

# Wisconsin Synod: Right or Wrong in Handling the Bennett Law?

[Senior church history paper submitted in partial fulfillment of course requirements at WLS, Mequon, WI,  
February 27, 1976]  
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## I.

### A Short History of the Bennett Law

We reject any attempt on the part of the State to restrict the free exercise of religion. We reject any views that look to the Church to guide and influence the State directly in the conduct of its affairs.

*This We Believe*, VIII, 5, 6.

Perhaps at no time in its history has the Wisconsin Synod participated more extensively in politics than it did from 1889-1891. Those were the years in which the so-called Bennett Law was in effect in the state of Wisconsin. The goal of this paper will be to examine whether the Wisconsin Synod should be praised or censured for the way it reacted to this law. Did it act properly according to the two Biblical principles listed above? In order to answer this question, a short history of the Bennett Law will be given; then the official Wisconsin Synod position against the Bennett Law will be shown from the *Gemeindeblatt* (the official synodical German paper), from Wisconsin Synod convention *Proceedings* from the years 1889-1891, and from Christian Koerner's pamphlet. Finally, an attempt will be made to evaluate the Synod's actions.

The Bennett Law came after two centuries of almost complete non-interference into the affairs of the Lutheran school system by local, state, and national legislatures.<sup>1</sup> But with the rapid expansion of the public schools, conflicts between the supporters of the parochial and public schools were almost inevitable. In some parts of the country opposition to parochial schools was fanned when various church leaders demanded that they be given a share of public funds to run their schools.<sup>2</sup>

Another factor which elicited strong opposition to parochial schools was that many church schools were conducted in a foreign language. People often have trouble accepting a segment of society that is different. The school issue gave them a chance to couple this prejudice with a cause—preserving their public schools and thereby promoting America.

It was in such a *Zeitgeist* that Governor William D. Hoard, in his initial address to the legislature on January 10, 1889, recommended the passing of a law to “make it the duty of county and state superintendents to inspect all schools, for the purpose and with the authority only to require that reading and writing in English be taught daily therein.”<sup>3</sup> Hoard based his recommendation on a report which claimed that from 40,000 to 50,000 children of school age were receiving no education. This statistic was strongly challenged at the height of the Bennett Law controversy by John Schlerf, the Secretary of School Legislation for the Missouri Synod. Schlerf came up with a far lower figure. He said less than one thousand children were going without an education, and not all of them were being deprived.<sup>4</sup> Whyte attributed Hoard's position to Hoard's State Superintendent of Public Instruction, Jesse B. Thayer, who “in his annual report took strong ground in favor of a compulsory school law, and doubtless was a factor in furnishing the new governor with ammunition which he used in attacking the parochial schools.”<sup>5</sup>

The legislature was quick to act on the Governor's proposal. About one month later the Pond Bill (No. 1475) was introduced at Madison. It was described as “A bill to provide for statistical reports from principals or teachers of commercial, parochial, and other private schools in the state of Wisconsin, and for the publication of

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<sup>1</sup> Beck, Walter H. *Lutheran Elementary Schools in the United States*. St. Louis: Concordia Publishing House, 1939. p. 225.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, p. 227.

<sup>4</sup> *Milwaukee Sentinel*, April 11, 1890.

<sup>5</sup> Whyte, William. “The Bennett Law Campaign in Wisconsin,” *Wisconsin Magazine of History*, Vol. 10. p. 370.

summaries of such reports in the biennial report of the State Superintendent.”<sup>6</sup> The reports were to contain the names and ages of pupils from two to twenty-four years old, the number of days they attended, the branches of study they were taught, how many students pursued each branch, and whether such instruction was given in German or English.<sup>7</sup>

The Pond Bill died in committee after only two months. The measure failed to pass largely due to the protest initiated by a committee appointed by the Central Conference of the Ev. Lutheran Synod of Wisconsin. The three members of this committee were Ernst, Notz, and Koehler, all members of the Northwestern College faculty. Their most effective weapon was a petition sent to many Lutheran pastors with a covering letter. The letter quoted provisions of the Pond Bill, and declared that the measure was unconstitutional, and was intended to be an “entering wedge” to begin the supervision, control, and, finally, the destruction of parochial schools. The letter also made reference to an incident at Haverhill, Massachusetts, where state school officers subjected Catholic clergy to disgraceful treatment with the excuse that their school was deficient in English instruction.<sup>8</sup> The 40,000 signatures on the petitions which were sent to Madison were enough to convince the law makers to let the Pond Bill die.

