

Lower Education

Chapter 1

INTRODUCTION

State Responsibility for Public Education

What are the state's responsibilities for education and how are they to be carried out? Since the U.S. Constitution contains no explicit statement on education, authorities believe that education is a state responsibility. This belief is based on the Tenth Amendment to the U.S. Constitution which states:

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The responsibility for education is considered to be within the "reserved powers" of the state. Within the limits of other U.S. constitutional requirements, each of the states are sovereign in educational matters.

Terminology and Specificity

In examining constitutional provisions relating to education, the underlying question is "Should provisions for education, educational functions, and institutions be contained in Hawaii's constitution and if so, to what extent?" The problems of terminology and specificity are based on the extent of detail deemed necessary such as: Is it adequate to simply establish a public school system, or is it necessary to define what this means? Is it necessary to define the total education program to include such features as libraries, educational research, or types of education? Is it necessary to designate the recipients of public education, to require minimum operation of public schools and minimum attendance age?

Arguments related to terminology and specificity are as varied as the provisions in the constitutions of the 50 states and are based on the particular interpretation of the function of the constitutional document itself. Those who

LOWER EDUCATION

favor specificity may argue that the constitution should reflect existing conditions and should at least contain references to the multiple aspects of education. In this way, the constitution is viewed as a guideline for future action.

On the other hand, others may argue that the constitution is a preamble to a statutory enactment and should be unencumbered by detail and references. The feeling that specificity should be left to statutory rather than constitutional provisions is reflected in some states such as Texas. In a report entitled, The Impact of the Texas Constitution on Education,¹ it is stated:

Some state constitutions provide in detail the nature of the state elementary and secondary education agencies. This provision obviously restricts the legislature from later altering the system of educational governance. Others, such as the Texas Constitution, note only that the state shall provide for public education and leave the task of creating an agency or agencies to the state legislature. This approach gives the state legislature much more flexibility to deal with elementary-secondary education.

Definition and Organization

Defining Public Education. "Public education" is not readily defined either in state constitutions or in state statutes. In the broadest sense, the term "public education" refers to all educational activities which are wholly or partially supported by public funds, including education programs from kindergarten through college, and graduate and postgraduate programs. However, "public education" is also commonly used to refer to only those state or locally funded and administered educational institutions and programs which are normally graded K to 12. This application of the term "public education" to encompass grades K to 12 coincides with the definition applied in section 298-1, Hawaii Revised Statutes, which states: "All academic and noncollege type schools established and maintained by the department of education in accordance with law are public shools." Section 298-2, Hawaii Revised Statutes, further specifies that: "The schools may include high schools, kindergarten schools, schools or classes for pregrade education, boarding schools, evening as well as day schools."

INTRODUCTION

This distinction is also used by the Hawaii Statewide Executive Budget System. In the statewide program structure, the educational system mandated by Article IX, section 1, of the Hawaii State Constitution is designated as Formal Education, one of 11 major programs. The formal education program is composed of 2 principal sub-programs: lower education and higher education. The lower education program administered by the department of education coincides with grades K to 12 which will be used throughout this discussion when referring to "public education". Institutions of learning which accommodate post-high school students, such as 4-year colleges and universities or other post-secondary institutions will be discussed in part II of this study.

Chapter 2 BACKGROUND

Public Education in Hawaii

Historical Background. Public education was established in Hawaii in 1840 under King Kamehameha III. The public school laws, which were enacted only 3 years after Massachusetts established its public school system, provided for compulsory education for children ages 4 to 14 and required communities to establish and maintain schools.¹

The pattern of centralized control over the public school system, which developed after 1840, did not change significantly when Hawaii became a territory of the United States in 1900. With statehood, the Reorganization Act of 1959 redesignated the territorial department of public instruction as the state department of education and continued the pattern of a centralized statewide system in contrast to the predominating pattern of independent, local school districts found in other states. In addition to being one of the oldest public education systems in the nation, Hawaii's single system ranks as the tenth largest in the nation.²

Organization and Structure. To manage Hawaii's public school system the department of education (DOE) has 3 interrelated levels of operation:³

- State Level: There is one school district headed by an elected nine-member board of education, which has no fiscal powers. The board appoints a superintendent of education, who serves as its executive officer. The superintendent has four major offices, headed by an assistant superintendent: business services, instructional services, library services, and personnel services.
- District Level: The 222 regular public schools and 5 special schools are grouped into seven districts headed by a district superintendent, appointed by the Superintendent. The district office directs and coordinates business affairs, personnel services, and special education schools; facilitates the implementation of curriculum and the dissemination of information; administers pupil personnel services and maintains communication between the DOE and the community. District Advisory Councils, established in each of

BACKGROUND

the seven school districts by the Legislature in 1966 and appointed by the governor, provide the public with an opportunity to express concerns and interests on educational matters.

- School Level: Schools are headed by principals who report to the respective district superintendents. Schools are generally organized by elementary, intermediate, and high school grade levels, although variations of this basic pattern exist. In 1976-77, there were over 174,000 regular and special education students in the public schools on seven islands in grades K through 12.

Governance. Responsibility for public education is shared by the legislature, the executive, and the board of education. The respective roles are summarized as follows:⁴

Legislature--establishes the overall structure of state government; legislates basic policies for the provision of public services; establishes the basic controls for the management of public resources; and appropriates funds for the operation of public programs, including education.

Executive--executes all laws, and generally supervises all executive agencies.

Board of education--formulates educational policy in accordance with law, and through the superintendent of education, manages and operates the state school system and regulates the licensing of private schools.

Funding. Hawaii is also unique in the manner in which public education is funded. The state legislature, which has the taxing power of the state, appropriates funds to finance the entire statewide system. The legislature and the governor exercise fiscal control over all expenditures for public education. Unlike the other 49 states, no real property taxes are used to support the public schools. Approximately 85 per cent of the moneys appropriated by the legislature for public education comes from the state general fund with the balance from special funds or from the federal government. The state general fund is primarily derived from excise taxes, personal income taxes, and corporate income taxes.⁵

General Constitutional Provisions

To obtain comparative information, constitutional provisions for education from 49 other states were examined. All but 18 state constitutions contain a separate constitutional article entitled "Education". Of the states which do have an education article, many also contain educational provisions in other articles. The executive article most frequently contained provisions relating to the superintendent of public instruction or education, particularly if this office was an elected one. The most widely scattered arrangement of provisions relating to education is in North Dakota's document which not only has an education article (Article VIII), but also has references to education in 7 other articles: IX School and Public Lands; XI Taxation and Revenue; XII Public Debt; II Legislature; XIX Public Institutions; III Executive; and 2 amendment articles, numbered 54 and 87.

Of the states which do not have a separate article on education, educational provisions are contained under the following kinds of headings: health, education and welfare (Alaska); education and school lands (Idaho, Iowa, Oregon, and South Dakota); the encouragement of literature (Massachusetts); school funds, education, science (Minnesota); education, state institutions, promotion of health and morals, public buildings (Wyoming); taxation and finance (New Jersey); miscellaneous provisions (Tennessee and Vermont); encouragement of literature, trades, etc. (New Hampshire); education, municipal home rule (Maine); education and public lands (South Carolina); education--the public free schools (Texas); and school and public lands (North Dakota). Oregon additionally is the only state to have a separate article for higher education.

In regard to article length, i.e., number of sections within an article, Wyoming's document is the lengthiest, consisting of 23 separate sections. In contrast are education articles contained in 3 brief sections in the constitutions of Alaska, Illinois, Maryland, New Jersey, and New York. These 3 sections usually deal with 4 subject areas: public education, higher education, governance and/or financing of education. Of note are the more unusual documents of some of the New England states--Massachusetts, New Hampshire,

BACKGROUND

and Vermont--which contain one paragraph related to education, consisting of one or 2 sentences. An example is New Hampshire's provision which instructs legislators and magistrates to "cherish the interest of literature and the sciences" and to "countenance and inculcate the principles of humanity and general benevolence".⁶ The provision for education in the National Municipal League's Model State Constitution is contained in one section of Article IX entitled education. This section simply mandates the legislature to provide for a system of free public schools and such other public educational institutions, including public institutions of higher learning, as may be desirable. Hawaii and Alaska are cited as sources for the arrival at such a terse constitutional statement on education.⁷

In reviewing the constitutional provisions for public education among the 50 states, all but 4 states explicitly designate the responsibility of education to the "state", "legislature", or "general assembly". The documents of Maine, Massachusetts, New Hampshire, and Vermont contain provisions for education which seem characteristic of most of the New England states. Chapter V, section II, of the Massachusetts document reads in part, "it shall be the duty of the legislatures and the magistrates to cherish the interests of literature and the sciences...." Vermont's Constitution states, "a competent number of schools ought to be maintained in each town...for the convenient instruction of youth" (Ch. 2, sec. 64).

Specific Constitutional Provisions

Defining a Public School System. Only 3 state constitutions do not contain provisions which mandate the legislature, general assembly, state, or towns to maintain, support, promote, cherish, or establish a uniform, thorough, and efficient public or common school system. These states are Iowa, Massachusetts, and New Hampshire.

Twelve state constitutions contain provisions for a free public school system and define the public school system as follows:

LOWER EDUCATION

- (1) Arizona--kindergarten, public school, high school, normal school, university, and industrial schools.
- (2) California--kindergarten, elementary, secondary, state, and technical schools.
- (3) Connecticut--free elementary and secondary schools.
- (4) Illinois--public schools through the secondary levels.
- (5) Kansas--common and higher grade schools, including normal, preparatory, colleges, and universities.
- (6) Michigan--free public elementary and secondary schools.
- (7) Montana--free quality public elementary and secondary schools.
- (8) North Dakota--primary to normal and college courses.
- (9) Utah--kindergarten, primary, grammar, high school, agricultural college, a university, and other educational institutions as the legislature may provide.
- (10) Virginia--free public elementary and secondary schools.
- (11) Washington--common schools, high schools, normal, and technical schools.
- (12) Wyoming--free elementary schools, a university, and other educational institutions as deemed necessary.

A "free system of public schools" was a constitutional issue for Hawaii's 1950 and 1968 Constitutional Conventions. Proponents felt that parents should not be obligated to raise funds to help pay for supplies and equipment or school activities not funded by the state. But the majority view felt that the word "free" had deep implications for Hawaii's budgeting process and rejected the proposed amendment.⁸ Consequently, Hawaii's Constitution does not provide for a free public school system, nor does it define the public school system in the same manner as the 12 states enumerated above.

Those who favor defining a public school system in the constitution maintain that there is a need to guarantee what may be considered barely minimal education. Such specific provisions as the guarantee of education through high school expresses the philosophy of the constitution, applied in

BACKGROUND

minimal practical terms. Those who would oppose such a provision feel that spelling out a specific minimum goal for education could lead to establishment of that minimum as the maximum expectation. Furthermore, the present need for increased opportunity for higher education might be minimized by overemphasis on guarantees for education through high school. It is felt that constitutional guarantees in such instances replace what should be continually changing statutes, adjusting to different needs as they arise.⁹

Other Educational Programs. Of those 12 states which constitutionally define a public school system, several mention technical and industrial schools. Additionally, Mississippi, in a section other than that establishing a public school system, mandates the legislature to provide institutions for education of the handicapped. Hawaii, Iowa, Michigan, Montana, and Wisconsin provide for public libraries. Nebraska's Constitution requires the state to provide schools for delinquents under 18 years of age.

There are those who favor constitutional enumeration for such other types or levels of education in addition to the K to 12 foundation program, such as adult education, technical and industrial schools for vocational education, public libraries, and educational research centers. These proponents argue that the specific reference to each of the contributing levels and areas of education indicate recognition and encourage their continuation and best use. The broadened scope of education is thus illustrated by reference to existing levels, in turn resulting in encouraging appropriate change in each era or the creation of new levels of education when necessary. These proponents argue that the constitution, while serving as a guide to the future, molds the future by beginning with recognition of the present--and should be changed to reflect the changes of the present over the past.¹⁰

Those who feel that no constitutional provision is necessary argue that changes in types of institutions take place constantly. A well-written constitution is, in itself, a preamble for statutory action to follow. It is felt that to include each category of educational activity or program is to risk antiquating these provisions in the immediate future.¹¹

LOWER EDUCATION

Minimum School Operation, Attendance, and Recipients of Public Education. Nineteen state constitutions contain provisions which designate that a free public school system shall be maintained for "all residents" or "children of school age in the state". These are Arizona, Arkansas, Colorado, Delaware, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, South Carolina, South Dakota, Utah, Virginia, Wisconsin, and Wyoming.

Thirteen state constitutions contain provisions which designate what "school age" may consist of. An illustrative provision is that of Alabama, which reads:

The Legislature shall establish, organize, and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years. (Art. XIV, sec. 256).

The other constitutions which stipulate age are: Arizona, 6 to 21; Arkansas, 6 to 21; Colorado, 6 to 21; Idaho, 6 to 18; Mississippi, 6 to 21; Missouri, up to 21; Nebraska, 5 to 21; New Jersey, 5 to 18; Oklahoma, 8 to 16; Oregon, 4 to 20; Wisconsin, 4 to 20; and Wyoming, 6 to 21. Seven state constitutions contain provisions for compulsory attendance. Those are California, Delaware, Idaho, North Carolina, Oklahoma, Virginia, and Wyoming. Nevada's and New Mexico's constitutions mandate the legislature to enact compulsory education laws.

Nine state constitutions provide for the minimum operation of state schools. In many instances, such a provision is contained in a section regarding the allocation of the state school fund. Such allocation of funds is usually made on the basis of 2 criteria: (1) enrollment in attendance area, school district, or county; and (2) the minimum operation of public schools in that district which ranges from 3 months out of a year to 9 months a year. These states and the period of time required for minimum operation are: Arizona, 6 months; California, 6 months; Colorado, 3 months; Iowa, 3 months; Nevada, 6 months; North Carolina, 9 months; Oklahoma, 3 months; Wisconsin, 3 months; and Wyoming, 3 months. Nebraska's Constitution designates the legislature as responsible for determining this matter.

BACKGROUND

Article IX of the Hawaii State Constitution

In the Hawaii State Constitution, provisions for education are contained in the 5 sections of Article IX.

Section 1 of Article IX on Education in the Hawaii State Constitution contains:

- (1) A general mandate to the state to establish, support, and control:
 - (A) A statewide public school system;
 - (B) A state university;
 - (C) Public libraries and other educational institutions as may be deemed desirable.
- (2) A prohibition of discrimination in public educational institutions because of race, religion, or ancestry.
- (3) A prohibition of the use of public funds for the support or benefit of any sectarian or private institution.

Sections 2 through 5 of this Article contain provisions for a state board of education, a state superintendent of education, a board of regents, and a president for the University of Hawaii.

Other provisions of the Hawaii State Constitution that affect the governance of public education include:¹²

Article III, section 1, which provides that "[t]he legislative power of the State shall be vested in a legislature..."; Article IV, section 1, which provides that "[t]he executive power of the State shall be vested in a governor"; Article IV, section 6, which specifies that "[e]ach principal department shall be under the supervision of the governor..."; and Article IX, section 3, which provides that "[t]he board of education shall have power, in accordance with law, to formulate policy, and to exercise control over the public school system through its executive officer, the superintendent of education...."

LOWER EDUCATION

Amendments to Article IX. In 1964, 3 constitutional amendments to Article IX on education were approved by the electorate. Although the 3 amendments have not affected the broad outline of education contained in this Article, they have affected some of the more specific constitutional aspects of education in Hawaii.

The amendments have affected the following sections:

- (1) Section 2 provides for the selection of the state board of education. Initially, members of the board were appointed by the governor, with the advice and consent of the senate, from a list of nominees submitted by local school advisory councils. A constitutional amendment in 1964¹³ deleted this provision and established an elected school board, the membership of which was elected from geographic subdivisions of the state.
- (2) Section 3 contained a provision making the superintendent of public instruction an ex officio voting member of the board of education. A 1964 amendment took away the ex officio voting membership status of the superintendent, changed the title from superintendent of public instruction to superintendent of education, and designated the superintendent secretary to the board.¹⁴
- (3) Section 5 describes the method of selection and the powers of the board of regents. A constitutional amendment deleted that part of this section which designated the superintendent of education and the president of the university as ex officio voting members on the board of regents.¹⁵

In 1970, the legislature approved a constitutional amendment to abolish the elected board of education and allow for the existence of a board with its status to be set by law but without the power to appoint the superintendent of education.¹⁶ Malapportionment of the elected board was listed as one of the reasons the legislature submitted the amendment to the electorate. The proposal was defeated by the electorate.

Since 1968, there have been numerous legislative proposals to amend the education article. The majority of these focus on changes in the governing bodies of the public school system and the university rather than on any other area of the educational provisions in the Constitution. They include legislative

BACKGROUND

proposals to change the duties and powers of the board of education; to change the method of selection of the board from a popularly elected board to a board that is appointed by the governor; to reorganize the governance structure with a system of school advisory councils at district and state levels; to provide for a single executive to be a gubernatorial appointment; and to provide for the election of the superintendent of education.¹⁷

In 1974, a report of the Joint Senate-House Interim Committee on Education in accordance with Senate Concurrent Resolution No. 66, Regular Session of 1973, recommended a 39-member board to meet reapportionment requirements, and suggested an alternative structure where: (1) each school would have a school council "to review the programs and operations of the school, to assess the needs of the school and how well the school progresses in meeting those needs, and to suggest improvements; (2) members of the district school advisory councils would be selected by the school councils; and (3) the board of education would be an advisory group, selected by the school councils and the superintendent would be appointed by the governor".

An explanation for this alternative was given:¹⁸

...public participation should occur at the school level more than at any other level in the system's hierarchy. The school level presents the most tangible opportunities for parents to seek improvements in education. There is a clearer and more direct interaction between the school and the parents than between any other level in the DOE structure and the parents. Your Committee also believes that public participation at the school level should be institutionalized and formalized and that it should be secured and recognized under some legal framework.

The committee report was not acted on by the legislature, resulting in the judicial decision which reapportioned the present 9-member elected board on the basis of 7 at-large members from Oahu and 2 at-large members from the other islands.

In reviewing Article IX of the Hawaii State Constitution and amendments thereof, one approach is that of keeping the present constitutional language. The arguments for this approach may be restated for Hawaii from a New York constitutional convention study:¹⁹

LOWER EDUCATION

- (1) These provisions clearly and satisfactorily fix the final responsibility for education at the state level.
- (2) Under the existing provisions, Hawaii has developed an adequate system for the administration, supervision, and coordination of both public and private education.
- (3) The provisions do not unduly hamper the legislature in making needed changes in the structure and organization of education in the state.
- (4) The provisions are not so detailed as to retard adjustment to new and unknown problems and they enable the state as a whole to accommodate itself to changes in federal policy.
- (5) There is no confusion in terminology for those who possess a rudimentary knowlege of the history of education in the state.

Chapter 3

CENTRALIZED VERSUS DECENTRALIZED STRUCTURE

Hawaii is frequently singled out as the only state with a purely centralized state system of education where policy-making, administrative, fiscal, and supervisory responsibilities for education are at the state level. In a decentralized system of education, administrative, fiscal, and policy-making functions relating to matters such as personnel, physical facilities, curriculum, and expenditures are maintained to a large degree within local units of government, whether these be school districts, counties, cities, or towns. In contrast to other states, Hawaii has no independent local districts or school boards or independent district superintendents, and school revenues, expenditures, curriculum, and the hiring and placement of teachers are determined at the state level.¹ In reality, all states are centralized in that education is deemed a state responsibility. What varies from state to state is the degree of autonomy and independence granted to local units.

In examining the issue of centralized vs. decentralized structure with reference to Hawaii, it would be helpful to consider 2 organizational contexts in which the terms are ordinarily used: (1) the political, and (2) the managerial. In the political context, the discussion focuses on Hawaii's present highly centralized statewide system as opposed to a decentralized system where there may be independent school districts or where the delegation of power over education is relegated to the counties. In the managerial context, decentralization deals with the delegation of power to the subunits of the department of education, namely, the district and the individual schools.²

Constitutional Provisions

Article IX, section 1, of the Hawaii State Constitution reads:

The State shall provide for the establishment, support and control of a statewide system of public schools....

It may be argued that preference for the existing centralized state system is not designated in this wording, unless "statewide" can be interpreted to mean "centralized". It may also be argued that there appears to be no legal restriction on the legislature or the school board to create additional independent school districts or restructure the existing single state school district into several independent districts.

In states where local districts exist, they are normally considered to be creatures of the legislature without inherent powers over education, except if they are constitutionally delegated such powers or established as independent political units.³ In general, the authority of the legislature is interpreted by the courts as being complete or plenary, except as it is curtailed by the constitution.⁴ The legislature then may enact any law relating to education unless specifically prohibited from doing so by the constitution and it may create whatever educational machinery it wishes and delegate to the agencies it creates, whatever powers it deems proper.⁵ Therefore, within the general mandate for state responsibility for education in almost all the constitutions, each state has determined for itself the organization and control of its educational system.

Several state constitutions enumerate specific school districts by name. Nine constitutions contain provisions for the creation or abolishment of schools or school districts. Five of these 9 vest this authority in the legislature: California--the general assembly may organize school districts; Mississippi--the legislature may abolish any public school; North Carolina--the legislature shall divide the state into 8 school districts; Texas--the legislature may provide school districts which embrace more than one county; West Virginia--the school districts into which any county is now divided shall continue until changed in pursuance of law. One of the 9 vests this function in the "state": North Dakota--the state has exclusive control over all educational institutions supported by public funds. Florida's, Georgia's, and Louisiana's constitutions provide that counties or school districts may consolidate only by electorate approval of the county or school district concerned. Even with the definition used in this review for a decentralized and centralized educational system, it is difficult to determine from the various constitutions the extent of these systems in the other 49 states.

Some Arguments for a Decentralized School System

Increasing Public Concern and Participation. Proponents of decentralization argue that local control of education promotes active public participation, which is basic to the democratic process. Education is considered to be a subject of primary interest to the citizenry, and therefore consideration of educational objectives and direction should be made more accessible to them. Such a system encourages the interest of people in their children's education and makes them more willing to provide the financial resources required to maintain an adequate school program. The proponents of decentralization also contend that the arrangement reflects the historical pattern in the United States, which relies on local government as a safeguard of liberties.⁶

Removal of Education from Politics and State Control. Some authorities believe that as long as the school districts remain autonomous and independent under the control of the local board of education, a decentralized system of education can prevent power seeking government officials who may favor central control from dominating the personnel policies and practices of the schools. Furthermore, there is a strong belief that education is properly nonpolitical in nature since education is for the good of society and any regimentation of thought through education would endanger individual freedom.⁷

Local Administrative and Fiscal Independence. Supporters of decentralization maintain that local control has also encouraged educational experimentation, flexibility, and adaptation to community needs which would be difficult to achieve in a system in which responsibility for education was largely concentrated in a state educational authority. They also argue that little evidence exists that more rational or better decisions about education can be made at the state rather than the local level.⁸ Additionally, subjecting policy-making to the bureaucracies of a large centralized system may slow the progress needed for schools to keep pace with society. Having such responsibilities at the local level also allows local districts to exceed the minimum standard set by the state.

LOWER EDUCATION

Twenty state constitutions contain provisions which designate fiscal authority at the sub-state level, i.e., county or school district, or both.⁹ These are established by a variety of means, such as a county school fund, special taxes for the support of schools in that local unit, fines collected for breach of state laws which occur within that local unit, general authority to levy and collect additional taxes for educational purposes, and general authority to issue bonds for educational purposes. These methods of financing education are assigned in varying degrees among the local units of government. Those state constitutions which provide local units with taxing powers for educational purposes are: Alabama (counties), Arkansas (school districts), California (counties), Florida (school districts), Georgia (counties), Louisiana (parishes), Mississippi (counties or separate school districts), South Dakota (counties), Texas (school districts), Virginia (cities, counties, school districts), West Virginia (counties or districts), and Wisconsin (towns or cities). Since only 12 states constitutionally empower local units to levy taxes, it is likely that the frequent statements in the literature referring to the predominance of decentralized fiscal authority regarding education are largely based on statutory provisions, judicial interpretation, or local ordinances.

Some Arguments for a Centralized School System

Equitable Provision of Education to All Persons. The supporters of a centralized system contend that one of the basic social principles of a democratic society is to allow each person the opportunity to develop all potential abilities. It is argued that a centralized state system of education can more effectively aid in the achievement of such a goal than a decentralized one. A Public Administration Service study on State and Local Government Relationships in the State of Hawaii identifies 2 basic principles of social policy as reasons for the willingness on the part of states to pay larger proportions of the cost of public education. These are:¹⁰

- (1) The conviction that in a democracy every citizen should have the equal opportunity to develop varied abilities to the fullest; this is something which cannot be achieved in a situation where various communities have unequal economic

CENTRALIZED VS. DECENTRALIZED STRUCTURE

resource bases and from this each must finance its own school system; and

- (2) The national interest requires the development of the abilities of all to the fullest, particularly in view of the present rapidity of technological and social change.

The Book of the States, which surveys developments in all areas of government among the 50 states, reported in 1972 that the reduction in the number of local school districts, through reorganization and consolidation in a number of states, suggested a trend toward greater efficiency in operations while providing a higher minimum level of educational opportunity through the provision of state funds to local school systems.¹¹

The proponents of a centralized system take issue with the argument that public education was not made a federal responsibility because the founding fathers feared the potentiality for dictatorship in a federal school system. As one author has put it:¹²

Actually, education was not included as a federal function in the Constitution because the idea of free education had not even occurred to the founding fathers. Our decentralized school system was not an inspired stroke of genius, but a historical accident, resulting from the fact that the ideal of free public education for all became widely accepted only long after the American Revolution.

Those who hold this point of view acknowledge that, although the excessive concentration of power must be avoided, this does not automatically justify every separation or diffusion of it.¹³ Proponents of a centralized system also have argued that the idea of local control and public participation is outdated, since mobility and interdependence have completely undermined the notion that local communities ought to have a free hand in the education of their children.¹⁴

Rapid Growth and Increased Complexity of Education. Because education plays such a vital role to the national welfare, and because of the inability of local units of government to keep up fiscally and administratively with the demands being made upon education, it is felt that education will inevitably

move further and further toward a centralized, state-controlled public service. Political scientists have traditionally argued philosophically against the setting apart of school districts from other units of local government and have pleaded the case for incorporating education into the broad range of public services.¹⁵

Better Administration and State Financing. Commentators in the field argue that financial and personnel requirements can be better dealt with in a centralized system where policy decisions common to all schools can be made at one focal point and then applied uniformly. For example, local school authorities needing more qualified teachers cannot regularly disregard broader views they encounter in teachers' colleges, which are their main sources of supply, and which are likely to reflect statewide or even national trends of opinions on educational affairs.¹⁶ Furthermore, these individuals take issue with the justification of a decentralized school system on the appeal to the experimental nature of this situation, for this seems to imply that a centralized administration is nonexperimental or that it will insist on uniformity down to every detail.

Several writers have pointed out a growing likelihood of more centralized systems of school financing resulting from state court rulings in California, New Jersey, and elsewhere in favor of greater equalization in school spending among rich and poor districts. Compact, a magazine of the Education Commission of the States, notes that in 1971, the California Supreme Court announced that "the quality of a child's schooling should not be a function of wealth other than the wealth of a state as a whole" in its decision of Serrano v. Priest. Some predicted that the U.S. Supreme Court's 1973 judgment in San Antonio Independent School District v. Rodriguez, in which a federal district court's decision outlawing Texas' school finance system was overturned would bring court-induced reform to a halt. However, judicial decisions which declare school revenue and expenditures disparities illegal on state constitutional grounds keep the pressure on for alteration of our archaic means for supporting schools.¹⁷

One alternative is full state funding. The Advisory Commission on Intergovernmental Relations (ACIR) comments that because the social and

economic consequences of education are felt beyond school district boundaries, states can no longer accept such wide differences in educational quality. Increasing state responsibility for the financing of public education may be the best way of equalizing public education throughout the state.¹⁸

Recommendations for Decentralization in Hawaii

The subject of centralization-decentralization has been introduced in several recent reports initiated by the state administration or the legislature. Of particular note are the legislative auditor's 1973 report entitled Management Audit of the Department of Education and the 1974 report of the governor's ad hoc commission on operations, revenues and expenditures entitled the CORE Report to the Governor. The 1977 report of the commission on organization of government entitled Report to the Ninth State Legislature, State of Hawaii, deals primarily with the transfer of certain department of education programs and operations and does not appear to have any significant constitutional implications. While all 3 reports continue to assume a centralized state system of public education for Hawaii, the recommendations imply a need for internal policy adjustments and procedural arrangements within the department of education to achieve objectives which are considered basic to decentralization:

- (1) To achieve greater public participation and concern for education;
- (2) To accommodate unique community conditions and needs by providing for decision-making on public school matters at the local level.

In the 1973 Management Audit of the Department of Education, the legislative auditor's office recommended that:¹⁹

...as part of formulating an organizational strategy for the department of education, the department fully consider the question of centralization-decentralization, and if, decentralization is to be pursued, the board of education (1) formulate explicit policies in this regard, outlining the guidelines within which decisions may be made by major organizational units at the lower levels of the organizational hierarchy and specifying the kinds of decisions and

LOWER EDUCATION

the level to which such decisions may be made by such major units and (2) establish a system by which such lower level units may properly account for their actions.

