

THE PASSAGE OF WISCONSIN HOMESCHOOL LAW

By Marvin Munyon

AB – 887 LEGALIZATION OF HOME EDUCATION IN WISCONSIN

In 1980, Laurence Popanz of Avoca, Wisconsin, was teaching his daughters at home and was taken to court on truancy charges under the compulsory school attendance law. Mr. Popanz claimed he had a private school and was not violating any law by teaching his children at home. The case made its way through the Wisconsin courts all the way to the State Supreme Court, with Mr. Popanz serving as his own legal counsel.

The Wisconsin Supreme Court handed down a decision in April of 1983, in *State of Wisconsin v Laurence Popanz*, saying that the phrase "private school" as used in the Wisconsin compulsory attendance statute was impermissibly vague, and prosecutions involving private schools in truancy actions would be unconstitutional. This in effect made the compulsory attendance statute, as applied to private schools, null and void. The court went on to say that the legislature or its delegated agent should define the phrase "private school." The court said that citizens or the courts should not have to guess at its meaning.

The chairman of the Assembly Education Committee believed the best way to approach this definition of "private school" would be through a committee made up of educational interests, rather than having the legislature itself try to write that definition. An Ad Hoc Committee was organized, and I was asked to be a member. The work began in earnest in August of 1983. Many different educational interests were represented on the Ad Hoc Committee, including a representative from the following public school groups: Wisconsin Education Association Council (WEAC), Wisconsin Association of School Boards (WASB), Wisconsin Federation of Teachers (WFT), Parent Teacher Association (PTA), Wisconsin Association of School District Administrators (WASDA), Association of Wisconsin School Administrators (AWSA), Milwaukee School District, and the Wisconsin Department of Public Instruction (DPI). Also present were representatives from the following private school groups: Wisconsin Association of Nonpublic Schools (WANS), Wisconsin Catholic Conference (WCC) and the organization I represented, Wisconsin Association of Christian Schools (WACS). The Ad Hoc Committee was originally instructed to consider only private schools in the definition and not include home educators, because this provision was to be handled by administrative rule. At this time, there were approximately 50 students in Wisconsin being taught at home under administrative rules established by The Department of Public Instruction (DPI). The administrative rules were scheduled to be updated in the near future.

The Ad Hoc Committee began to meet regularly, with some weeks having as many as two meetings. At almost every meeting, a new rough draft of the definition would be developed and then changed, modified and rewritten by the next meeting. I sought to create a separate category for Christian schools and a separate category for non-Christian private schools. My concern was that there is a great difference in philosophy between a private school and a private Christian school. The committee was not at all receptive to this and wanted only one category of private schools. If it was not a public school, then it would be a private school. This strategy was adopted because the Assembly Education Committee needed this Ad Hoc Committee to arrive at a consensus draft that all the committee members would be able to support. As the Ad Hoc Committee continued to meet and articles began to appear in newspapers, other interested groups who had not had a representative on this committee began to surface and show interest in having their concerns represented. Some of these groups were Independent Schools Association of Central States (ISACS), Association of Christian Schools International (ACSI), Wisconsin Evangelical Lutheran Synod (WELS) and a small number of individual home educators. Since the committee had made considerable progress, many thought that new groups should not come in at this late time and have input. As a result of this decision, I

began to meet privately with individuals from these groups and encouraged their input and support for the final product. Since all the home educators I met with had no organization, but were very concerned that their concerns were not being addressed, I encouraged them to form a group with a name so as to have some clout and recognition. Since I had a voice on the Ad Hoc Committee, I encouraged these groups because I did have input and could address their concerns. Working and meeting with individuals involved in home education resulted in the formation of Wisconsin Parents Association (WPA).

After many draft proposals and changes, the Ad Hoc Committee presented a final bill to the Primary and Secondary Education Committee of the Assembly. This committee did not have unanimous consent to this proposal, but since a majority agreed, they were willing to proceed. I did not favor this final product for several reasons but realized there would be some more changes before the final vote was taken in the legislature. Since a majority of the Education Committee favored the draft, they voted to introduce it as a bill and hold a public hearing. The bill was introduced and assigned the number AB 887. A public hearing was scheduled for January 25, 1984, in the Assembly Chambers of the State Capitol in Madison.

