Louisiana Constitution, Article VIII: Education

Frances Moran Bouillion
Education reform has been a much discussed topic in Louisiana recently. New educational programs must comply with Louisiana Constitution article VIII, which provides the framework for the state's educational system. This comment will give a brief history of the provisions of article VIII, outline the general structure of the educational system mandated by those provisions, identify certain problem areas and analyze some recent court decisions.

History and General Structure of the Louisiana Educational System

Article VIII, "Education," was the subject of much controversy during the constitutional convention of 1973, consuming over fifteen days of debate. While disagreements arose concerning the goals of the educational system, the major conflicts concerned the structure of that system. The debates focused on the number and the kinds of agencies that the constitution would recognize, as well as on the amount of power each entity would have. Delegates struggled with decisions of whether to give detailed constitutional protection to new or existing institutions, such as the local school boards or college boards, or to give the legislature more power over the educational system as a whole. Much of the debate centered on past abuses, especially in the colleges and universities. One such incident occurred in the 1930's, when the president of Louisiana State University (L.S.U.) misappropriated funds which were intended for use by the university. This incident and other similar abuses resulted in an amendment to the 1921 constitution that created a Board of Supervisors to govern and control L.S.U.
The most controversial area of article VIII, and perhaps of the entire 1974 constitutional convention, was the creation of the various educational boards. As a result of the controversy, two alternative proposals were put before the voters of Louisiana. These proposals were themselves the subject of several days of debate, and both represented compromises by the delegates. One alternative proposed two policy-making boards—one board for elementary and secondary education and one board for higher education—with a single superintendent of education to coordinate and oversee both. The second alternative, and the one selected by the voters, divided education into two major areas of responsibility—elementary and secondary, and college—with each area operating independently of the other. Although the constitution provides for a yearly coordinating meeting between the two supervising boards, no action is required so both areas are functionally independent. The voters overwhelmingly vetoed the idea of an educational superboard, favoring instead greater decentralization. That the voters made a clear choice in this regard may well be a basis for courts to foster this policy of decentralization by construing the powers of the Board of Regents narrowly and those of the management boards broadly.

The several sections of article VIII detail the structure of the educational system and the powers of the various entities. At the elementary and secondary level the state Board of Elementary and Secondary Education (hereinafter referred to as BESE) has general policy-making control, while the State Superintendent of Education is in charge of implementing those policies. Neither BESE nor the superintendent has power to interfere with the day-to-day operations of the local school boards. At the college level, three boards supervise and manage the colleges and universities, with a Board of Regents to plan and coordinate.

Sections 2, 3, 9 and 10 of article VIII outline the specific structure of the elementary and secondary system. Section 2 provides for the Superintendent of Education to be the administrative head of the Department of Education and to implement the policies of BESE. All "other powers, functions, duties and responsibilities of the superintendent shall be provided by law." Section 3 creates BESE to supervise and control the public elementary schools and to have budgetary responsibility for funds appropriated for those schools, "all as provided by law." This section also specifically denies BESE control over the "business affairs" and selection and removal of employees of local school boards.

8. Carleton, supra note 2, at 578.
9. La. Const. art. VIII.
10. La. Const. art. VIII, § 2. The superintendent was originally an elected position, but during the 1985 session the legislature exercised the option provided in the Constitution to make it an appointed position.
11. La. Const. art. VIII, § 3.
Section 9 provides for the creation of local school boards, and section 10 recognizes those school boards that were in existence when the constitution became effective. Neither section 9 or 10 gives any specific power to the school boards, each stating only that they are subject to the control and supervision of BESE and the legislature. The common thread running through these provisions is the phrase "as provided by law," which the courts have interpreted as requiring the legislature to delineate the exact powers, duties, and responsibilities of each branch of the elementary and secondary system.

Sections 5, 6 and 7 describe the structure of the college system. Section 5 is a general introduction providing that the Board of Regents "plan, coordinate and have budgetary responsibility for all public higher education." The Board of Regents' specific responsibilities are the revision, modification, and approval of degree programs; the formulation of a master plan for higher education; the recommendation of any necessary new institutions; and the submission of budget recommendations for each institution. All management powers "not specifically vested by [Section 5] in the Board of Regents are reserved to [the other boards]." Sections 6 and 7 provide for three management boards for the various institutions—a Board of Supervisors for the L.S.U. system, a Board of Supervisors for the Southern University system, and a Board of Trustees for all the other colleges and universities. Each board is to have "supervision and management" powers over those institutions under its control "subject to powers vested by [article VIII] in the Board of Regents." Similarly, the 1921 constitution, as amended in 1940, provided that L.S.U was under the "direction, control, supervision and management" of the Board of Supervisors.

