

NEW HAMPSHIRE



CONSTITUTIONAL PROVISIONS

Compelled Support Clause

"But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination" NEW HAMPSHIRE CONST. Pt. FIRST, Art. 6.

Blaine Amendment

"Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." NEW HAMPSHIRE CONST. Pt. SECOND, Art. 83.

Other Relevant Provisions

"Every member of the community ... is therefore bound to contribute his share in the expense of such protection" NEW HAMPSHIRE CONST. Pt. FIRST, Art. 12.

"[A]nd to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state" NEW HAMPSHIRE CONST. Pt. SECOND, Art. 5.

EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

New Hampshire Revised Statutes Annotated 194-B:1 to 194-B:22

Charter Schools: **Yes**

New Hampshire Revised Statutes Annotated 194-B:1 to 194-B:22

Private School Choice: **No**

RELEVANT CASE LAW

Trustees of Phillips Exeter Academy v. Exeter, 27 A.2d 569 (N.H. 1940)

The New Hampshire Supreme Court held that aid to educational institutions by exempting them from taxation is a proper exercise of the legislative power.

Opinion of the Justices, 616 A.2d 478 (N.H. 1992)

The justices of the New Hampshire Supreme Court opined that a proposed voucher program violated the New Hampshire Constitution because it contained no safeguard to prevent use of public funds for religious purposes.

Opinion of the Justices, 233 A.2d 832 (N.H. 1967)

The justices of the New Hampshire Supreme Court opined that appropriating money from a sweepstakes fund directly to parochial institutions violates the Establishment Clause of the First Amendment.

Opinion of the Justices, 113 A.2d 114 (N.H. 1955)

The justices of the New Hampshire Supreme Court opined that nursing education scholarships do not violate the New Hampshire Constitution because they were religiously neutral and intended to further the teaching of the science of nursing.

ANALYSIS AND RECOMMENDATIONS

A tax credit program is New Hampshire's best option for school choice. It is well-established within New Hampshire case law that tax exemptions aimed at promoting education for all New Hampshire citizens but incidentally affecting religious institutions are constitutionally acceptable. They serve a legitimate public purpose and comport with New Hampshire's "uniform and reasonable" and "fair share" tax laws as interpreted by New Hampshire's state courts.

The New Hampshire Supreme Court has not ruled on the constitutionality of vouchers under its Blaine Amendment, but it did suggest in its 1992 Advisory Opinion that they would violate the Blaine Amendment. While Advisory Opinions are not binding legal precedent, they can be persuasive to courts in subsequent cases. One potential way of avoiding the Blaine Amendment would be to use a non-tax source such as lottery proceeds to fund the program.

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