Between the time the Assembly Education Committee had introduced AB 887 and the public hearing, there were several more changes that were incorporated into the bill. When the public hearing was held in Madison on January 25, 1984, a new bill with several significant changes had been reprinted and was what the committee heard testimony on. The new bill was known as LRB 0553/2 and was a substitute amendment to AB 887.

The public hearing was an all-day event, beginning about 9:00 a.m. and going until 7:45 that evening. Approximately 2,000 people who turned out for this public hearing, with about 1,600 people who registered or testified in opposition to this bill. Those opposing the bill far outnumbered those testifying in favor.

There seemed to be common ground among those who were speaking in opposition to the bill. The major concern was the process set forth in the bill to determine if a school was a private school or not. This authority was given to the local public school district administrator, whose decision could then be appealed to the state superintendent. If the state superintendent's determination was objectionable, then the school could appeal to the court for a determination. There were a number of other areas that were also objectionable, but the determination process was the most objectionable area and brought the most testimony in opposition. All who were opposed believed this process put all private schools under the direct authority of DPI to determine their status or approve them as a school. It was concluded by all that this would place too much authority over private schools, especially religiously oriented private schools. Those individuals involved in and interested in home education believed they were being left out completely and as a separate group would have no say or input under the administrative rule procedure.

I testified at the public hearing, giving my approval to the changes that had been made and indicated WACS was very supportive of the changes that had been made and were included in the substitute amendment. However, there were some areas of definite concern that I believed still needed to be addressed. I outlined these areas in detail, stating that WACS was not in favor of this substitute amendment to AB 887 as it read at that time, and I would have to oppose it in the future unless further changes were made. I had testified for information only at the public hearing rather than testifying in opposition to the bill because of some very significant changes that had been made, and I did not want to have some of those things put back in the bill.

Following the public hearing, more Ad Hoc Committee meetings took place and the bill was further discussed and amendments added by the Assembly Education Committee. However, the proposal that was finalized for the next step in the legislative process did not change the process of determining a private school to be a private school.

One night following the public hearing and after a follow-up meeting of the Ad Hoc, I was driving home very burdened and concerned over all the testimony I had heard in opposition to the bill at the public hearing along with my personal opposition to the bill. I prayed all the way home, asking the Lord to show me a way to solve this problem and protect the freedoms and rights of parents to have an alternative to public schools.

In the middle of that night I woke up with some definite ideas as to how to answer the court's demand for a private school definition and yet not put private schools under the authority of the state superintendent and DPI and also include home educators in with private schools, to give them the same protection. I got out of bed and began to put these ideas on paper before they escaped me. The next day I met with some individuals and began to refine these ideas. I sought help and advice from all interested individuals and groups that agreed we needed to change the determination process and include home educators. I then went to various groups of private school people and asked for their approval and support to try to get another substitute amendment introduced. Those indicating support for my proposal were the Association of Christian Schools International (ACSI), Wisconsin Parents Association (WPA), Wisconsin Conference of Seventh Day Adventists (WCSD), Education Committee of the United Pentecostal Church, and Wisconsin Association of Christian Schools (WACS).

All the public school groups and the Independent Schools Association of Central States (ISAC), Wisconsin Association of Nonpublic Schools (WANS) and the Wisconsin Catholic Conference (WCC) were favoring the proposal introduced at the public hearing and would not support the proposal I wanted to introduce. In fact, they informed me they would strongly oppose my substitute amendment and would stand with the public school lobby groups.

I was not discouraged or defeated, but I was disappointed that the other major private school groups would want DPI to approve their schools and have authority over them rather than be true private schools and maintain their freedom and autonomy. I sought to get the Ad Hoc Committee and the Education Committee to consider my proposal, but they absolutely refused to even consider it.

In this whole process I met Representative Wayne Wood and soon realized he was a man of like faith and interest in protecting our freedom to have private schools and assure parents of the right to teach their children at home in home-based private educational programs free of government and bureaucratic intervention. Representative Wood enthusiastically agreed to introduce my substitute amendment from the floor of the Assembly since the other committees would not consider it. We then got the word out to as many people as possible all across the state to contact their Assembly representative and ask them to support what soon became known as the "Wood Amendment." Eighteen representatives signed onto this amendment as co-sponsors.