These sections of article VIII of the 1974 constitution are self-actuating and do not require legislation for implementation. The delegates intended that the legislature's main function in regard to the universities would be to apportion funds. The desire to take politics out of education and to avoid incidents such as the "Louisiana Hayride" scandals of the 1930's was frequently mentioned by the delegates in their debates regarding the amount and the kind of power that each board would

14. Hargrave, supra note 4 at 442.
15. La. Const. art. VIII, § 5.
16. La. Const. art. VIII, § 5 (E).
19. La. Const. art. 12, § 17 (1940).
20. LCCRC, supra note 3, Vol. IX at 3283.
have. 21 Since 1940, the L.S.U. system had been operated by an independent board of supervisors, and the delegates considered that board's stability and freedom from legislative control to be an advantage. 22 Past court decisions emphasized that the board's management powers were broad and far-reaching and that the amendment to the 1921 constitution which created the board was designed to restrict legislative interference. 23 In the 1973 convention, too, the delegates decided in favor of independent, powerful boards. A proposed amendment, intended to give power to the boards "as provided by law," was soundly defeated. 24 An additional indication of the delegates' general distrust of legislative involvement is the amount of detail in the provisions regarding higher education. The delegates also tried to ensure the boards' future independence by staggering the length of the appointments of board members, to make it unlikely that a single governor would appoint an entire board.

Other sections of article VIII outline the goals of the educational system, provide for funding by legislative appropriations and local taxes, make available free school books and materials to all students, and establish recognition of Tulane University as created in 1884. 25

Litigation Involving Article VIII

Most of the litigation concerning article VIII has centered around one or more of the structural sections. As with the debates during the convention, the litigation has involved the amount and the kinds of powers the various boards possess. Litigation involving elementary and secondary education has been concentrated in three major areas—the authority of the local school boards, the authority of BESE, and the authority of the State Superintendent of Education. At the college level, however, there has been considerably less litigation.

21. LCCRC, supra note 3, Vol. VIII at 2264, 2265. For an interesting discussion of the scandals that plagued the college administration after Huey Long's term as governor, see H.T. Kane, Louisiana Hayride, N.Y. 1941.
22. LCCRC, supra note 3, Vol VIII at 2264-65.
23. See Student Government Ass'n of L.S.U. v. Board of Supervisors of L.S.U., 262 La. 849, 264 So. 2d 916, (La. 1972) which stated that the intent of the constitution was to grant exclusive administrative authority over operation of the university to the Board of Supervisors. This includes regulating student parking on campus and on campus activity of faculty, employees, and students. See also, Trice v. Reddoch, 273 So. 2d 894 (La. App. 1st Cir. 1973) wherein the court declared La. R.S. 17:1803 an unconstitutional infringement by the legislature on the Board of Supervisor's constitutional authority. The statute provided a maximum fine for parking violations.
Authority of the School Boards

The authority of a school board to deny sabbatical leave has been questioned in two cases. In Collins v. Orleans Parish School Board, a vocal music teacher with a Master's degree in music education planned to take two courses while on sabbatical. The school board, however, denied the requested leave because the courses would not "contribute substantially to the teacher's ability to perform her present tasks nor do they offer the promise of the kind of growth needed for the future in her present assignment." These two courses did not, according to the school board, assure "mutual benefit." The trial court upheld the school board's decision, and the court of appeal affirmed. The supreme court, however, reversed the lower courts, ruling that a school board is required to grant sabbatical leave when "sought for the purpose of professional or cultural improvement." While refusing to decide if a school board has any discretion to deny a sabbatical which a teacher thinks would be helpful, the court ruled that in this case the board "abused whatever discretion it might have had." The court reasoned that the language of the statute, which provides that a sabbatical "shall be granted if the requirements are met," is mandatory; and because the constitution did not specifically give any duties or powers to the school boards, the language of the statute was controlling. If the procedural requirements of the statute are met, said the court, the school board must grant the sabbatical.

In an earlier case, Shaw v. Caddo Parish School Board, the second circuit upheld a school board's decision to terminate a sabbatical granted to a principal who had accepted full time employment in an out of state school during the period of the sabbatical. The court ruled that since the sabbatical was obtained through misrepresentation, the school board had the authority to terminate it. As in Collins, the court based its decision on the text of the legislation, but in this case the court said that the legislature intended to allow the local board to make this type of decision.