While the Wisconsin Synod and other opponents of the Pond Bill were still savoring their victory, Michael John Bennett of Iowa County, chairman of the House Committee on Education, proposed a new bill. The Bennett Law (Wisconsin Statutes, 1889, chapter 519), passed on April 18, 1889, was rushed through both houses with no real protest, even though the chairman of the House Committee on Education was a German Lutheran from Milwaukee. Kellogg maintained that several hundred copies of the bill had been sent to educators around the state without any noticeable negative response. One might ask, however, to which educators had they been sent—to parochial and private educators or to public teachers only?

Bennett proposed the bill, but it seems there were others behind the measure. The *Milwaukee Sentinel* said that the Assistant City Attorney of Milwaukee, Robert Luscombe, had drawn up the compulsory attendance part of the bill. He was urged to do so by the Tenth Ward District School Society of Milwaukee.<sup>9</sup> They saw the bill as an attempt to stop a horrendous truancy problem. There was already a compulsory attendance law on the books since 1879, but it had become a dead letter. Whyte says that Governor Hoard was responsible for adding to Luscombe’s draft the provision to make English instruction mandatory.<sup>10</sup>

No matter who finally put the bill together, its similarity to the 1888 Massachusetts school bill and the Compulsory School Attendance Bill in Illinois (the 1889 Edwards Law) seems to be more than mere coincidence. The opponents of the bill often referred to the Boston Committee of One Hundred as the real authors of the Bennett Law and the Edwards Law. Other similar groups out to destroy Catholic and other parochial schools lest they damage the public schools were the American Protective Association and the National Reform Association.

The Bennett Law was not only an education bill. It also sought to outlaw abuses of child labor. Its full title was: “An act concerning the education and employment of children.” The child labor portion of the bill was generally accepted, even by the opponents of the educational aspects of the law. Therefore we will not consider those sections of the Bennett Law dealing with child labor.

Here are the educational reforms proposed by the Bennett Law:

*Section 1.* Every parent or other person having under his control a child between the ages of seven and fourteen years—shall annually cause such child to attend some public or private day-school in the city, town, or district in which he resides for a period of not less than twelve weeks in each year, which number of weeks shall be fixed prior to the first day of September in each year by the board of education or board of directors of the city, town, or district, and for a portion or portions thereof, to be so fixed by such boards that the attendance shall be consecutive; and such boards shall, at least ten days prior to the

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<sup>6</sup> Central Conference Committee, *Covering Letter* (to anti-Pond bill petition), NWC archives. p. 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, p. 2.

<sup>9</sup> *Milwaukee Sentinel*. March 13, 1889.

<sup>10</sup> Whyte, *op. cit.*, p. 377.

beginning of such period, publish the time or times of attendance in such manner, as such boards shall direct; provided that such boards shall not fix such compulsory period at more than twenty-four weeks in each year.

*Section 2.* For every neglect of such duty the person having such control and so offending shall forfeit to the use of the public schools of such city, town, or district a sum not less than three dollars (\$3.00) nor more than twenty dollars (\$20.00), and failure for such week or portion of a week on the part of any such person to comply with the provisions of this act shall constitute a distinct offense; provided that any such child shall be excused from attendance at school required by this act, by the board of education or school directors of the city, town, or district in which such child resides, upon its being shown to their satisfaction that the person so neglecting is not able to send such child to school or that instruction has otherwise been given for a like period of time to such child in the elementary branches commonly taught in the public schools or that such child has already acquired such elementary branches of learning or that his physical or mental constitution is such as to render attendance inexpedient or impracticable, and in all cases where such child be excused, the penalty herein provided shall not be incurred.

*Section 3.* Any person having control of a child who, with intent to evade the provisions of this act, shall make a willful false statement concerning the age of such child or the time such child has attended school shall, for such offense, forfeit the sum of not less than three dollars (\$3.00) nor more than twenty dollars (\$20.00) for the use of the public schools of such city, town, or district.

*Section 4.* Five days prior to the beginning of any prosecution under this act such board shall cause a written notice to be personally served upon such person having control of any such child, of his duty under this act, and of his default in failing to comply with the provisions hereof; and if, upon the hearing of such prosecution, it shall appear to the satisfaction of the court that before and after the receipt of such notice such person has caused such child to attend a school as provided in this act in good faith and with intent to continue such attendance, then the penalty provided by this act shall not be incurred.

*Section 5.* No school shall be regarded as a school under this act unless there shall be taught therein, as part of the elementary education of children, reading, writing, arithmetic, and United States History in the English language.

*Section 6.* Prosecution under this act shall only be instituted and carried on by the authority of such boards and shall be brought in the name of such boards; and all fines and penalties, when collected, shall be paid to the school treasurer of such city, town, or district or other officers entitled to receive school moneys, the same to be held and accounted for as other school moneys received for school purposes.

