

OKLAHOMA



CONSTITUTIONAL PROVISIONS

Blaine Amendment

“No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.” OKLAHOMA CONST. Art. II, § 5.

Education Articles

“Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools.” OKLAHOMA CONST. Art. I, § 5.

“Section thirteen in every portion of the State, which has been granted to the State, shall be preserved for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established, or hereafter to be established, one-third; and of the Agricultural and Mechanical College and Colored Agricultural and Normal University, one-third. The said lands or the proceeds thereof as above apportioned to be divided between the institutions as the Legislature may prescribe: Provided, That the said lands so reserved, or the proceeds of the sale thereof, or of any indemnity lands granted in lieu of section thirteen shall be safely kept or invested and preserved by the State as a trust, which shall never be diminished, but may be added to, and the income thereof, interest, rentals, or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of the State and no part of the proceeds arising from the sale or disposal of any lands granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college, or university, and no portion of the funds arising from the sale of sections thirteen or any indemnity lands selected in lieu thereof, either principal or interest, shall ever be diverted, either temporarily or permanently, from the purpose for which said lands were granted to the State.” OKLAHOMA CONST. Art. XI, § 5.

EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

Intradistrict/mandatory
Oklahoma Statutes Title 70 Section 1210.541 and Oklahoma Administrative Code Section 210:10-13-18

Interdistrict/mandatory
Oklahoma Statutes Title 70 Sections 8-101.1 to 8-112

Charter Schools: **Yes**

Oklahoma Statutes Title 70 Sections 3-130 to 3-162

Private School Choice: **No**

continued on next page

RELEVANT CASE LAW

Burkhardt v. City of Enid, 717 P.2d 608 (Okla. 1989)
The Oklahoma Supreme Court held that a municipality’s purchase of a local community college and subsequent lease of the college back to its original owners did not violate Oklahoma’s Blaine Amendment because the college was not religious. The court noted that, even if it were, the city could still enter into the arrangement assuming it received sufficient consideration.

Meyer v. City of Oklahoma City, 496 P.2d 789 (Okla. 1972)
The Oklahoma Supreme Court held that maintenance by Oklahoma City of a cross on the city’s fairgrounds, at a slight but continuing public expense, did not violate Oklahoma’s Blaine Amendment because it was not operated for the use or benefit of any particular religion



continued from previous page

or sect and its religious symbolism was obscured by the commercial atmosphere in which it was placed.

Board of Education for Independent School District No. 52 v. Antone, 384 P.2d 911, 913-14 (Okla. 1963) *see also Gurney v. Ferguson*, 122 P.2d 1002 (Okla. 1941)

The Oklahoma Supreme Court held that transporting pupils of parochial schools at public expense aided the schools and was forbidden by Oklahoma's Blaine Amendment.

State ex rel. Town of Pryor v. Williamson, 347 P.2d 204 (Okla. 1959)

The Oklahoma Supreme Court held that the state's Blaine Amendment did not prohibit the building and maintenance of a non-denominational, non-sectarian chapel on state grounds at public expense.

Murrow Indian Orphans Home v. Childers, 171 P.2d 600 (Okla. 1946)

The Oklahoma Supreme Court held that the state's Blaine Amendment did not prohibit the state from contracting with religious orphanages to provide care for needy children.

Sharp v. Guthrie, 152 P. 203, 408 (Okla. 1915)

In upholding a city's ability to sell a public park to a religious university for a dollar, the Oklahoma Supreme Court reasoned: "[t]he city having the right to sell the property, and the consideration being adequate, it would make no difference whether the grantee be a sectarian institution or not, for a sale upon a sufficient consideration would not be within the prohibition of section 5, art. 2 of the Constitution [Oklahoma's Blaine Amendment]."

Oklahoma Ry. Co. v. St. Joseph's Parochial School, 127 P. 1087 (Okla. 1912)

The Oklahoma Supreme Court held that a city franchise contract that required a tram line to provide half fare rides for all schoolchildren, whether they are public or parochial school students, does not violate the state's Blaine Amendment. In its reasoning, the court noted that children have a right to attend private school and that the reduced fares help promote education of children. In addition, the court stressed that the city could not discriminate on the basis of religion in a contract.

Connell v. Gray, 127 P. 417 (Okla. 1912)

The Oklahoma Supreme Court held that the president of a state college could not require students to pay for a Christian athletic association as a condition of their enrollment without violating the state's Blaine Amendment.

ANALYSIS AND RECOMMENDATIONS

Tax credit programs are the best school choice option for Oklahoma. Its Constitution contains a Blaine Amendment on which the Oklahoma Supreme Court premised its decision to strike down a private school transportation bill after the U.S. Supreme Court's decision in *Everson* upholding a transportation program in New Jersey under the Establishment Clause. This failure to distinguish between aiding students and aiding the schools they attend would probably foreclose voucher legislation.

Model Legislation: Great Schools Tax Credit Program, Family Education Tax Credit Program