The report noted that decentralization assumes the passing on of responsibility to the lower levels of an organizational hierarchy. But, in no case of decentralization is full responsibility so easily shifted. Residual responsibility still remains at the top.²⁰

The 1974 CORE Report concluded that a restructuring of the department of education might provide opportunities for the public to express their concerns at a time when their expressions have the potentiality of affecting decisions. The commission recognized that in many instances decisions "are made at a level far removed from the actual school situation. Centralized funding for education need not result in centralized or standardized decision-making. A persuasive case can be made for decentralized decision-making in various areas because schools have different clienteles and because the most knowledgeable persons to deal with a problem are oftentime those closest to the children and community."²¹

On that basis, the commission made it clear that the role of personnel at the school level was primary to that of the personnel at the state office and that a system needed to be established to provide more opportunity for school administrators and teachers to be involved in decisions regarding their schools and their students. By designating the school complex as the basic unit for administration and planning of education, the commission felt greater accountability could be attained. Accordingly, the commission recommended that:

The present organizational structure of the Department of Education be revised by using the school complex as the basic administrative/planning unit. The school complex shall be comprised of a high school, its feeder intermediate schools and their feeder elementary schools. The school complex shall have the responsibility for: (a) preparing a profile of its students in terms of basic characteristics that affect their learning; (b) preparing a profile of its personnel in terms of characteristics that affect teaching; (c) developing and updating, on a periodic basis, an academic plan which sets forth goals and objectives, the means for

CENTRALIZED VS. DECENTRALIZED STRUCTURE

achieving these aims, and the resources necessary (human, physical, and fiscal) and also includes the setting of priorities; (d) developing a budget, both for operations and capital improvements; (e) allocating resources; and (f) assessing the educational program--its students, teachers and administrators as well as its academic plan.²²

The roles and staffing of the state office, district office, and the principal's office be re-examined and revisions made to ensure the role of the school complex as the basic administrative/planning unit in the Department of Education.²³

With regard to greater public participation, the 1973 Management Audit further found that the district school advisory councils which were to provide for community input to the state board of education and the district superintendent actually did a minimal amount of advising on educational policy to the state board or the district superintendents. It recommended that the councils be allowed greater flexibility by statute to attain their full potential.²⁴ The 1974 Report of the Joint Senate-House Interim Committee on Education, which was not acted on by the legislature, recommended a revamping of the advisory councils at the school, district, and state levels to establish an interrelated network for public participation and communication. The report recommended that each school have its own council to review programs, operations, and assess needs, that the district school advisory councils be selected by the school council, and that the district councils select in turn an advisory state board of education.²⁵

This recommendation was also echoed in the CORE Report for the school level which recommended that:²⁶

A parent council be established at each school to assess the needs of that school, to review its programs and operations, to evaluate how well the school is progressing in meeting those needs, and to suggest improvements.

A parent council be established at each school complex comprised of elected representatives from the school parent councils. This council may be used in an advisory capacity by the school complex in carrying out its varied responsibilities.

Chapter 4

GOVERNANCE

Governance includes the making of policy decisions as distinguished from administering such decisions and involves a complex network of relationships among those individuals or bodies who affect the educational policy-making process. Where there is specific delegation, the state board of education and/or the superintendent of education play important roles in the actual formulation of policies. The state's chief executive (governor) also is a part of this system especially where the members of the state board of education or the state superintendent of education are appointed. In addition, the legislature has a role in the educational policy-making process, usually in the area of school finance, a responsibility shared with the governor.¹

Irrespective of the particular types of organization structure existing in the 50 states, there exist 2 central questions regarding education governance:

- (1) How much and what kind of formal separation should there be between the state education agency and the general governance structure: For example, should this agency be simply another executive department or should it have considerable autonomy?
- (2) Who should have governing authority with regard to the state education agency? For example, should the formal control emphasize the governor, a lay state board, or the superintendent of education?

Features of Educational Organization

The terms "state education agency" and "central education agency" are frequently used in the broadest sense to identify a legally constituted state department, office, board, commission, or other state administrative unit that is expressly delegated powers and duties by law.² Generally, the central education agency consists of a state board of education, a chief state school officer, and the necessary staff. The state board of education is regarded as

the agency's legislative policy-making body, the chief state school officer as the agency's executive, and the organized staff as the professional and technical work force who implement educational programs and policies.³ For further detail on statutory as well as constitutional provisions regarding state boards, chief state school officers and departments of education, see Appendix A.

State Boards of Education. Twenty-six states have constitutions which establish a state board of education. These are: Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, and West Virginia. Eleven of these 26 states also establish local boards of education. These are: Arizona, California, Colorado, Florida, Georgia, Louisiana, Montana, New Mexico, Ohio, Oregon, and Virginia. The constitution of Oregon calls for school district elections but is silent regarding a state board of education.

Of the 26 state constitutions containing constitutional provisions for a board of education, New York presents a unique case. The New York Constitution calls for a state board of regents with the responsibility for elementary and secondary education as well as for higher education. Nine of the 26 states leave the determination of the powers and duties of the board to the legislature.⁴ The remaining 17 contain a wide variety of provisions regarding this matter.⁵ In general, the provisions of those 17 states assign to the state board of education overall supervision of public schools and/or public instruction. The constitutions of Hawaii and New Mexico specify that the board shall formulate policy.⁶ Louisiana's Constitution authorizes budgetary responsibility for its state board.⁷ For a listing of those states which constitutionally establish and/or provide for the selection of state and/or local boards of education, see Appendix B.

Chief State School Officer. Thirty-five constitutions call for a chief state school officer, sometimes called the superintendent of education or commissioner of education or of public education. Nine constitutions also call for a superintendent of schools at the local level. The 35 are: Alabama, Arizona,

California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In each of these, the powers and duties of the superintendent are either left to the legislature to determine, or are designated as being the general supervision and/or administration over public schools. For a listing of those states which constitutionally select their chief state school officer, see Appendix C.

State Departments of Education. Only 2 constitutions mention a state department of education. Article VII, section 16, of Nebraska's document establishes the powers and duties of a commissioner of education, one of these being the administrative head of the department of education. Article XII, section 6, of New Mexico's Constitution establishes a state board of education and a state department of education at the same time. A recent U.S. Office of Education survey lists 36 states in which a state department of education is identified either by constitutional provision or by statute.⁸ A listing of these states may be found in Appendix A. From the absence of constitutional provisions regarding departments of education, it may be concluded that it has been a subject left to statutory enactment more frequently than boards or chief state school officers.

Education and Politics. It has been observed that "aloofness from partisan politics is highly desirable, but aloofness from the political system is impossible".⁹ As a rule, state education agencies have avoided identification with political parties in order to insulate the educational system from undue political influence. At the same time, the "emergence of systems that encourage participation, allow for conflict and are more visible"¹⁰ has made it difficult for public education to ignore politics. Elected officials, such as governors and legislators, are no longer willing to accept educators' open-ended cost estimates of need; and, because of the ever-expanding budgets for public education, scrutinize cost items with greater care than before. Demands for accountability and/or evaluations based on measures of effectiveness continue to be major issues. Teacher associations have abandoned their traditional apolitical stances

and with the help of members, money, and grass roots support are beginning to exercise their political strength. The broadened participation, increased group conflict, and growing public concern over the course of education are manifestations of the politicization of educational policy-making.

The high cost of education and the public concern over the results of education have made it almost impossible to stay out of the political mainstream in most states. The major question has become not whether, but how education is to be linked with the general governmental and political system.¹¹ There are some who feel that the state should administer educational services in much the same fashion as other governmental functions such as public health, transportation, or social services. Others contend that education is a matter which the legislative and executive branches of state government should support but with which they should not interfere. The fear is that any structure that closely links the state education agency to executive control is vulnerable to "excessive partisanship", "patronage rather than professionalism", and "political indoctrination".¹² The separate election of the agency head is the clearest type of independent status. Along with being opposed to "political interference" in what is perceived as a domain of professional competence, educators believe that educational policy-making would experience a lack of continuity and perhaps, "chronic instability" if change in state educational leadership accompanied every new governor.

There are generally 2 types of administrative style: integration and separatism, but there are many examples of a middle ground between the 2 styles. Agencies can be grouped along a spectrum of nearly complete independence at one end to nearly complete subordination to central political control at the other. Furthermore, in an agency that may appear independent, the governor may in fact exercise strong influence because of popularity with the electorate, influence in the legislature, public prestige, and constitutional responsibilities. On the other hand, where the governor appears to control the agency, the influence of a special clientele, the growing connections of the employees, the interests of legislators and legislative committees, and of intergovernmental relationships can also wield considerable "clout".¹³

Separated Administration of Education

The pressure to set education apart structurally from other public services has been strongly felt among the states. Advocates maintain that education is unique and distinct from other public services and that lay control, educational program emphasis, insulation from partisan politics, policy-making continuity, and professional competence¹⁴ can best be realized through a semi-autonomous state education agency. However, among those who wish to separate education from the general government structure, there are disagreements, particularly over who should control the state education agency. Features which generally characterize a separated administration include: (1) an independently elected state board, (2) the authority to appoint its own superintendent of education, and (3) some fiscal authority of its own. Hawaii to a large degree resembles this pattern except for the lack of fiscal authority.

Election of Board Members. Of 10 state constitutions which provide for an elected board (Alabama, Colorado, Hawaii, Illinois, Iowa, Kansas, Michigan, Nebraska, New Mexico, and Utah), Nebraska's Constitution is the only one which indicates that board members are to be elected on a nonpartisan basis. In Michigan's Constitution, candidates for the school board are nominated by party convention. The remaining 8 states only designate that board members shall be elected. One state, South Carolina, has constitutional language which provides for an indirect election of board members. South Carolina's Constitution provides for a delegation of counties within each judicial circuit to nominate members who are then elected by the legislature. Louisiana's Constitution provides for a combined appointive and direct elective method for its state board of education.

Three other state constitutions establish an ex officio board of education. Florida's Constitution lists the board's membership as: the governor, commissioner of education, secretary of state, attorney general, comptroller, commissioner of agriculture, and the treasurer. Mississippi's document lists the board membership as: the attorney general, secretary of state, and the superintendent of public education. Oklahoma's Constitution designates the governor, secretary of state, attorney general, and superintendent of public

instruction as the state board. In all 3 states, these state officials are elected, including the superintendent of education.

All 10 state constitutions with directly elected boards allow the board to appoint its superintendent of education. For these states, policy-making is delegated to the board and a mechanism for implementation is included. To further strengthen this policy-making role, some states have constitutional language describing powers and duties. Illinois' Constitution is the most detailed and allows the board to establish goals, to determine policies providing for planning and evaluating education programs, and to recommend financing. New Mexico's Constitution empowers the board to be responsible for public school policy as well as vocational education policy. In Iowa, the board of education has the power to legislate (make policy), to make rules and regulations, and to receive aid from the school fund. Hawaii's Constitution grants the elected board the power to formulate policy in accordance with law. Other duties and powers are prescribed by law. None of these 10 states allows the board the authority to tax or appropriate money.

Independence of the State Board. It is argued that the persons who determine education programs and policies should be a representative group of lay persons who will reflect the varied concerns and interests of the community and that this group be held directly accountable for its actions. In addition, the election of board members gives people a means of expressing themselves on education policy and places responsibility for education on elected officials who are not beholden to the governor, the legislature, or any partisan interests.¹⁵

In recommending a board as head of an educational agency, proponents subscribe to the idea of separating policy-making and administrative functions, an arrangement largely supported by students of educational administration. Although the difficulty of separating such activities is acknowledged, various authorities maintain that it can be accomplished. In this way, the activity of the board does not intrude upon the professional sphere of administration and the activity of the chief state school officer does not intrude upon the representative sphere of policy-making.¹⁶ These individuals feel there is a necessity for representativeness and professionalism in education. For example,

P. Cook and his colleagues note that not only is a full-fledged state board more representative, but it also insures selection of the chief state school officer by merit rather than politics, renders prestige and confidence to the administering of education, and allows greater continuity and stability to educational policies.¹⁷

Others contend that the professional aspect of education should be vested in the state superintendent of schools. The individual should be a trained executive responsible to the state board of education for the effective organization, management, and leadership of the state school system. Therefore, the person should be appointed by the state board of education on the basis of professional preparation and experience and in terms of the person's general fitness for the assignment. These individuals also point out recent trends toward:¹⁸

- (1) Appointment of the chief state school officer by the state board of education, rather than appointment by the governor or election by popular vote.
- (2) The removal of the chief state school officer from membership on the state board of education; making him chief administrative officer of the state department of education.
- (3) A longer or indefinite term of office, a better salary and increasing the educational and administrative qualifications for the position.
- (4) Clarifying the duties and functions of the chief state school officer in relation to those vested in the state board of education.
- (5) The separation of policy-making functions from executive and administrative functions; vesting the former with state boards, and assigning the latter to the state superintendent.

Nonpartisanship. Most advocates of elected school boards call for a removal of education from partisan politics. These individuals agree that school board members should be elected by popular vote at nonpartisan elections. The reasons given are that board members should feel no allegiance to any political organization or interest group and party members should not be rewarded with positions on the professional or other staff of the school system.¹⁹ The

proponents of nonpartisanship also argue on the basis of candidate availability. The contention is that many excellent professional and business people are not willing to make a campaign for office on a political party ticket because they have patients, clients, or customers in all parties.

Public Participation. Many proponents of an elective system contend that people take more interest in their schools and in local educational issues when these issues are popularized as the result of an election campaign. Elected members are directly responsible to the people for their actions in maintaining the kind of schools the people want at a cost they are willing to pay. Under an appointive system, voters may feel frustrated in securing changes in school policies and school administration.²⁰ Moreover, an elected board draws members from more segments of the community and thereby achieves the involvement of a greater number of neighborhoods and individuals.

Fiscal Independence for State Boards. It is argued that if education is an atypical governmental function, it should also be financed separately from other governmental agencies. Many proponents recommend fiscal independence for school boards, i.e., legal power to levy or cause to be levied taxes to raise necessary funds, and to spend the funds without approval from another local governing body. It is argued that expenditures for education are by character different from expenditures for other governmental functions. One often cited basic difference in purpose is that money spent on education is an investment from which future returns may be expected. Because of this difference, means should be available through which the people may express their willingness to make increased expenditures in areas where the investment characteristic is present. Fiscal independence contributes to this possibility.²¹

Effects of Fiscal Dependence. Theoretically, a school board is charged with the important responsibility of representing the public in all affairs of education, including setting of purposes and determining how the purposes are to be achieved. Yet, the final authority regarding the financing of the educational program is withheld from many school boards. Since no school board can operate schools or implement its decisions without necessary funds, the board's ability to discharge its responsibility is seriously handicapped. Commentators

in the field maintain that fiscal dependency enables another body to stand between the school board and the people. It is extremely difficult for the public to fix responsibility in such a setting. The 2 bodies can "pass the buck", and the public is uncertain just which is responsible for the schools. Only when the school board has full authority over the school budget and the financing of the educational program does it have full authority over and full responsibility for the schools.²²

The opponents of fiscal dependence further argue that inherent in a system which removes from the school board the financial means of implementing its decisions is a tendency to discourage effective long-range planning. A board and a professional staff that must secure financial support elsewhere for all their plans are not encouraged to make plans for the future because of uncertainty as to their fulfillment. Any plans which may be developed run the risk of being changed by someone not interested in the school program and not responsible for it. In many instances, the best the fiscally dependent board can do is operate on a year-to-year basis.²³

It is also maintained that fiscal dependence leads to undesirable practices. Budget padding--asking for more than is actually needed in anticipation of "cuts"--and "playing to the grandstand" in an attempt to compete effectively with other governmental agencies for funds are frequently engaged in by school boards that see the process of budget approval as "survival of the fittest". Requiring the school budget to be approved by another governing body encourages school board irresponsibility. Complete school board authority for its budget and its expenditures encourages budgetary and financial integrity as well as a greater sense of responsibility on the part of the board to the people.²⁴ One of the studies on this subject maintains that fiscal independence and an elected board go hand in hand. Elected officials and legislators would be more apt to grant fiscal autonomy to members of a school board who also are directly responsible to the voters through the elective process.²⁵

A. R. Dykes contends that where there is no fiscal independence, important educational decisions are often made by bodies which have infrequent contact with the schools and usually do not understand school problems.²⁶ He

further asserts that lack of understanding and contact with schools may result in years of hard work by a school board professional staff being wiped out at budget approval time.²⁷ In most communities, the school system represents the single largest expense of government. Not infrequently, operational expenditures for the schools are greater than for all divisions and departments of local government combined. Because of the sheer size and complexity, it is exceedingly unlikely that the body which has responsibility for the operation of government will possess the experience, information, and understanding necessary for wise budgetary decisions to be made on education.²⁸

Constitutional Provisions. Several state constitutions do assign taxing powers and bond issues to local school boards but there is no constitution which empowers a state board of education with fiscal autonomy. Constitutionally provided revenues earmarked for educational purposes is the closest approximation to fiscal autonomy. The large number of states which maintain several special funds consisting of specific tax revenues, fines, proceeds of land sales, etc., has already been discussed. Arguments favoring the system of ear-marking funds for education are: it provides definite assurance of support for the educational program; it provides a hedge against capricious legislative action; and it frees the legislature from frequent review of revenue needs for special functions and legislative time for consideration of other matters.²⁹

Integrated Administration of Education

The concept of administrative integration is closely linked with the concept of executive leadership and management. Most political scientists maintain that good administration is generally found where practically all aspects of management in state government are subject to the administrative direction and control of the executive branch. Those who espouse this doctrine have sought to make state government more orderly, rational, and visible by reducing the autonomy of government agencies and consolidating them into larger functional departments. Each department head would be an appointee of the chief executive and constitutional and statutory sources of an agency's

independence would be eliminated or curtailed as far as possible. The executive branch would then resemble an administrative pyramid with the governor in charge at the top.³⁰

An application of the concept to educational governance would reduce the autonomy of the state education agency and expand gubernatorial control. The reasons for integrating the state education agency into the executive branch are based on the need for better accountability and responsiveness, more comprehensive planning and efficient use of state resources, and the access to gubernatorial influence. The latter is a pragmatic consideration since education has become increasingly dependent on political influence attained through effective access to the governor's office.³¹ There are 2 types of structural arrangements which are based on the executive leadership concept. Both are similar in that the head of the educational agency is appointed by the governor, the difference being whether the appointed head is a single officer or a board.

Single Appointed Officer. Most political scientists recommend that the head of an educational agency be a single appointed officer to better coordinate the agency's activities and concentrate responsibility.³² They maintain that separating policy-making and executive functions at the administrative level is not only unrealistic but diffuses accountability among several levels of administration and several individuals. If the chief executive is to be held directly accountable for educational programs in the state, the most effective means of assessing responsibility is through a single appointed administrative officer. These proponents believe that to have educational programs determined by a board and implemented by an appointed officer is an attempt at separating policy-making and executive functions. If boards are to be used at all, they should be used only for specific legislative and judicial functions at administrative levels, for the operation, and not the management of particular programs, or for purely advisory purposes.³³ Under this structure, the superintendent is the administrative head of the education agency and is generally superior to any existing board.

The appointed single officer concept for education has not gained constitutional status to any large degree. Only 2 state constitutions provide for

GOVERNANCE

the gubernatorial appointment of the chief state school officer. Pennsylvania's Constitution provides for the appointment of the chief state school officer by the governor with the advice and consent of the senate.

In Virginia's Constitution, the chief state school officer is appointed by the governor with the advice and consent of the general assembly. The appointees in both states are members of the governor's cabinet and share certain gubernatorial expectations for this position, including: "reporting and recommending needed changes to the governor; providing statewide advocacy for education; serving as a 2-way communication channel between the governor and education agencies; winning legislative support for gubernatorial proposals in education; articulating education with other state services represented on the governor's cabinet; coordinating the activities of various education agencies; conducting studies, developing information systems, and disseminating findings; reviewing agency budgets; and promoting efficiency and economy in education agency programs".³⁴ It should be noted that these functions are performed in a governance structure which includes a state board of education, a legislature, and a governor's office--all responsible for educational policy. In addition to the gubernatorially appointed chief state school officer, there is a governor-appointed state board in both states.

Of the 2, Pennsylvania's secretary of education commands an unusually powerful position. This individual is both head of the department of education and the chief executive of the state board of education. As a result, the person has the opportunity to participate in policy deliberations of the board and to exert line authority over the resources of a large state agency.³⁵ In contrast, Virginia's appointed superintendent of public instruction has duties prescribed by the board in addition to duties otherwise prescribed by law.³⁶ The superintendent serves as secretary to the state board of education, but information is lacking as to which body heads the education agency in Virginia.

Additionally, Tennessee has implemented the idea of a single appointed officer of education; however, this had been done by statute or administrative regulation rather than constitutional provision. The Tennessee commissioner of education is appointed by the governor and is empowered to appoint all heads

and subordinates in the department, but these appointments are subject to the governor's approval. The commissioner can, in certain circumstances, request that appropriate authorities protect, recover, or force collection of school funds; provided the governor shall first give approval to such actions.³⁷ The statutes indicate, it is the governor who has strong control in the state department of education. Consequently, departmental programs must be consistent with the governor's priorities since the governor has the ability to modify programs or replace administrators. Tennessee's structure minimizes chief state school officer-governor conflict and presumably there is a spirit of cooperation between the two for education programs.

Tennessee's state board of education is also appointed by the governor but gubernatorial power is constrained by lengthy terms of board members--9 years--and in the manner of determining the representative area. Twelve members are appointed, but each of the 3 geographic-political divisions of the state must be represented by 4 members and each of the 2 leading political parties must have at least 3 board appointees. Despite its nonconstitutional status, Tennessee's state board has statutory authority for policy-making and regulatory action for K to 12 education as well as having the authority to administer laws governing vocational education.³⁸

Statutory authority and restrictions on gubernatorial appointments seem to give independent status to Tennessee's state board of education. However, the governor, along with making board appointments, also serves on that body as an ex officio member. Further, it is the governor and not the board who appoints and holds accountable the commissioner of education. Finally, the governor's appointee is not only a voting member of the state board, but also is chairman. Tennessee's education "system is a strong executive-type organization dominated from the top which relegates the board to a relatively minor role".³⁹ Of the 3 states where the governor appoints the chief state school officer, the case of Tennessee indicates the strongest centralized control over the state education agency, but all 3 states have structures which emphasize the governor as the ultimate head of the state department of education.

Appointed Boards. An appointed executive board as head of an educational agency reflects the idea that education is nonseparable from other governmental functions with the governor being the chief administrative officer of the state, responsible for and accountable for education. Therefore, most of the arguments advanced for an appointed board are similar for an appointed individual. For example, on accountability, Charles E. Reeves states:⁴⁰

If school board members are appointed, the appointing authority can be held fully responsible to the people for the actions of the school board, for the integrity of the members appointed, and for any misuse of the schools by the appointing authority or by the school board, for its members' political or selfish purposes.

However, there are differences between the 2 concepts. An appointed board is an additional element inserted between the governor and the departmental executive officer (the superintendent). To some, it is viewed as a preventive device to provide a measure of insurance against a single individual's control over education, while to others, it is viewed simply as a hinderance. In either case, it means a division of what was one function under a single appointed officer into 2 functions--policy-making and administration. In order for a board to operate effectively, it must also be able to appoint its administrative officer whose responsibility it is to carry out programs and policies determined by it. It would seem futile for a board to formulate educational policy if its administrative officer were not directly responsible to it. If the chief state school officer were selected by some other authority, the individual would be under no obligation to carry out the board's programs. The instance of a board functioning as a department head also differs from a single appointed officer in one further respect. When boards are used in this capacity, the reasons usually advanced are that a basically important and extensive enterprise as education requires a representative board. Beach and Will have contended that boards are more representative of the total population they serve than an individual who serves as the policy-making agent and should be in a position to make wiser and sounder policy decisions than an individual.⁴¹ More importantly, widespread access to the policy-making machinery should be maintained.

Proponents of an appointed board argue that this system places men and women of the highest caliber and qualifications on the board. By exercising due care in selection, capable board members can be found. It is argued that many citizens hesitate to become involved in a race for public office, even if it is on a nonpartisan basis. Many professional and business people are reluctant to subject themselves to electoral campaigns. Desiring to avoid the necessity of spending a great deal of time and sometimes money in a campaign for election, they refuse to run. These same people, however, are often willing to serve on the school board if asked to do so as a matter of civic responsibility. Appointment is considered more of an honor and such persons may be quite willing to give the time necessary for effective school board services but be unwilling to take time out from their business and professional duties to seek office. It is felt then that appointment for long, overlapping terms of persons deeply interested in the welfare of the public schools, from nominees selected by representatives of civic and other organizations, will secure better members than a competition for school board via popular election.⁴²

An appointed board is constitutionally established in 5 of the 26 states which establish a state board of education. These are: Arizona, Georgia, Missouri, Virginia, and West Virginia. All 5 states also require senate confirmation on board appointments. Two other state constitutions establish boards, the membership of which consists of appointed individuals plus state officials. In Montana's Constitution, a 10-member board is established consisting of the governor, commissioner of higher education, superintendent of public instruction, and 7 others to be appointed by the governor with the consent of the senate. In North Carolina's Constitution, a 14-member board is provided, consisting of the governor, the treasurer, the superintendent of education, and 11 others to be appointed by the governor and approved by the legislature in joint session. Eight are to be from school districts and 3 at large. The constitutions of Missouri and West Virginia further designate the maximum allowable number of partisan appointees. Article IX, section 2(a), of Missouri's Constitution reads in part "...consisting of eight lay members appointed by the governor, by and with the advice and consent of the senate, provided that at no time shall more than four members be of the same political party...." West Virginia's Constitution states "...no more than five members of the board shall belong to the same political party...." (Article XII, section 2)

GOVERNANCE

It is difficult to determine from the constitutions whether these appointed boards function as authoritative or advisory heads of the state educational agency. It may be assumed that those boards which select the superintendent of education may have substantial policy-making influence over the educational agency. Only the appointed boards of Missouri and West Virginia constitutionally select their administrative officer. The rest of the states mentioned above elect the chief state school officer, except for Virginia where the governor not only appoints board members but appoints the chief state school officer as well.

The constitutions of Missouri, Montana, and West Virginia provide that the board shall have duties and powers as determined by the legislature and, in general, shall supervise the public school system. The constitutions of Arizona and Georgia are silent regarding the board's powers and duties. Only North Carolina and Virginia have constitutions which contain any degree of detail regarding duties and functions of the state board, none of which, however, includes the selection of or relationship to the board of an administrative officer.

Generally speaking, these 7 states provide for the separation of policy-making and administrative functions at the administrative level. The state board performs the principal policy-making or legislative function while the chief state school officer and department staff perform professional administrative tasks. However, these appointed boards have limited policy-making roles. They are either confined to an advisory capacity or to exercise of a narrow range of delegated powers. In fact, the chief state school officer overshadows these boards, with the exception of 2 states. But this structure is consistent with the idea, that the state educational agency is like any other executive department, and its head should be appointed by and serve at the pleasure of the governor.

Legislative Financing of Education. Those who view education as a typical governmental function feel that it is the legislature's role to provide funds for education in the same manner as for other public services. The legislature is responsible for reviewing the budgets of various state departments and

agencies, and education's budget should be one of them. Particularly since the Serrano v. Priest decision of the California Supreme Court, there is demand by some persons that the state should provide an increasing portion, even to full assumption of school support. These individuals contend that the legislature should provide equitable amounts for education throughout the state and also establish an appropriate priority for education along with other public services. To lodge the financing of education with the legislative body is also in keeping with the idea of a state budget being a total financial plan for the state.

The legislature's fiscal responsibility entails more than simply budget review. In the interest of all, the legislature must be equipped to control the taxing and spending policies of administrative officials, and to supervise and hold accountable administrative officials who implement policies determined by the legislature.⁴³ One writer states that the legislature is:⁴⁴

...much more than a mere lawmaking body. It controls finances through taxation and appropriation. It has administrative control to worry about.... These functions, the control of finances and administrative oversight of the executive branch, are strongly interrelated, and constitute the most significant role which state legislatures play today.

The opponents of fiscal independence for education also point out that the rising cost of education has increased pressures for outside control over financial affairs and local school districts. It is felt that fiscally independent school boards are finding it increasingly difficult to remain independent in the face of these steadily rising costs. Further, some boards, because of public reaction to increased budgets, have come to consider fiscal independence too great a burden and thus welcome the opportunity to put themselves under the protective custody of state government.

There are 5 states: Georgia, Michigan, New Jersey, Pennsylvania, and South Carolina which constitutionally require the legislature to provide for the financial support of public schools. Michigan's state board is a partisan one and it selects its own administrative officer. However, the members are elected rather than appointed, after being nominated by party convention. In Georgia, the board and superintendent of education are selected on a partisan basis;

however, the board is appointed and the superintendent of education is elected at large. For South Carolina, state board members are elected by the legislative delegations of the several counties within each judicial circuit while the superintendent of education is elected at large. New Jersey's and Pennsylvania's constitutions are silent and make no mention of a chief state school officer nor a state board.

Special funds. Some other state constitutions provide for legislative appropriation only as supplementary funding to education. These are the states which constitutionally establish special funds for education, the most frequent being a common, regular, or permanent "state school fund". This type of fund is composed of earmarked revenues for education (specified tax revenues, proceeds of land sales, and investments, escheated estates, fines, gifts and donations, etc.) and is used only to finance education. Of the 39 states which have such a state school fund, 27 of them constitutionally require the legislature to add to or supplement the school fund by general appropriation or by specified tax revenues (see Appendix D). Because its effect is to curtail legislative (and executive) action in education, the concept of special funds reflects the idea of education as a social government function. As one study has stated:⁴⁵

...Special funds are continuing appropriations of specific revenues, without regard to actual needs. They tie the hands of the Executive and the Legislature since they can be used only for specific purposes, and thus, one Legislature succeeds in binding its successors.

Some states have constitutionally removed the control and supervision of the state school fund from the legislature by establishing a separate nonlegislative body to be in charge of this fund. Nine state constitutions establish commissions or boards for the purposes of managing, supervising, or investing the school fund, or the disposal of school lands. These are: Colorado, Minnesota, Montana, Oregon, South Dakota, Texas, West Virginia, Wisconsin, and Wyoming. In all cases, the commission or board is composed of elected officials such as the governor, treasurer, superintendent of education, auditor, secretary of state, comptroller, and attorney general.