*Section 7.* Jurisdiction to enforce the penalties herein described in this act is hereby conferred on justices of the peace and police magistrates within their respective counties.

The Bennett Law set off in the Lutheran Church a “storm of protest” which was unprecedented in its history in the United States.<sup>11</sup> German Lutherans, especially those in the Wisconsin Synod who had been successful in stopping the Pond Bill, protested this new intrusion into their parochial schools. They especially protested the requirement that four subjects be taught in English.

For two years skirmishes over the Bennett Law bloodied the pages of the public press. Anti-Bennett sentiment was strong in several German daily papers: the *Herold*, *Seebote*, and in the weekly *Germania*. The legal editor of the *Germania* was Christian Koerner, a member of the Synod’s anti-Bennett committee, which was picked at the 1889 convention. Others on the same committee were Ernst, Notz, August Pieper, Christian Sauer, and H. Graebner. The Democratic *Milwaukee Journal* was also a strong opponent of the Bennett Law. Leading the defense of the law was the Republican *Milwaukee Sentinel*. One favorite weapon used by the

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<sup>11</sup> Beck, op. cit., p. 229.

*Sentinel* to win support for the law was to point out deficiencies in the German schools. To carry this out it often called on its ally in Manitowoc, the *Pilot*:

It (a *Pilot* editorial) says the superintendent of schools of Manitowoc County has reports from several town clerks of a number of parochial schools in which no English is taught. Its writer knows of four teachers of parochial schools who cannot speak English.<sup>12</sup>

The *Sentinel* tried to put to rest the fears of church leaders who thought the Bennett Law was conceived to destroy their schools. The *Sentinel* had this excerpt from the *Two Rivers Chronicle*:

The real friends of education do not care how much catechism a child gets with his spelling book if the spelling book is not neglected for the catechism ... the same persons do not care how much of foreign language a child gets with his English if the English is not neglected for foreign language.<sup>13</sup>

Superintendent Thayer, addressing a convention of public school superintendents also tried to ally ecclesiastical misgivings about state supervision of parochial schools as suggested in the wording of the Bennett Law:

There is nothing in the law antagonistic to such schools. It is simply provided that all children between certain ages have the benefit of elementary instruction in the English language. There is on the part of the state no disposition to create any hard feelings among the advocates of parochial schools. There is no way provided by law for investigating the conduct of parochial schools to determine whether or not they are complying with the requirements necessary to be considered schools in the eye of the law, nor is this at all desirable. The state does not assume to interfere with or invade church institutions.<sup>14</sup>

In spite of the protests made by the *Sentinel* and Superintendent Thayer, one wonders whether there was no intent to interfere, or whether the magnitude of the protest made it unwise, impractical, and impossible to carry out the Bennett Law's provisions. In most districts school officials were content to publish the year's compulsory school days in local newspapers and let it go at that. When Superintendent Anderson of Milwaukee was asked whether he thought the Bennett Law would ever be enforced he answered:

The great defect of the whole law, in my opinion is that it does not make it mandatory upon the board to carry out its provisions. For this reason, I think, the board (Milwaukee) will not invite contests by inquiring into the methods of the private schools. It is generally supposed that English is sufficiently taught in all schools of a private character, and the supposition will be taken as a granted fact.<sup>15</sup>

Although the state officials claimed there would never be abuses of the Bennett Law in Wisconsin, all the Wisconsin Synod had to do was to point to Illinois to show what abuses the Bennett Law made possible. Illinois officials had given similar assurances to those made by Thayer in Wisconsin.

Yet there under the similar Edwards Law some school boards were failing to approve Synod schools even though they had met with the English requirements of the law. Again, the reserved behavior of the Wisconsin officials may have been attributable more to the size of the protest they faced than to the purity of their motives.

Even with the salutary warning given by the large protests and even though officials pledged non-interference, incidents also occurred in Wisconsin. Superintendent Smith of Waukesha County threatened to enforce the law in connection with one or two parochial schools where he thought no English was being taught.<sup>16</sup> In Jefferson County three German families from the town of Sullivan were charged under the Bennett

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<sup>12</sup> *Milwaukee Sentinel*. July 27, 1889.

<sup>13</sup> *Ibid.*, July 20, 1889.

<sup>14</sup> *Ibid.*, January 8, 1890.

<sup>15</sup> *Ibid.*, July 15, 1889.

<sup>16</sup> *Ibid.*, January 16, 1890.

