

Citizens React to the School Funding Dilemma: State Officials Become Defensive

A website by “a growing number of public officials” is “under development and enhancement” to counter “a series of misperceptions” about school funding. The “misperceptions”, the website indicates, have been created by a well-orchestrated network of school districts.

The website lists five “widely held misperceptions”. The authors of this website imply that alert community minded citizens have been duped. They talk about “building trust by bridging the perception gaps”. Apparently these public officials believe citizens who have the audacity to question the efficacy of legislators’ efforts, or lack thereof, just don’t understand the situation. They certainly want people to believe that legislators and the Governor have done all they possibly can do to remedy the school-funding dilemma.

Below is a reality check on each of the five “misperceptions” listed and discussed in the website:

“Misperception” 1—Nothing has been done to fix Ohio’s system of funding its schools since the Supreme Court’s rulings in the *DeRolph* case.

The Court said in its December 11, 2002 *DeRolph* IV decision,

“To date, the principal legislative response to DeRolph I and DeRolph II has been to increase funding, which has benefited many schoolchildren. However, the General Assembly has not focused on the core constitutional directive of DeRolph I: “a complete systematic overhaul” of the school-funding system. Id., 78 Ohio St.3d at 212, 677 N.E.2d 733. Today we reiterate that that is what is needed, not further nibbling at the edges. Accordingly, we direct the General Assembly to enact a school-funding scheme that is thorough and efficient, as explained in DeRolph I, DeRolph II, and the accompanying concurrences.”

*We are not unmindful of the difficulties facing the state, but those difficulties do not trump the constitution. Section 2, Article VI of the Ohio Constitution states, “The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools * * *.” This language is essentially unchanged from the initial report from the Standing Committee on Education at the Constitutional Convention of 1850-51. I Report of the Debates and Proceedings of the Convention for the Revision of the Constitution, 1850-51 (1851) 693 (“Debates”). Even the minority report, presented by those opposed to the above language, had virtually the same import. It stated, “The General Assembly shall provide by law a system of common schools, and permanent means for the support thereof * * *.” Id. at 694.*

Since the *DeRolph* IV decision, the legislature has done nothing to accomplish a complete systematic overhaul of the school funding system. In fact, the current state biennial budget (for fiscal years 2004 and 2005) allocates a smaller percentage of the state budget to public K-12 education in fiscal years 2004 and 2005 than in fiscal year 2003. The Supreme Court released jurisdiction of the *DeRolph* case during the state budget preparation process and thus the legislature gave public K-12 funding a lower funding priority.

The fact (not a misperception) remains: the school funding system in Ohio is unconstitutional. The Governor and legislature refuse to give the school funding system a complete systematic overhaul.

Another fact (not misperception) is that the Ohio school system is currently in the throes of a horrific fiscal dilemma. Hundreds of school tax issues are being proposed this year for addition to the already overburdened property tax.

Still another fact (not a misperception) is that the per pupil base support level has no relationship to the cost of an adequate education. The Court said the per pupil base support level is set by “residual

budgeting” and thus is unrelated to the actual cost of an adequate education. Furthermore, state officials refuse to commission a professional study to determine the cost of adequacy. It appears obvious that these officials do not wish the cost of an adequate education to be computed and made public.

Due to the pressure of the *DeRolph* I decision, the state established the Ohio School Facilities Commission and initiated a school-rebuilding program. Although more than 200 new buildings have been constructed since the 1997 *DeRolph* I decision, hundreds of buildings that currently need replaced or renovated will have to be used for several years due to the state’s timeframe for replacing or renovating buildings. Some districts will have to wait until 2012 or later to receive state funding.

“Misperception” 2—State funding to schools has been reduced

Historically, with few exceptions, state funding to public K-12 education has increased each year since the School Foundation Program was initiated in 1934. The need for additional funding each year has been influenced by inflation and ever-expanded responsibilities assigned to public K-12 education. The pressure of the *DeRolph* litigation precipitated greater than normal increases in state revenue to public K-12 education from the early 1990s to fiscal year 2003.