---
26. 373 So. 2d 1376 (La. App. 4th Cir. 1979).
27. Id. at 1377.
28. Id.
29. Id.
30. Id. at 1379.
31. 384 So. 2d 336, 338 (La. 1980).
32. Id. at 339.
34. 384 So. 2d at 338.
35. 347 So. 2d 39 (La. App. 2d Cir. 1977)
36. Id. at 43.
Collins did not overrule Shaw since both decisions rested on legislative intent rather than on constitutional grounds. The Louisiana Supreme Court in Collins clearly established that the local school boards have little if any discretion in the area of sabbaticals and that the courts probably will not allow a local school board to deny or terminate any request for a sabbatical that meets the technical and procedural requirements of the law, unless there is fraud or misrepresentation, or the sabbatical is obviously not for the "purpose of professional or cultural improvement" as required by the statute. 37

Both decisions are consistent with the idea that the constitution, in its provision for legislative establishment of the school boards, and in its failure to enumerate specific duties of the school boards, gives the school boards power only indirectly. The legislature, through statutes, activates the powers given the boards by the constitution, and thus maintains the ultimate control over boards.

In St. John the Baptist Parish Association of Educators v. Brown 38 the power of the school board was again narrowly defined when the supreme court ruled that a parish school board has no authority to call a referendum to determine the opinion of its electorate. 39 In this case the school board had promised a union that it would call the referendum as part of a settlement of a teacher’s strike. 40 The court reasoned that, while the legislature’s authority to call a similar referendum emanates from its sovereign power, any such power of a school board must be created by a statute or the constitution. 41 Finding no such express or implied power, the court refused to allow the referendum. 42

In Johnson v. State Board of Elementary and Secondary Education 43 the supreme court indicated that the local school boards do have some authority, when it held unconstitutional legislation which allowed BESE to revoke teaching certificates for tenured teachers. 44 The court relied on section 3 of article VIII, which specifically denies BESE control over the selection or removal of school board employees. Since revocation of a teaching certificate would be tantamount to a discharge, reasoned the court, the legislature had violated the constitutional restriction on BESE’s power. 45 The court stopped short of saying that the school board has inherent authority over the selection and the removal of its own

37. 384 So. 2d at 338.
38. 465 So. 2d 647 (La. 1985).
39. Id. at 675.
40. Id. at 677.
41. Id. at 675.
42. Id. at 677.
43. 414 So. 2d 352 (La. 1982).
44. Id. at 355.
45. Id. at 354.
employees, only stating that BESE could not have authority in this area. From the court's opinion, it appears that legislation which directly establishes criteria for removing teachers would likely be upheld, as article VIII does not designate any such power for the school boards, and legislation is necessary to give them the power. Thus, while the legislature cannot authorize BESE to revoke teaching certificates, it may otherwise establish grounds for such action by statute.

Authority of BESE

As with the school boards, the courts generally have defined the powers of BESE narrowly, reasoning that without statutory authorization, BESE is powerless since the constitution grants it no powers directly, but only "as provided by law."

In the first challenge to BESE's power, State Board of Elementary and Secondary Education v. Nix, the Louisiana Supreme Court denied BESE's assertion of direct control of its funds, holding that the legislature has the power to channel all of BESE's funds through the office of the state superintendent of education, and that legislative allocation of functions between BESE and the superintendent does not violate the constitution. The court relied on the intent of the delegates to the constitutional convention to divide the responsibility of education between BESE and the superintendent through legislative grants of power.

The textual support for this decision was in section 3, which states that BESE "shall supervise and control the public elementary and secondary schools ... and shall have budgetary responsibility ... all as provided by law." Justice Tate, writing for the majority, found the phrase "as provided by law" to be key to the legislature's ultimate decision-making ability in this case, but stated that the legislature could not deprive BESE of "its constitutional policy-making duties and powers." Actually, this latter assertion was only dicta because the court held that the legislature had not usurped BESE's power. Justice Tate probably meant that the legislature could not allocate BESE's policy-making power to the superintendent or to the local school boards; nevertheless, the courts have consistently held that legislative policy decisions do not violate the constitution, at least in the area of elementary and secondary education.