LOWER EDUCATION

Others oppose the concept of special funds on the grounds of unsound public finance policy. C. D. Hutchins has maintained the inadvisability of such a method on the basis that earmarking reduces flexibility in approving the state budget, frustrates the legislature in its efforts to obtain economy and eliminate waste, and does not assure provision of the right amount for school support. Hutchins contends that the proceeds of the earmarked revenue may be ample part of the time and disproportionately low for other years. But more commonly, earmarked funds are not sufficient and legislators are expected to appropriate additional amounts. He further states that:⁴⁶

The absence of earmarking places complete reliance upon the state legislature to appropriate the right amount for education in relation to the other requirements of public service and exhibits a faith in the legislative process which, in the long run, assures the most careful consideration of appropriations for the schools and for other items in the state budget.

A further disadvantage of the special fund concept is that funds are allocated on the basis of need:⁴⁷

Special funds represent a clumsy and archaic method of making allocations of public moneys to particular purposes. They serve no purpose that could not be accomplished far more conveniently, efficiently and economically through the budget system. Public moneys should be allocated on the basis of demonstrated needs with due regard to the importance and urgency of each need in relation to all other needs. The special fund system takes no account of actual or relative needs for moneys, but arbitrarily applies revenues from particular purposes.

Several state constitutions establish 2 or 3 special funds for education, and some others contain detailed provisions on the various kinds of revenues to be earmarked for education (Louisiana's document leads the field in this respect). By contrast, there are 7 state constitutions which are silent regarding educational financing. These are: Alaska, Hawaii, Illinois, Massachusetts, New Hampshire, Pennsylvania, and Vermont. For a further discussion of special funds, see Hawaii Constitutional Convention Studies 1978, Article VI: Taxation and Finance.

Recommendations for Governance in Hawaii

The issue of governance for public education is affected by the fact that responsibility for public education in Hawaii is shared by the legislature, the executive, and the board of education with some confusion over their respective responsibilities.⁴⁸

While the board of education is responsible for the governance of the department of education, this is not what occurs in practice. The legislature has the primary power of budgeting for the department of education and, consequently, can influence or mandate department of education programs, policies, directions, and activities very heavily. The governor exercises this kind of power also with the ability to "allocate" or not allocate funds and the governor also has control over other factors of administrative supremacy that can influence department of education operations. The public, therefore, is never sure just who is responsible for a particular decision affecting the department of education or who is to be held accountable for its policies.⁴⁹

Legislative Role. The legislative role is generally regarded as clear, since the debate of the 1950 Constitutional Convention indicated that:⁵⁰

The phrase, "in accordance with law," contained in Article IX, section 3, means that the legislature may legislate on any matter relating to public education and that the board of education may formulate policy where no law exists or, where there is law, in a manner not contrary to law.

Although the legislature possesses such plenary powers, there exist certain limitations on the scope of legislative authority. In the first place, it should be noted that the legislature cannot act arbitrarily or without any reasonable basis for so doing.⁵¹ Moreover, legislation enacted must be uniform in operation throughout the state. Legislation that violates the principle of uniformity would be unconstitutional under the equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution.⁵²

Governor's Role. With regard to the respective responsibilities of the executive and the board of education, the problem can be traced to the Hawaii Constitution adopted in 1950 which originally provided for a board of education appointed by the governor. As long as the board remained appointed, the principle that executive authority resided with the governor went unquestioned. No law was passed by the legislature excepting the board from the governor's supervisory powers. When the Constitution was amended in 1964 to provide for an elected school board, the legislature did not alter the relationship. Thus, the board is constitutionally accountable to the general public because it is elected but the department of education like all executive agencies is also accountable to the governor, giving rise to the anomalous relationship.⁵³

The 1973 legislative auditor's Management Audit of the Department of Education indicated that an agency can achieve direct public accountability only if it is completely independent meaning that it must not only be elected but possess taxing and revenue-raising powers. Neither the 1950 nor the 1968 Constitutional Conventions empowered the board with such authority since the legislature controls the appropriations and the governor determines the allocation level.⁵⁴ Having at least a semi-autonomous status, the department has attempted to develop aggregate fiscal controls whereby the governor would establish an aggregate ceiling on the budget for public education and the legislature would appropriate funds in aggregate amounts. Within this ceiling, the board of education would make educational policies and manage the school system by establishing program priorities and allocating resources to effectuate these priorities. The board of education has charged the superintendent with the responsibility of designing such a system of aggregate fiscal controls.⁵⁵

Three questions need to be answered on governance if a constitutional amendment is to be proposed:⁵⁶

- (1) Is the department of education to be headed by a single executive or by a board?
- (2) If headed by a board, should the board remain elected or be appointed?

GOVERNANCE

- (3) What should be the relationship between the governor and the department of education?

CORE Report Recommendations. The governor's ad hoc commission on operations, revenues and expenditures examined the governance issue with a threefold purpose:⁵⁷

- (1) To clarify the complex decision-making process and to make accountability more explicit;
- (2) To provide public input into the educational system by providing opportunities for the public to express their concerns at a time when their expressions have the potentiality of affecting decisions;
- (3) To focus on the heart of the enterprise--learning/ teaching--and the chief participants--students, teachers, and other professional personnel.

Based on these considerations, the commission opted for a position which departed from the view that the board should be insulated from politics. The commission indicated that the present approach did not really provide for meaningful public input and that keeping education out of politics may not be necessarily desirable if government was obligated to operate the system. In its 1974 report, the commission recommended that:⁵⁸

- (1) The "board" approach to governance of the lower education system be modified in favor of governance via the traditional triumvirate of governmental organization, legislatively by the State Legislature, administratively by the Governor and Superintendent, and judicially by the court system.
- (2) The Board of Education, appointed by the Governor and confirmed by the Senate, continue to exist but serve in an advisory capacity to the Superintendent of Education.
- (3) The Board of Education be comprised of representatives from the parent councils to be elected from the school complexes.

In regard to internal administration, the commission noted that in the interests of streamlining overall management of the department of education and in an attempt to provide authority commensurate with the responsibility carried

LOWER EDUCATION

by the superintendent of education, the superintendent should be appointed by the governor. The commission indicated the change offers the following advantages:

- (1) Provides a clear-cut chain of command for department of education management.
- (2) Affords authority commensurate with responsibility to superintendent of education for managing the department of education.
- (3) Focuses accountability.
- (4) Makes the power of the governor's office directly available to the superintendent of education in relationships with the legislature, unions, etc.
- (5) Helps maintain separation between administrative and legislative aspects of education.
- (6) Allows school principals to be considered part of the department of education management.

To help further separate legislative from administrative responsibilities and to concentrate authority for managing the school system in the department of education, the commission indicated the legislature should consider the feasibility of a "lump-sum" budget for the department of education.

The CORE Report recommendations related to the above subjects are as follows:⁵⁹

- (1) The Superintendent of Education be appointed by the Governor with the advice and consent of the Senate and serve as a full cabinet officer.
- (2) As the Department of Education improves its management capability, the Legislature should consider the feasibility of a "lump-sum" budget for the Department.

Chapter 5

EQUAL EDUCATIONAL OPPORTUNITY

The Concept of Equal Opportunity

In presenting the various aspects of the concept of equal educational opportunity, it is necessary to first discuss the idea of "equal opportunity" and its relevance to education, particularly to the quantity of educational experiences available and to the quality of the educational product. Francis Keppel calls the first revolution of American education that of quantity education, an attempt to provide everyone with an education. The second revolution, equality of opportunity, strives to provide not only an education for everyone but to transmit the values of a democratic society by making access to the best that education has to offer equal to all.¹

Social Inequities. "Equal opportunity" and/or "egalitarian-ism" has been acknowledged by both political scientists and educators as being a dominant value of American society. It is further acknowledged that the school is one way of giving expression to this value. This belief or faith in education as one of the means to achieve equality of opportunity has long been a tradition of the American people. Horace Mann in the nineteenth century defined education as the "great equalizer of the condition of men". The U.S. Commission on Civil Rights states:²

Education has long been recognized as one of the important ways in which the promise of America--equality of opportunity--can be fulfilled. The public schools traditionally have provided a means by which those newly arrived in the cities--the immigrant, and the impoverished--have been able to join the American mainstream. The hope for public education always has been that it would be a means of assuring equal opportunity and of strengthening and unifying American society.

Implicit then is the assumption that some individuals will not have the same opportunities as others to fully participate in the American "mainstream". Consequently, education has been viewed as a means of overcoming such social inequities.

LOWER EDUCATION

Racial Discrimination. The concept of equal educational opportunity, particularly in the 1950's and 1960's was closely related to the many court decisions and studies based on meeting the issue of desegregation of public schools. The landmark case of Brown v. Board of Education³ on desegregation was determined under the provisions of the Fourteenth Amendment to the U.S. Constitution. This amendment requires the states to guarantee all persons equal protection of the laws, regardless of race. It held:⁴

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment--even though the physical facilities and other "tangible" factors of white and Negro schools may be equal.

While the subject of desegregation and racial discrimination has largely been centered in certain geographical areas of the mainland United States, the findings based on cases regarding racial discrimination have been considered applicable to other groups of individuals such as the "culturally deprived", "the educational disadvantaged", or the "socially disadvantaged". In the 1970's, equal educational opportunity has been extended to apply not only to racial imbalance but to alleviate social, economic, cultural, and sexual imbalances as well.

Financing Education. While the conclusion that separate but equal educational facilities are inherently unequal, was based more upon consideration of social inequities, equality of education has often been measured in terms of expending equal dollar amounts by the public sector. The assumption in such a case is that the educational needs of any given group of students are essentially the same as those of any other group of comparable size in any other location in the state.

This has not necessarily been the case, however, as studies have indicated. The U.S. Office of Education's report entitled Equality of Educational Opportunity concluded that even where a similarity of fiscal and physical factors exist from one school to the next, there is a wide variation in pupil achievement within the same student body. The report indicates that

EQUAL EDUCATIONAL OPPORTUNITY

educational disadvantage is more a function of: a student's socioeconomic background; social and motivational composition of the student body within a given school; and beliefs of the individual students about whether the environment will respond to reasonable efforts or whether the student believes it is instead merely random or immovable.⁵

It is possible, then, that unequal expenditures for education may be a means toward equalizing education.⁶

The introduction of the concept of "compensatory education" grew out of the recognition that learners who did not begin from the same point may not have comparable opportunities for achievement when provided with equal and similar educational experiences. To make the opportunity equal, it is argued, it may be necessary to make education something more than equal. It may be necessary to compensate for the handicaps if we are to provide education of equal quality. It may be necessary to change the educational method and create new models in order to meet the learning need and style of the youngster who comes to school out of a different background of experiences.

Sex Discrimination. In the years since the 1954 Supreme Court decision regarding Brown v. Board of Education, federal and state legislation and case law have focused on other forms of discrimination which exist in educational institutions and agencies and have defined the rights of students not only in regard to race, but particularly in terms of sex.

Section 906 of Title IX of the 1972 Education Amendments states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

Title IX prohibits discrimination on the basis of sex against students and employees of education programs and activities receiving federal funds. Nearly all elementary, secondary, and post-secondary institutions are covered under this legislation. The Title IX Regulation prohibits sex discrimination in such areas as:⁷

LOWER EDUCATION

- (1) Admissions to vocational, graduate, professional, and public undergraduate schools.
- (2) Access to courses and programs.
- (3) Counseling and guidance--tests, materials, and practices.
- (4) Physical education and athletics.
- (5) Vocational education programs.
- (6) Student rules and policies.
- (7) Financial assistance.
- (8) Student housing.
- (9) Extracurricular activities.
- (10) Employment in education institutions.

Equal Educational Opportunity in Hawaii

Unlike school systems in the other states where the issue has been visible in the provisions of educational opportunities for black children as compared with white children, the issue in Hawaii instead has been one of providing equally for handicapped children--the mentally retarded, the emotionally disturbed, physically handicapped, the academically retarded--as compared with "normal" children. Educational leaders and legislators have sought to equalize this discrepancy in several ways--the funding of programs according to needs, funding by the number of pupils to be educated, and funding on a per pupil expenditure basis. The problem is addressed by the Master Plan for Public Education with the commitment that the "...school system will provide pupils with equal opportunities in education". The Master Plan states:⁸

Each child, regardless of the circumstances of his birth, background and the size and geographic location of his school, should have the best chance the school system is capable of providing to develop his intellectual, moral, aesthetic and technical capacities.

A Constitutional Provision on Equal Educational Opportunity

Should a provision in guaranteeing equal educational opportunity for all be incorporated in the Constitution as one of the guidelines for public policy in education? How should equal educational opportunity be defined, if at all? Moreover, if such a statement is incorporated, should the Constitution take further steps to insure this policy by requiring the legislature or some other government agency to be the body responsible and to take action if necessary in order to achieve this end?

The Hawaii Constitution requires equal protection under the law and explicitly forbids discrimination because of race, religion, sex, or ancestry. Article I, Bill of Rights, section 4, reads:

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

Section 1 of the education article in Hawaii's Constitution, while omitting the reference to sex, reaffirms the guarantee of Article I of the Bill of Rights and states in part that:

...There shall be no segregation in public educational institutions because of race, religion, or ancestry....

While it may be argued that the Bill of Rights already prohibits sex discrimination, it would appear that an amendment to Article IX ought to be considered to include "sex" for consistency and to place Hawaii's Constitution in line with recent federal legislation and Hawaii's Equal Rights Amendment contained in Article I, section 21, of the Hawaii Constitution.

Arguments Against. The major arguments against the inclusion of equal educational opportunity provisions have been condensed in the New York State Constitutional Convention Commission's publication on Education.⁹ These are:

LOWER EDUCATION

- (1) The concept of equal opportunity is itself still evolving, and there is yet no agreed upon definition of this phrase which can be readily translated into a provision in a state constitution. In view of ongoing research and scientific findings, notions of what constitutes equality of educational opportunity will continue to evolve. For this reason, some observers feel that it may be impossible to write into the constitution a meaningful section on equality of educational opportunity for the future. It is argued that in the light of existing imperfect knowledge, experimentation already under way, discoveries yet to be made and the likelihood of greater future understanding, decisions on how to achieve equality of educational opportunity should be left to the legislature and the educational authorities of the state.
- (2) The problems of the economically and socially disadvantaged will not be solved by constitutional edict. In fact, it is said that the imposition upon the legislature of an affirmative duty to act weakens the stature of the constitution because the courts are reluctant to issue a mandate to a co-equal branch of government against which they can impose no effective sanctions. Education is thought to be the vehicle toward common understanding, and common understanding is thought to be the prerequisite for the achievement of social justice and human rights without force or violence. What is needed then is the opportunity for the legislature to be free to use different concepts and to change its approach as problems change.
- (3) The legislature should not be empowered to provide for heterogeneous groupings in public schools because such authority is an infringement on the constitutional right to private property and the right of a citizen to choose a personal domicile in terms of ability to pay, the character of the neighbors, the condition of the neighborhood, the kind of school available and other personal values. There are those who maintain that the welfare and safety of young children require attendance at a school close to home. Others who have moved from a particular neighborhood to promote the welfare of their children object to having them returned to that neighborhood for schooling. Still others object to the use of some children as "pawns" to promote the rights of other children. Some maintain that all such efforts actually cause either further migration to new neighborhoods or increased enrollment at private or parochial schools. Those individuals holding such views believe that unless the population in a neighborhood or a community is balanced, it is unrealistic to expect racially balanced schools. It has also been argued that exposing deprived children to a competitive academic situation before they are ready to deal with it successfully might damage them further.

EQUAL EDUCATIONAL OPPORTUNITY

- (4) In a survey of the constitutions of the 50 states, Montana is the only state whose constitution contains an explicit provision for equal educational opportunity.¹⁰ However, there are those who argue that this kind of statement is unnecessary if a constitution already has a provision relating to equal protection under the law normally found under a bill of rights article. It is felt that such existing constitutional provisions provide adequate bases for providing equal opportunity. It may further be argued that the question of equal educational opportunity is a nonconstitutional matter. It may well be considered a departmental policy. Dentler has stated:¹¹

Establishment of a free common school system that will serve all children necessarily involves attempts to serve them all equally well. Section 2 of Article I (in the New York State Constitution) guarantees equal protection under the law of the State and prohibits discrimination in civil rights.

Arguments For. Arguments for the inclusion of a provision on equal educational opportunity are:

- (1) Some writers feel that an adequate definition of equal educational opportunity can be achieved by means of clarifying what is meant by such labels as educationally disadvantaged, or culturally deprived. Since this is considered possible, then such a provision can be incorporated in the constitution. Dentler has stated that although these at one time were ethnic labels, they all nevertheless are attempts to identify those undesirable attributes which are shared among students who do not do well in school.¹² However, he does feel that some of these labels are more inadequate and misleading than others. For example, he takes issue with the term "culturally deprived". He feels this is cloaked arrogance since it implies that a child can be culturally deprived only in the sense that he possesses a culture which does not happen to be the culture preferred by another group. Such a concept threatens to violate the sense of constitutional reference to all children. He also takes issue with the label "socially or culturally disadvantaged" since this refers to specific background factors or antecedents to the teaching or learning function. A free common school system must presuppose that pupils will be drawn from diverse subcultures and that some enter childhood with better overall life prospects than others. Dentler feels that for want of a better concept, perhaps the concept of "educationally disadvantaged" could be used. He states, however, that:¹³

LOWER EDUCATION

...this categorical label has a few strengths to offer those who seek to interpret state educational policies and practices. For example, it is an idea that may be made to cut both ways: We may think of people as clients who attend advantaged or disadvantaged schools; that is, whose programs of instruction and equipment for aiding study are more or less well designed or supplied, and whose teachers are more or less able to teach. Or, we may reverse the concept and think of pupils who, regardless of the level of advantage or disadvantage provided by schools, are less able to learn than others.

We may also elect to broaden or narrow applications of the concept of educational disadvantage. It may include students with organic and functional disabilities, or it may be limited to students in regular public schools who exhibit cumulative academic retardation relative to age and grade norms for the state or nation.

- (2) Several writers also feel that such a provision is necessary because there is no guarantee that states or local communities will inevitably strive for equal educational opportunity. Campbell states:¹⁴

Many localities cannot provide educational opportunity for the children, youth and adults of their communities.... Some states cannot or will not provide adequate educational opportunity for the people within their boundaries.

Many who are not satisfied with the rate of progress to date in achieving equal educational opportunity hold that it is necessary to change state constitutions in order to prod both the public and the responsible government authorities. Clarence Senior, in discussing the New York State Constitution, has stated:¹⁵

The supporters of a militantly democratic educational system should, I believe, press for a positive statement of the right of each person to equality of educational opportunity. Such a statement is now missing. The present [New York] constitution permits farsighted boards of education to attempt to provide such opportunities, but it does not make such efforts mandatory.

- (3) Some suggest that progress toward achieving the goal of equality of educational opportunity might be speeded if the legislature were assigned responsibility to promote equal

educational opportunity regardless of domicile, race, religion, economic status, or sex. This would allow the legislature to do more to achieve true equality of educational opportunity, by providing for adequate educational programs designed to overcome the adverse effects of poverty, segregation, discrimination, infirmity, or other individual handicaps or disadvantages. Others suggest that the legislature be made responsible for taking steps to prevent discrimination in education, to promote integration in education or to do both. Such a provision could be coupled with another on equality of educational opportunity. Either or both would focus attention on the problems of inequality of education.¹⁶ One would stress preventative measures, the other remedial.

An Educational Bill of Rights

An alternative proposal submitted by the New York Commission on the Constitutional Convention is an "Educational Bill of Rights". The constitution could be amended by inserting a positive statement of the basic rights of citizens with respect to education. Although its proper wording would require careful deliberation, such a statement might provide specifically for the right of all to an equal educational opportunity or for the right to equal access to education made available directly or indirectly at public expense. Proponents of such amendments argue that this would exert pressure on the legislature to achieve true equality of educational opportunity and equal access to education advantages, but would still permit the legislature and education authorities latitude to devise and improve programs. In the judgment of those who support this type of amendment, an open-minded attitude on the part of citizens and public policy makers is first necessary in order to accomplish the goal of equal educational opportunity for all. Proponents also stress the moral and exhortative impact of such a statement.¹⁷

In summary, the proponents for a constitutional guarantee for equal educational opportunity feel that the concept can be defined and its inclusion is a matter of social urgency. On the other hand, those who argue against such a provision feel that there is much yet to be clarified and that there is a need for more research on the subject in order to achieve this clarification. These individuals subscribe to the school of thought that prefers to leave much to

LOWER EDUCATION

legislative enactment and statutory law rather than constitutional law. In this context, an initial decision on whether or not any meaning can be given to the concept of equal educational opportunity will precede the question of whether or not it can or should be included in the constitution. It may be worth noting that the Model State Constitution makes no mention of equal educational opportunity. Article IX, Public Education, simply states:¹⁸

Free Public Schools; Support of Higher Education. The legislature shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Chapter 6

PUBLIC AID TO NONPUBLIC SCHOOLS

"Public aid" to "nonpublic schools" usually refers to the indirect or direct use of government funds or tax revenues (whether local, state, or federal) for the support, benefit, or aid of "nonpublic schools", which are educational institutions supported by religious denominations or other private interests. Nonpublic schools are most often divided into 2 groups--sectarian (religiously affiliated) and nonsectarian--and then sometimes further subdivided within these classifications. They include parochial or sectarian schools, privately operated nonsectarian schools (profit-making or nonprofit), privately operated schools for the handicapped or those with special needs for whom the education equivalent to public elementary or secondary schools is provided, private college preparatory schools or military academies, secondary level "finishing" schools, and evening schools offering the equivalent of high school education.¹ For a discussion of public aid to nonpublic schools of higher education, see Part II, Higher Education.

When considering the issues of public aid to nonpublic schools, a number of questions should be considered. As suggested by the New York State Temporary Constitutional Convention, these are:²

- (1) Should public funds help support education in nonpublic schools?
 - (A) Can some public purposes be better, more economically realized through nonpublic schools?
 - (B) Will public support of nonpublic schools adversely affect the public schools, thus possibly impairing our commitment to universal public education and equality of educational opportunity?
- (2) If support is to be given, what forms and amounts of support are desirable?
 - (A) Is there any reason for distinguishing between elementary and secondary schools and higher education?

- (B) Is there reason to prefer direct to indirect assistance?
- (C) What kind of control, if any, should the state have over the use of public funds by nonpublic schools?

The First Amendment and the U.S. Supreme Court

In most instances, public aid to nonpublic schools in grades K to 12 involve sectarian schools. In this context, the subject is part of the larger issue of the separation of church and state. In order to be acceptable constitutionally, plans to aid nonpublic schools must first of all comply with the federal constitution. More specifically, such aid programs must clear both the First Amendment's prohibition against the establishment of religion and the Fourteenth Amendment's due process provision.³

The First Amendment of the U.S. Constitution prohibits the enactment of any law respecting the establishment of religion and guarantees the freedom of religion. The Fourteenth Amendment contains a "due process" restriction upon the states and is generally conceded to make the First Amendment applicable to the states.⁴ Through its interpretation of these amendments, the U.S. Supreme Court has been slowly defining its position on the limits of permissible state aid to private or parochial schools. Therefore, the arguments for or against the use of public funds for nonpublic schools frequently refer to relevant U.S. Supreme Court cases. A review of U.S. Supreme Court decisions based on the establishment clause of the First Amendment relating to public aid to sectarian schools provides guidelines for types of aid which are permissible:

- (1) The reimbursement of parents for the cost of transporting children to school by public transportation, including parents of parochial school students, is not a violation of the establishment clause (Everson v. Board of Education).⁵
- (2) A program whereby pupils in public schools are released temporarily from school classes to attend religious classes conducted by ministers of their respective faiths in school building rooms is a violation of the establishment clause (McCullum v. Board of Education).⁶

PUBLIC AID TO NONPUBLIC SCHOOLS

- (3) A program whereby pupils in public schools are released temporarily from school classes to attend religious instruction or devotional exercises in religious centers off the school premises is not a violation of the establishment clause (Zorach v. Clauson).⁷
- (4) The daily recitation in the public schools of a prayer prescribed by the school board is a violation of the establishment clause (Engel v. Vitale).⁸
- (5) A state law requiring the reading, without comment, of at least 10 verses of the Holy Bible as a part of the opening exercises each day in the public schools and providing for excusing pupils from such exercises on the request of a parent or guardian is a violation of the establishment clause (School District of Abington Township, Pennsylvania v. Schempp).⁹
- (6) A school board regulation providing for the holding of daily opening exercises in the public schools consisting primarily of the "reading, without comment, of a chapter in the Holy Bible and/or the use of the "Lord's Prayer" and providing for excusing pupils from such exercises on request of the parent or guardian is a violation of the establishment clause (Murray v. Curlett).¹⁰
- (7) Requirement that local school boards lend secular textbooks free of charge to all private and parochial school students in grades 7 to 12 is not a violation of the establishment clause (Board of Education v. Allen).¹¹
- (8) Granting property tax exemptions to religious organizations for properties used solely for religious worship is not a violation of the establishment clause (Walz v. Tax Commission).¹²
- (9) Two state laws, Pennsylvania's Nonpublic Elementary and Secondary Education Act and Rhode Islands' Salary Supplement Act to permit salary supplements for teachers of secular subjects in parochial primary and secondary schools were held in violation of the establishment clause (Lemon v. Kurtzman, Earley v. DiCenso; Robinson v. DiCenso).¹³
- (10) An Ohio statute providing for educational grants to parents who send their children to nonpublic schools was found unconstitutional by a federal district court. The case was appealed, but the U.S. Supreme Court upheld the lower court's decision (Wolman v. Essex).¹⁴
- (11) Following the U.S. Supreme Court's invalidation in Lemon v. Kurtzman, (Lemon I) of Pennsylvania's statutory program to reimburse nonpublic sectarian schools for secular services,

LOWER EDUCATION

the District Court on remand enjoined any payments for services performed after Lemon I but permitted the state to reimburse the schools for all those services prior to the first Lemon case. Appellants challenged the scope of the court's action, appealing the case to the Supreme Court but the Court affirmed the lower court's action (Lemon v. Kurtzman).¹⁵

- (12) Amendments to New York's Education and Tax Laws, enacted in 1972, established 3 separate aid programs--a program which granted money directly to qualifying nonpublic schools for maintenance and repair purposes, a tuition reimbursement plan for eligible parents of nonpublic school pupils and a tax credit program for parents of nonpublic school students not eligible for tuition reimbursements. They were held to be in violation of the establishment clause (Committee for Public Education and Religious Liberty v. Nyquist).¹⁶
- (13) Pennsylvania's "Parent Reimbursement Act for Nonpublic Education" to establish a tuition reimbursement program for nonpublic school student's parents is a violation of the establishment clause (Sloan v. Lemon).¹⁷
- (14) An appropriation by the New York legislature to reimburse nonpublic schools for performing certain mandated services (keeping attendance and health records, administering certain required tests, etc.) is a violation of the establishment clause (Levitt v. Committee for Public Education and Religious Liberty).¹⁸
- (15) With respect to the requirement that the state provide directly to all children enrolled in nonpublic elementary and secondary schools, auxiliary guidance, testing, remedial, and therapeutic services (Act 194) and loans of textbooks, instructional materials and equipment (Act 195), it was held that Act 194 and all but the textbook loan provisions of Act 195 violate the establishment clause (Meek v. Pittenger).¹⁹
- (16) An Ohio statute authorizing the state to provide nonpublic school pupils with the same textbooks as used in public schools; with the same standardized texts and scoring services as used in public schools; with speech, hearing, and psychological diagnostic services provided on nonpublic school premises by public employees; and with certain therapeutic, guidance, and remedial services provided off nonpublic school premises does not violate the establishment clause. Statutory provisions which authorize the loan of equipment or instructional materials to nonpublic school students and field trip transportation to sites chosen by nonpublic school teachers violate the establishment clause (Wolman v. Walter).²⁰

The criteria by which the U.S. Supreme Court has determined the cases have developed over the last 30 years. It was the Allen case and the Walt case in which the U.S. Supreme Court developed the present standard against which all plans aimed at aiding nonpublic schools are tested: (1) the statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion,²¹ and (3) the statute must not foster an excessive government entanglement with religion.²² Despite the limitations on the types of aid which must pass this threefold test, the U.S. Supreme Court was careful not to rule out all aid, noting that "some forms of aid may be channeled to the secular [activities of nonpublic schools] without providing direct aid to the sectarian [activities]. But the channel is a narrow one."²³

Characteristic Constitutional Provisions

Although the First Amendment is held applicable to the several states by way of the Fourteenth Amendment, not all state courts have had an opportunity to decide upon the validity of direct or indirect aid to students of nonpublic schools, nor has any consistent pattern in the decisions emerged. Of note is the U.S. Supreme Court's decision in the Everson case, where providing transportation to parochial school children was found not in violation of the First Amendment, and which left the states free to determine whether their own constitutions would so permit. The dozen or so courts which have faced the issue under general clauses "have divided about evenly on it but the division", according to one jurist, "seems not so much to reflect differences in the phrasing, or, for that matter, the history or social context of their state constitutions, as divergent views on the underlying policy".²⁴ There are those who feel that it was a mistake to ever call upon the First Amendment in deciding the cases. Because the U.S. Constitution itself is explicitly silent on the matter of religion in schools, or more basically, the matter of public funds being used for sectarian purposes, it may be argued that this is an area more of states rights than of personal freedoms. A state could constitutionally allow direct or indirect aid to sectarian schools, if the argument is used that no preferential allotment shall be allowed, or that all sectarian or nonpublic schools be allotted equivalent amounts of aid. Or a state constitution may be silent on this issue,

as in Louisiana's Constitution which leaves the determination of this matter to the legislature.