During the 1970s, more than 40 percent of the State General Revenue Budget was allotted to public K-12 education. The percentage gradually declined to 34.5 in fiscal year 1992 when the *DeRolph* litigation was filed. That percentage increased to 39.3 by fiscal year 2003. However, when it became clear during the state budget making process for the fiscal years 2004 and 2005 that the Ohio Supreme Court had released jurisdiction of the *DeRolph* case, the priority for public K-12 education declined. The percentage of the state budget allotted to public K-12 education in fiscal years 2004 and 2005 declined to 38.6 and 38.5 respectively. Also during the state budget making process, the Governor cut \$100 million from the fiscal year 2003 public K-12 education budget.

Within the fiscal years 2004 and 2005 state budget, the annual increase in per pupil base support was cut from 2.8%, under previous law, to 2.2%. Many school districts are losing local revenue due to changes in the tangible tax laws. Additionally, many school districts are suffering from reduced state funding due to a change in the way pupil enrollment is computed for school funding formula purposes.

Has the state increased the overall appropriation for public K-12 education in recent years? Yes. Did some school districts lose funding due to law changes associated with the fiscal years 2004 and 2005 state budget? Yes. Did the state per pupil base cost level increase more than the anticipated inflation rate for fiscal years 2004 and 2005? No. Does the current funding system accommodate the additional costs associated with new state assisted buildings? No. Does the current per pupil base support level relate to the actual cost of an adequate education? No. Have the Governor and the legislature given the school funding system a complete systematic overhaul as required in *DeRolph* I and *DeRolph* II? No. Has funding to schools been reduced? In some cases, yes. Does Ohio have a constitutional system of school funding? No.

“Misperception” 3—House Bill 920 prevents schools from receiving increased local tax dollars unless voters pass additional operating laws.

Historically Ohio has maintained a property tax policy in which citizens approve a rate of taxation but that rate is applied in such a way that the amount of taxes paid on a specific property, for any given levy, is constant through the life of the levy. Before HB 920, the millage rate was actually reduced on all property as assessed valuation increased. HB 920 and subsequent constitutional changes created two classes of real property: Class 1 property (residential and agricultural) and Class 2 property (public utility and business); and a process by which an effective millage rate is calculated for each class subsequent to property reevaluation. The actual voted and inside millage, under HB 920, is applied to personal tangible property; however, the assessment rates of tangible property have been and are still being reduced over time. Of course, the reductions in assessment rates have resulted in less funding to political subdivisions.

It is true that the reduction factors of HB 920 do not apply to the 10 inside mills; however, the typical school district only receives four inside mills. The revenue from inside mills constitutes a small percentage of the school district budget. It is also true that political subdivisions receive additional tax revenue due to new construction; however, many school districts experience very little new construction and thus little additional revenue from that source.

The overall impact of HB 920 on school districts is very substantial. Had the millage rates been frozen in the mid-1970s when HB 920 was enacted, the total property tax collected by all school districts collectively today would be about the same as it is with the thousands of levies having been passed in the interim.

“Misperception” #4—Property taxes have been ruled unconstitutional as a means toward funding our schools.

The Ohio Supreme Court in *DeRolph I*, identified four factors that contributed to the unworkability of the school funding system as follows:

By our decision today, we send a clear message to lawmakers: the time has come to fix the system. Let there be no misunderstanding. Ohio's public school financing scheme must undergo a complete systematic overhaul. The factors which contribute to the unworkability of the system and which must be eliminated are (1) the operation of the School Foundation Program, (2) the emphasis of Ohio's school funding system on local property tax, (3) the requirement of school district borrowing through the spending reserve and emergency school assistance loan programs, and (4) the lack of sufficient funding in the General Assembly's biennium budget for the construction and maintenance of public school buildings. The funding laws reviewed today are inherently incapable of achieving their constitutional purpose. DeRolph I p. 212

The above-mentioned four factors interact with each other in the distribution of state and local resources to Ohio school districts. Emphasis on property tax is particularly harmful to low property wealth districts in Ohio because the per pupil base support is a function of “residual budgeting” instead of the actual cost of an adequate education; hence, in this ongoing unfortunate situation, the quality of education in school districts throughout the state is a function of the property tax base within each district.