On March 1, 1984, Assembly Bill AB 887 was debated on the Assembly floor for approximately five and a half hours before finally being passed. There were 21 amendments attempted with several being adopted. The substitute amendment known as the "Wood Amendment" was introduced and debated at great length. A vote to reject the "Wood Amendment" carried by a vote of 51-47. A real political lesson was learned from this vote when 5 of the 18 co-sponsors of the amendment voted to reject it. It was unreal, very disappointing, and a real lesson in truth to me that those who were willing to co-sponsor the amendment would then vote against it when the vote was taken. It revealed to me and all who were concerned that in politics you really don't know for sure until the vote is taken, and legislators have to declare themselves. It was clear that a roll call vote is what really counts and not their word or indicated intentions. If all the cosponsors of our proposal would have voted for what they agreed to cosponsor, we would have won in the Assembly on March 1, 1984. Although we were disappointed, we felt this was a victory when we came within four votes of passage. In a sense, it was also a victory considering all the groups that were opposing our position.

The bill the Assembly passed was then engrossed with all the amendments and became known as "engrossed AB 887" and was sent to the Senate for its consideration. We, then, carefully went over the "Wood Amendment" and removed a couple of areas that seemed to be the most objectionable to some in the Assembly and actually made it stronger for our position. I then began to look for a Senator who would sponsor the amendment and introduce it from the floor of the Senate if necessary. This support was found in Senator Marvin Roshell whom Wayne Wood introduced me to. We had several things in common immediately, both having the same first name and both wearing cowboy boots. I sensed this was the right man to work with and asked Senator Roshell to be the lead sponsor in the Senate. Senator Roshell told me he was not on the education committee of the senate and knew very little about education but that he did favor parent's rights and freedom. I told him I would educate him to the issue and help him with the process, if he would be the Senate sponsor. After discussing the issue at length, Senator Roshell agreed to sponsor the new amendment for me in the Senate.

Before the bill was to be discussed in the Senate, it was referred to the Senate Health, Education, Corrections and Human Services Committee. This committee then scheduled a public hearing for March 13, 1984. This was a different type of public hearing, as the testimony was by invitation only. Approximately 15 people representing various interests were invited to testify at this hearing, myself being one of the invited participants.

My testimony centered on the Popanz court case and what the court had asked for. I pointed out very clearly that engrossed AB 887 went far beyond what the court had asked for. The substitute amendment that Senator Roshell had agreed to introduce for me was made very clear to the committee, even though they refused to take any action on it. The committee then referred the engrossed AB 887, as passed by the Assembly, to the Senate Organization Committee for scheduling for floor debate and vote. This floor debate was scheduled for March 27, 1984. We began to contact Senators and seek their support for the amendment to be introduced from the floor by Senator Roshell. When the bill was debated in the Senate, it became very obvious we had real support for the Roshell amendment. A motion to reject the Roshell amendment failed by a vote of 18-13. A motion was then made to refer the bill back to the Senate Organization Committee in a move to stall for more time to get some more support from our opposition for engrossed AB 887. This motion carried 16-15 and the bill was referred back to committee.

All this time we were working very diligently to gain all the support possible for the Roshell Amendment from as many senators as possible. The opposition was also working very diligently to gain support for engrossed AB 887. The committee scheduled the bill for floor debate again on April 4, 1984.

Anticipation ran high as to how the debate and vote would go this time, especially since DPI had come up with a completely new bill of its own that was also going to be introduced. Senator Roshell still had the floor for debate of his amendment first. In an attempt to get DPI's bill on the floor, a motion was made by Senator Strohl to table the Roshell Amendment. This tabling motion lost by a vote of 22-9. This vote made it clear that there was still much support for the Roshell amendment in the Senate. There were four more amendments added to the Roshell substitute, and then the Roshell substitute was adopted on a voice vote. The amendments that were added did not harm the original intent of the substitute amendment. With the Senate's adoption of this substitute amendment, engrossed AB 887 was killed and the Roshell amendment replaced it. Needless to say, there was great rejoicing among all of us who had worked so hard to protect the rights and freedoms of parents to have an alternative to public schools and not be under the direct authority of DPI.

The Assembly scheduled the substitute amendment for debate for the next day, April 5. When the bill came to the Assembly floor for debate, there was no discussion at all, only a vote to concur with the Senate on passage. This vote was then taken, and the Assembly concurred with the Senate by a vote of 97-2. Even the two who voted against the bill later talked to me and apologized, saying they had made a mistake and should have voted in favor. This vote was a victory that came only after much hard work and expense.