All state constitutions provide protection for religious worship. Often there are prohibitions against requiring worship or against requiring support of religious institutions. Typically, state constitutions also prohibit the enactment of laws respecting an establishment of religions, the use of public funds for sectarian institutions, and the interference with freedom of worship. For a tabulation of those state constitutions which have restrictions on the use of public funds for sectarian or private schools, or both, or no provisions at all, see Appendix E.

In all but 11 states, the constitutional document contains some provisions regarding public funds and sectarian institutions. These provisions, however, vary greatly in language, extent of detail, and in length. In the aforementioned 11 states, there is an absence of constitutional statements regarding the use of public funds for nonpublic schools. These are: Arkansas, Connecticut, Iowa, Louisiana, Maine, Maryland, New Hampshire, New Jersey, North Carolina, Vermont, and Washington.

Twelve of the 39 states which have provisions regarding nonsupport of sectarian schools also have provisions under a "freedom of religious exercise" clause. An example of this type of statement is Utah's document which adopts the general language of the First Amendment and further states: "No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or for the support of any ecclesiastical establishment".²⁵ The other states with such provisions are: Florida, Georgia, Indiana, Michigan, Minnesota, Missouri, Oregon, Rhode Island, Tennessee, Texas, and West Virginia.

Nine other states designated nonsupport of sectarian and private educational institutions: Alaska, Arizona, Colorado, Hawaii,²⁶ Michigan, Mississippi, New Mexico, South Carolina, and Wyoming. Four states, California, Massachusetts, Nevada, and Virginia specify sectarian schools as ineligible for aid along with other schools. An example is California's Constitution which reads:²⁷

PUBLIC AID TO NONPUBLIC SCHOOLS

No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools....

Virginia's Constitution prohibits state funds to schools or institutions of learning not owned or exclusively controlled by the state, except in 3 constitutionally cited instances. These exceptions are: (1) funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate, or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning; (2) funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by 2 or more states under a joint agreement to which Virginia is a party for the purpose of providing educational facilities for the citizens of the several states joining in the agreement; and (3) funds to nonsectarian schools of manual, industrial, or technical training.²⁸

Alaska's provision provides an example of a brief and nondetailed statement regarding nonsupport of sectarian schools. Article VII, section 1, reads in part: "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." By contrast, Idaho's corresponding provision reads:²⁹

Sectarian appropriations prohibited. --Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose.

Hawaii's Constitutional Provisions

The Hawaii Constitution's provisions regarding religion and public funds are:

LOWER EDUCATION

Article I, Bill of Rights, section 4, Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

Article VI, Taxation and Finance, section 2, Appropriations for Private Purposes Prohibited.

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 3 of Article I of this constitution.

Article I, Bill of Rights, section 3, Freedom of Religion, Speech, Press, Assembly and Petition.

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Article IX, Education, section 1, Public Education.

...nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution.

The place of religion in the public schools of Hawaii is subject to the state constitutional provisions as well as those of the U.S. Constitution. It can be concluded that the state constitutional prohibitions are more restrictive than the federal because of the specific prohibition against: (1) the granting of public money or property for a private purpose, and (2) the use of public funds for the support or benefit of any sectarian or private institution.

Spears v. Honda

The controlling case of state subsidy to nonpublic schools for Hawaii is Spears v. Honda,³⁰ where the Hawaii Supreme Court ruled unconstitutional a state statute and administrative regulation which authorized private and sectarian school students to receive a subsidy for their bus transportation to

and from school. The crux of the decision was the interpretation of Article IX of the Hawaii Constitution. The Hawaii Supreme Court identified subsidies for the bus transportation as being an appropriation of public funds to sectarian and private schools and stated such expenditures were rejected by the framers of the Hawaii Constitution.³¹

Two elements of the Spears decision should be noted. First, the Hawaii Supreme Court observed that the Constitutional Convention of 1950 discussed the scope of the state's role in the education of children in public and nonpublic schools and specifically rejected the child benefit theory as applied to bus transportation and other welfare programs for nonpublic school students. This theory that the true beneficiary of state aid is the student and that the school itself is only an indirect, derivative, secondary or incidental beneficiary had been accepted in some jurisdictions, but rejected in others. Secondly, the Hawaii Supreme Court refused to hold that public provision of transportation to private school students is justified under the police power of the state to protect the health, safety, or welfare of all students. This argument was raised and discussed at length in the state's brief. The Hawaii Supreme Court's implicit rejection of this theory indicates that notwithstanding the broadness and comprehensiveness of the state's police power, it could not be exercised in the contravention of plain and unambiguous constitutional inhibitions against the support or benefit of any sectarian or private educational institution.³²

Further, the Hawaii Supreme Court in Spears did not strike down the statute in toto; it was only when appropriations authorized under the statute were used to subsidize bus transportation to nonpublic schools that a constitutional violation occurred. This question arose because the statute on its face did not distinguish between students from public and nonpublic schools. The Hawaii Supreme Court rectified the situation by construing the words "all school children" as meaning "all public school children".³³

The opinion notes the overlap in the Hawaii Constitution between Article IX, section 1, and Article VI, section 6, which provides:

LOWER EDUCATION

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 3 of Article I of this Constitution.

Article I, section 3, states in part that "No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof." The Court then stated that it is unnecessary to determine whether the transportation of all school children under a general welfare program would violate Article VI, section 6, or Article I, section 3. The Spears decision was appealed, but rehearing was denied.³⁴

FOOTNOTES

Chapter 1

1. Irving Dawson, John Thompson, and Fred Waddell, *The Impact of the Texas Constitution on Education* (Houston: University of Houston, 1973), pp. 38-40.

Chapter 2

1. Hawaii, Legislative Auditor, *Management Audit of the Department of Education* (Honolulu: 1973), p. 5.
2. Hawaii, Department of Education, *Education Today in Hawaii* (Honolulu: 1976).
3. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, *CORE Report to the Governor* (Honolulu: 1974), p. A-2, updated from Hawaii, Department of Education, *Education Today in Hawaii*.
4. Hawaii, Legislative Auditor, p. 11.
5. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. A-7.
6. *New Hampshire Const.* art. 83.
7. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 101.
8. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, Committee of the Whole Debates, pp. 584-585; Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Journal and Documents, Standing Committee Report No. 41, p. 204.
9. Michigan, Citizen's Advisory Committee on Education for the Constitutional Convention, *Report* (Lansing, Mich.: 1961), p. 31.
10. *Ibid.*, p. 33.
11. *Ibid.*
12. Hawaii, Legislative Auditor, p. 11.
13. House Bill 4, Second Legislature, 1963, State of Hawaii, was passed by two-thirds vote and ratified on November 3, 1964.
14. House Bill 421, Second Legislature, 1964, State of Hawaii, was passed by two-thirds vote and ratified on November 3, 1964.
15. House Bill 253, Second Legislature, 1964, State of Hawaii, was passed by two-thirds vote and ratified on November 3, 1964.
16. Senate Bill 1689-70, Fifth Legislature, 1970, State of Hawaii.
17. Legislative Reference Bureau, *Final Cumulative Index of Bills and Resolutions*, for the years 1968, 1972, 1974, and 1976 (Honolulu: 1968-1976).
18. Joint Senate-House Interim Committee on Education, Special Committee Report No. 2, Seventh Legislature, 1974, State of Hawaii, p. 9.

19. New York (State), Temporary State Commission on the Constitutional Convention, *Education*, No. 6 (New York: 1967), p. 15.

Chapter 3

1. W. Brooke Graves, *Centralization of Government in Hawaii* (Washington: U.S. Library of Congress, Legislative Reference Service, 1962), p. 8.
2. Yukio Naito, "School System Decentralization" (Paper presented at the House Majority Seminar on Program Issues, December 5, 1973), pp. 1-2.
3. Lee O. Garber and E. Edmund Reutter, Jr., *The Yearbook of School Law, 1969* (Danville, Ill.: Interstate Printers, 1969), p. 51.
4. *Ibid.*, p. 16.
5. *Ibid.*, p. 17.
6. D. Richard Wynn, *The Organization of Public Schools* (Washington: Center for Applied Research in Education, 1964), p. 4.
7. Wilbur J. Cohen, "The Federal Government and Education," *The Role of Government, Foundations and Business in Education* (New York: American Textbook Publishers Institute, 1963), pp. 35-36.
8. Roald F. Campbell, Luvern L. Cunningham and Roderick F. McPhee, *The Organization and Control of American Schools* (Columbus, Ohio: Charles E. Merrill, 1965), p. 106.
9. Alabama, Arkansas, California, Colorado, Florida, Georgia, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, South Dakota, Texas, Virginia, West Virginia, Wisconsin, and Wyoming.
10. Public Administration Service, *State and Local Government Relationships in the State of Hawaii* (Chicago: 1962), pp. 170-171.
11. *Book of the States, 1972-73* (Chicago: Council of State Governments, 1972), p. 293.
12. Myron Lieberman, *The Future of Public Education* (Chicago: University of Chicago Press, 1960), p. 39. (Note: Although for the most part, Lieberman's arguments for a centralized educational system are in terms of a national or federal system of schools, these constitute basic arguments for centralization whether it be at the state or federal level.)
13. *Ibid.*, p. 40.
14. *Ibid.*, p. 35.
15. Campbell, Cunningham and McPhee, p. 84.
16. Harvey C. Mansfield, "Functions of State and Local Governments," *The 50 States and Their Local Governments*, ed. James W. Fesler (New York: Alfred A. Knopf, 1967), p. 133.
17. James W. Guthrie and Paula H. Skene, "Local Control Gives Way," *Compact*, Education Commission of the States, March/April 1974, p. 20.

18. Advisory Commission on Intergovernmental Relations, "State Aid to Local Government," 1969, pp. 4-6.
19. Hawaii, Legislative Auditor, *Management Audit of the Department of Education* (Honolulu: 1973), p. 55.
20. *Ibid.*
21. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, *CORE Report to the Governor* (Honolulu: 1974), p. A-25.
22. *Ibid.*, p. A-26.
23. *Ibid.*, p. A-27.
24. Hawaii, Legislative Auditor, p. 30.
25. Joint Senate-House Interim Committee on Education, Special Committee Report No. 2, Seventh Legislature, 1974, State of Hawaii, p. 9.
26. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. A-27.

Chapter 4

1. Roald F. Campbell and Tim L. Mazzoni, Jr., *State Policy Making for the Public Schools* (California: McCutchan Publishing Corporation, 1976), p. 303.
2. Sam P. Harris, *State Departments of Education, State Boards of Education, and Chief State School Officers*, DHEW/Office of Education, OE 73-07400 (Washington: U.S. Government Printing Office, 1973), p. 1.
3. Campbell and Mazzoni, p. 287.
4. Nine states which leave the powers and duties of a board of education to the legislature: Arizona, Colorado, Georgia, Mississippi, Nebraska, New York, Ohio, South Carolina, and Texas.
5. Seventeen states which have provisions regarding the powers and duties of a board of education: California, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Utah, Virginia, and West Virginia.
6. The constitutional provisions for Hawaii and New Mexico reads in part:

The board of education shall have power, in accordance with law, to formulate policy.... (Hawaii Const. art. IX, sec. 3)

The state board of education shall determine public school policy.... (New Mexico Const. art. XII, sec. 6A)
7. *Louisiana Const. art. VIII, sec. 3(A)* which reads in part:

The State Board of Elementary and Secondary Education...shall have budgetary responsibilities for all funds appropriated or allocated by the state....
8. Harris, pp. 1-12.
9. Kenneth H. Hansen and Arthur P. Ludka, "Persistent Problems and New Dilemmas," in Edgar L. Morphet and David L. Jessor, eds., *Emerging State Responsibilities for Education* (Colorado: Improving State Leadership in Education, 1970), p. 29.
10. Campbell and Mazzoni, p. 274.
11. *Ibid.*, p. 318.
12. *Ibid.*, p. 319.
13. York Willbern, "Administrative Organization," James W. Fesler, ed., *The 80 States and Their Local Governments* (New York: Alfred A. Knopf, Inc., 1967), p. 358.
14. Campbell and Mazzoni, p. 332.
15. "Study of the Board of Education of Hawaii" (Special School Board Committee, Hawaii Concerned Parents and Teachers, November, 1960). (Mimeographed).
16. Robert F. Will, *State Education: Structure and Organization*, U.S. Office of Education OE-23038, Misc. No. 46 (Washington: U.S. Government Printing Office, 1964), pp. 4, 8.
17. P. Cook, et al., "The Job of the Secretary for Educational Affairs," A Report prepared for the Massachusetts Educational Conference Board, September 1970, VII-3.
18. Leo M. Chamberlain and Leslie W. Kindred, *The Teacher and School Organization* (4th ed.; Englewood Cliffs, N.J.: Prentice-Hall, 1966), p. 53.
19. "Study of the Board of Education of Hawaii."
20. Charles E. Reeves, *School Boards: Their Status, Functions and Activities* (New York: Prentice-Hall, 1954), p. 87.
21. Archie R. Dykes, *School Board and Superintendent: Their Effective Working Relationships* (Danville, Ill.: Interstate Printers, 1965), pp. 164-165.
22. *Ibid.*
23. *Ibid.*, p. 165.
24. *Ibid.*, p. 166.
25. "Study of the Board of Education of Hawaii."
26. Dykes, p. 165.
27. *Ibid.*
28. *Ibid.*
29. Donald J. Leu, *Elementary and Secondary Education and the Michigan Constitution*, Michigan Constitutional Convention Studies (Lansing, Mich.: Constitutional Convention Preparatory Commission, 1961), p. 8.
30. Herbert Kaufman, *Politics and Policies in State and Local Government* (New Jersey: Prentice-Hall, 1963), p. 41.
31. Campbell and Mazzoni, p. 318.
32. Will, p. 9.
33. *Ibid.*

34. Campbell and Mazzoni, p. 325.

35. *Ibid.*, p. 326.

36. Harris, p. 223.

37. Gary V. Branson and Donald J. Steele, Jr., *State Policy Making for the Public Schools of Tennessee* (Ohio: Ohio State University, Educational Governance Project, February 1974).

38. *Ibid.*, p. 25.

39. *Ibid.*, pp. 80, 96-98.

40. Reeves, p. 89.

41. Fred F. Beach and Robert F. Will, *The State and Education*, U.S. Department of Health, Education, and Welfare, Office of Education, Misc. No. 23 (Washington: U.S. Government Printing Office, 1955), p. 4.

42. Reeves, p. 89.

43. *Ibid.*

44. Utah, Legislative Council, Legislative Study Committee, *Final Report* (Salt Lake City: 1966), p. 45.

45. California, Legislature, Assembly, Interim Committee on Constitutional Amendments, p. 11.

46. See remarks by Clayton D. Hutchins, "Guiding Principles in School Finance," *New Directions in Financing Public Schools*, based upon the Proceedings of the Third National School Finance Conference, April 21-22, 1960, St. Louis, Missouri (Washington: National Education Association, Committee on Educational Finance, 1960), p. 103.

47. California, Legislature, Assembly, Interim Committee on Constitutional Amendments, Report, Assembly Interim Committee Reports, 1961-63, Vol. 27, No. 2, Part I, January, 1963, p. 6.

48. Hawaii, Legislative Auditor, *Management Audit of the Department of Education* (Honolulu: 1973), p. 11.

49. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues, and Expenditures, *CORE Report to the Governor* (Honolulu: 1974), p. A-24.

50. Hawaii, Legislative Auditor, p. 11.

51. *Becker v. Board of Education*, 138 N.W. 2d 909 (Iowa).

52. Lee O. Garber and E. Edmund Reutter, Jr., *The Yearbook of School Law*, 1969 (Danville, Ill.: Interstate Printers, 1969), pp. 18-20.

53. Hawaii, Legislative Auditor, p. 12.

54. *Ibid.*, p. 16.

55. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. A-16.

56. Hawaii, Legislative Auditor, p. 16.

57. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. A-23.

58. *Ibid.*, pp. A-24 and A-25.

59. *Ibid.*, p. A-25.

Chapter 5

1. Judith B. Spellman, "Dimensions of Equality of Educational Opportunity," Research Memorandum No. 3 (Stanford, Calif.: Stanford Research Institute, 1967), p. 3.

2. U.S., Commission on Civil Rights, *Racial Isolation in the Public Schools*, Vol. I (Washington: U.S. Government Printing Office, 1967), p. 1.

3. 347 U.S. 483 (1954).

4. *Ibid.*

5. James S. Coleman, et al., *Equality of Educational Opportunity*, U.S. Office of Education, OE-38001 (Washington: U.S. Government Printing Office, 1966). This report is based upon systematic data from district superintendents, principals, teachers, and 3rd, 6th, 9th, and 12th grade pupils in 4,000 schools, along with 1st grade pupils in 2,000 schools during the 1965-1966 school year. The Senate report, *Toward Equal Educational Opportunity*, supports the findings of the Coleman report, that socioeconomic integration may well be the most hopeful strategy for improving the educational opportunity of educationally disadvantaged children. The Senate report further cites some of the criticisms of Coleman's research data, but acknowledges that the Coleman report has provoked an academic debate which continues to the present day.

6. Edmund W. Gordon, "Toward Defining Equality of Educational Opportunity," *On Equality of Educational Opportunity*, ed. Frederick Mosteller and Daniel P. Moynihan (New York: Random House, 1972), p. 426.

7. Shirley McCune and Martha Matthews, *Identifying Discrimination; A Review of Federal Antidiscrimination Laws and Selected Case Examples* (Washington: U.S. Department of Health, Education and Welfare, 1976), p. 3.

8. Hawaii, Department of Education, *Master Plan for Public Education in Hawaii* (Honolulu: 1969), p. 49.

9. New York (State), Temporary State Commission on the Constitutional Convention, *Education*, No. 6 (New York: 1967), pp. 33-35. The arguments for or against the inclusion of an equal educational opportunity provision are still relevant. The 1973 Texas constitutional study, *The Impact of the Texas Constitution on Education*, uses the same arguments.

10. *Montana Const.* art. X, sec. 1(1), reads:

It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

11. Robert A. Dentler, "Educational Disadvantage and the New York State Constitution," *Modernizing State Government: The New York Constitutional*

Convention of 1967, Proceedings of the Academy of Political Science, 28(3) (January, 1967), p. 126.

12. *Ibid.*, p. 121.
13. *Ibid.*, p. 122.
14. Roald F. Campbell, Luvern L. Cunningham and Roderick F. McPhee, *The Organisation and Control of American Schools* (Columbus, Ohio: Charles E. Merrill, 1965), p. 521.
15. Clarence Senior, "Comments: I," *Modernizing State Government: The New York Constitutional Convention of 1967, Proceedings of the Academy of Political Science*, 28(3) (January, 1967), p. 133.
16. New York (State), Temporary State Commission on the Constitutional Convention, *Education*, pp. 35-36.
17. *Ibid.*, p. 37. The Educational Bill of Rights is considered a relevant issue for constitutional framers. *The Impact of the Texas Constitution on Education*, p. 50, states "while equal educational opportunities remain unstated, there is suggestion that equal codes could be amended by inserting an 'educational bill of rights' into a constitution without detailing issues."
18. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 101.

Chapter 6

1. Roald F. Campbell, Luvern L. Cunningham and Roderick F. McPhee, *The Organisation and Control of American Schools* (Columbus, Ohio: Charles E. Merrill, 1965), p. 501.
2. New York (State), Temporary State Commission on the Constitutional Convention, *Education*, No. 6 (New York: 1967), p. 21.
3. Wisconsin, Legislative Reference Bureau, "State Aid to Nonpublic Schools," Research Bulletin 73-2 (May 1973), pp. 2-3.
4. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
5. 330 U.S. 1 (1947).
6. 333 U.S. 203 (1948).
7. 343 U.S. 306 (1952).
8. 370 U.S. 421 (1962).
9. 374 U.S. 203 (1963).
10. *Ibid.*
11. 392 U.S. 236 (1968).
12. 397 U.S. 664 (1970).
13. 403 U.S. 602 (1971).
14. 342 F. Supp. 399 (S.D. Ohio 1972), aff'd 409 U.S. 808 (1972).
15. 411 U.S. 192 (1973).
16. 413 U.S. 756 (1973).
17. 413 U.S. 825 (1973).
18. 413 U.S. 472 (1973).
19. 421 U.S. 349 (1975).
20. 45 U.S.L.W. 4861 (June 21, 1977).
21. *Board of Education v. Allen*, 392 U.S. 236, 243 (1968).
22. *Lemon v. Kurtzman*, 403 U.S. at 612-13 (1971), citing *Waltz v. Tax Commission*, 397 U.S. 664, 674 (1970), and *Board of Education v. Allen*, 392 U.S. 236, 243 (1968).
23. Daniel J. Sullivan, *Public Aid to Nonpublic Schools* (Mass.: Lexington Books, 1974), p. 80, Appendix 4A.
24. Lester J. Mazor, "Notes on A Bill of Rights in a State Constitution," 2 *Utah L. Rev.* 336 (1966).
25. *Utah Const.* art. I, sec. 4.
26. The Hawaii Constitution prohibits the appropriation of public funds for the support or benefit of any sectarian or private educational institution. Two state attorney general opinions exempt the use of public funds for the transportation of private or sectarian school students from this proscription. Opinion No. 66-24 (August 9, 1966) dealt with the question of renting county-owned buses to sectarian institutions to transport students who are released from public schools to attend religious education classes. The opinion answered that such use of buses by religious institutions is within the bounds of the constitution. On the question of the wear and tear of buses constituting an indirect contribution to religion, the opinion cited 2 principles: *maxim De minimus non curat Lex* (the law does not concern itself about trifles); and the premise that it is a "passive accommodation to religion" and as such, does not constitute use of public funds for the support or benefit of religion. A subquestion in Opinion No. 67-13 (April 27, 1967) deals directly with the appropriation of state funds to transport public and private school students. The opinion maintained that this would not be constitutionally prohibited on the principle that such service could be for the safety, welfare, and benefit of the child and not the educational institution. In the most recent Opinion No. 73-15 (December 7, 1973), public money may not be expended to procure insurance for the junior police officer (JPO) programs of nonpublic schools. The opinion cited the controlling case of *Spears v. Honda*, 51 Haw. 1, 449 P.2d 130 (1968), in which the Hawaii Supreme Court held that sectarian school students may not receive a bus transportation subsidy. The opinion stated the character of the bus transportation and JPO programs was similar and the expenditure of public funds to procure the insurance coverage for the private and sectarian schools would be tangible support and benefit to such schools, and therefore unconstitutional.
27. *Calif. Const.* art. IX, sec. 8.
28. *Virginia Const.* art IX, sec. 70.
29. *Idaho Const.* art IX, sec. 5.
30. 51 Haw. 1, 449 P.2d 130 (1968).

31. *Ibid.* at 12.
32. Att'y Gen. Ops. No. 73-15 (December 7, 1973) at p. 5.
33. *Ibid.*
34. 51 Haw. 103, 449 P.2d 130 (1969).