46. 347 So. 2d 147 (La. 1977).
47. Id. at 152.
48. La. Const. art. VIII, § 3.
49. 347 So. 2d. at 153.
In *Aguillard v. Treen* the supreme court, consistent with its reasoning in *Nix*, refused to overturn Louisiana's Creationism Act. The act provides that schools must teach creation science whenever evolution is taught. The court upheld the act on the narrow ground that the legislature has the absolute power to prescribe a course of study. Again, the court noted that BESE has no power without a legislative grant of authority. Because in this case the court upheld what was clearly a "policy-making" decision by the legislature, Justice Tate's dicta about BESE's constitutional policy-making power must not refer to legislative policy-making, but to policy-making by the local school boards or the state superintendent of education. Thus, the legislature can make policy in the area of elementary or secondary education, or it can delegate those decisions to BESE. Nevertheless, state educational policies may not be decided by any other agency. For example, a local school board probably could not decide on its own to adopt textbooks not approved by BESE. This reasoning would require that a court confronted with a direct conflict between BESE and a local school board define "policy-making". On the other hand, the past decisions make it clear that legislation will be given great deference. Consequently, any statute allocating decisional power to the local school boards, rather than to BESE, would probably be upheld unless it was clear that state-wide uniformity is required in that particular area.

**Authority of the State Superintendent of Education**

The courts have also consistently defined the constitutional power of the superintendent narrowly, reasoning that without a legislative grant of authority, the superintendent has no power. The text of section 2, however, does not entirely support this reasoning as it states that the superintendent "shall implement the policies of the State Board of Elementary and Secondary Education and the laws affecting schools under its jurisdiction. The qualifications and other powers, functions, duties, and responsibilities of the superintendent shall be provided by law." Thus, although the superintendent appears to have a certain core of self-actuating power, the constitution permits the legislature some discretion in this area, and the courts generally give the legislature broad discretion in implementing the provisions of the constitution. In *BESE

50. 440 So. 2d 704 (La. 1983).
52. 440 So. 2d at 710.
53. Id. at 707, 708.
54. La. Const. art. VIII, § 2 (emphasis added).
v. Nix,\textsuperscript{55} for instance, the court upheld legislation allocating duties between BESE and the Superintendent.

In \textit{Faul v. Superintendent},\textsuperscript{56} the court ruled that the legislature has the power to permit parents to petition for a French program in the schools and to require funding for such a program from the budget of the State Department of Education.\textsuperscript{57} The superintendent was allowed no discretion, but was expected to implement the policies of the legislature just as it implements the policies of BESE. This duty is obviously necessary in light of the decisions allowing the legislature to set educational policies, because that legislative power would be meaningless if the superintendent were not required to implement those policies. In addition, the language of section 2 requiring the superintendent to “implement the policies of [BESE] and the laws affecting schools under its jurisdiction,”\textsuperscript{58} clearly implies the legislature’s power to determine policies and to force the superintendent to implement them with the funds allocated to the Department of Education.

Thus, in the area of elementary and secondary education it appears that legislation will be upheld unless its effect is to increase, rather than to limit, the constitutional powers given to the various agencies. The legislature has broad discretion both in setting educational policies and in defining and limiting the powers of BESE, the superintendent, and the local school boards. Nevertheless, the legislature cannot add to or change the division of power between the bodies; it must keep intact the constitutionally mandated structure. Over three-fourths of the legislation affecting education is in the area of elementary and secondary education, which suggests that the legislature is taking very seriously its mandate to provide for public education through the constitutional structure. Challenges can be expected, but the jurisprudence indicates that virtually all legislation in this area will be upheld as a constitutional exercise of legislative power.

\textit{Higher Education}

There has been much less litigation in the area of post-secondary education, perhaps because the constitution more specifically delineates the powers of the higher education boards. Also, there has been relatively little legislation in this area, which indicates a realization by the legislature that it was intended to have a much more limited role with respect to college education.\textsuperscript{59} Because of the dearth of legislation, fewer court

\textsuperscript{55} 347 So. 2d 147 (La. 1977).
\textsuperscript{56} 367 So. 2d 1267 (La. App. 3d Cir. 1979).
\textsuperscript{57} Id. at 1274.
\textsuperscript{58} La. Const. art. VIII, § 2.
\textsuperscript{59} Only about one-eighth of the revised statutes on education deal with higher education.
challenges would be expected. In fact, since 1974 there have been only two cases dealing specifically with higher education.