Law, but then dismissed on the technicality that the school board had omitted key phrases when it had announced in the newspapers the mandatory school session.<sup>17</sup>

The opposition to the Bennett Law, led by the Wisconsin Synod, used the media extensively to promote its cause. They also used public meetings like the one at Turner Hall in Watertown. The speakers there to debate the need for the Bennett Law were the Synod's Major Krez, the Civil War vet and poet of national renown, along with Senators Vilas of Wisconsin and Mills of Texas. But the Synod's greatest weapon was probably the ballot. At a December 28, 1889 meeting at Bading's St. John's Church in Milwaukee, a State Central Committee of Fifteen was chosen by the Synodical Conference Lutherans, other Protestants, and Catholics who had come to form a united front against the Bennett Law. The duties of the committee were to draw up a platform for the political conventions and to plan an overall election strategy. A resolution was passed to give support only to candidates opposed to the Bennett Law and who would pledge to work for its repeal. The committee was to find out how each candidate stood on this issue.

The election strategy was first tested in the April 1, 1890 Milwaukee municipal election. The Democrats called for the repeal of the Bennett Law. Their candidate for mayor, newspaperman George W. Peck, was elected by 4000 votes over the incumbent, Thomas Brown. The Democrats won similar victories in municipalities throughout the state.

In May of 1890 the State Central Committee called for an anti-Bennett Law convention to gather in Milwaukee on June 4, 1890. Resolutions of the convention laid plans for a state-wide protest. Decisions were made on how to handle the party conventions prior to the 1891 Spring gubernatorial election. Perhaps the single most effective piece of propaganda against the Bennett Law resulted from this convention. It was a pamphlet published by Germania Publishing Company, written by Milwaukee lawyer Christian Koerner. A Pastor Dicke produced a similar document for widespread use in the Missouri Synod.

Dr. A. F. Ernst of the Wisconsin Synod was responsible for much of the success of the anti-Bennett Law campaign.<sup>18</sup> He campaigned relentlessly throughout Wisconsin. He also delivered a long paper on the *Doctrine of Civil Government* to the 1890 Synodical Conference meeting in St. Paul. The other members of the Synodical Conference, English Missouri, Michigan, and Minnesota, stood on the side of the Wisconsin Synod in the school question. The Ohio Synod also joined the protest, as did Iowa, which produced a very clear and comprehensive statement on its position. Among the Scandinavians the Norwegian Synod and the Augustana Swedish Synod also opposed the Bennett Law. The Augusta Swedish Synod, however, conceded to the State the right to "specify in which language instruction shall be given in the schools which books are to be used, and the purposes which the schools are to serve."<sup>19</sup>

Roman Catholics joined the Lutherans in trying to get the Bennett Law recalled. Their formal participation in the campaign was slow in coming, however, in spite of the fact that Roman Catholics had been present at the December 27, 1889 meeting at St. John's. Kellogg wrote of the Catholic participation:

The Catholic opposition to the law was in its inception less pronounced and on the whole was less aggressive than the Lutheran. This was doubtless due to non-German elements in the Catholic Church, especially to the English-speaking Irish. It was not until March 12, 1890 that the three prelates of the state issued a formal manifesto against the Bennett Law, and that the whole force of the Catholic hierarchy was employed to obtain its repeal.<sup>20</sup>

During August of 1890 both state political conventions were held. The Democratic platform called the Bennett Law a "local manifestation of Paternalism,"<sup>21</sup> and called for its repeal. It viewed the Bennett Law as unnecessary, since English was growing in use due to natural causes and necessity. It also pronounced the law unwise, unconstitutional, un-American, and undemocratic. In short, it used the very phrases the Wisconsin

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<sup>17</sup> *Gemeindeblatt*. May 15, 1890, p. 142.

<sup>18</sup> Beck, op. cit., p. 237.

<sup>19</sup> *Ibid.*, p. 241.

<sup>20</sup> Kellogg, Louise. "The Bennett Law in Wisconsin," *Wisconsin Magazine of History*. Vol. 2, p. 10.

<sup>21</sup> Wisconsin Democratic Campaign Book, 1894. p. 41.

Synod was using to describe the law. The Republicans put their endorsement of the Bennett Law in a campaign book. On its cover was a picture of the “Little Red School House” with the injunction to “Stand by it.” The Republican Party’s defense of the law was no longer without reservations, however. The Republicans now conceded that it *was* within the rights of the parent or guardian to select the time of year, the place where his child will be educated, and whether he desires it to be in a public or private school. They promised to modify the existing law.