Forced borrowing, to meet ordinary expenses, was declared unconstitutional because it is a symptom of a greater problem: a state-established funding level, unrelated to the cost of an adequate education. In the 1970s, school districts closed when a deficit situation existed. This became embarrassing to state officials and thus the law was changed to force districts to borrow in order to stay open. Notwithstanding a declaration that forced borrowing is illegal, schools districts are still forced to borrow under current law.

The Ohio Constitution requires, not just a system of education, but a “thorough and efficient” system. The state defended the inadequate, inequitable and morally wrong system at the Trial Court in 1993 as being “thorough and efficient”. The Court, in the syllabus of *DeRolph II*, defined thorough and efficient as:

"1. 'The sovereign people made it mandatory upon the general assembly to secure not merely a system of common schools,' but rather a thorough and efficient system of common schools. Miller v. Korn (1923), 107 Ohio St.287, 297-298, 140 N.E. 773, 776, approved and followed.

2. 'The attainment of efficiency and thoroughness in that system' of common schools is 'expressly made a purpose, not local, not municipal, but statewide.' Id., (Miller v. Korn) followed.

3. A thorough system means that each and every school district has enough funds to operate. An efficient system means one in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state building and fire codes, and equipment sufficient for all students to be afforded an educational opportunity."

Although the legislature responded to the Court decisions by favoring low wealth districts with equity aid and then subsequently with parity aid, the per pupil base cost formula is essentially the same as when the *DeRolph* litigation was filed. The results are also essentially the same: unconscionable inadequacies in some districts and gross disparities system wide.

A per pupil support level that is based on the actual cost of an adequate education would eliminate the inadequacies and greatly reduce the disparities. In a state system, as envisioned by the Ohio Constitution, all students are guaranteed a high quality, thorough and efficient system of common schools.

“Misperception” #5—Ohio’s school funding system is broken.

Ohio’s school funding system was broken in 1991 when the *DeRolph* case was filed. The Trial Court has confirmed that the system is broken on two occasions and the Ohio Supreme Court has ruled it broken four times. The Governor and legislature have broken their trust with the citizens of Ohio by ignoring the key orders of the Ohio Supreme Court. The Court clearly stated that school funding is a state responsibility. On pages 212 and 213 of *DeRolph I* the Court ruled with regard to a remedy:

Although we have found the school financing system to be unconstitutional, we do not instruct the General Assembly as to the specifics of the legislation it should enact. However, we admonish the General Assembly that it must create an entirely new school financing system. In establishing such a system, the General Assembly shall recognize that there is but one system of public education in Ohio. It is a statewide system, expressly created by the state's highest governing document, the Constitution. Thus, the establishment, organization and maintenance of public education are the state's responsibility. Because of its importance, education should be placed high in the state's budgetary priorities. A thorough and efficient system of common schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain these facilities in a safe manner, in compliance with all local, state, and federal mandates.

Notwithstanding these clear pronouncements by the Court, state officials continue to pontificate the rhetoric that school funding is a partnership and that any problems a district might have is a local matter.

The state does not have the constitutional right to delegate the school funding responsibility to the local school communities. The buck stops with the state. School funding is a state responsibility. The state must secure a thorough and efficient system.

The state has the constitutional obligation to:

1. Identify the essential learning resources inherent in a thorough and efficient system
2. Cost out the essential learning resources identified
3. Assume full responsibility for funding the essential learning resources

Ohio school children have the constitutional right to a thorough and efficient system of public schools. The Governor and legislature have denied that right and the current membership of the Ohio Supreme Court refuses to enforce that right. The sovereign people of Ohio must see that public officials respect the rule of law or replace them with those who will.