Almost 8 months of work, including 62 days in Madison, had paid a dividend. The Wisconsin Association of Christian Schools spent over \$1,000 on attorney fees and \$1,215 for telephone expense, plus \$576 for printing and postage costs. There were also travel expenses for the 7,750 miles I drove drive back and forth to Madison, as well as traveling to speak in 13 different churches concerning this legislation. Much time and expense had been expended in this effort not only by WACS, but by other interested parties and individuals as well.

The bill then needed the governor's signature to become law in the State of Wisconsin. There were some anxious days of waiting to see if the governor would sign the bill, or if he possibly would veto the measure. However, on May 10, 1984, Governor Tony Earl signed the bill into law and it became 1983 Wisconsin Act 512. This was definitely an answer to prayer and nothing short of a miracle from the Lord. When 95% or more of all educational interests were favoring engrossed AB 887, the state's version, and then for us to receive the victory, that was truly a victory from the Lord. Many people had worked and prayed, and we saw the Lord answer in a mighty way.

There are many more details to this story that could be included. However, the real bottom line to this whole issue is that parent's rights to have an alternative to public school have been protected. This must always remain the central focal point of this whole battle for rights and freedom.

We want to thank all who worked and prayed concerning this matter. Much time and expense were expended in this effort. But, how can we put a price on freedom? My freedom is priceless, and I trust you feel the same way. We must continue to be even more diligent in the future to maintain the freedom we have been given by this legislation. Remember, the price of freedom is eternal vigilance.

1983 Wisconsin Act 512

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 115.001(3r) and (3g) of the statutes are created to read:

115.001 (3r) PRIVATE SCHOOL. "Private school" means an institution with a private educational program that meets all the criteria under s.18.165 (1) or is determined to be a private school by the state superintendent under s.118.167.

(3g) HOME-BASED PRIVATE EDUCATIONAL PROGRAM. "Home-based private educational program" means a program of educational instruction provided to a child by the child's parent or guardian or by a person designated by the parent or guardian. An instructional program provided to more than one family unit does not constitute a home-based private educational program.

SECTION 2. 115.30.(3) of the statutes is amended to read:

115.30 (3) On or before each October 15, each administrator of a public or private school system or a home-based private educational program shall submit, on forms provided by the department, a statement of the enrollment on the 3rd Friday of September in the elementary and high school grades under his or her jurisdiction to the department which shall prepare such reports as will enable the public and private schools and home-based private educational programs to make projections regarding school buildings, teacher supply and funds required. The administrator of each private school system and home-based private educational program shall indicate in his or her report whether the system or program meets all of the criteria under s. 118.165 (1).

SECTION 3. 118.15 (1)(a) of the statutes is amended to read:

118.15 (1) (a) Except as provided under pars. (b) to (d) and sub (4), unless the child is excused under sub. (3) or has graduated from high school, any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age.

SECTION 4. 118.15 (4) of the statutes is repealed and recreated to read:

118.15 (4) Instruction in a home-based private educational program that meets all of the criteria under s. 118.165 (1) may be substituted for attendance at a public or private school.

SECTION 5. 118.165 of the statutes is created to read:

118.165 Private schools. (1) An institution is a private school if its educational program meets all of the following criteria:

- (a) The primary purpose of the program is to provide private or religious-based education.
 - (b) The program is privately controlled.
 - (c) The program provides at least 875 hours of instruction each school year.
 - (d) The program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health. This subsection does not require the program to include in its curriculum any concept, topic or practice in conflict with the program's religious doctrines or to exclude from its curriculum any concept, topic or practice consistent with the program's religious doctrines.
 - (e) The program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement under s. 118.15 (1)(a).
 - (f) The pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation, or the institution is licensed as a child caring institution under s. 48.60 (1).
- (2) An institution may request the state superintendent to approve the institution's educational program as a private school. The state superintendent shall base his or her approval solely on the criteria under sub. (1).

SECTION 5m. 118.167 of the statutes is created to read:

118.167 Private school determination by state superintendent. If an association that regulates or accredits private educational institutions in this state submits an affidavit to the state superintendent attesting that the institution meets or exceeds all of the criteria under s. 118.165 and the state superintendent finds that the institution does meet or exceed all of the criteria under s. 118.165, the state superintendent shall determine that the institution is a private school. If at any time the state superintendent finds that an institution determined to be a private school under this section no longer meets the criteria under s. 118.165, he or she may withdraw the determination.

SECTION 6. 118.255 (1) (am) of the statutes is repealed.

SECTION 7. 121.51 (3) of the statutes is repealed.

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