The results of the election are generally well known to those who have heard of the Bennett Law. The normal Republican majority in Wisconsin disappeared. The normal election success was transformed into a crushing defeat. There certainly were other factors which contributed to the Democratic landslide. Most notable were the unpopular McKinley Tariff and the recession. Whyte makes the point, nevertheless, that Hoard could still have won the governorship over Peck had Hoard not focused on the Bennett Law as his personal project. Minnesota had seen a Democratic landslide also, and yet had elected a Republican governor, Merriam.

One of the first bills passed by the new legislature adds another proof of the importance of the Bennett Law in the 1891 election. On February 3, 1891, the Bennett Law was recalled by the Senate (the House had recalled it even sooner). The new governor signed the recall bill. The promptness of the newly elected officials in removing the Bennett Law illustrates that they believed they had indeed been given a mandate to do so in the 1891 election.

After the law had been repealed, many who had strongly supported the Bennett Law immediately tried to stir up new opposition to the parochial schools, but their voices went largely unheeded.

In the Spring of 1891 a new law, proposed by Representative Desmond of Milwaukee, with none of the objectionable features of the Bennett Law, was passed by the state legislature of Wisconsin. This new bill and the success of the whole Wisconsin Synod campaign had widespread influence and helped produce similar legislative actions in other states.<sup>22</sup>

One would think that the Bennett Law decision would have led to a marked increase in the number of Wisconsin Synod teachers and schools. Koehler, nevertheless, states that this was not the case. In fact, our Synod went from 110 teachers in 1892 to only 93 in 1902.<sup>23</sup> The Bennett Law success proved to be a costly victory in another sense. Because of the obvious political acumen shown by the leaders of the Wisconsin Synod in their fight against the Bennett Laws, many pastors, teachers, and laymen of the Synod were appointed to political posts. But in spite of certain negative results of the anti-Bennett Law campaign, the goal to insure the independence and existence of the Lutheran parochial schools had been reached, at least for a time.

## II.

### The Official Synod Position as Found in Its Periodicals

The second part of this paper will attempt to show from the *Gemeindeblatt*, from convention *Proceedings*, and from Koerner’s pamphlet *The Bennett Law*, exactly how the Wisconsin Synod officially fought the Bennett Law. When direct quotes are used, the enclosed words are the writer’s attempt to translate the German accurately. When no quotes are used, the writer is attempting to briefly summarize what the particular article said. The Koerner pamphlet was available in an English translation. It seemed best not to try to put the material into a narrative, since the thoughts were not always closely related. When only a date is given for the information, that would indicate that the material comes from the *Gemeindeblatt* issue of that date.

February 1, 1889

Notice is given of Governor Hoard’s speech.

The article concludes with the thought that if the state wants to supervise our schools they should pay to run them.

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<sup>22</sup> Beck, *op. cit.*, p. 248.

<sup>23</sup> Koehler, John Philipp. *The History of the Wisconsin Synod*. St. Cloud: Sentinel Publishing Company. 1970. p. 187.

February 15, 1889

Pond's Bill is announced, along with the committee chosen by the Central Conference to fight it.

The plan to fight the Pond Bill by petition is announced also. Senator Widule, Chairman of the State Commission on Education, has promised to submit our petition and work for our cause. Our goal is to show unanimity and strength so the leaders (especially state school teachers' unions) will lose their desire to mingle in our matters.

"Our church wants to have both kingdoms be thoroughly separate. It is our "duty ... to strive with all permissible means" to defeat the Pond Bill.

April 15, 1889

There is no doubt that the Pond Bill will be defeated.

Pond wants it made known that he is not a German hater or enemy of the Church. He only wanted statistics to be gathered about the schools.

May 1, 1889

The Pond Bill was defeated April 13, 1889.

Pond is again quoted saying that he wanted only statistics. Pond said the state still has the right to supervise the public education of the children.

In spite of what Pond says, the bill was intended to supervise parochial schools.

Pond cast aspersions at our patriotism. For this we can forgive him. He was a mere tool. The state officials and the public school teachers' unions really stand behind the matter. This will not be the end of all this. The Bennett Bill has been passed unexpectedly quickly. After the provisions of the Bennett Law were listed this encouragement is given: "We must be on the guard against these efforts by the Freethinkers and the English Reformed sectarian congregations which are more or less all involved with Rationalism or unbelief."

May 15, 1889

Under the Bennett Law the school superintendents have the freedom to interpret the degree they should carry out the requirement that four subjects must be taught in English.

Necessity demands that congregational officials choose upright men as candidates for nomination and election for church offices in order to get good men to lead this fight.

It is proper to discuss the Bennett Law in congregational meetings.

The Bennett Law and the 1879 Compulsory School Bill may be unconstitutional. Perhaps a test case should be made soon before the Supreme Court to see whether it is. We should nevertheless stress the need to improve English in our schools.