Grace v. Board of Trustees for State Colleges and Universities\(^\text{60}\) involved a challenge to the Board of Trustee's authority to control the resolution of faculty grievances. The court upheld the board's power in this area, stating that the constitution granted "unqualified and exclusive powers of supervision and management to that board, as to the universities under its jurisdiction."\(^\text{61}\) The court found that the 1974 constitution increased the authority of the Board of Trustees, and, quoting from State Board of Elementary and Secondary Education v. Nix,\(^\text{62}\) stated that, unlike BESE and the local school boards, the Board of Trustees has constitutional powers that are "self-executing (i.e. enforceable without supplementary legislation) and exclusive administrative authority over the institutions of learning within [its] jurisdiction."\(^\text{63}\) In addition, the court declared that in matters of supervision and management, the 1974 constitution removed the Board of Trustees from the "restraints of legislative control."\(^\text{64}\)

Although certain legislation provided for hearings to resolve grievances of other state employees, the court refused to extend this legislation to cover the school faculty, reasoning that the Board of Trustees has full control over faculty grievances. This case suggests that any legislation affecting higher education will be narrowly construed and may even be declared unconstitutional if it conflicts with a decision of the college boards. This implication is consistent with the delegates' intent that the boards be free from legislative control and be allowed to operate independently.

The only case to reach the appellate level involving a head-to-head confrontation between the Board of Regents and one of the lower boards is Board of Regents v. Board of Trustees,\(^\text{65}\) which involved a challenge to the authority of the Board of Trustees to change the name of one of the institutions under its jurisdiction. In April of 1984, the Board of Trustees changed the name of the University of Southwestern Louisiana to the University of Louisiana.\(^\text{66}\) The Board of Regents challenged this action, and a permanent injunction declaring the name change to be null was issued in May, 1984.\(^\text{67}\) The injunction was appealed, but

\footnotesize{\begin{itemize}
\item \textit{\textsuperscript{60}}. 442 So. 2d 598 (La. App. 1st Cir. 1983), writ denied, 444 So. 2d 1225 (La. 1984).
\item \textit{\textsuperscript{61}}. Id. at 600.
\item \textit{\textsuperscript{62}}. 347 So. 2d 147 (La. 1977).
\item \textit{\textsuperscript{63}}. 442 So. 2d at 600.
\item \textit{\textsuperscript{64}}. Id.
\item \textit{\textsuperscript{65}}. 460 So. 2d 80 (La. App. 1st Cir. 1984).
\item \textit{\textsuperscript{66}}. Id. at 81.
\item \textit{\textsuperscript{67}}. Id.
\end{itemize}}
before the appeal was heard, the legislature passed Act 656 which provides that only the Board of Regents has the power to change the name of a state institution of higher learning, and then only with the approval of the legislature. The Board of Regents then moved to dismiss the appeal on the grounds that the statute made the issue moot. The court refused to dismiss, reasoning that the statute may be unconstitutional if it purports to remove powers that are specifically granted by the constitution.

The Louisiana First Circuit Court of Appeal recently affirmed the trial court decision. In a brief discussion of the issues the court ruled that only the legislature could change the name of a university since the constitution did not give the power to any board. The appellate court rejected the Board of Trustees' argument that a name change is a management decision and accepted the Board of Regents argument that "the power of institutional naming is a matter of public policy, not internal management."

While no cases delineate the specific powers of the different boards, the court of appeal could have looked to several sources for guidance. The text of the 1974 constitution, past legislation, and the intent of the delegates of the constitutional convention provide some insight. The constitution gives five specific powers to the Board of Regents and "all remaining Management and Supervision" powers to the lower boards. Section 5(D) of article VIII states that the Board of Regents shall revise, modify, or approve degree programs; formulate a master plan for education; recommend any necessary new institutions; and submit budgets for all institutions to the legislature. Section 5(E) specifically reserves all management powers to the lower boards. Unless the name of a university is an essential part of the master plan for education, the text of the constitution does not support the Board of Regent's authority to change such a name.

Past legislation does not indicate that the legislature considers that determining a college name to be solely a legislative function, as the legislature has not chosen to name all the state colleges and universities. In fact, while the act that created Louisiana State University at Shreveport does name the school, the act that created Louisiana State University at Eunice does not give the school a name or even suggest how it will

69. 460 So. 2d at 82.
70. 491 So. 2d 399 (La. App. 1st CIR. 1986).
71. Id. at 401.
72. La. Const. art. VIII, § 5 (D), (E).
73. La. R.S. 17:1511 (1982).
be named. The same was true of several junior colleges.\footnote{La. R.S. 17:1531 (1982).} In addition, the name of the Louisiana State University at New Orleans was changed to the “University of New Orleans” without legislative input. This indicates that the legislature does not consider a college name to be within its sole discretion, but does not settle the issue of who has the ultimate power to choose a name in case of a conflict.