Appendix A

THE STATE DEPARTMENT OF EDUCATION: SEPTEMBER 1972

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Alabama.....	State Department of Education..	The State Department of Education is under the direction of the State Superintendent of Education with the advice and counsel of the State Board of Education. The State Board of Education exercises, through the State Superintendent of Education and his professional assistants, general control and supervision over the public schools of the State, junior colleges, trade schools, Alabama State University and Alabama Agricultural and Mechanical University. All other higher education institutions are under separate boards of trustees.
Alaska.....	State Department of Education..	The Department of Education includes the Commissioner of Education and the staff necessary to carry out the functions of the department. At the head of the department is the Board of Education; the Commissioner of Education is the principal executive officer of the department. The department (1) administers the State's program of education at the elementary and secondary levels, including programs of vocational education, vocational rehabilitation, library services, and correspondence courses and plans; and (2) finances and operates related school and educational activities and facilities.
Arizona.....	State Department of Education..	The Department of Education is administered through (1) the State Board of Education which is the governing and policy-determining body of the department, and (2) the Superintendent of Public Instruction in whom all executive, administrative, and ministerial functions of the department are vested and who is the executive officer of the State Board of Education.
Arkansas.....	State Department of Education..	The Department of Education consists of the State Board of Education, a Director of the Department of Education, and such divisions as presently exist within the department and as may be created by law or the State Board of Education. The State board selects the staff of the department and is authorized to organize the department into such divisions, branches, or sections as may be found necessary and desirable by the Director of Education.
California.....	State Department of Education..	The Department of Education is an administrative unit of State government. The State Board of Education is the governing and policy-determining body of the State Department of Education. The Superintendent of Public Instruction is vested with all executive and administrative functions of the department; he is the secretary and executive officer of the State Board of Education and is ex officio Director of Education. The Superintendent executes, under direction of the State Board of Education, the policies which have been decided upon by the board and directs, under general rules and regulations adopted by the board, the work of all appointees and employees of the board.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Colorado.....	State Department of Education..	The Department of Education is a unit in the executive branch of the State government consisting of the State Board of Education, the Office of the Commissioner of Education, and such divisions, boards, agencies, officers, and employees as may be provided by law or by order of the State board and the Commissioner. The State Board of Education is responsible for the general supervision of the public schools. The Commissioner of Education is secretary of the State board and the administrative and executive head of the department. A separate State Board for Vocational Education functions independently of the State department, the Commissioner, and the State Board of Education.
Connecticut.....	State Department of Education..	No reference is made to the Connecticut State Department of Education in the 1970 edition of <u>Laws Relating to Education</u> or the laws enacted by the 1971 or 1972 General Assembly.
Delaware.....	State Department of Public Instruction.....	The only law that relates to the establishment of the Department of Public Instruction does not refer to the department by name but calls for "the appointment for a term of no more than one year, of professional and clerical assistants necessary for carrying out the policies and the rules and the regulations of the board." The general administration and supervision of the free public schools and of the educational interests of the State are vested in the State Board of Education. The board appoints as its executive secretary the State Superintendent of Public Instruction.
District of Columbia.....	Public Schools of the District of Columbia.....	The control of the public schools of the District of Columbia is vested in the Board of Education which consists of 11 elected members, three elected at large and one from each of the eight school election wards established by law. The Board of Education appoints the Superintendent of Schools for a term of 3 years and a secretary who is not a member of the board. The board determines all questions of general policy relating to the schools, determines the curricula, plans the program of school construction, and is responsible for textbook acquisition. It approves and sets priorities for the expenditure of funds. The Superintendent of Schools has the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He has a seat on the board but not the right to vote.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Florida.....	Department of Education.....	The head of the Department of Education is the State Board of Education in which is vested the general control of the public schools of Florida. The Department of Education acts as an administrative and supervisory agency under the direction of the State board. The board and its staff comprise the department. The Commissioner of Education is secretary and executive officer of the board and exercises general supervision over the State system of public education.
Georgia.....	State Department of Education..	The Department of Education is clearly identified as the organized staff under the executive direction of the Superintendent of Schools. The State Board of Education is responsible for the general supervision of the Department of Education. The Superintendent of Schools is the executive officer of the board and the administrative officer of the department.
Hawaii.....	State Department of Education..	The Department of Education is a unit within the executive branch. Administratively it is headed by an elected executive board, the Board of Education. Under the State Constitution the board is to formulate policy and exercise control over the public school system through its executive officer, the Superintendent of Education.
Idaho.....	State Department of Education..	The Department of Education is an executive agency of the State Board of Education. The State Superintendent of Public Instruction serves as the executive officer of the department and has the responsibility for carrying out policies, procedures, and duties authorized by law or established by the board. The department is organized in a manner determined by the State Superintendent and approved by the board.
Illinois.....	Office of the Superintendent of Public Instruction.....	No reference is made to the Illinois Department of Education in the new State Constitution in force July 1, 1971 or in the School Code of Illinois, Circular Series A, No. 265, 1969. In Illinois, "Office of the Superintendent of Public Instruction" appears to be synonymous with what other States might call "State Department of Education."
Indiana.....	State Department of Public Instruction.....	Charged with responsibility for standards in the public schools, the Department of Public Instruction is administered by the Superintendent of Public Instruction as it carries out duties and functions described by State law, State Board of Education promulgated rules and policies, Federal laws and regulations, and administrative policies established by the Superintendent and his staff.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Iowa.....	State Department of Public Instruction.....	The Department of Public Instruction acts as an administrative, supervisory, and consultative agency under the direction of the Superintendent of Public Instruction and the State Board of Public Instruction. The department is located in the office of the State Superintendent, and assists the Superintendent in providing professional leadership and guidance and in carrying out policies, procedures, and duties authorized by law or by the regulations of the State board, as are found necessary to attain the purposes and objectives of the school laws of Iowa. The Superintendent of Public Instruction is the executive officer of the State board.
Kansas.....	State Department of Education..	The Department of Education is under the jurisdiction of the State Board of Education and the administrative supervision of the Commissioner of Education as directed by law. The Legislature provides for a State Board of Education which has general supervision of public schools, educational institutions, and all the educational interests of the State, except educational functions delegated by law to the State Board of Regents. In compliance with the Constitution of Kansas, provisions are made in the law for an elected State Board of Education and a Commissioner of Education who is appointed by and serves at the pleasure of the State board as its executive officer.
Kentucky.....	State Department of Education..	The Department of Education consists of the State Board of Education and the Superintendent of Public Instruction. The department exercises all the administrative functions of the State in relation to the management and control of the public common schools, of vocational education and rehabilitation, and of West Kentucky Vocational School, the Kentucky School for the Blind, and the Kentucky School for the Deaf, and may exercise certain powers and functions relating to area vocation schools, and relating to television in aid of education and other proper public functions. The State Board of Education is recognized as a public body corporate and politic, and an agency and instrumentality of the Commonwealth in the performance of essential governmental functions. The board has the management and control of the common schools, public vocational education and vocational rehabilitation, West Kentucky Vocational School, and the Kentucky School for the Blind.
Louisiana.....	State Department of Education..	The State Superintendent of Public Education as ex officio secretary and executive officer of the State Board of Education is authorized to establish a Department of Education. The State board has supervision and control of all free, public, elementary and secondary schools, trade and/or vocational-technical schools, schools for the blind, deaf, cerebral palsied and spastic, and State colleges and universities other than Louisiana State University and its branches.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Maine.....	Department of Educational and Cultural Services.....	Authorized by statute effective July 1, 1972, implementing the reorganization of the Department of Educational and Cultural Services, the department consists of the Commissioner of Educational and Cultural Services and includes the following: The Department of Education, the State Board of Education, the Maine Education Council, the Maine Commission for the Higher Education Facilities Act of 1965, the Maine Advisory Council on Vocational Education, the Maine Representatives to the New England Board of Higher Education, the Maine School Building Authority, the Governor Baxter School for the Deaf, the Maine State Commission on the Arts and the Humanities, the State Museum, the Maine State Museum Commission, the State Historian, and the Maine State Library.
Maryland.....	State Department of Education..	Educational matters affecting the State and the general care and supervision of public education are entrusted to the Department of Education, at the head of which is the State Board of Education. The State Superintendent of Schools is the chief executive, the secretary, and the treasurer of the State Board of Education.
Massachusetts....	State Department of Education..	The Department of Education is under the supervision and control of the Board of Education. Under the direction of the board, the Commissioner of Education is the secretary to the board and serves as its chief executive officer. Several of the agencies placed in the Department of Education by law function independently in conducting their work and are not subject to its control.
Michigan.....	State Department of Education..	The Department of Education was created pursuant to the 1965 Executive Organization Act, which sets forth the powers, duties, and functions of the department as required by the Michigan Constitution. The executive order creating the department designates the State Board of Education as the head of the department and the Superintendent of Public Instruction as its principal executive officer. The Superintendent is chairman of the board without the right to vote, and is responsible for the execution of its policies.
Minnesota.....	State Department of Education..	The Department of Education is maintained under the direction of the State Board of Education. The Commissioner of Education is the executive officer and secretary of the State board.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Mississippi.....	State Department of Education..	The Department of Education consists of the chief State school officer and the staff under his executive direction. The department is charged with the execution of all laws relating to the administrative, supervisory, and consultative services to the public schools, agricultural high schools, and junior colleges of Mississippi. Subject to the direction of the State Board of Education, the chief State school officer is vested with the administration, management, and control of the Department of Education.
Missouri.....	State Department of Education..	The Department of Education includes the State Board of Education, the Division of Public Schools, the Division of Registration and Examination, and the agencies assigned to the department. Supervision of instruction in the public schools is vested in the State Board of Education. The Commissioner of Education is the chief administrative officer of the State board and supervises the Division of Public Schools.
Montana.....	Office of the Superintendent of Public Instruction.....	The Superintendent of Public Instruction is the executive head of Montana's elementary and secondary education system. With the recodification of Montana's school law in 1971, the former Department of Public Instruction no longer exists. The Superintendent of Public Instruction, a member of the executive department of State government, is an ex officio member of the State Board of Education and serves as secretary of the State board. Also, the Superintendent is the executive officer of the State Board of Education for vocational education purposes.
Nebraska.....	State Department of Education..	The Department of Education consists of the State Board of Education and the Commissioner of Education. The department has general supervision and administration of the school system of the State and of such other activities as the Legislature may direct. The board is the policy-forming, planning, and evaluative body for the State school program. Acting under the authority of the board, the Commissioner of Education is the executive officer of the board and the administrative head of the professional, technical, and clerical staff of the department.
Nevada.....	State Department of Education..	The Department of Education receives its authority from the State Board of Education through its executive head, the Superintendent of Public Instruction. The State board is the governing body for the department, and through this authority provides policies so that the department through the Superintendent can exercise all administrative functions relating to schools not conferred by law upon some other agency.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
New Hampshire....	State Department of Education..	The Department of Education consists of the State Board of Education, the Commissioner of Education, and such other officials and employees as may be authorized. The State board is entrusted with the management, supervision, and direction of all public schools in the State, except as limited by law. The Commissioner of Education is the chief executive officer and secretary of the board.
New Jersey.....	State Department of Education..	The Department of Education is a principal department in the executive branch of the State government; it consists of the State Board of Education, which is at the head of the department, the Commissioner of Education, and such divisions, bureaus, branches, committees, officers and employees as are necessary. The general supervision and control of public education in the State, except higher education, are vested in the State board, which formulates plans and makes recommendations for the unified, continuous, and efficient development of public education, other than higher education, of people of all ages within the State. The Commissioner of Education is the chief executive and administrative officer of the Department of Education and is also its budget and fiscal officer.
New Mexico.....	State Department of Education..	The Department of Education and State Board of Education are created by the State Constitution. As the governing authority, the State board has control, management, and direction of all public schools, except as otherwise provided by law, and determines policy for the operation of all public schools and vocational education programs in the State. The State Superintendent is the chief administrative officer of the board.
New York.....	State Education Department.....	The State Education Department is the administrative department of State government charged with the general management and supervision of all public schools and all educational work of the State. The Board of Regents of The University of the State of New York heads the State Education Department. The Commissioner of Education is the chief executive officer of the department and is appointed by the Board of Regents and serves at its pleasure. He serves also as president of The University of the State of New York.
North Carolina...	Department of Public Education.	The legally created Department of Public Education was made operative by executive order of the Governor by July 1, 1972. The head of the Department of Public Education is the State Board of Education. The Superintendent of Public Instruction is the secretary and chief administrative officer of the board.
North Dakota.....	State Department of Public Instruction.....	The Department of Public Instruction is not expressly defined in the law. When the department is mentioned in the law, reference is generally to the staff under the executive direction of the Superintendent of Public Instruction.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Ohio.....	State Department of Education..	The Department of Education consists of the State Board of Education, the Superintendent of Public Instruction, and a staff of such professional, clerical, and other employees as may be necessary. The department is the administrative unit and organization through which the policies, directives, and powers of the board and the duties of the Superintendent are administered by the Superintendent as executive officer of the board.
Oklahoma.....	State Department of Education..	The Department of Education is the unit of State government in which are placed the agencies created or authorized by the Constitution and Legislature that are charged with the responsibility of determining the policies and directing the administration and supervision of the public school system of the State. These agencies are the State Board of Education, the State Superintendent of Public Instruction, and such divisions and positions as may be established by law and by the State Board of Education. The State board is the governing board of the department and the public school system of the State. The Superintendent is president and executive officer of the board.
Oregon.....	State Department of Education..	The Department of Education functions under the direction and control of the State Board of Education. The department consists of the State Board of Education, the State Textbook Commission, such other agencies and officers as are added by law to the department, and the administrative organizations and staffs required for the performance of the department's functions. All administrative functions of the State board are exercised through the Department of Education, and the department exercises all administrative functions of the State relating to supervision, management, and control of schools and community colleges not conferred by law on some other agency. The Superintendent of Public Instruction acts as executive head of the department.
Pennsylvania....	State Department of Education..	An Act of July 1969 created the Department of Education, an administrative unit of State government headed by a Secretary of Education. The department contains some 26 administrative boards and commissions, one of which is the State Board of Education. Educational policies, standards, rules, and regulations promulgated by the State Board of Education are binding upon the Department of Education. The department submits to the State board for approval all rules and regulations proposed by the department in the areas under the policy control of the board. The department furnishes upon request of the board such data and information as the board may require, and provides administrative services for and on behalf of the board.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Rhode Island.....	State Department of Education..	A reorganization of the Department of Education mandated by the Education Act of 1969 resulted in the establishment of a Board of Regents which, for all levels of public education in the State, has the responsibility of formulating and implementing a master plan for public education in the State, determining fiscal priorities, setting standards, supervising and evaluating results. The Board of Regents has assumed "all powers, rights, duties, and privileges formerly belonging to the board of trustees of State colleges, the State Board of Education, the Department of Education, and, excepting as specifically provided, the Commissioner of Education."
South Carolina...	State Department of Education..	The Department of Education is not expressly identified in the law even though the term is used in various instances. For example, a duty of the State Superintendent is to "organize, staff, and administer a State Department of Education which shall include such divisions and departments as are necessary to render the maximum service to public education in the State" and "administer through the State Department of Education; all policies and procedures adopted by the State board." The State Board of Education adopts policies, rules, and regulations not inconsistent with the laws of the State for the government of the free public schools. As a policy body, the State board is designed to regulate, evaluate, upgrade, and control the statewide educational system. The State Superintendent serves as secretary and administrative officer of the board.
South Dakota.....	State Department of Public Instruction.....	The Department of Public Instruction is not expressly defined or identified by statute although the term is generally used. The law provides that the State Board of Education shall, except for the appointment of the Deputy State Superintendent, appoint and fix the salaries of the professional staff of the Department of Public Instruction. The Superintendent delegates ministerial and executive functions to the personnel of the department. The State board is responsible for the adoption of all policies (1) for the government of the department and (2) for carrying out educational functions which relate to elementary and secondary schools, or which may be vested in the department.
Tennessee.....	State Department of Education..	The Department of Education is an administrative unit of State government. In addition to serving as chairman and ex officio member of the State Board of Education, the Commissioner of Education is the administrative head and chief executive officer of the department. The State Board of Education is associated with the Department of Education for administrative purposes.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Texas.....	State Department of Education..	The Department of Education constitutes the professional, technical, and clerical staff of the Central Education Agency. The State Board of Education, the State Board for Vocational Education, the State Commissioner of Education, and the State Department of Education comprise the Central Education Agency, which exercises general control of the system of public education at the State level. The State Board of Education is the policy-forming and planning body for the public school system. The Commissioner of Education serves as executive officer of the Central Education Agency and as executive secretary of the State Board of Education and of the State Board for Vocational Education.
Utah.....	Office of the State Board of Education.....	The Office of the State Board of Education is analogous to the department of education in many other States. The State Superintendent of Public Instruction is the executive officer of the board, which is vested with the general control and supervision of the public school system.
Vermont.....	State Department of Education..	The Department of Education is defined in the Vermont education laws as the Commissioner of Education and the staff necessary to carry out the functions of the department. The State Board of Education has supervision over and management of the department and the public school system, except as otherwise provided by law. The Commissioner is the chief executive officer and secretary of the board.
Virginia.....	State Department of Education..	The Department of Education is not clearly identified by constitutional provision or statute; no reference is made to it in the law. The general supervision of the school system is vested in the State Board of Education, which is appointed by the Governor, subject to confirmation by the General Assembly. The Superintendent of Public Instruction is appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor making the appointment. The Superintendent serves as secretary of the board.
Washington.....	Office of the Superintendent of Public Instruction.....	The term "State Department of Education" is not used in the laws of Washington. There is fully operational a single State education office under the direction of the Superintendent of Public Instruction who is responsible for administration of the total State educational program including carrying out the policies of the State Board of Education in those areas in which the board has statutory power. In his relationship to the State board, the State Superintendent serves as ex officio president and executive and administrative officer.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
West Virginia....	State Department of Education..	The Department of Education is maintained at the Office of the State Superintendent of Schools. Subject to and in conformity with the Constitution and laws of West Virginia, the State Board of Education determines the educational policies of the public schools in the State and makes rules for carrying into effect the laws and policies of the State relating to education.
Wisconsin.....	State Department of Public Instruction.....	There is created by law a Department of Public Instruction under the direction and supervision of the State Superintendent. Wisconsin does not have a State Board of Education for public elementary and secondary education.
Wyoming.....	State Department of Education..	There is a separate and distinct department designated as the State Department of Education which consists of the State Superintendent of Public Instruction, the State Board of Education, and such divisions, staffed by such personnel and provided with such facilities as the State Superintendent with the approval of the State board determines necessary to assist him and the State board in the proper and efficient discharge of their respective duties. The general supervision of the public schools is entrusted to the State Superintendent, who is the administrative head and chief executive officer of the department.
American Samoa...	Department of Education.....	The Department of Education of the Government of American Samoa is the agency responsible for administration of the system of education. The Board of Regents was created to take the place of the former Board of Education. The board functions as an advisory board to the Director of Education, who is an ex officio member of the board. The Board of Regents also acts as the Board of Vocational Education.
Guam.....	Department of Education.....	There is within the executive branch of the Government of Guam the Department of Education. Also within the Government of Guam is the Territorial Board of Education which with the approval of the Governor appoints the Director of Education, who is the administrative head of the department and executive secretary of the board.

State	Designation	Legal status of State department of education, including references to the State board of education and the chief State school officer
Puerto Rico.....	Commonwealth Department of Education.....	The Commonwealth of Puerto Rico Department of Education is an administrative unit of Commonwealth government. The Commonwealth Board of Education has as its essential mission (1) to formulate with the Secretary the educational philosophy of the government of the Commonwealth; (2) to advise the Secretary in the orientation of the educational system; and (3) to observe that the programs of the department comply with selected educational objectives. As a basis for the decisions of the Department of Education on policy, manpower, economic resources and on physical plant, the board considers and approves a general 4-year plan for the development of the primary, secondary, vocational, and technical system. The Secretary of Education is the administrative head and chief executive officer of the Department of Education.
Trust Territory of the Pacific Islands.....	Department of Education.....	The Micronesia ^{1/} Board of Education has power in accordance with law to formulate policy and to exercise control over the educational system in the Trust Territory. The Department of Education is headed by a Director who, under policies established by the High Commissioner in consultation with the board, administers programs of education and public instruction throughout Micronesia. The Director of the department is also a member and executive officer of the board.
Virgin Islands...	Department of Education.....	The Department of Education is an executive unit in the Government of the Virgin Islands. The department is administered under the supervision and direction of the Commissioner of Education. Established as an independent agency within the department for administrative purposes is the Virgin Islands Board of Education, composed of nine elected members and the Commissioner, who serves as an ex officio member. The board has authority and jurisdiction in general to do anything necessary for the proper establishment, maintenance, management, and operation of the public schools of the Virgin Islands. The department has authority and jurisdiction to exercise general control over the enforcement of the laws relating to education and cooperates with the Virgin Islands Board for Vocational Education in the administration and promotion by that board of vocational education.

^{1/} As used in this study, "Micronesia" is synonymous with "Trust Territory of the Pacific Islands."

Source: Sam P. Harris, *State Departments of Education, State Boards of Education, and Chief State School Officers*, DHEW/Office of Education (OE) 73-07400 (Washington: U.S. Government Printing Office, 1973), pp. 2-13.

Appendix B

STATE CONSTITUTIONS PROVIDING FOR THE SELECTION OF CHIEF STATE SCHOOL OFFICER, STATE AND/OR LOCAL BOARD OF EDUCATION

<u>SELECTION</u>	<u>STATE BOARD</u>	<u>CSSO</u>	<u>LOCAL BOARD</u>
1. Constitution is silent or left for the legislature to determine.	Alaska	None	None
	Arkansas	None	Reference to Board of Directors.
	California	Elected	California Leg. provided for BOE in each county.
	Connecticut	None	None
	Delaware	None	None
	Idaho	Elected	None
	Indiana	Elected	None
	Kentucky	Elected	None
	Maine	None	None
	Maryland	None	None
	Massachusetts	None	None
	Minnesota	None	None
	Nevada	None	None
	New Hampshire	None	None
	New Jersey	None	None
	New York	Board Appoints	None
	North Dakota	Elected	None
	Ohio	Board Appoints	School district to determine number and organization of District Board.
	Oregon	Elected	Elected
	Pennsylvania	Governor Appoints	None
	Rhode Island	None	None
	South Dakota	Elected	None
	Tennessee	None	None
	Texas	None	None
	Vermont	None	None
	Washington	Elected	None
	Wisconsin	Elected	None
	Wyoming	Elected	None

<u>SELECTION</u>	<u>STATE BOARD</u>	<u>CSSO</u>	<u>LOCAL BOARD</u>
2. Constitution provides that the Board be appointed by the Governor with the advice and consent of the Senate.	Arizona	Elected	None
	Georgia	Elected	Grand jury selects.
	Missouri	Board Appoints	None
	Virginia	Governor Appoints	Legislature to determine the method of selecting the Division School Board.
	West Virginia	Board Appoints	None
3. Constitution designates members combined with appointive system.	Montana: 10-member board consisting of Governor, Commissioner of Higher Education, Superintendent of Public Instruction, 7 to be appointed by the Governor with consent of the Senate.	Elected	Elected
	North Carolina: 14-member board consisting of Governor, Treasurer, Superintendent of Education, plus 11 to be appointed by the Governor and approved by the legislature in joint session. Eight are to be from school districts and 3 at-large.	Elected	None
4. Constitution provides for direct election of board members.	Alabama	Board Appoints	None
	Colorado: on the basis of congressional districts.	Board Appoints	Elected
	Hawaii	Board Appoints	None
	Illinois: regional basis	Board Appoints	General Assembly to determine.
	Iowa	Board Appoints	None
	Kansas	Board Appoints	Elected
	Michigan: nomination by party convention.	Board Appoints	None
	Nebraska	Board Appoints	None
	New Mexico: elected on the basis of judicial districts.	Board Appoints	None
5. Indirect election of Board.	Utah	Board Appoints	None
	South Carolina: delegation of counties within each judicial circuit nominates members who are then elected by the legislature.	Elected	None
6. Combination appointive and direct elective.	Louisiana: 8 members elected from single-member districts and 3 members appointed by Governor from state at-large, with consent of Senate.	Elected	Parish Board to be elected
7. Constitution designates membership of the Board. ^a	Florida: Governor, Commissioner of Education, Secretary of State, Attorney General, Treasurer, Comptroller, and Commissioner of Agriculture.	Elected	County Board of Education elected.
	Mississippi: Attorney General, Secretary of State, Superintendent of Public Education.	Elected	None

SELECTIONSTATE BOARDCSSOLOCAL BOARD

Oklahoma: Governor, Secretary of State,
Attorney General, Superintendent of Public
Instruction (President).

Elected

None

^aThe Superintendent of Education in these three states is an elected state official.

Source: Legislative Drafting Research Fund, *Constitutions of the United States, National and State* (New York: Columbia University, 1975), Vols 1-5, and Sam P. Harris, *State Departments of Education, State Boards of Education, and Chief State School Officers*, BHEW/OFFICE of Education (OE) 73-07400 (Washington: U.S. Government Printing Office, 1973), pp. 76-77.

Appendix C

CONSTITUTIONAL PROVISIONS REGARDING STATE AND LOCAL CHIEF SCHOOL OFFICER^a

<u>METHOD</u>	<u>CHIEF STATE SCHOOL OFFICER</u>	<u>LOCAL SCHOOL OFFICER</u>
1. Constitution is silent or left to legislative determination.	Alaska	None
	Arkansas	None
	Connecticut	None
	Delaware	None
	Maine	None
	Maryland	None
	Massachusetts	None
	Minnesota	None
	Nevada	None
	New Hampshire	None
	New Jersey	None
	Rhode Island	None
	South Dakota	Silent ^b
	Tennessee	None
	Texas	None
	Vermont	None
2. Elected	Arizona	Elected
	California	Elected
	Florida	County Board Appointment
	Georgia	Elected
	Idaho	None
	Indiana ^c	None
	Kentucky	None
	Louisiana	County Board Appointment
	Mississippi	Appointed by state board with advice and consent of the Senate.
	Montana	Constitution provides that other school officers be elected; however, no mention is made that one of these will be local school superintendent.
	North Carolina	None
	North Dakota	Elected

<u>METHOD</u>	<u>CHIEF STATE SCHOOL OFFICER</u>	<u>LOCAL SCHOOL OFFICER</u>
3. Appointed by state board of education.	Oklahoma	None
	South Carolina	None
	Washington	Legislative authority of county provides election of county superintendent of education.
	Wisconsin	The term of office, time and manner of electing or appointing all other officers of supervision of public instruction shall be fixed by law.
	Wyoming	None
	Alabama	None
	Colorado	Elected
	Hawaii	None
	Illinois	General Assembly to determine.
	Iowa	None
4. Appointed by Governor with the advice and consent of the legislature.	Kansas	Provides locally elected boards, no mention of chief officer.
	Michigan	None
	Missouri	None
	Nebraska	None
	New Mexico	None
	New York	None
	Ohio	Elected
	Utah	None
	West Virginia	Legislature may provide for county superintendents and define their duties, powers and compensation.
	Pennsylvania - Governor appoints with advice and consent of the Senate.	None
5. Chief State School Officer designated.	Virginia - Governor appoints with advice and consent of the General Assembly.	Appointed by division school board.
	Oregon - Superintendent of Education is the Governor. Note: The most recent Oregon Constitution (1975) provides that "after five years from the adoption of this Constitution, it shall be competent for the Legislative Assembly	Constitution provides for school district elections; particular offices, however, are not designated.

METHOD

CHIEF STATE SCHOOL OFFICER

LOCAL SCHOOL OFFICER

to provide by law for the
election of a superintendent,
to provide for his compen-
sation, and prescribe his
powers and duties. (Art.
VIII, sec. 1)

^aSuperintendent of Education, Superintendent of Public Instruction, Commissioner of Education, Superintendent of Schools, etc. Primary emphasis in this table is on state school officer selection, and secondarily, local school office selection.

^b"Silent" implies that a local school superintendent is called for, but the method of selection is not designated.

^cA constitutional amendment which went to the voters in November 1972 continues the constitutionality of the office but leaves to the general assembly the manner in which the Superintendent is elected, his term of office, and his duties.

Source: Legislative Drafting Research Fund, *Constitutions of the United States, National and State* (New York: Columbia University, 1975), Vols. 1-5, and Sam P. Harris, *State Departments of Education, State Boards of Education, and Chief State School Officers*, DHEW/Office of Education (OE) 73-07400 (Washington: U.S. Government Printing Office, 1973), pp. 76-77.

Appendix D
 CONSTITUTIONAL PROVISIONS
 RELATING TO THE FINANCING OF EDUCATION

State	None	Legislature	Legislature to Supplement	State School Fund	County School Fund
Alabama			x	x	
Alaska	x				
Arizona			x	x	x
Arkansas			x	(by refer- ence only)	
California			x	x	
Colorado				x	
Connecticut				x	
Delaware			x	x	
Florida			x	x	x
Georgia		x			
Hawaii	x				
Idaho				x	
Illinois	x				
Indiana				x	
Iowa			x	x	
Kansas			x	x	
Kentucky			x	x	
Louisiana			x	x	
Maine					x towns shall support and provide
Maryland			x	x	
Massachusetts	x				
Michigan		x			
Minnesota			x	x	
Mississippi			x	x	x
Missouri			x	x	x
Montana			x	x	
Nebraska			x	x	
Nevada			x	x	
New Hampshire	x				
New Jersey		x		x	

State	None	Legislature	Legislature to Supplement	State School Fund	County School Fund
New Mexico				x	
New York				state lot- tery reve- nues	
North Carolina			x	x	x
North Dakota				x	
Ohio			x	x	
Oklahoma				x	
Oregon				x	
Pennsylvania		x			
Rhode Island			x	x	
South Carolina		x			
South Dakota			x	x	
Tennessee			x	x	
Texas			x	x	x
Utah				x	
Vermont	x				
Virginia			x	(literary fund)	
Washington			x	x	
West Virginia			x	x	
Wisconsin				x	
Wyoming			x	x ^a	x

^aNon-legislative in the sense of earmarked revenues (taxes, proceeds of land sales and investments). Many states have special boards or commissions in charge of the State School Fund.

Sources: *Legislative Drafting Research Fund, Constitutions of the United States, National and State* (New York: Columbia University, 1975), Vols. 1-5.

Appendix E **CONSTITUTIONAL RESTRICTION ON PUBLIC FUNDS** **FOR NONPUBLIC SCHOOLS**

States	Sectarian Schools	Private	No Provisions
Alabama	x	0	
Alaska	x	x	
Arizona	x	x	
Arkansas	0	0	x
California	x ^a		
Colorado	x	x	
Connecticut	0	0	x
Delaware	x	0	
Florida	x (Bill of Rights - freedom of exercise clause)	0	
Georgia	x (Bill of Rights - freedom of exercise clause)	0	
Hawaii	x	x	
Idaho	x	0	
Illinois	x	0	
Indiana	x (Bill of Rights - freedom of exercise clause)	0	
Iowa	0	0	x
Kansas	x	0	
Kentucky	x	0	
Louisiana	0	0	x
Maine	0	0	x
Maryland	0	0	x
Massachusetts	x ^b	0	
Michigan	x (Bill of Rights - freedom of exercise clause)	x	
Minnesota	x (Bill of Rights - freedom of exercise clause)	0	
Mississippi	x	x	
Missouri	x (Bill of Rights - freedom of exercise clause)	0	
Montana	x	0	
Nebraska	x ^c		
Nevada	x	0	
New Hampshire	0	0	x
New Jersey	0	0	x

States		Sectarian Schools	Private	No Provisions
New Mexico	x		x	
New York	x		o	
North Carolina	o		o	x
North Dakota	x		o	
Ohio	x		o	
Oklahoma	x		o	
Oregon	x	(Bill of Rights - freedom of exercise clause)	o	
Pennsylvania	x			
Rhode Island	x	(Bill of Rights - freedom of exercise clause)	o	
South Carolina	x		x	
South Dakota	x		o	
Tennessee	x	(Bill of Rights - freedom of exercise clause)	o	
Texas	x	(Bill of Rights - freedom of exercise clause)	o	
Utah	x	(Bill of Rights - freedom of exercise clause)	o	
Vermont	o		o	x
Virginia	x ^d			
Washington	o		o	x
West Virginia	x	(Bill of Rights - freedom of exercise clause)	o	
Wisconsin	x		o	
Wyoming	x		x	

^aAnd any other school not under the exclusive control of public school officers.

^bAnd no other school than those which are conducted according to law and under the order and superintendence of the authorities of the town or city in which the money is expended.

^cOr any other educational institution not exclusively owned and controlled by the state or a governmental subdivision thereof.

^dState appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the state or some subdivision thereof.

Source: Legislative Drafting Research Fund, *Constitutions of the United States, National and State* (New York: Columbia University, January 1, 1961 to December 31, 1967), Vols. 1-2.

Legislative Drafting Research Fund, *Constitutions of the United States, National and State* (New York: Columbia University, January, 1975), Vols. 1-5.

PART II

Higher Education

Chapter 1

INTRODUCTION

PART I. BACKGROUND

Higher education is the knowledge acquired at universities and colleges in which degree credit is given.¹ Higher education should be distinguished from the commonly used term post-secondary education which encompasses a wide range of programs offered at various facilities throughout the community. Any learning or training beyond high school can generally be referred to as post-secondary education.

Higher education is usually recognized as having 3 major functions: teaching, research, and public service. Prior to the nineteenth century, teaching and research were not considered separately, the primary rationale for research being its impact on teaching. By the end of the nineteenth century, scholarly attention turned from its singular teaching function to a search for new knowledge and research which was recognized as an end in itself.² As a research institution, the University of Hawaii at Manoa has been ranked among the top 50 universities in the United States.³

Although most authorities agree on the benefits of the first 2 functions, there is less agreement on the idea of the university's role as a public service agency. Those who feel that this is a necessary and vital part of higher education argue that the needs of the society greatly affect the nature of colleges and universities, the effect on the University of Hawaii being a tradition of serving the community through extension and continuing-education programs and, in recent years, through the community colleges.⁴

Opponents to the public service role of higher education argue that an institution is defined by its task; its task, in turn, being defined by asking what it alone can do or what it can do better than any other institution. They point out that other than intellectual leadership, many of the present activities of the American university can be carried out by other institutions and organizations.

HIGHER EDUCATION

The actions of the federal government in the field of higher education, however, reinforce the public service function of universities and colleges. The Morrill Act of 1862 and its subsequent extensions initiated the land grant movement in higher education as a public service response to the rapid industrial and agricultural development of this country. By providing aid from the government for the endowment and support of at least one college in each state to teach agricultural and mechanical arts, education was opened to all qualified people from all walks of life. This emphasis in higher educational opportunity was part of a national trend toward a democratic, egalitarian, and populist society.

Congressional action subsequent to the Morrill Act indicated an intent of additional federal involvement in higher education. The Hatch Act (1887) reflected governmental interest in vocational and professional training and established agricultural programs. The establishment of the Reserve Officers Training Corps and the Student Army Training Corps in 1923 paved the way for full utilization of college facilities for national defense and eventual ROTC programs on college campuses. In the 1930's, the National Youth Administration provided employment and money for students to continue their education. Government-subsidized education for war veterans was initiated in 1944 as the Servicemen's Readjustment Act⁵ popularly known as the "G.I. Bill". The National Defense Education Act of 1958 and its subsequent extensions and amendments greatly increased the facilities and support of undergraduate and graduate education. This Act marked an involvement of the federal government in higher education beyond any previous venture.⁶

Increased control over state higher education programs came with increased federal attention to higher education. By 1963, the federal government was requiring detailed state plans for higher education in order to participate in federal programs.⁷ This control by the federal government continued with the Education Amendments of 1972 which required any state desiring to participate in federally funded programs to establish state post-secondary education commissions.⁸

INTRODUCTION

The role of the federal government, however, has not been the only factor in raising the importance of the public service function of higher education. Colleges and universities themselves have been so transformed from their status as solely teaching and research institutions that society will be turning to them with increasing frequency to aid vitally important social functions. Several unique qualities of universities and colleges have supported this transformation. First, the university provides unique institutional strengths, i.e., staff, buildings, grounds, a climate within, and a prestige without that define unique institutional leverage for resolving the problems of a society. Second, the universities have acquired a substantial monopoly on the particular kind of human talent required for dealing with the problems of a society as distinguished from the problems of an enterprise, i.e., the business world seldom focuses its attention and energy on the formulation of foreign policy, the design of educational programs, space exploration, urban blight, slums, or smog--the university however, has a substantial and growing proportion of men and women who are capable of and concerned with concentrating informed intelligence on such problems. Third, the universities nurture a discipline of objectivity. Fourth, the universities are committed to the search for new knowledge. Finally, a university possesses values, i.e., it stands for some of the most civilizing values of which we know.⁹ It is evident that the role of the university will become ever more important in the future as institutions of higher education continue to perform these unique functions.