The call was given for a joint committee of Wisconsin and Missouri men to follow Bennett Law developments, repel the attacks of enemies of the Church, improve the English instruction in our schools by recommending curricula. This committee should also decide whether to hand over any statistics to the government.

Finally, all pastoral conferences were urged to discuss the Bennett Law, since it will be affecting all of the Synod.

July 15, 1889

The Convention is discussed at which Bading's opening address had emphasized the principle of the separation of Church and State and called for the Synod to "stand up to battle with open eyes and strong determination against all such endeavors."<sup>24</sup>

The Synod's committee reports that they had been chosen to answer two questions: what is the meaning, purpose, and result of the Bennett Law for our schools; and what stand should the Wisconsin Synod take in regard to the Bennett Law?

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<sup>24</sup> Beck, op. cit., p. 224.

The committee concluded that the purpose of the Bennett Law was hostile to our schools and would bring terrible result for the following reasons:

1. A superintendent could break up the twelve to twenty-four weeks into such small segments that instruction would be difficult.
2. The law robs our school of the freedom they've always had to set the time of their instructions. It makes celebrating our weekday church holidays impossible. Our children might be picked up as vagabonds if they're on the street when parochial school begins one hour later than the public schools.
3. The law forces parents to send their children to a publicly recognized school in their district only. This harms the parochial school which may get children from four different school districts.
4. A parent could be fined for sending his child to a school which is only five steps away if he lives near a border between two districts.
5. The reasons for acceptable excuses are too limited. A parent could be fined for taking his child out of school to attend a baptism, funeral, or wedding.
6. The fines are so high that the offender is at the mercy of the school board and the justice of the peace.
7. Paying fines for missing parochial school to the public school board is unfair.
8. Money should be paid to the parochial schools if they are forced to add courses like U. S. history, which they may have treated cursorily before.
9. English in for subjects is not needed and is a tyrannical demand.
10. If the state has the power to limit German, it has the power to eliminate it.
11. With all the required courses in English, there may be no time to teach German or religion during normal school hours.
12. The enemies of the Church shouldn't be allowed to judge whether the parochial and private schools are meeting the requirements of the law.

The following recommendation of the committee was unanimously adopted by the convention:

“We are not enemies of the public schools; we consider them and declare them to be a necessary institution. We are ever willing to pay our taxes for the support of the public schools. We are opposed to any and every grant of public school funds to private schools. But we insist upon enjoying the privilege of founding private schools with our own means of regulating and governing them, without external interference, according to our conviction and according to sound principles of pedagogy, for the sake of making our children loyal and good citizens. We, therefore, protest against the assertion which has been made by so many, and even by officers of the State, that our Lutheran Church is hostile to the public schools, and that our parochial schools are a standing menace to the public schools.”<sup>25</sup>

The committee was instructed to keep working to remove the Bennett Laws which was called unjust, by court case or by ballot.

The Synod resolved to enter and fight urgent cases if they arose.

Synod members were encouraged to pray for our schools. Dr. Ott of Watertown had prepared some English readers and this was brought to the attention of the Synod.

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<sup>25</sup> Koerner, Christian. “The Bennett Law and the German Protestant Parochial Schools of Wisconsin.” Milwaukee: Germania Publishing, Co., 1890. p. 12.



January 15, 1890

The December 27, 1889 meeting at St. John's in Milwaukee was reported.

It was reported that up to that time there had been threats to enforce the Bennett Law, but no actual enforcement. Most boards just publish the dates of the compulsory days. They didn't dare enforce the law because everyone knew the Germans were good citizens. Some were apathetic, others felt the law to be unjust.

The unanimous opinion of those gathered was that we must get the Bennett Law repealed or it will always be hanging over our heads.

An executive committee was named (State Central Committee of Fifteen) at the meeting.

A decision by the Illinois Supreme Court was reported which said the parents have the right to educate their children as they choose.

In the same issue the case in Wine Hill, Illinois was announced. There a teacher in a parochial school has even taught the five subjects required in English by the Edwards Law. Yet a Mr. Lindenberg was fined \$12 because the school was not approved. The board had taken no steps to learn what was taught at the school. "Isn't this very terrible? That's the way it stands here in spite of the declaration of Mr. Edwards that the school law is not directed against private and parochial schools." (quoted from a letter by Pastor Liebe)

March 1, 1890

The hint has been made in Wauwatosa by Coughlin, the school clerk, that parents who send their children out of the district will be fined.