In Louisiana Revised Statute 14:3552 the legislature purports to delineate the functions of the Board of Trustees.\footnote{La. R.S. 17:3552 (1982).} Although this statute would not be binding on the courts because the constitution mandates the powers of the board, it does provide further insight into the legislative view of the powers of the Board of Trustees. Powers such as making contracts, setting fees, determining courses, and buying and selling land suggest management authority more significant than the routine day-to-day operation of a university.\footnote{Id.}

Transcripts of the constitutional convention also contain guidance in interpreting the constitution. The delegates likened the relationship between the Board of Regents and the lower boards to that of BESE and the local school boards.\footnote{LCCRC, supra note 3, Vol. VIII at 2319.} No one would seriously suggest that only BESE has the power to name or re-name an elementary school or a high school. This is routinely done by school boards across the state. If the university boards have as much authority as the local school boards, the ultimate power is with the lower boards. One can argue, however, that the name of a school of higher learning is much more important than that of a high school. A university has a much wider, possibly even national, scope of recognition, and one can argue that because of possible confusion, only a central body should select the name of a university. Presumably, however, the body selecting a name will do so with an eye toward national exposure.

One might also argue, as the Board of Regents has, that the name of the school sets the tone of the school and is actually a part of the overall goal of the school. The Board of Regents argued that the colleges and universities under the Board of Trustees are local institutions and that the name should reflect this regionalization. This argument is flawed, however, as many of the other universities do not have a name reflective of regionalization. Louisiana Tech University, McNeese State University and Nichols State University are examples. In addition, the University of New Orleans, which is part of the L.S.U system, has a name that reflects a local rather than a state orientation. Thus, the argument that the L.S.U schools are state oriented and that the other schools are locally and regionally oriented is unfounded.

\footnote{75. La. R.S. 17:1531 (1982).}
\footnote{76. La. R.S. 17:3552 (1982).}
\footnote{77. Id.}
\footnote{78. LCCRC, supra note 3, Vol. VIII at 2319.}
It is the process of naming the state's colleges and universities, rather than the wisdom of a particular name, that is at issue in *Board of Regents*. The fact that the institution’s name is a matter of "public policy" does not necessarily mean that only the legislature can choose it, for the constitution gives the boards authority over many matters of "public policy," including the formation of the state's master plan for education. The Board of Regents, the lower boards, and the legislature are all to a certain extent political bodies, and ultimately, all three entities have to answer to the people of the state. That the voters chose to remove the colleges and universities from the direct control of the legislature in an effort to remove politics from higher education might help the supreme court in deciding the name change issue in *Board of Regents*.

Conclusion

As the jurisprudence illustrates, the powers of the lower education boards differ significantly from those of the higher education boards. This difference is not as much due to the goals of the constitution as it is to the method of implementing those goals. The delegates chose to give the legislature much greater input in the area of elementary and secondary education. This decision is reflected in the inclusion in each section of the constitution dealing with elementary and secondary education of the provision that the agencies may act only "as provided by law." The constitution attempts to guide the legislature in defining the specific powers of each agency, but does not prevent the legislature from exercising power itself.

With respect to higher education, the constitution makes no mention of legislation or of powers "as provided by law." The courts have realized that the higher education boards have significantly greater freedom from legislative interference and, indeed, that this freedom is one of the main thrusts of the constitutional provisions on education.

The jurisprudence also indicates that legislation affecting elementary or secondary education will usually be upheld on constitutional grounds unless the legislature affirmatively changes the power structure that the constitution mandates. Also, challenges to the agencies probably will be decided on legislative, rather than constitutional grounds. That is, courts will look to see if there is legislation that could grant the power to the agencies and will then look to the intent of that legislation. Again, only a clear attempt by the legislature to have one agency usurp the constitutional power of another agency will be invalidated.

The end result of possible conflicts between the legislature and the boards connected with higher education is not so clear, although the courts have indicated that the legislature has far less power to affect college education. Indeed, a narrow construction of legislative power is
consistent with the intent of the 1974 constitution. Unless the courts interpret the boards' powers broadly, the freedom from legislative control that the delegates and the voters envisioned will not come about.

Frances Moran Bouillion