PART II. CONSTITUTIONAL PROVISION FOR HIGHER EDUCATION

The acknowledged importance of colleges and universities, and a recognition of the need for intellectual freedom and objectivity, have resulted in a traditional autonomy for these institutions. Both custom and law have assigned a wide measure of independence to them.¹⁰ Autonomy has been provided by establishing a system of higher education and entrusting the responsibility for university affairs to governing boards of laypersons, by means of a constitutional provision or by statute.

HIGHER EDUCATION

Constitutionally, 24 states have provisions establishing a state university, university system and/or state college system.¹¹ Four state constitutions provide for the establishment of a board for higher education.¹² Four states indirectly mention higher education in their constitutions by providing for higher education loans.¹³ Florida constitutionally handles higher education through the state board of education. Connecticut mandates the legislature to provide for a system of higher education. The remaining state constitutions are silent regarding higher education.¹⁴ (For a listing of the various states and the manner in which higher education is constitutionally dealt with, see Appendix.)

Other countries provide for higher education through slightly different methods. The British leave the university under the control of its faculty; continental European nations place higher education directly under the control of a government minister.¹⁵

Constitutional recognition of higher education indicates public endorsement of education as a fundamental mission of state government. Universities and colleges are then free to expand their institutions and develop programs in the "public interest" without fear of interference from other branches of government, since constitutional recognition of higher education grants the university and college some degree of independence from legislative and executive controls. In addition, constitutional recognition of governing boards increases board responsibility and accountability for financial and policy obligations.¹⁶

The Model Executive Article proposes recognition of higher education by:¹⁷

...[creating], exclusive of and in addition to other agencies a single system of higher education administered by a Board of Regents for Higher Education. The legislature determines the composition of the Board, and the Governor designates its chairman. The Board selects a chancellor as chief administrative officer of the system.

Some argue that constitutions should be broadly phrased and therefore should not include an item such as higher education which is understood to be a

INTRODUCTION

fundamental right granted to all. They point out that by specifying and recognizing higher educational institutions in a constitution, all higher education matters including construction of new publicly supported facilities would require a constitutional revision. Higher educational systems may be difficult to coordinate if these institutions are specified constitutionally. Constitutional recognition might also allow for the development of institutional programs without necessary legislative review mechanisms such as the authorization, appropriation, and accountability of university funds.¹⁸

The National Municipal League leans toward nonrecognition of higher education in constitutions in spite of the fact that it maintains that a system of free lower public education is of such pre-eminent importance that a special mandate to the legislature is warranted:¹⁹

...The largely hortatory direction to the legislature to establish public institutions of higher learning need not have been included as a matter of constitutional necessity. Its inclusion can do no harm, however, and may advance the cause of public higher education. There can be no doubt, of course, that no special constitutional authorization is needed for the establishment of state universities, since the state government has plenary powers, except as constitutionally limited, to govern the state and to provide services necessary for the general welfare.

Recognition of lower and higher education in Article IX of the Model State Constitution reads:²⁰

Free Public Schools; Support of Higher Education. The legislature shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Such broadly phrased provisions seem to respond adequately to the support of higher education especially in view of the fact that growth of institutions might lead to future structural changes necessitating revision of a more specifically worded constitutional provision.²¹

Autonomy

Although many states may constitutionally recognize higher education by providing for a state university or university system and their governing boards, such recognition does not necessarily indicate or confer autonomy on these higher education institutions. Only a few states such as California, Colorado, Georgia, Idaho, Michigan, Minnesota, Montana, and Oklahoma have conferred an autonomous constitutional status on one or more of their universities.²² The constitutions of these states have provisions vesting "almost exclusive powers of governance, control, and management in the governing boards of the respective institution...such institutions are often viewed as the fourth branch of government, coequal with the legislative, executive and judicial branches".²³

Even though states such as Alabama, Arizona, and Nevada have conferred constitutional status upon their institutions of higher education, this constitutional status is heavily qualified because of court decisions, attorney general's opinions, or long-established practice.²⁴ Furthermore, in Louisiana, Missouri, and Utah the apparent constitutional autonomy of higher education has been completely eroded as a result of adverse court decisions, attorney general's opinions, or long-established practice.²⁵

Granting of corporate status is a method of providing autonomy to institutions of higher education. Corporate status acknowledges the university as "a legal entity...vested with the capacity...of acting as a unit in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law".²⁶

Of the 33 states which constitutionally recognize higher education, Alaska, California, Hawaii, and Louisiana additionally establish the state university as a legal corporation, while Colorado, Florida, Michigan, and New York establish the governing boards of the state university as a legal corporation.

INTRODUCTION

The Hawaii Constitution states that the University of Hawaii is established as the state university and constituted as a corporate body.²⁷ In drafting the 1950 Hawaii Constitution, the major rationale for granting corporate status to the university was to enable the University of Hawaii to hold title to property. This power would, in turn, enable the university to utilize federal funds for critically needed dormitory construction.²⁸ Corporate status additionally gave the university legal continuity and placed it on the same basis as other land grant colleges in the United States having constitutional independence so as to provide opportunity for future development on par with universities throughout the nation.²⁹

In interpreting this provision of the Hawaii Constitution, the attorney general of Hawaii found that the university is a constitutionally autonomous body and not an administrative or executive agency of the state:³⁰

The status of the University under the constitution is special and unique. The University of Hawaii by Article IX, section 4, is established as a state university and constituted a body corporate with title to all real and personal property set aside or conveyed to it. Article IX, section 5, then provides for a board of regents with power "in accordance with law, to formulate policy, and to exercise control over the University, through its executive officer, the president of the University, who shall be appointed by the board". By reason of these constitutional provisions there is created a constitutional corporation of independent authority.

The general powers of the university as a body corporate include the power (1) to make governing laws for the university; (2) to control property; (3) to enter business contracts; (4) to allocate funds appropriated to the institution;³¹ and (5) to sue or be sued in its corporate name.³²

Finally, it is important to differentiate between the autonomy of institutions of higher education and academic freedom since they are often confused with each other. "The former is a characteristic sought or claimed by the university per se.... Academic freedom, on the other hand, is a right possessed and assertable only in individuals, whether student or faculty,..."³³ and as such is not relevant in discussions of university and college autonomy. For further discussion on academic freedom, see Hawaii Constitutional Convention Studies 1978, Article I: Bill of Rights.

PART III. RELATIONSHIP WITH LEGISLATIVE AND EXECUTIVE BRANCHES

As an autonomous institution, the university would normally be able to control a number of factors relating to management and operations. In Hawaii, however, the legislature retains controls relating to fiscal and budgetary matters. The level of financial support accorded higher education is a decision made by the governor and the legislature, the latter having the total responsibility for providing tax measures raising revenues and for making appropriations to institutions of higher education.³⁴ Such a decision is a political one which under a democratic system must be made by elected representatives in response to public will.

Financial needs of higher education created by rising costs and demand for services have had to compete with other state programs to receive adequate funding. Constitutional independence of higher education institutions is therefore limited by the fiscal power wielded by other branches of state government. Fiscal accountability and responsibility of university appropriations are subject to executive and legislative supervision.

The legislature, in addition to fiscal control over the university, also initiates legislation regarding various phases of higher education. Although it is often responding to the wishes of the public the legislature, through the enactment of education laws, is able to control the input of ideas to universities and colleges.

The governor can also exert considerable influence on the educational policy of the state. Since the 1920's the influence of the state executive has been increasing with the creation of executive line agencies vested with administrative powers and controls overlapping those of the university.³⁵

Relationship with the State Budget Office

Once appropriations for higher education are made, determination of whether the university or the state office of fiscal control has the primary right to allocate and expend funds becomes a major problem.³⁶ On the one hand, it appears that such right should be reserved for the state budget office in order that it may uniformly and efficiently administer the total state budget.³⁷ Hawaii's state budget office has assumed considerable influence in the budgeting process by making final recommendations concerning the release of higher education appropriations from the executive budget and by reviewing expenditures.

On the other hand, university officials maintain that the unique missions of higher education cannot be subject to the centralized controls placed upon other state agencies.³⁸ Therefore, they contend that the university should be reserved the right to allocate its program funds. The idea of granting the university this power of allocation and management of its expenditures is accomplished to some degree by creating special funds for higher education from specific revenue sources. In Hawaii, the legislature appropriates program funds in lump sum and leaves internal allocation of appropriations to the university subject to approval of release of all or part of the lump sum by the budget director. This method allows the university some measure of control over its fiscal management.

Relationship with Private Institutions of Higher Education

The role of the private institution of higher education is generally acknowledged as an important one, particularly in terms of educational innovation, experimentation, and quality.³⁹ The problem lies in defining the relationship between private and public institutions of higher education. Constitutional recognition of private institutions of higher education is found in the documents of some states⁴⁰ in much the same manner recognition is accorded public institutions of higher education. Traditionally, however, private education institutions are distinguished from public institutions by their freedom

from such governmental recognition and control, i.e., institutional autonomy. This difference between private and public institutions has been sharply reduced, particularly in light of the fact that both types of institutions compete for the same financial support⁴¹ and are subject to the same conditions placed on institutions receiving this support. The nature of the 2 types of institutions has become so similar, in fact, that some authorities maintain that legislation, regulation, and court decisions affecting public institutions will be of direct consequence to private institutions.⁴² Increased dependence of private higher education upon state legislation is evident in the tax-exempt status granted to private institutions of higher education.⁴³

Additionally, need has been expressed for stringent state controls over private institutions of higher education to prevent fraudulent operations and poor quality instruction.⁴⁴ Recognizing the need for such control, the 1971 Hawaii legislature enacted a measure⁴⁵ which provides for the regulation of private institutions of higher education. This Act establishes a license requirement for degree granting institutions not maintained by the state beyond the secondary school level, and prohibits the awarding of degrees and honorary degrees by institutions not licensed by the director of regulatory agencies.

Relationship with the Proposed Department of Life-Long Learning

One of the purposes of Hawaii's commission on organization of government was to recommend consolidation of similar services and functions in order to facilitate government responsiveness.⁴⁶ Accordingly, the commission made several recommendations relating to education, one of which is of particular significance to higher education.

The commission proposes the creation of a new executive line agency to be known as the department of life-long learning.⁴⁷ This department is to handle various education programs presently administered by other executive agencies in the effort to consolidate services and consistent with "the growing recognition of State governmental responsibilities for individual and community development"⁴⁸ (see chart of proposed department). Among the duties of this

DEPARTMENT OF LIFE-LONG LEARNING

EXECUTIVE DIRECTOR

Administrative Support

Office of Educational Opportunities

Western Interstate Commission on Higher Education
(from Gov)

Student Loans
(from B&F)
a) general
b) dental

For administrative purposes:

Post Secondary Education Commission

Cultural & the Arts (from B&F)

History & Humanities
Hawaii Historic Places Review Board (from B&F)

Kamehameha Day Commission (from DAGS)

DIRECTOR Continuing Education

Adult Education
(Department of Education programs) (from DOE)

Continuing Education
(University of Hawaii Continuing Education & Community Service programs, including Hawaii Open program and Center for Governmental Development) (from UH)

DIRECTOR Library System (operation of community - school libraries under operating agreement with DOE)

State Library

Library for Blind & Handicapped

Regional Libraries

School libraries will remain under the DOE

Source: Hawaii, Government Organization Commission, Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government (Honolulu: 1977), p. 108.

HIGHER EDUCATION

proposed department is the operation and administration of continuing education and community service programs presently under the control of the University of Hawaii. By assuming these functions, the department would relieve some of the administrative burden of the university, especially as the university has, in the past, shown reluctance to serve continuing education needs⁴⁹ and has considered these programs to be in second priority to basic campus programs.⁵⁰ In short, should such a department be established, the university would be able to concentrate its administrative duties in other areas while higher education support services, such as student loan and adult education programs, would be administered by the department of life-long learning.

Chapter 2 MANAGEMENT FOR HIGHER EDUCATION

PART I. GOVERNANCE AND GOVERNING BOARDS

One of the major concerns of the states in the area of higher education is that of governance. According to John Millet, "governance is both a structure and a process. It is a structure legitimatizing power groups and power relationships. It is a process for making basic decisions about purpose, procedure, and performance".¹ Types of governing boards, their functions, membership composition, selection, and relationships to other sectors of the community are important in reviewing the governance of higher education.

Due to the idea that higher education is a function of the state, state governments have attempted to make institutions of higher learning responsive to public needs.² Governing boards of these institutions were established with memberships composed of officials and elected citizens representing those who supported and were served by these institutions.³

From the available information, it appears that all state-supported (and some nonpublic) institutions of higher education are governed by such boards or a collective group of individuals rather than any other form of governing body. The U.S. Office of Education defines state governing boards of higher education as:⁴

A legally constituted body having some direct responsibility for the government, coordination, or supervision of public higher educational institutions, including universities, professional schools, four-year colleges, junior colleges, technical institutes, or related types of education beyond the high school.

Constitutional Provisions for Boards of Higher Education

In establishing boards of higher education, it is essential to decide what aspect, if any, of higher education should be constitutionally recognized.

Constitutional provisions for higher education are a means of preventing "easy incursions by politicians and bureaucrats into the management and control of the university".⁵ Some states recognize the state university, some the governing board of the university, and others, both. Most state constitutions which establish governing boards of higher education also designate the general duties of the board such as the control, management, or supervision of the particular institution of higher education. Only 4 of the constitutionally established boards (California, Louisiana, North Dakota, and Oklahoma) have accompanying provisions designating specific responsibilities.

Although the general duties of the board may be described constitutionally, the powers conferred upon governing boards vary from state to state. In some states governing boards are given fairly extensive and exclusive authority over the internal affairs of the institutions and neither the legislature nor the executive can substantially interfere with the management and controlling powers of the governing boards.⁶ In other states, governing boards are constitutionally delegated power which can, at any time, be amended, expanded, modified, or diminished.⁷ Such state governing boards are accountable to the legislature which establishes overall higher education policies and controls appropriations for higher education.

Hawaii's Constitution provides the University of Hawaii board of regents with "power, in accordance with law, to formulate policy, and to exercise control over the university...."⁸ (Emphasis added) Therefore, although the board of regents has power to govern the university, the final authority over decisions made by the board rests upon the law-making body, the state legislature.

Functions of Boards of Higher Education

Since the governing boards of American public universities are an attempt to reflect the views of laypersons, some authorities caution that boards should play a delicate role. A definition of what this role should be is of major concern. The Carnegie Commission recommends several functions which should be delegated to governing boards of higher education institutions.

MANAGEMENT

A governing board should:⁹

- (1) Hold and interpret the "trust"; that is, it should define purposes and set standards for the institution;
- (2) Act as a "buffer" between society and the campus by simultaneously introducing necessary contact with society and resisting unnecessary interference;
- (3) Act as the court of last resort for disagreements, the supreme legal authority for university affairs;
- (4) Be an "agent of change" by deciding what should be allowed or encouraged to be changed;
- (5) Be responsible for the financial welfare of the campus;
- (6) Govern the institution by appointing officers and arranging its administrative structure.

With respect to the relationship of the board to the president of the institution, the board should depend on the president for professional opinions and intellectual leadership.¹⁰ In its relationship with the community, the board should interpret educational policy and objectives to the public and respond to community needs by implementing appropriate programs.¹¹ Finally, in its relations with the faculty, the board should assess, protect, and defend faculty recommendations and safeguard academic freedom.¹²

The board of regents of the University of Hawaii is, by statute, given power over the general management and control of the affairs of the university, the property of the institution, the determination and charge of tuition and the granting of scholarships. Definitionally, then, the board is an administrator and policy maker. It is left up to the board members themselves to assume these responsibilities and exercise powers delegated to them on behalf of the public.

Types of Governing Boards of Higher Education

The responsibilities of the boards of higher education vary from institution to institution and from state to state. These functions and responsibilities are essentially dependent on state higher education objectives. On the basis of scope of responsibilities, 5 general types of boards have been identified:¹³

GOVERNING BOARD--legally charged with the direct control and operation of only a single institutional unit.

MULTICAMPUS GOVERNING BOARD--legally charged with the direct control and operation of a state university or college system or a particular institution that has more than one institutional unit. In a state where a statewide agency carries the primary coordinating responsibility for these institutions, the board may have both governing and coordinating responsibilities but never on a statewide basis.

GOVERNING-COORDINATING BOARD--legally charged with the coordination and governance of 2 or more separate institutions that offer programs with common elements, and located in a state where no separate statewide coordinating board exists.

COORDINATING BOARD--legally responsible for organizing, regulating, supervising, evaluating, or otherwise bringing together the overall policies or functions, or both, in areas such as planning, budgeting, and programming, but does not have authority to govern institutions.

OTHER BOARD--responsible at the state level for supervising, accrediting, certifying, advising, or performing a similar function in relation to public higher education institutions, but does not have specific authority to govern these institutions or to coordinate their operations.

The 5 types of boards listed above can be further reduced to 2 basic types of governing boards. The distinction can be made between a governing board charged with the operation of a single institution and a governing board charged with the coordination and regulation of several institutions or statewide higher education programs. It is important to realize that whatever the type of board chosen, governing boards are simply mechanisms of achieving state objectives for higher education.

Single Institution Governing Boards. Only 6 of the constitutionally established boards of higher education are designated responsibility for the management and control of a single state institution.¹⁴ All other boards of higher education established by state constitutions govern and/or coordinate more than one institution.

Boards responsible for a single institution may be attributable to the earlier era of individual colleges. For many years, most states had public post-high school institutions operating largely on an individual, almost autonomous basis.¹⁵ Single-institution boards are considered to be somewhat antiquated forms of management in view of the increasing number of colleges and universities. There are nevertheless several arguments supporting this particular form of management:¹⁶

- (1) The problems of the individual institution can best be handled by a board serving and having responsibility for only one institution.
- (2) Public interest can be served by single institution governing boards in which more people are directly involved in the decision making process.
- (3) Needs particular to an institution can be precisely handled through a governing board of that institution.
- (4) There is more opportunity for board members to handle responsibilities and to make direct, important decisions affecting the institution.

For the above reasons, some argue that even within a multicampus institution, the establishment of separate boards for each campus might prove advantageous, particularly if the campuses are large and have educational program and characteristic campus differentiations.¹⁷

The arguments against single institution boards are:¹⁸

- (1) With a profusion of boards, lines of responsibilities tend to become confused.

HIGHER EDUCATION

- (2) Separate boards promote their own interest in a competitive manner to the disadvantage of the entire higher education system.
- (3) It is difficult to recruit enough able members to fill positions of a number of boards.
- (4) A multiplicity of boards tends to create red tape and inefficient operation which could result in added cost to the public.

With the rapid growth of universities and colleges, governing boards with legal responsibilities over a single institution are unlikely to be the most appropriate form of governance. Even in states where the constitutionally established higher education institutions are presently served by single institution governing boards, the need for a coordinating agency may be indicated by the desire to include the state vocational institutions, community colleges, and private higher education institutions in the coordinating process and to handle the planning function of higher education for the state.¹⁹

In many instances, the concept of a coordinating board may be considered a reaction to single institution boards. Therefore, further arguments against single institution boards may be found in the discussion below on coordinating boards.

Coordinating Boards. The realization that colleges have an impact on one another and the acknowledgment that the marshalling of a state's resources requires effective planning for statewide higher education goals and objectives have resulted in the inauguration of some form of board with coordinating powers. In many states, the concept of the coordinating board has been utilized as a means of organizing the various higher education operations. These boards with coordinating powers can be insertions in the line of control between the legislature and the governing boards of the separate public colleges and universities.²⁰

Although the coordinating board is frequently referred to in the literature as the answer to achieving some purposeful orientation to the proliferation of separate higher education institutions, only a few state constitutions specifically

call for the establishment of a coordinating board for higher education.²¹ State constitutions more frequently provide for higher education boards with both governing and coordinating powers. Some authorities feel that the roles and responsibilities of coordinating boards are still developing and that it is necessary to define further their role in higher education.

In general, boards with coordinating but not governing powers are limited in both responsibility and authority. They have the overall responsibility of planning and facilitating the development of statewide systems of higher education, achieving balance and effectiveness by delegating authority, and recommending proper apportionment of funds to individual institutions.²² In most cases, however, they have no direct legal power to interfere with the university in administrative details and in the management of its education affairs.²³

The arguments in favor of boards with coordinating powers are:

- (1) Budgetary coordination is made possible by giving coordinating powers to governing boards. Such boards can provide statistical information based on standard criteria²⁴ to equalize consideration for appropriations of operating and capital funds.²⁵
- (2) Boards with coordinating powers help eliminate costly duplication of programs and rivalry for funds and status from the legislature.²⁶
- (3) Coordinating boards could also provide an effective and economical method for long-range planning in higher education.²⁷

On the other hand, the following arguments are made against boards with powers of coordination only:

- (1) The nature of each institution is varied and control may be best administered by a single institution board.²⁸
- (2) Coordinating boards could undermine both the autonomy and the individuality of each institution.²⁹ The establishment of coordinating boards with regulatory powers has had a history of eroding the institutional independence of colleges and universities.³⁰

HIGHER EDUCATION

- (3) Boards with powers of coordination may not be more effective nor cost-saving but may, in fact, lead to bureaucracy, red tape, and inflexibility in the operation of higher education institutions.³¹

Of the 27 states with constitutionally established boards of higher education, all but 2 states, Idaho and Wyoming, have governing boards with some sort of coordinating power. The greatest number of these boards govern multicampuses of a state university or college system.³² Eleven states have constitutional provisions for boards with coordinating-governing powers due to a lack of separate statewide coordinating boards.³³ Four states have provisions in their constitutions for boards which can be considered to have only coordinating powers.³⁴

Hawaii appears to fall into the category of states having coordinating-governing boards of higher education. The community colleges as well as the 4-year campuses are under the administrative jurisdiction of the board of regents of the University of Hawaii. The board also sits as the post-secondary education commission and is designated as the state board for vocational education. Thus, the board of regents not only governs the university and its campuses, but it must also coordinate technical, vocational, semi-professional, and general education services and programs for the state.

One of the suggestions considered at Hawaii's 1950 Constitutional Convention was that the board of regents be constitutionally delegated the right to control all publicly supported higher education in Hawaii,³⁵ i.e., the power of statewide coordination. At the time, such a provision was felt unnecessary as community colleges were only envisioned and the University of Hawaii itself had only begun its growth. The possibility of statewide control over all public higher education by the board of regents was left for future legislation.³⁶ The 1968 Constitutional Convention did not consider this particular issue during its proceedings.

Over the almost 3 decades since the 1950 Constitutional Convention, the University of Hawaii has experienced phenomenal growth to its present system of two 4-year campuses and 7 community colleges. In 1964, a system of

community colleges was established under the administration of the board of regents.³⁷ Additionally, there has been increased interest in all aspects of higher education including vocational and technical education provided by the community colleges.

In response to this growth of facilities and interest in higher education, the governor's CORE Report recommended that the present governance structure of the university system be reviewed to assure that all components, particularly the community colleges were adequately represented.³⁸ The report also recommended that community college advisory bodies be established at each campus and given statutory status.³⁹

According to A Master Plan for Hawaii's Community Colleges, prepared by the office of the chancellor of community colleges, however, the present system of community college governance under the board of regents of the University of Hawaii was felt appropriate following the strong tradition of state centralization in both government and education.⁴⁰ Although governance by the board of regents was not without its problems, the master plan attributed the rapid growth of the community colleges to the strength and viability of the governance structure and recommended its retention.⁴¹

The commission on organization of government recommended that community colleges remain with the university.⁴² The report by the commission expressed concern over the priority and articulation accorded community colleges but concluded that these problems might be aggravated by reorganizing the colleges under a new administrative structure.⁴³

Only 2 states have constitutional provisions for a separate governing board for state colleges. Michigan's document provides for a state board for community and junior colleges with coordinating powers, while Oklahoma provides for a board of regents of Oklahoma colleges which is classified as a multicampus governing board. Both states additionally establish boards to govern other aspects of higher education.

Methods of Board Selection

There are basically 2 methods of selecting board members of higher education: (1) by gubernatorial appointment, often with senatorial consent; and (2) by popular election. The appointment method occurs more frequently in constitutional provisions for the selection of higher education board members. Eighteen state constitutions require members of boards of higher education to be appointed by the governor, most with the additional requirement of the advice and consent of the senate.⁴⁴ Two of these 18 states, Michigan and Nebraska, also have provisions for other boards of higher education with elected membership. Colorado, Iowa, and Nevada provide only for higher education boards with elected membership. In the remaining states, the legislature either is given constitutional powers to provide for the selection or assumes such power by virtue of constitutional silence.⁴⁵

The merits of an elected board are as follows:⁴⁶

- (1) Education problems are of vital importance to the general welfare and therefore election of public representatives to control such activity is of political importance.
- (2) The public can appraise the effectiveness of control and appropriateness as is reflected in the actions of their representatives at established intervals through the ballot.
- (3) Actions of elected board members regarding educational policy could not be construed as reflections of views of the elected officials who make the appointments.

In contrast, the following reflect arguments in favor of an appointed board:

- (1) Appointment eliminates the danger of voting without sufficient comprehension of the abilities needed to be a good governing board member and adequate appraisal of the candidates' qualifications.⁴⁷
- (2) Better board members are acquired via appointment; well-qualified people are sought out and drafted for this type of public service.⁴⁸

- (3) By appointing members education is kept out of politics.⁴⁹

During the 1968 Constitutional Convention, a proposal was submitted for an elected board of regents. In rejecting this proposal, Standing Committee Report No. 41 declared that, in contrast to lower education, attendance at the university was voluntary and therefore decisions made by the governing board did not affect almost every member of the public. Consequently, a means for giving the public a direct voice in the governance of the institution was felt unnecessary. Additionally, no evidence was presented to indicate that the appointive process failed to obtain dedicated and qualified persons to serve as members of the board of regents.⁵⁰

The merit of senate confirmation of gubernatorial appointees was also considered at the 1968 Constitutional Convention. Because the board is not wholly an administrative line department of the executive branch, it was felt that a requirement of senate confirmation would further the academic freedom of the university and insulate it from political pressures.⁵¹ The governor's CORE Report supports the present system of appointment of the board of regents and the university president and recommended that the selection method used be retained.⁵²

Membership on the Board

Qualifications. Harold C. Eichelberger in testimony to the Hawaii house of representatives regarding the board of regents of the University of Hawaii felt that regents appointed by the governor should meet 3 qualifications:⁵³

- (1) Regents must have an interest in higher education and the university system;
- (2) Regents must be willing to devote time and energy to serve the university;
- (3) Regents must be competent and respected by the community for their judgment.

HIGHER EDUCATION

The Carnegie Commission on Higher Education states that in order for a board to function effectively it needs to be "independent, free from conflict of interest, competent, devoted, and sensitive to the interest of the several groups involved in the life of the campus".⁵⁴ Constitutionally, however, there are no specific requirements in Hawaii's document regarding regent qualifications except to mandate that "[a]t least part of the membership of the board shall represent geographic subdivisions of the State".⁵⁵

A few state constitutions require age, residency, or other qualifications to be considered for membership on a higher education board. For example, the California Constitution specifies qualifications of regents as follows:⁵⁶

Regents shall be able persons broadly reflective of the state, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in the selection of regents.

Faculty and Student Members. Members of the faculty are the primary resource components necessary to run a university. They have special needs and interests which should be represented in the decision-making process.⁵⁷ Students constitute another major element of a university and should be accorded recognition and a voice in the decisions affecting their lives.⁵⁸ Student and faculty representation would not only contribute toward the educational process but also insure more effective and acceptable higher education policies.⁵⁹

During the 1968 Constitutional Convention, a proposal was submitted to include a faculty member and/or at least one full-time student as a member of the board of regents.⁶⁰ An attempt was made to include an alumni member on the board as well.⁶¹ It was argued that faculty/student/alumni representation on the board would bridge a gap of communication which existed between the segments of the university⁶² and would increase participation and involvement in the problem-solving and decision-making function of the board. It was especially hoped that by giving representation to the students, student activism demanding input into the decision-making process would be reduced.⁶³

MANAGEMENT

This proposed amendment failed to pass the committee on public health, education and welfare at the 1968 Constitutional Convention on the ground that channels were already available to the faculty and the student body to bring grievances to the attention of the board of regents.⁶⁴ Standing Committee Report No. 41 stated 3 additional reasons for rejecting this proposal:⁶⁵

- (1) The governor already has the power to appoint anyone, including a student or a member of the faculty, to the University of Hawaii board of regents;
- (2) The university administration and board of regents have established campus policies and procedures to give student representatives every opportunity to discuss their views, their problems, and their grievances with the administration; and
- (3) It would be difficult for one faculty member or one student representative to truly represent the many campuses which are part of the University of Hawaii system.

The Carnegie Commission on Higher Education also opposes faculty and student representation on the board of the same institution because of the potential conflict of interest involved. Trends toward faculty unionization and student lobbies at state legislatures reinforce this conflict.⁶⁶ The commission does, however, favor having faculty members and students serve either on board committees or on parallel committees that meet with the boards.⁶⁷ "Such consultation through the committee work of the boards can add both to the wisdom of the decisions and to the sense of legitimacy of the decision-making process."⁶⁸

In 1971, the legislative committee of the associated students of the University of Hawaii prepared and had introduced a resolution requesting student representation on the board of regents.⁶⁹ The reasons given for the need of a student representative were: (1) to establish lines of communication between the board of regents and the community it serves; (2) to continue the validity of the board of regents by creating a diversity of viewpoints and broad representation; and (3) to make the board more responsive and relevant to the needs of youth.⁷⁰

HIGHER EDUCATION

Although the resolution was adopted by the senate, it failed to change the existing statutory provisions for board representation. It was the recommendation of regent Harold Eichelberger that no statutory requirement for student, faculty, or administrative representation per se on the board be made.⁷¹ His recommendation was further supported by a statement made by Kingman Brewster, Jr., President of Yale College:⁷²

Trustees perform three crucial functions--maintenance of stability, continuity, public confidence. Their credibility in the performance of all three of these functions depends in significant part on the widespread confidence of faculty, alumni, and public that they are not spokesmen for any special interest inside or outside the University. Trustees are not "legislators." They do not have--or should not have--"constituents." Any "representation" of faculty, students or anyone else directly affected by their decision would immediately corrupt the essence of the trusteeship and turn it into a legislative forum of "blocs."