A report of the February 27, 1890 meeting of Reformed, and Lutherans was given. They decided at this meeting to:

- 1) work with legal means to get the Bennett Law repealed.
- 2) elect only those candidates who openly oppose the Bennett Law.
- 3) speak out in all congregations concerning the dangers of the Bennett Law and to try to get their congregations to take positions against the law.
- 4) have people present at the caucuses at which candidates will be nominated for justice of the peace or alderman.
- 5) empower a committee to find out how the candidates stand on this issue

April 1, 1890

Several Illinois cases show how dangerous the Bennett Law really is.

*Woodworth, Iroquois County, Illinois.*

Men refusing to send their children to a state school were freed from charges that they had broken the Edwards Law by a judge who called the law "a cruel law." Our schools proved they'd kept the letter of the law. This case points out how vital it might sometimes be to request a "change of venue" as you have the right to do.

*Bible Grove, Clay County, Illinois.*

Two members pulled their children out of parochial school and sent them to public school because of pressure. This was even after our school had introduced English on own volition. The men were tried but the jury couldn't agree on a verdict. They were still fined \$1.00, because "our pastor couldn't speak enough English."

"The strangest thing, however, was that the school board then declared, if the congregation wouldn't appeal the case and would pay the fine, then in the future the congregation would have peace, and they would allow them to send their children to the parochial school."

*Conant, Perry County, Illinois.*

A truant officer, “who can hardly write his own name,” ordered seven children should be sent to the schools in their own district by New Year or their parents would be sued. The school board had been told by higher authorities to carry out the Edwards Law or be disciplined for neglecting their duty.

The pastor refused to invite the board to tour his school. He said they should approve his school on the basis of verbal testimony, just as they did in other districts. Pastor: “We shall not give up, but fight to the utmost for our precious rights.”

April 1, 1890

Pastors should watch their local papers so that they may continue to fight the enemy publicly where necessary. The committee volunteered to help such pastors if they would ask for help. The local pastors were asked to send articles about the Bennett Law into the Synod anti-Bennett Law committee.

April 15, 1890

The article pointed out that a movement was afoot to completely destroy parochial schools. A Massachusetts bill was proposing unlimited inspection of private schools, and schools to be approved only if English was taught in all classes, textbooks were approved, and if the progress made by the pupils was reasonable. Urging a child to attend a non-approved school carried the stiff fine of \$300 to \$1000.

A quote was cited from a Massachusetts newspaper: “The private school must be destroyed. Fealty to the parochial school means treason to the State.”

The Bennett Law threatens our freedom and our religion.

It forces children into non-religious schools.

It hinders confirmation instruction and worship on weekday festival days.

It declares faithful pastors and teachers unfit for service. Some of our schools can only meet three days per week (for a longer school year) but since they do not meet on consecutive days they are threatened by the Bennett Law. The procedure for punishing offenders sets aside due process.

“The law of the land itself gives us the right to overturn dangerous and unconstitutional laws by the ballot box through the election of just officials, in the courts through appeals and test cases.”

May 15, 1890.

There is a proposed bill in Nebraska forbidding any instruction in foreign language. Three families were charged under the Bennett Law but the charges were dropped due to a technicality. This occurred in Sullivan in Jefferson County, Wisconsin.

June 15, 1890

It was reported that 900 people, not only Lutherans, but also other Protestants attended the May 4, 1890 meeting of the State Central Committee. Mayor Peck of Milwaukee also attended.

The following four points were adopted:

- 1) We are not enemies of English. We do think public schools are necessary as are the child labor provisions of the bill. But we appeal for no funds for our schools. We shouldn't be treated as public nuisances if we have moral objections to public supervision.
- 2) The law gives parental rights to the school board. When the schedule is set up consideration is rarely given to the desires of the parochial and private schools. The state is given the power to interfere with our instruction by determining our curriculum.
- 3) We'll only elect Bennett Law opponents to political office.
- 4) We invite all freedom lovers and citizens who love German to unite to remove the unnecessary dissension causing, unrighteous Bennett Law.

The *Gemeindeblatt* announced its regret that Governor Hoard publicly stated that our pastors and congregations have taken an oath “to darken the understanding of young people.” This is false! Our leaders do all they can to give the best education possible.

“No refutation therefore is needed for this groundless, tactless, and untrue opinion.”

Horace Rublee has implied in the *Milwaukee Sentinel* that the anti-Bennett Law movement was provoked by our pastors whom our people follow blindly.

#### Proceedings 1890

The committee reported its past success, i.e., no noteworthy harm has come to our schools as yet.

We will work to influence the spring elections (1891). The Central State Committee urges all church societies and citizen groups to meet on this matter throughout the state.

The committee was told to care for the production of uniform curricula, gather material for a possible statistical report of our school system, publish results of their work in the Synodical paper.