In 1971, the legislature expanded membership on the board of regents from 9 to 11 members and provided that 2 of the members on the board of regents should serve 2 as opposed to the normal 4-year terms. Although not set forth in the Act, it was the legislative intent reflected in committee reports that at least one woman and at least one person who is able to articulate a youthful point of view be appointed as members of the board of regents.⁷³ The executive has followed the intent of this Act although there is no binding directive for such appointment.

Only 2 states, Louisiana and Nebraska, specifically mandate that a student be a member of the constitutionally established board of higher education. The Louisiana Constitution calls for one nonvoting student member for each of its 3 boards of higher education. Three nonvoting student body presidents of the 3 campuses of the University of Nebraska are to be members of the board of regents.

None of the state constitutions call for university faculty representation on a board of higher education. Two states, however, provide for alumni representation on the higher education board established in the state constitution. In California, the president and vice president of the alumni

association of the university are ex officio regents of the University of California. Rather than specify that an alumni representative be a member of the state board of higher education, North Dakota's Constitution states that no more than one alumni of any one institution under the jurisdiction of the board sit as a member.

Ex Officio Members. Should there be ex officio members on governing boards? The Carnegie Commission opposes politically elected officials serving as ex officio on boards of higher education as such members increase state control over campus affairs and introduce conflicts of interest due to their necessary political partisanship.⁷⁴

Some states constitutionally declare that certain state officials be members of boards of higher education. For example, the governors of Alabama, Arizona, California, Iowa, Montana, and North Dakota are ex officio members of their respective governing boards of higher education. Other ex officio members of boards frequently mentioned in state constitutions are presidents of the institutions of higher learning and superintendents of public instruction.⁷⁵

Hawaii's Constitution makes no provision for ex officio members for the board of regents of the University of Hawaii. The Hawaii Revised Statutes also makes no provision for ex officio membership.

Number of Members. Eight states are silent on designating the number of members on their constitutionally established boards of higher education.⁷⁶ One of the 8, Connecticut, mandates the General Assembly to determine the size of membership. Twenty-one state constitutions establishing boards of higher education indicate the number of board members in their documents. The size of membership ranges from 4 regents for the University of Nebraska to 25 regents for the University of California.

The number of regents for the University of Hawaii is set by statute. The only important change made to the nature of the board of regents membership since 1968 was to increase the number of regents from 9 to its present 11 members⁷⁷ in order to better handle the increased responsibilities of the growing university system.⁷⁸

HIGHER EDUCATION

Length of Terms. Some state constitutions specify the length of term of state higher education board members. The Alabama, California, and Mississippi state constitutions provide for 12-year terms for their higher education board members. The average length of term for board members as provided in state constitutions is 7.8 years. Nine states additionally specify that terms of board members overlap. Regents of the University of Hawaii serve 4-year overlapping terms but this condition is not stated in the Constitution.

In general, it is thought that terms of higher education board members should be long and overlapping, consistent with the intention of insulating university boards from immediate partisan influence.⁷⁹ Longer terms also tend to provide members with more time to become thoroughly familiar with their duties and to develop stronger interest and expertise in the field of higher education. On the other hand, longer terms make it difficult to infuse new educational policy or to find citizens willing to sacrifice the time to handle the various duties and responsibilities of a board member.

PART II. PUBLIC FUNDING AND HIGHER EDUCATION

Since the enactment of the G.I. Bill of World War II, there has been an outpouring of federal funds to assist students in obtaining an education beyond the high school level. Basic education opportunity grants, guaranteed student loans, and other higher education programs have been funded by the Higher Education Act of 1965 and by subsequent legislation providing for the supplementation and extension of these programs. In contrast to federal programs in elementary-secondary education, many of these measures affecting higher education were written without reference to state roles and responsibilities except in the automatic appropriation distribution formulas.⁸⁰

Education Amendments of 1972

In 1972 an act of significance with regard to state roles in higher education was passed. Under section 1202 of the Education Amendments of 1972,

states were required to establish state post-secondary education commissions, also called 1202 commissions, to plan for and coordinate all post-secondary education in the state including private colleges and proprietary institutions:⁸¹

Any State which desires to receive assistance under section 1203 of this title or subchapter X of this chapter shall establish a State Commission or designate an existing State agency or State Commission (to be known as the State Commission), which is broadly and equitably representative of the general public and public and private nonprofit and proprietary institutions of postsecondary education in the State including community colleges..., junior colleges, postsecondary vocational schools, area vocational schools, technical institutes, four-year institutions of higher education and branches thereof.

The institution of 1202 commissions at the state level indicated federal support of statewide planning not only for higher education but also for the broader arena of post-secondary education. Most particularly, the establishment of these commissions indicated the need for state involvement with private higher educational institutions.⁸² 1202 commissions also reflected national trends for centralized organization for state higher education agencies.⁸³ In addition, state post-secondary education commissions were to serve as the state agency for the receipt of federal funds where federal legislation dealing with higher or post-secondary education required, as a condition of state receipt of such funds, a state agency which is broadly representative of the general public and of post-secondary education in the state.⁸⁴ Federal funds made available under the Higher Education Act of 1965 fell into this category.

Another item of considerable impact contained in the Education Amendments of 1972 was the establishment of the State Student Incentive Grant (SSIG) program. This program provided 50 per cent matching federal funds for new or expanded state programs which aid students attending higher education institutions. It thus recognized for the first time the important role the states were to play in student aid and opened the way for subsequent discussions of state-federal partnership in student aid distribution and planning.⁸⁵ This program also called for a single state agency to administer these student aid programs.⁸⁶

Hawaii and the Education Amendments of 1972

In conformance with the federal requirements of the Education Amendments of 1972 and with the added recommendations of the governor's ad hoc commission on operations, revenues and expenditures,⁸⁷ the Hawaii Post-Secondary Education Commission was established under chapter 305H, Hawaii Revised Statutes. The commission consists of the university board of regents and 4 additional members broadly representative of the general public with the president of the university acting as its administrative officer. As of 1976, 46 states likewise have established or designated existing agencies as the state post-secondary education commission.⁸⁸

As recommended by the CORE Report, Hawaii's 1202 commission was to serve the vital purpose of fostering effective relationships among public and private colleges in the state.⁸⁹ The CORE Report further suggested increased state involvement with private educational institutions by recommending that:⁹⁰

The University administration be encouraged to review how private facilities and other assets can be utilized to assist the State in meeting its higher education responsibilities.

The creation of 1202 commissions stimulated the interest and concern of the states in their relationships with private higher educational institutions. The nonpublic sector, previously left to itself, was now to become an integral element in statewide planning for post-secondary education. As stated in the report, State Policy and State Aid to Students Attending Independent Colleges in Hawaii, private and sectarian higher educational institutions help public institutions to shoulder the responsibility of educating the public.⁹¹ Hawaii's 5 private colleges play an important role in offering alternative academic programs and settings not available at the state university, i.e. private institutions provide students with choice in higher education.⁹² Furthermore, equal educational opportunity or access to higher education, whether obtained at private, sectarian, or public institutions, is necessary to ensure choice and diversity to students of the state.⁹³ Therefore, nonpublic institutions are essential elements in the state's efforts to achieve the goals of providing both access and choice in higher education.

MANAGEMENT

By virtue of its defined duties, the Hawaii State Post-Secondary Education Commission was additionally delegated the responsibility of administering the State Student Incentive Grant Program. In administering the SSIG program, Hawaii's 1202 commission handled only the federal portion of the grant program with all staff and expenses paid with federal moneys. The state portion of the funding was administered by the University of Hawaii board of regents and applied only to students attending public post-secondary educational institutions.

State Constitutional Conflict

Not until 1976 has there been any state constitutional conflict as a consequence of state receipt of federal funds to implement the SSIG program. In 1976, under section 1070C-2 of P.L. 94-482, an amendment was made to the 1972 State Student Incentive Grant program which provided that:⁹⁴

Effective with respect to any academic year beginning on or after July 1, 1977, all nonprofit institutions of higher education in the state are eligible to participate in the state program.

The new federal requirement allows not only state, but all nonprofit institutions of higher education, such as private and sectarian colleges, to participate in the State Student Incentive Grant program.

The constitutional conflict lies in the fact that, in varying phraseology, all states except Vermont have constitutional provisions prohibiting the expenditure of state funds for sectarian purposes. Many state constitutions provide that public school funds may not be used for any purpose other than for the support of public schools. Other states have constitutional provisions restricting the use of public funds only to institutions under the state's exclusive control. Still other states prohibit public appropriations for any sectarian purpose, institutions, or society. In some states public funds may not be granted to sectarian educational institutions, educational institutions controlled by a sectarian denomination, or schools where sectarian doctrines are taught. Finally, some states provide that no state aid may be given to private schools.⁹⁵

Federal Constitutional Conflict

One reason for state constitutional provisions prohibiting state aid for sectarian and/or private purpose finds its roots in the First Amendment of the U.S. Constitution. The U.S. Constitution provides in Article I the guarantee of religious freedom: "Congress shall make no law respecting an establishment of religion and the free exercise thereof;..." The establishment and free exercise clauses indicated an intent by the framers of the Constitution that the federal government, at least, should not involve itself in religious affairs, thereby creating a separation of church and state.

The language found in Article I has become the focal point of controversy in several U.S. Supreme Court cases dealing with state entanglement in educational affairs of religious institutions. It is important to note in following the history of these cases that, despite some question as to the exact scope of restriction of the U.S. Constitution with respect to religion and education, it is generally understood that the U.S. Constitution permits a broader range of aid to sectarian educational institutions than do some state constitutions.⁹⁶ For a discussion of Supreme Court cases regarding types of permissible aid to sectarian schools, see part I of this study concerning lower education.

One Supreme Court decision is of particular importance to the discussion of state aid to sectarian and private higher educational institutions. In Tilton v. Richardson, the Supreme Court upheld the constitutionality of the Higher Education Facilities Act by allowing for the use of federal funds for the construction of facilities at sectarian colleges. The significance of this decision lies in the distinction made between church-related institutions of higher education from church-related elementary and secondary schools in arriving at the finding.⁹⁷ Chief Justice Burger stated for the plurality that:⁹⁸

College students were less impressionable than younger persons, and institutions of higher learning (even though they might have ties with religious organizations) were not characteristically so devoted as parochial primary and secondary schools to propagating faith. Furthermore, ..., the sort of aid given (buildings) was not likely to involve governmental agents in close and continued monitoring of the work of the recipient institutions. The degree of entanglement was

MANAGEMENT

not sufficient to require invalidation under the Establishment Clause.

Also:⁹⁹

College students are not as susceptible as young children to religious indoctrination. College courses true to their internal disciplines do not provide much opportunity for sectarian influences. Finally, the general pattern in church-related higher education is of academic freedom. Most church-related schools seek to evoke a free critical response from their students.

And it appeared that:¹⁰⁰

Since religious indoctrination is not a substantial purpose or activity of these church-related colleges and universities, there is less likelihood than in primary and secondary schools that religion will permeate the area of secular education. This reduces the risk that government aid will in fact serve to support religious activities.

Consequently, the decision reached in Tilton v. Richardson seems to indicate that certain types of federal aid may be permissible for higher education while the same might not hold true at the lower education level.

Federally funded higher education programs providing scholarships, fellowships, and loans generally make no distinction as to whether the schools toward which these federal funds are to be used are sectarian, private, or public.¹⁰¹ The exception is the National Defense Act which provides that funds may not go to a school or department of divinity. There has been "no direct Supreme Court decision that goes directly to the issue of general scholarship funds given to college students without regard to the type of institution they attend".¹⁰² Neither has the Supreme Court examined a case of assistance programs, such as the G.I. Bill, on establishment clause grounds.¹⁰³

Hawaii's Constitutional Provisions

State constitutions, however, are not limited to application of the problems confronted by the U.S. Constitution. More rigid prohibitions against grants of public funds to sectarian schools are found in the constitutions of many states, even if such grants are found to be within the limits allowed by the U.S. Constitution.¹⁰⁴ Article IX, section 1, of Hawaii's Constitution states in part:

There shall be no segregation in public educational institutions...; nor shall public funds be appropriated for the support or benefit of any sectarian or private education institutions.

Further, Article VI, section 2, relating to taxation and finance states:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 3 of Article I of this constitution.

In addition, Article I, section 3, contains language similar to the U.S. Constitution's First Amendment establishment provision. The Hawaii Constitution expressly prohibits state aid in both the private and sectarian sectors.

In order to determine the constitutionality of the use of state funds for tuition subsidies for students attending nonpublic post-secondary institutions, such as was required under the SSIG program, the question was referred to the attorney general of Hawaii. In an opinion dated November 3, 1976, the attorney general found that there was a state constitutional prohibition against state tuition subsidies for students attending nonpublic institutions of post-secondary education.¹⁰⁵ The opinion cited Spears v. Honda,¹⁰⁶ in which a program involving state money given students to pay for transportation costs to and from private and sectarian institutions was ruled unconstitutional, and Matthews v. Quintin,¹⁰⁷ in which the Court noted that state transportation subsidies would aid in increasing attendance at private and sectarian schools and in promoting religious doctrines taught at these schools thereby implying prohibited

entanglement of church and state. In light of Spears and Matthews, tuition subsidies were also found to be in violation of Hawaii state constitutional provisions. Similar state tuition assistance, whether in the form of a loan or grant, for students attending sectarian institutions of higher education has been held unconstitutional by state supreme courts in Alabama, Nebraska, Virginia, and Washington.¹⁰⁸ Thus, the attorney general's ruling indicates that the Hawaii Constitution expressly prohibits allocation of state moneys, necessary to match federal funds under the SSIG program, for tuition subsidies to students attending nonpublic institutions of post-secondary education.

Under Act 14 of the Special Session of 1977, the state post-secondary education commission was authorized to make rules and regulations to enable the state to participate in certain federally funded programs available to institutions of post-secondary education. In addition, Act 14 restricted the use of state moneys appropriated for post-secondary education only to persons attending state-owned or state-controlled institutions and prohibited the use of state funds to pay for staff work used in the distribution of federal or private funds to students attending nonpublic institutions for which purpose only federal or private funds or both may be used.¹⁰⁹

Interim participation in the SSIG program was permitted to states with constitutional and statutory provisions prohibiting the use of state aid to private institutions by the use of "alternative matching funds". Under this plan, the private post-secondary education institutions are to provide "alternative matching funds" matched by federal funds used to provide tuition subsidies for their students. The state is to provide "state" matching funds matched by federal funds to be used for tuition subsidies for students attending public post-secondary educational institutions.¹¹⁰ However, the ad hoc committee on financial aid to students of the state post-secondary education committee noted that this method of the use of alternative matching funds "cannot be expected to foster full realization of the principle of access and choice".¹¹¹ Meanwhile, the post-secondary education commission is forced to make artificial distinctions in carrying out the federal SSIG program.

HIGHER EDUCATION

In its report, State Policy and State Aid to Students Attending Independent Colleges in Hawaii, the ad hoc committee of the state post-secondary education commission on House Resolution 35-76 Requesting a Review of Financial Aid to Students recommended several steps be taken to encourage access and choice of post-secondary educational opportunities in Hawaii and to fully utilize SSIG program participation. Two actions require constitutional revisions to allow the use of state funds for sectarian and private institutions. It was suggested that Article VI, section 2, be revised as follows:¹¹²

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used directly or indirectly, except for a public purpose(.) unless otherwise provided in this constitution. No grant shall be made in violation of Section 3 of Article I of this constitution. The use of public funds and public credit under Section 1 of Article IX of this constitution shall not be deemed to violate Section 3 of Article I of this constitution.

and that Article IX, section 1, be revised in the following manner:¹¹³

The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public library and such other educational institutions as may be deemed desirable, including physical facilities thereof. There shall be no segregation in public educational institutions because of race, sex, religion or ancestry(; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution). No appropriation of public funds, directly or indirectly may be made to any school or institution of learning not owned or exclusively controlled by the State or a department of the State, provided, that the Legislature may appropriate public funds and the public credit may be used to provide for scholarships, loans, and grants to persons attending or planning to attend nonprofit institutions of postsecondary education in the State whose primary purpose is to provide postsecondary education and not religious training or theological education provided that no such scholarship, loan, or grant may be made to a student enrolled or planning to enroll in a religious, seminarian or theological program. No such funds shall be made available to students attending or planning to attend any institution which discriminates because of race, sex, religion, or ancestry.

Additionally, a Hawaii Instructional Grant Program is recommended to be established under chapter 305H, Hawaii Revised Statutes, to implement a tuition

assistance program for accredited post-secondary education to be funded by the state and federal governments and administered by the state post-secondary education commission.¹¹⁴

Constitutional amendments would have to be adopted in states with provisions prohibiting grants of public funds to private and/or church-related schools before any program of direct state aid to these institutions, such as is the case with the SSIG program, could be enacted. If the Hawaii Constitution is to be revised to allow state aid to private and sectarian education institutions, the following questions should be considered:¹¹⁵

Should public funds help support education?

- (1) Can some public purpose better, more economically be realized through private or sectarian educational institutions?
- (2) Will public support of nonpublic schools adversely affect the public educational institutions, impairing state commitment to public education?

If support be given, what forms and amounts of support are desirable?

- (1) Is there a reason for distinguishing between elementary and secondary schools and higher education?
- (2) Is there reason to prefer direct or indirect assistance?
- (3) If a different degree or kind of aid is to be permitted for private and sectarian higher education institutions, should the differences be made explicit in the constitution or left to legislative and administrative discretion?¹¹⁶

Whether the present so-called interim participation will be changed to require states to fund private post-secondary education must be considered in view of the number of states with constitutional provisions against such funding. Finally, the U.S. Senate and Conference Committee Reports to P.L. 94-482 recognize the existence of state constitutional prohibitions against state aid to nonprofit educational institutions but it is not clear that the intent of Congress was to require state constitutional amendments in order to continue state participation in the program.¹¹⁷

HIGHER EDUCATION

Although there is evidence of increasing federal support in the area of post-secondary education, actions which require state constitutional revisions to further federal objectives should be carefully examined before they are implemented. It was the intent of the 1950 Constitutional Convention to explicitly prohibit appropriation of public funds for sectarian or private purposes. The committee on education stated:¹¹⁸

Your Committee has incorporated a prohibition against the appropriation of public funds "for the support or benefit of any sectarian, denominational or private educational institution."

The present constitution, Article IX, section 1, reads in part:

...Nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution.

clearly spelling out the prohibition of specific uses of state aid. Furthermore, it is argued that educational funds diverted to nonpublic education institutions reduce funds available to public education institutions.¹¹⁹ More importantly, opponents to state aid for nonpublic use contend that indirect benefits, such as tax exempt status and funds for construction from the Higher Education Facilities Act of 1965, available to nonpublic educational institutions are substantial and sufficient.¹²⁰

There is a definite trend in states' interest in "independent higher education resulting from the contributions made by independent colleges and universities toward the achievement of goals for postsecondary education".¹²¹ Nevertheless, this inclusion of the nonpublic sector of education in state planning should, according to the education commission of the states, be "constructed within the legal and constitutional provisions that apply at both state and federal levels".¹²² Financing student aid programs in higher education to provide access and choice is not enough.¹²³ These programs must also provide an effective, i.e. quality, system of higher education.¹²⁴ Whether or not this is best accomplished through constitutional revision will be an important decision likely to affect future directions in state planning for all aspects of post-secondary education.

PART III. TUITION POLICY AND HIGHER EDUCATION

Among the powers of the board of regents of the University of Hawaii is the regulation of tuition fees, chapter 304-4, Hawaii Revised Statutes. At the 1968 Constitutional Convention, a constitutional amendment was proposed which provided that residents attending state institutions of higher learning, vocational and technical schools would not be charged tuition.¹²⁵

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries, colleges, and institutions on vocational and technical learning and such other educational institutions as may be deemed desirable, including physical facilities thereof, of which there will be no tuition charged of residents. There shall be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution. (Emphasis added)

It was argued by proponents of the amendment that many state universities charge no tuition and that the University of Hawaii should follow their example. To offset the costs of a tuition free policy for state residents, it was suggested that out-of-state tuition to nonresidents be increased.¹²⁶

On the other hand, it was argued that:¹²⁷

- (1) Such a generalized constitutional provision for no tuition would restrict the power of the legislature in determining educational policies in terms of needs, resources, and the best approach in terms of conditions existing at any given time;
- (2) The greatest economic barrier to higher education may not be tuition but other barriers such as living away from home, family economics, and high fees and the high cost of campus activities;
- (3) The cost to the state would be prohibitive, and the effort of the State to fully support the K-12 public school system may be seriously impeded;
- (4) Specific reference to "no tuition" would still permit the legislature or the board of regents to impose substantial fees in lieu of tuition, as is being done in many state universities; and

HIGHER EDUCATION

- (5) Setting a high out-of-state tuition for nonresident students will not make up for the anticipated loss of an estimated \$3.2 million (based on 1967-68 enrollment figures for the entire University of Hawaii complex including community colleges). This estimated dollar loss in state revenues was obtained from the business office, University of Hawaii.

The committee on public health, education, and welfare rejected this proposal. A floor debate at the Convention also considered the concept of free education for resident students at the University of Hawaii. The proposal stated in part:¹²⁸

The University of Hawaii is hereby established as a state university which shall be free for undergraduate residents of Hawaii and constituted a body corporate.

The term "undergraduate" in this proposal would have included students pursuing community college and adult education and other programs at the undergraduate level.¹²⁹

Proponents of a free undergraduate education argued that:

- (1) States such as Alaska, Arizona, Arkansas, California, Delaware, Florida, and Idaho provide free tuition for higher education and Hawaii should do the same.¹³⁰
- (2) Tuition free education could supply the state with professionals rather than recruiting from other states.¹³¹
- (3) A tuition-free policy provides equal educational opportunity to all students.¹³²
- (4) The available state scholarship and loan programs are not adequate and pose qualification requirements which hinder those needing financial aid from receiving assistance.¹³³
- (5) A tuition-free education would enable the state to provide higher education to all.¹³⁴
- (6) Higher education has become a minimum requirement of every citizen and a tuition-free policy would help meet this requirement.¹³⁵

MANAGEMENT

- (7) Monetary values cannot be placed on an investment such as education.¹³⁶

Opposition to a constitutional amendment providing tuition-free higher education was based on the following arguments:

- (1) Those who could pay, should pay; i.e., tuition should be based on the ability to pay and state funds would be more wisely spent by aiding students in financial need rather than offering free education to every student.¹³⁷
- (2) The state had already made available scholarship and grant programs to meet the needs of students requiring financial aid.¹³⁸
- (3) The costs of providing a tuition-free higher education would increase enrollment and consequently require raising additional revenues.¹³⁹
- (4) The costs of a tuition-free policy would be prohibitive causing budgetary strain at a time when even lower education needs and services cannot be adequately met.¹⁴⁰
- (5) The value of one's college education is appreciated when one contributes toward it.¹⁴¹
- (6) Increased enrollment as a result of a tuition-free policy implies hidden costs such as the need for additional staff, facilities and programs.¹⁴²
- (7) A tuition-free policy is a legislative problem which should not be limited by constitutional prohibitions.¹⁴³

In concluding the debate, it was stated that the basic issue of the feasibility of a tuition-free higher education policy was a decision which should be left to the legislature and settled in light of other budgetary considerations.¹⁴⁴ The proposal was defeated by the Convention.

Although proposals for a tuition-free higher education were not accepted at the 1968 Constitutional Convention, the idea of changing the tuition structure is not dead. For example, in 1974 the state legislature enacted a bill which allows senior citizens who are 60 years of age or older to enroll in regular credit courses on a space available basis at the University of Hawaii without charge.¹⁴⁵ Act 16 of the 1975 legislature eliminated statutory requirement for a minimum

HIGHER EDUCATION

resident tuition fee at any University of Hawaii campus, including a community college.

The governor's ad hoc committee on operations, revenues and expenditures recommended a restructuring of the tuition rate which stated that:¹⁴⁶

A policy be enunciated and implemented which, over a reasonable period of time, would establish tuition schedules for the upper division and graduate/ professional schools so as to provide at least 25 per cent of educational costs. Factors that make up educational cost should be clearly identified and quantified, and students, the University administration, the Legislature and the public should be involved in the definition of these factors.

In conjunction with this recommendation, the committee felt that the state should establish a long-term loan program to aid qualified persons, regardless of their economic levels, to pursue further education.¹⁴⁷ The Carnegie Commission on Higher Education also supports a policy of:¹⁴⁸

...no tuition or very low tuition...charged for the first two years in public institutions including the community colleges, state colleges and universities.

A review of the constitutions of the 50 states indicates that the constitutions of Arizona, North Carolina, and Wyoming specifically provide for higher education which is "nearly as free as possible". North Dakota's Constitution states in Article VIII, section 184:

The legislative assembly shall provide for a uniform system of free public schools through the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and services charges to assist in the financing of public schools of higher education.

Eight states¹⁴⁹ constitutionally mandate their respective legislatures to provide gratuitous education to students between the elementary school age (usually 6 years of age) and 21.¹⁵⁰ The constitutional intent of language such as "the

maintenance and establishment of free public schools for all children between the ages of 6 and 21 years"¹⁵¹ should be interpreted with care. The inclusion of students of college age in the group which qualifies for free public education does not, in itself, indicate a mandate for tuition-free college or university education. Other state constitutions provide for a university fund or tax for use by the state university or institutions of higher education, but, do not specify that the funds are to be used to implement a tuition-free policy at these institutions.

Higher Education and Equal Education Opportunity

Hawaii, along with states such as Kansas, New York, Ohio, Montana, and Wyoming, has adopted the policy of providing each high school graduate or otherwise qualified person an opportunity to enter a state higher education institution.¹⁵² This policy of universal access means an opportunity to obtain higher education for disadvantaged groups by equalizing factors which would otherwise prohibit admission of these disadvantaged groups at institutions of higher learning. Universal access places identified disadvantaged groups in Hawaii--the low-income, geographically isolated, and ethnic minority groups¹⁵³--on equal footing with all other applicants to state higher educational institutions.

State efforts to provide adequate financial support to equalize educational opportunity is a major factor in realizing universal access. A little or no tuition policy is one means of equalizing educational opportunity. Other means which could help achieve universal access include increased state scholarship and tuition waivers, an efficient statewide community college system,¹⁵⁴ and a review of admission policies.¹⁵⁵

Programs such as the Basic Educational Opportunity Grants (BEOG) program in the Educational Amendments of 1972 represented a major step toward a federal policy to aid higher education by primarily encouraging equality of opportunity.¹⁵⁶ The BEOG program additionally was expected to provide students with choice of institutions, assist both public and private institutions,

HIGHER EDUCATION

and ensure a large flow of student aid to states and institutions with a large enrollment of low-income students.¹⁵⁷

At the state level, several constitutions contain language which indicates state policy of equal education opportunity at all educational levels. Examples are the constitutions of Montana which, in Article X, section 1, states:

It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

and of New Mexico's provision in Article XII, section 1:

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

Before such language is considered for insertion into the constitution, some vital policy questions must be addressed:¹⁵⁸

Does the state have the responsibility to equalize the opportunity of all students in providing public higher education?

At what level do tuition and other fees become a deterrent to education of the total public and result in only the middle and upper class obtaining the educational advantages?

Can a state deny a public service such as an education on the sole basis of the economic condition of the recipient?

Answers to these questions should be sought in view of state policies of access and choice. Equalizing educational opportunity through a low-tuition policy or tuition subsidies such as loans and scholarship could provide some answers. Tuition subsidies funded by state and federal governments can provide a timely and effective means of aiding students at public and nonpublic higher education institutions. The result of state involvement in state-federal programs for higher education may require state constitutional changes. Therefore, careful consideration must be given to the necessary points of revision to ensure a firm and effective basis for future state educational

MANAGEMENT

decisions and policies. For a further discussion on equal education opportunity, see part I of this study concerning lower education.

FOOTNOTES

Chapter 1

1. Lewis B. Mayhew, *The Carnegie Commission on Higher Education* (San Francisco: Jossey-Bass Publishers, 1974), p. 131.
2. James A. Perkins, "Organization and Functions of the University," *The University as an Organization*, ed. James A. Perkins (New York: McGraw-Hill Book Company, 1973), p. 7.
3. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, *CORE Report to the Governor*, November 1974, p. A-66.
4. *Ibid.*, p. A-67.
5. Pub. L. No. 346, 78th Cong., 2nd Sess. (1944).
6. William Clyde DeVane, *Higher Education in Twentieth-Century America* (Cambridge, Mass.: Harvard University Press, 1965), p. 123.
7. Aims C. McGuinness, Jr., T. Harry McKinney, and Richard M. Millard, *The Changing Map of Postsecondary Education; State Postsecondary Education Commissions (1902): Their Origin, Development and Current Status*, Education Commission of the States Report No. 66 (Denver: Education Commission of the States, 1975), p. 5.
8. Not all federal legislation regarding higher education have been restricting. For example, the Higher Education Act of 1965 provided additional funds for the advancement of higher education and extended previous programs in this area.
9. John J. Corson, "If Not the University," *Educational Record* (Spring, 1967), pp. 154-155.
10. Committee on Government and Higher Education, *The Efficiency of Freedom* (Baltimore: Johns Hopkins Press, 1959), p. 3.
11. Alabama, Alaska, Arizona, California, Colorado, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, South Dakota, Texas, Utah, Wisconsin, and Wyoming.
12. Mississippi, Montana, North Dakota, and Oklahoma.
13. Maine, Oregon, Ohio, and Virginia.
14. Arkansas, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, and West Virginia.
15. Committee on Government and Higher Education, p. 5.
16. New York (State), Education Department, *Education and the 1967 Constitutional Convention; An Analysis of Selected Proposals Affecting Education Which May Come Before the Convention* (Albany: 1966), p. 49.
17. *Suggested State Legislation, 1970* (Lexington, Ky.: Council of State Governments, 1969), p. 4.
18. Michigan, Constitutional Convention Citizens Advisory Committee on Education, *Citizens' Advisory Committee Report: Education* (Lansing, Mich.: 1961), p. 44.
19. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 101.
20. *Ibid.*
21. C. H. Pforzheimer, Jr., "Comments: I," *Modernizing State Government: The New York Constitutional Convention of 1967, Proceedings of the Academy of Political Science*, 28(3) (January, 1967), p. 167.
22. Lyman A. Glenny and Thomas K. Dalglish, *Public Universities, State Agencies, and the Law: Constitutional Autonomy in Decline* (Berkeley: University of California, Center for Research and Development in Higher Education, 1973), p. 15.
23. Perkins, p. 176.
24. Glenny and Dalglish, p. 15.
25. *Ibid.*
26. Henry Campbell Black, *Black's Law Dictionary* (4th ed., revised; St. Paul, Minn.: West Publishing Co., 1968), p. 409.
27. *Hawaii Const.* art. IX, sec. 4.
28. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 52, p. 204.
29. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, p. 616.
30. Art'y Gen. Ops. No. 61-84 at p. 2 (August 18, 1961).
31. *Hawaii Rev. Stat.*, sec. 304-2.
32. *Hawaii Rev. Stat.*, sec. 304-6.
33. Lyman A. Glenny and Thomas K. Dalglish, "Higher Education and the Law," *The University as an Organization*, ed. James A. Perkins (New York: McGraw-Hill Book Company, 1973), p. 199.
34. John W. Hicks, "The Role of State Government in Public Higher Education," *Toward an Understanding of Higher Education; Studies Conducted by the Midwestern Conference of the Council of State Governments by the Midwestern Advisory Committee on Higher Education*, prepared by Bernard S. Adams and others, June, 1970, p. 33.
35. Glenny and Dalglish, "Higher Education and the Law," p. 179.
36. Malcolm Moos and Francis E. Rourke, *The Campus and the State* (Baltimore: Johns Hopkins Press, 1959), p. 30.
37. *Ibid.*, p. 5.
38. *Ibid.*, p. 6.

39. The Carnegie Commission on Higher Education, *The Capitol and the Campus; State Responsibility for Postsecondary Education* (New York: McGraw-Hill Book Company, 1971), p. 65.
40. Among states which constitutionally recognize private institutions of higher education are: California (Stanford), Connecticut (Yale), Louisiana (Tulane), and Massachusetts (Harvard).
41. The Carnegie Commission on Higher Education, p. 64.
42. Moos and Rourke, pp. 4-5.
43. *Ibid.*, p. 5.
44. James Bryant Conant, *Shaping Educational Policy* (New York: McGraw-Hill Book Company, 1964), p. 75.
45. 1971 Haw. Sess. Laws, Act 169 (*Hawaii Rev. Stat.*, ch. 446D).
46. Hawaii, Government Organization Commission, *Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government* (Honolulu: 1977), p. i.
47. *Ibid.*, p. 104.
48. *Ibid.*, p. 106.
49. *Ibid.*, p. 107.
50. *Ibid.*, p. 7.
11. "Management of Colleges and Universities," *Challenge and Change in American Education*, eds. Seymour E. Harris, Kenneth M. Deitch and Alan Leevensohn (Berkeley: McCutchan Publishing Corporation, 1965), p. 244.
12. *Ibid.*
13. Zwingle and Rogers, p. 5.
14. Idaho, Regents of the University of Idaho; Michigan, Board of Trustees, Michigan State University; Michigan, Board of Governors, Wayne State University; New Mexico, Board of Regents, New Mexico Highlands University; New Mexico, Board of Regents, Western New Mexico University; Wyoming, Board of Trustees, University of Wyoming.
15. S. V. Martorana and Ernest V. Hollis, *State Boards Responsible for Higher Education*, U.S. Office of Education, OE-53003, Circular No. 619 (Washington: U.S. Government Printing Office, 1960), p. 8.
16. Michigan, Constitutional Convention Citizens Advisory Committee on Education, *Citizens' Advisory Committee Report: Education* (Lansing, Mich.: 1961), p. 47.
17. The Carnegie Commission on Higher Education, *The Capitol and the Campus; State Responsibility for Postsecondary Education* (New York: McGraw-Hill Book Company, 1971), p. 108.
18. Michigan, Constitutional Convention Citizens Advisory Committee on Education, pp. 47-48.
19. The Carnegie Commission on Higher Education, *The Capitol and the Campus*, p. 25.
20. Heimberger, p. 1104.

Chapter 2

1. John D. Millett, "Governance and Leadership in Higher Education," *Management Forum*, December, 1974, p. 1.
2. "State Boards of Higher Education" (Legislative Reference Bureau, University of Hawaii, Request No. 8063, 1961), p. 9. (Mimeographed).
3. *Ibid.*
4. J. L. Zwingle and Mabel E. Rogers, *State Boards Responsible for Higher Education, 1970*, Association of Governing Boards of Universities and Colleges (Washington: U.S. Government Printing Office, 1972), p. 4.
5. Lyman A. Glenny and Thomas K. Dalglish, *Public Universities, State Agencies, and the Law: Constitutional Autonomy in Decline* (Berkeley: University of California, Center for Research and Development in Higher Education, 1973), p. 1.
6. *Ibid.*, p. 148.
7. *Ibid.*
8. *Hawaii Const.* art. IX, sec. 5.
9. The Carnegie Commission on Higher Education, *Governance of Higher Education; Six Priority Problems, A Report and Recommendations* (New York: McGraw-Hill Book Company, 1973), pp. 32-33.
10. Frederic Heimberger, "The State Universities," *Daedalus*, Fall, 1964, p. 1105.
21. Louisiana, Board of Regents; Louisiana, Board of Trustees for State Colleges and Universities; Michigan, State Board for Community and Junior Colleges; New York, Board of Regents of the University of the State of New York; Oklahoma, Oklahoma Regents for Higher Education.
22. Heimberger, p. 1104.
23. *Ibid.*
24. Willis F. Dunbar, *Higher Education in Michigan's Constitution*, Michigan Constitutional Convention Studies (Lansing, Mich.: Constitutional Convention Preparatory Commission, 1961), p. 18.
25. Michigan, Constitutional Convention Citizens Advisory Committee on Education, p. 52.
26. *Ibid.*
27. Heimberger, p. 1104.
28. Michigan, Constitutional Convention Citizens Advisory Committee on Education, pp. 52-53.
29. Heimberger, p. 1104.
30. The Carnegie Commission on Higher Education, *The Capitol and the Campus*, p. 101.
31. Michigan, Constitutional Convention Citizens Advisory Committee on Education, p. 53.

32. Alabama, California, Colorado, Connecticut, Louisiana, Michigan, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, and Texas.
33. Alaska, Arizona, Florida, Georgia, Hawaii, Kansas, Mississippi, Montana, Nevada, North Dakota, and South Dakota.
34. Louisiana, Michigan, New York, and Oklahoma.
35. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 52, p. 204.
36. *Ibid.*, p. 205.
37. 1964 Haw. Sess. Laws, Act 39.
38. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, *CORE Report to the Governor*, November, 1974, p. xv.
39. *Ibid.*
40. Hawaii, Office of the Chancellor for Community College System, University of Hawaii, *A Master Plan for Hawaii's Community Colleges ... Guidelines, 1977-1983* (Honolulu: November, 1976), p. 6. (Draft #2)
41. *Ibid.*
42. Hawaii, Government Organization Commission, *Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government* (Honolulu: 1977), p. 8.
43. *Ibid.*, p. 107.
44. Alabama, Alaska, Arizona, California, Georgia, Hawaii, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Wyoming.
45. Samuel K. Gove and Susan Welch, "The Influence of State Constitutional Conventions on the Future of Higher Education," *Educational Record* (Spring, 1969), p. 208. (Reprint).
46. Michigan, Constitutional Convention Citizens Advisory Committee on Education, pp. 49-50.
47. *Ibid.*, p. 50.
48. *Ibid.*
49. Gove and Welch, p. 208.
50. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 41, p. 205.
51. *Ibid.*, p. 195.
52. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. xv.
53. Testimony of Harold C. Eichelberger, member, Board of Regents, University of Hawaii to the House of Representatives, Committee on Higher Education, February 26, 1971.
54. The Carnegie Commission on Higher Education, *Governance of Higher Education*, p. 33.
55. *Hawaii Const.* art. IX, sec. 5.
56. *California Const.* art. IX, sec. 9(d).
57. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 434.
58. *Ibid.*
59. *Ibid.*
60. *Ibid.*, p. 433.
61. *Ibid.*, p. 439.
62. *Ibid.*, p. 434.
63. *Ibid.*
64. *Ibid.*, p. 439.
65. *Ibid.*, p. 205.
66. The Carnegie Commission on Higher Education, *Governance of Higher Education*, pp. 33-34.
67. *Ibid.*, p. 34.
68. *Ibid.*
69. Senate Resolution 25, Sixth Legislature, 1971, State of Hawaii.
70. *Ibid.*
71. Testimony of Harold Eichelberger, p. 3.
72. *Yale Daily News*, January 14, 1970.
73. Senate Standing Committee Report 442 on Senate Bill 194, Sixth Legislature, 1971, State of Hawaii.
74. The Carnegie Commission on Higher Education, *Governance of Higher Education*, p. 33.
75. Governor as ex officio member: Alabama (president of the board), Arizona, California, Iowa, Montana (nonvoting), and North Dakota. President of institution as ex officio member: Arizona, California, Michigan (nonvoting), and Wyoming (nonvoting). Superintendent of public instruction as ex officio member: Alabama (superintendent of education), Arizona, California, Michigan (nonvoting), Montana (nonvoting), Nebraska (commissioner of education), North Dakota, Oklahoma, and Wyoming (nonvoting).
76. Alaska, Arizona (silent for board of regents of the University of Arizona but not for the state board of education), Connecticut, Hawaii, Idaho, North Carolina, Texas, and Utah.
77. 1971 Haw. Sess. Laws, Act 143.
78. Senate Standing Committee Report 442 on Senate Bill 194, Sixth Legislature, 1971, State of Hawaii.
79. Leon D. Epstein, "State Authority and State Universities," *Daedalus*, Summer, 1970, p. 709.
80. Richard M. Millard, *State Boards of Higher Education*, ERIC Higher Education Research Report No. 4 (Washington: The American Association for Higher Education, 1976), pp. 30-31.

81. Education Amendments of 1972, sec. 1202, 20 U.S.C.A. 1142a(a) (1974).
82. Millard, p. 34.
83. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. A-57.
84. *Hawaii Rev. Stat.*, sec. 305H-2.
85. Millard, p. 35.
86. *Ibid.*
87. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. xvii.
88. *Book of the States, 1978-79* (Chicago: Council of State Governments, 1976), p. 330.
89. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. xvii.
90. *Ibid.*
91. "State Policy and State Aid to Students Attending Independent Colleges in Hawaii; Response to House Resolution 35-76 Requesting a Review of Financial Aid to Students" (Ad Hoc Committee Chaired by the State Postsecondary Education Commission, Honolulu, December, 1976), p. 3; hereinafter cited as "State Policy and State Aid." (Mimeographed).
92. *Ibid.*
93. *Ibid.*, p. 4.
94. 20 U.S.C.A. 1070c-2(4) (1977).
95. Kern S. Alexander and Erwin S. Solomon, *College and University Law* (Charlottesville, Va.: The Michie Company, 1972), pp. 118-119.
96. New York (State), Temporary Commission on the Constitutional Convention, *Education* (New York: March 3, 1967), p. 25.
97. Richard E. Morgan, "The Establishment Clause and Sectarian Schools: A Final Installment?," *The Supreme Court Review, 1973*, ed. Philip B. Kurland (Chicago: The University of Chicago Press, 1973), p. 83.
98. *Ibid.*
99. Donald A. Giannella, "Lemon and Tilton: the Bitter and the Sweet of Church-State Entanglement," *The Supreme Court Review, 1971*, ed. Philip B. Kurland (Chicago: The University of Chicago Press, 1971), pp. 169-170.
100. Alexander, p. 177.
101. New York (State), Temporary Commission on the Constitutional Convention, p. 25.
102. "Schools and Colleges--Higher Education," 45 U.S.L.W. 2582 (June 14, 1977).
103. *Ibid.*
104. The Carnegie Commission on Higher Education, *The Capitol and the Campus*, p. 93.
105. Att'y Gen. letter to Chairperson of the Ad Hoc Committee for State Policy and State Aid to Students Attending Independent Colleges in Hawaii (November 3, 1976).
106. *Spears v. Honda*, 51 Haw. 1, 440 P.2d 130 (1969).
107. *Matthews v. Quintin*, 362 P.2d 932 (Alaska, 1961), appeal dismissed, 308 U.S. 517 (1962).
108. Kern S. Alexander and Erwin S. Solomon, *College and University Law, 1976 Supplement* (Charlottesville, Va.: The Michie Company, 1977), p. 5.
109. 1977 Haw. Special Sess. Laws, Act 14.
110. "State Policy and State Aid," pp. 27-28.
111. *Ibid.*, p. 27.
112. *Ibid.*, p. 20.
113. *Ibid.*, pp. 20-21.
114. *Ibid.*, pp. 22-23.
115. New York (State), Temporary Commission on the Constitutional Convention, p. 22.
116. *Ibid.*, p. 26.
117. U.S., Congress, Senate, Committee on Labor and Public Welfare, Senate Report No. 94-882 to S. 2657, 94th Cong., 2d Sess., 1976, pp. 4724-4725; U.S., Congress, Conference Committee to S. 2657, House Conference Report No. 94-1701, 94th Cong., 2d Sess., 1976, p. 4883.
118. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, p. 204.
119. Irving Dawson, John Thompson and Fred Waddell, *The Impact of the Texas Constitution on Education* (Houston: 1973), p. 48.
120. New York (State), Temporary Commission on the Constitutional Convention, p. 27.
121. "State Policy and Independent Higher Education Project," *Higher Education in the States*, Vol. 6, No. 1, 1977, p. 1.
122. *Ibid.*
123. U.S., Department of Health, Education and Welfare, Secretary, *The Second Newman Report: National Policy and Higher Education; Report of a Special Task Force to the Secretary of Health, Education and Welfare* (Cambridge, Mass.: The MIT Press, 1973), p. 80.
124. *Ibid.*
125. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 204.
126. *Ibid.*
127. *Ibid.*, pp. 204-205.
128. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, p. 440.
129. *Ibid.*, p. 441.

130. *Ibid.*, p. 442.
131. *Ibid.*, p. 445.
132. *Ibid.*, p. 446.
133. *Ibid.*
134. *Ibid.*
135. *Ibid.*, p. 447.
136. *Ibid.*, p. 448.
137. *Ibid.*, p. 442.
138. *Ibid.*, p. 443.
139. *Ibid.*
140. *Ibid.*
141. *Ibid.*, p. 444.
142. *Ibid.*, p. 447.
143. *Ibid.*
144. *Ibid.*, p. 448.
145. 1974 Haw. Sess. Laws, Act 189.
146. Hawaii, Governor's Ad Hoc Commission on Operations, Revenues and Expenditures, p. xvi.
147. *Ibid.*
148. The Carnegie Commission on Higher Education, *The Capitol and the Campus*, p. 86.
149. The states are Alabama, Arizona, Arkansas, Colorado, Mississippi, Missouri, Nebraska, and Wisconsin.
150. Wisconsin provides for free education to students between the ages of four and twenty years.
151. *Mississippi Const.* art. 8, sec. 201.
152. The Carnegie Commission on Higher Education, *A Chance to Learn, An Action Agenda for Equal Educational Opportunity on Higher Education* (New York: McGraw-Hill Book Company, 1970), pp. 11-12.
153. "Equal Educational Opportunity for Higher Education in Hawaii; A Progress Report prepared for presentation at the regular meeting of the Board of Regents on February 8, 1971," by Richard S. Takasaki (University of Hawaii, February, 1971), pp. 2-3. (Mimeographed).
154. *Ibid.*, p. 19.
155. *Ibid.*, p. 20.
156. The Carnegie Council on Policy Studies in Higher Education, *The Federal Role in Postsecondary Education: Unfinished Business, 1975-1980* (San Francisco: Jossey-Bass Publishers, 1975), p. 22.
157. *Ibid.*, pp. 22-23.
158. Alexander, p. 303.

Appendix

CONSTITUTIONAL PROVISIONS RELATING TO STATE BOARDS OF HIGHER EDUCATION

State	Board	Membership	Selection	Terms	Responsibilities
ALABAMA	Board of Trustees [University of Alabama]*	2 - University's congressional district	Subject to senate confirmation	12 years (staggered)	Management and control of state university
		1 - Every other congressional district			
		State superintendent of education	Method of appointment not stated		
	Constitution also provides for: Board of Trustees Auburn University	Governor	Ex officio president of the board		
		2 - Institute's congressional district	Appointed by the governor with advice and consent of the senate	12 years (staggered)	Management and control of the institute
		1 - Every other congressional district			
		State superintendent of education	Method of appointment not stated		
		Governor	Ex officio president of the board		
ALASKA	Board of Regents University of Alaska (body corporate)		Appointed by the governor subject to confirmation of a majority of members of the legislature in joint session		In accordance with law, formulate policy and appoint the president of the university
ARIZONA	Arizona Board of Regents [University of Arizona]		Appointed by the governor		
		Governor	Ex officio member of the board		
	State Board of Education	Superintendent of public instruction			Responsible for conduct and supervision of the public school system (which includes a university)
		President of a state university or a state college	Appointed by the governor with advice and consent of the senate		
		3 lay members			
		State junior college board member			
		1 superintendent of a high school district			
		1 classroom teacher			
		1 county school superintendent			
ARKANSAS	Community College Enabling Act: Establishment of dis- tricts by General Assembly for pro- viding community college instruction and technical training				
CALIFORNIA	The Regents of the University of California (corporation)	7 (Governor, Lieutenant Governor, Speaker of the Assembly, Superin- tendent of Public Instruction, President of State Board of Agriculture, President of the Mechanics Institute of San Francisco, President of the Alumni Association of the University)	Ex officio members		Vested with legal title and the manage- ment and disposition of the property of the university...
		Vice President of the Alumni Associa- tion of the University			Power to take and hold...all real and personal property...
		President of the University			Powers necessary or convenient for the effective administra- tion of its trust...
		18	Appointed by the governor and approved by the senate, a majority of the membership concurring	12 years (staggered)	Power to sue and to be sued, to use a seal, and to delegate to its committee or to the faculty of the university...such authority or functions as it may deem wise

State	Board	Membership	Selection	Terms	Responsibilities
	Constitution also recognizes: Leland Stanford Junior University California School of Mechanical Arts California Academy of Sciences Cogswell Polytechnic College				(Receive all funds derived from the sale of lands)
COLORADO	The Regents of the University of Colorado (body corporate) The Constitution declares the following as state institutions of higher learning: The University at Boulder, Colorado Springs, Denver The University at Fort Collins The School of Mines at Golden	9	Elected in a manner prescribed by law	6 years	General supervision of the university, and the exclusive control and direction of all funds of, and appropriations to the university
CONNECTICUT	Governing Boards of the University of Connecticut Constitution also confirms: The Charter of Yale College		General Assembly shall determine the size, number, terms, and method of appointment		
DELAWARE	--	--	--	--	--
FLORIDA	State Board of Education (body corporate)	Governor and members of the cabinet			Supervision of public education (establishment, maintenance, and operation of institutions of higher learning included in section 1, system of public education)
GEORGIA	Board of Regents of the University System of Georgia	1 - Each congressional district 5 - State at-large	Appointed by the governor and confirmed by the senate	7 years	Government, control, and management of the University System of Georgia Powers and duties as provided by law Establish program for elderly citizens
HAWAII	Board of Regents University of Hawaii (body corporate)		Appointed by the governor; nominated and, by and with the advice and consent of the senate		Power, in accordance with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university
IDaho	Regents University of Idaho		The Idaho State Board of Education serves as regents of the University of Idaho and trustees of the other institutions		General supervision of the university, and the control and direction of all the funds of, and appropriations to the university, under such regulations as may be provided by law
ILLINOIS	--	--	--	--	--
INDIANA	--	--	--	--	--

State	Board	Membership	Selection	Terms	Responsibilities
IOWA	Constitution establishes the State University Board of Education	1 - Each judicial district Lieutenant Governor Governor	Elected Presiding officer of the board Ex officio member	4 years (staggered)	Full power and authority to legislate and make all needful rules and regulations in relation to...educational institutions that are instituted, to receive aid from the school or university fund of this state; but all acts, rules, and regulations of said board may be altered, amended, or repealed by the General Assembly
KANSAS	State Board of Regents	9 (1 - each congressional district; remainder at-large)	Appointed by the governor, subject to confirmation by the senate No two members shall reside in the same county at the time of their appointment	Overlapping terms	Control and supervision of public institutions of higher education Other duties as prescribed by law
KENTUCKY	--	--	--	--	--
LOUISIANA	Board of Regents (body corporate)	15	Appointed by the governor, with consent of the senate At least one member, but no more than two members, shall be appointed from each congressional district	6 years (staggered)	Plan, coordinate, and have budgetary responsibility for all public higher education Revise, eliminate, approve, disapprove, or modify degree programs Study need for and feasibility of any new institution of post-secondary education Formulate and revise a master plan for higher education Responsible for budget recommendations for higher education
	Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (body corporate)	2 - Each congressional district 1 - State at-large 1 - Student w/o vote	Appointed by the governor with consent of the senate	6 years (staggered) Not more than 1 yr.	Supervise and manage the institutions, statewide agricultural programs, and other programs administered through its system
	Board of Supervisors of Southern University and Agricultural and Mechanical College (body corporate)	2 - Each congressional district 1 - State at-large 1 - Student w/o vote	Appointed by the governor with consent of the senate	6 years (staggered) Not more than 1 yr.	Supervise and manage the institutions, statewide agricultural programs, and other programs administered through its system
	Constitution recognizes: Tulane University				
MAINE	--	--	--	--	--
MARYLAND	--	--	--	--	--
MASSACHUSETTS	Constitutional recognition of: Harvard College				

State	Board	Membership	Selection	Terms	Responsibilities
MICHIGAN	Constitution mandates appropriations to maintain: University of Michigan Michigan State University Wayne State University Eastern Michigan University Northern Michigan University Western Michigan University Ferris Institute Grand Valley State College				
	Regents of the University of Michigan (body corporate)	President of the institution 8	Ex officio member w/o vote Elected as provided by law	8 years	General supervision of institution and the control and direction of all expenditures from the institution's funds
	Board of Trustees of Michigan State University (board corporate)	President of the institution 8	Ex officio member w/o vote Elected as provided by law	8 years	General supervision of institution and the control and direction of all expenditures from the institution's funds
	Board of Governors of Wayne State University (body corporate)	President of the institution 8	Ex officio member w/o vote Elected as provided by law	8 years	General supervision of institution and the control and direction of all expenditures from the institution's funds
	Other institutions of higher education governed by a board of control	President of the institution 8	Ex officio member w/o vote Appointed by the governor by and with the advice and consent of the senate	8 years or less (staggered)	General supervision of the institution Control and direction of all expenditures from the institution's funds
	State Board for Public Community and Junior College	8 Superintendent of public education	Appointed by the state board of education Ex officio member w/o vote	8 years or less (staggered)	Advise the state board of education concerning general supervision and planning for such colleges and requests for annual appropriations for their support
MINNESOTA	Constitution mentions: University of the State of Minnesota				
MISSISSIPPI	Constitution establishes: Agricultural and Mechanical College of Mississippi Alcorn Agricultural and Mechanical College				
	Board of Trustees of State Institutions of Higher Learning:	1 - Each congressional district 1 - Each Supreme Court district 2 - State at-large	Appointed by the governor with the advice and consent of the senate	12 years (staggered)	Management and control of state institutions of higher learning
	University of Mississippi Mississippi State College Mississippi State College for Women Mississippi Southern College Delta State Teacher's College Alcorn Agricultural and Mechanical College Mississippi Negro Training School	1 trustee for the LaBauve fund	Appointed by the governor	4 years	Power to contract deans, professors, and other members of the teaching staff and administrative employees

State	Board	Membership	Selection	Terms	Responsibilities
MISSOURI	Board of Curators of the State University	9	Appointed by the governor, by and with the consent of the senate		Government of the state university
MONTANA	Board of Regents of Higher Education (Montana University System)	7	Appointed by the governor and confirmed by the senate		Government and control of the Montana university system
		Governor and superintendent of public instruction	Ex officio members w/o vote		Supervise and control other public educational institutions assigned by law
NEBRASKA	Board of Regents (University of Nebraska)	6-8	Elected from and by districts	6 years	General government of the University of
		3	Nonvoting student body presidents of: University of Nebraska at Lincoln University of Nebraska at Omaha University of Nebraska Medical Center	Period of service as student body president	
	Board of State Colleges	6	Appointed by the governor with the advice and consent of the legislature	6 years	General government of the state colleges
		Commissioner of education	Ex officio member		
NEVADA	Board of Regents State University	4	Elected		Control and manage the affairs of the university and the funds of the same under such regulations as may be provided by law
NEW HAMPSHIRE	--	--	--	--	--
NEW JERSEY	--	--	--	--	--
NEW MEXICO	1 Board of Regents each for: University of New Mexico at Albuquerque New Mexico State University near Las Cruces New Mexico Highlands University at Las Vegas Western New Mexico University at Silver City Eastern New Mexico University at Portales New Mexico Institute of Mining and Technology at Socorro New Mexico Military Institute at Roswell	5	Nominated by the governor and by and with the consent of the senate No more than 3 of whom at the time of their appointment shall be members of the same political party	6 years	Control and management of the respective institutions
NEW YORK	Board of Regents of the University of the State of New York (corporation)	Not less than 9			Governance, with corporate powers of the University of the State of New York
NORTH CAROLINA	Board of Trustees of the University of North Carolina and of the other institutions of higher education		General Assembly shall provide for the selection		General Assembly may enact laws...for the maintenance and management of the University of North Carolina and the other public institutions of higher education

State	Board	Membership	Selection	Terms	Responsibilities
NORTH DAKOTA	State Board of Higher Education: State University and School of Mines, at Grand Forks, w/their substations State Agricultural College and Experiment Station at Fargo, w/their substations School of Science at Wahpeton State Normal Schools and Teachers Colleges at Valley City, Mayville, Minot, and Dickinson Normal and Industrial School at Ellendale School of Forestry at Bottineau	7	Appointed by the governor, by and with the consent of the senate No more than 1 graduate of any one of the institutions under the jurisdiction of the state board of higher education at any one time	7 years (staggered)	Control and administration of the institutions Prescribe, limit, or modify courses offered at the several institutions Power to delegate to its employees details of the administration of the institutions under its control Prescribe standard system of accounts and records Consider, revise, prepare, and submit a budget Control of the expenditure of funds Appoint a state commissioner of higher education
OHIO	--	--	--	--	--
OKLAHOMA	Oklahoma State Regents for Higher Education (The Oklahoma State System of Higher Education)	9	Appointed by the governor, confirmed by the senate	9 years (staggered)	Coordinating board of control Prescribe standards of higher education applicable to each institution Determine functions and courses of study in each of the institutions Grant degrees and other forms of academic recognition Recommend to the state legislature budget allocation to each institution Power to recommend to the legislature proposed fees for all of such institutions... Private, denominational, and other institutions of higher learning may become coordinated with the State System of Higher Education under regulations set forth by the Oklahoma State Regents for Higher Education
	Board of Regents of Oklahoma Colleges: Central State College at Edmond East Central State College at Ada Southwestern Institute of Technology at Weatherford Southeastern State College at Durant	9 (1 - each congressional district; 9th member: state superintendent of public instruction)	Appointed by the governor, by and with the consent of the senate	9 years (staggered)	Supervision, management, and control of state colleges

State	Board	Membership	Selection	Terms	Responsibilities
	Northwestern State College at Alva Northeastern State College at Tahlequah				
OREGON	--	--	--	--	--
PENNSYLVANIA	--	--	--	--	--
RHODE ISLAND	--	--	--	--	--
SOUTH CAROLINA	--	--	--	--	--
SOUTH DAKOTA	Board of Control: The State University The Agriculture College The School of Mines and Technology The Normal Schools	5	Appointed by the governor and confirmed by the senate		Control of the educa- tional institutions
TENNESSEE	--	--	--	--	--
TEXAS	Board of Regents of the State University; The University of Texas Constitution recognizes: Texas Agricultural and Mechanical University			Not to exceed 6 years	
UTAH	University of Utah Agricultural College				
VERMONT	--	--	--	--	--
VIRGINIA	--	--	--	--	--
WASHINGTON	--	--	--	--	--
WEST VIRGINIA	--	--	--	--	--
WISCONSIN	--	--	--	--	--
WYOMING	Board of Trustees University of the State of Wyoming	Not less than 7 President of the University Superintendent of public instruction	Appointed by the governor by and with the advice and consent of the senate Ex officio members w/o vote		Management of the uni- versity, its lands, and other property

Source: Columbia University, *Legislative Drafting Research Fund, Constitutions of the United States, National and State* (2nd ed.; New York: Oceana Publications, Inc., 1974), vols. 1-5.

*Brackets indicate constitutional recognition of board but no specific recognition of the educational institution.