It was announced that Koerner had produced a pamphlet. The committee from Synod working to fight the Bennett Law consists of Ernst, Notz, Kammeyer, Kneyse, Fritze, and Jahr.

#### Koerner's pamphlet: *The Bennett Law and the German Protestant Parochial Schools of Wisconsin*

After a full reprint of the law and its probable tie to the Boston Committee of One Hundred, several weaknesses in the law were discussed.

It was pointed out the law excused children to whom “instruction has otherwise been given,” and not “is being given. Thus if a comparable education is being given in a parochial school, that does not necessarily mean the parents of that child cannot be prosecuted under the law.

The lowest fine given for assault and battery is \$1.00, while the lowest fine under the Bennett Law is \$3.00! If a child were missing Friday and Monday for the same reason, his parents could be fined twice.

The language defining possible excuses is too restrictive, since only physical disability or financial inability excuses the parents from sending them.

If a “little English” is the goal of the law, why doesn't it require only reading and writing in English?

The law is unrepugnant, unnecessary. It was not needed before, since even the Germans learned enough English to prosper. And English can't be learned by Germans in English only. German must be used.

We often schedule our schools so that our children can also attend public school.

Koerner cited these statistics: before 1889, 207 German schools taught English. 139 didn't. In many of these cases the students also attended public school. Of the same schools 108 use more German, 137 use German and English about equally, 129 use more English.

Among the inalienable rights guaranteed by the Constitution is its right of parents to choose how to educate their children.

This law will destroy our schools. Many of our schools are taught by the minister who can only teach several days a week. Many of our scholars come from other districts.

“It is an insult and an outrage that the state should attempt to assume control over our private schools that we have built up and maintained with great sacrifices to ourselves and without any aid by the state or school districts, and to give such control to men who may frequently be hostile to our language and to our religious belief, and who, moreover, may not even be able to read and understand a fourth reader ... And such men (are) to be judges of our ministers and teachers!”

Other examples were given of schools which were not approved: Campbell Hill, Jackson County, Illinois; Wine Hill, Randolph County, Illinois.

The Minnesota Legislature enacted a law which says that all schools must use English books, but the instruction in using these books may be done in any other language.

The Bennett Law denies the right of trial by jury and replaces it with the need to make satisfaction to the school board. The law denies our constitutionally guaranteed religious liberty.

September 1, 1890

The Republican Party convention was held.

They reaffirmed their allegiance to the Bennett Law, but they agreed to make concessions to modify the law. They now agree that parents have the right to choose the time, place, and whether the education of their children will be at a public or private school.

We still want the Bennett Law repealed.

Those who support the Bennett Law use double-talk. Their words can be taken in one way when they reassure us, but in a far different way by the liberals. Their words provoke suspicion.

October 15, 1890

Thayer has defined the ability to teach as the ability to speak English fluently and correctly, and with taste (Laws of Wisconsin relating to Common Schools-Madison 1890, p. 107).

“These are a powerful weapon against our Lutheran teachers and schools in the hands of evil, hostile school officials.”

Hoard has been negligent of his office, and has thrown his personal honor in the dirt. He has placed himself in the service of the Devil.

A report has appeared in a Milwaukee Bennett Law Hoard Newspaper which slanders our churches. It said our churches are dilapidated, and so our leaders will vote for whomever promises them most for church repairs.

A quote from the *Western Good Templar*:

“But give us ten years under the Bennett Law and we will in each town where English is now spoken, have a lodge of the Good Templars. The Bennett Law will be the keystone of a higher civilization.”

Hoard was asked how the Bennett Law would be enforced. He answered by saying it would turn out as badly for delinquents under the Bennett Law as it would for the cow who got in the way of a locomotive.

February 1, 1891

The first step has been taken to recall the tyrannical Bennett Law. The text of the recall bill is by Representative Schmitz of Milwaukee. (this was passed Feb. 3)

Even before the Bennett Law was officially repealed a new bill was proposed by Senator Paul Bechtner, a Republican from Milwaukee. Of this bill the *Gemeindeblatt* said “The bill deserves to be defeated, and this will also without a doubt happen. This is still put together in a misleading way like the old Bennett Law, although at first overview it appears very peaceable. The district clause has been struck, but that is all. The state authority will undercut our parochial schools through it, at least indirectly, and will deny the right of the parents just the same as the Bennett Law did.”

Proceedings, 1891

President von Rohr in his report: “God has given us a victory none of us expected.”

Then the committee to fight the Bennett Law reported: We don't have to give the details. “We are satisfied to point to the happy result, that the offensive Bennett Law fortunately has been removed.”

A new school law has been passed. “With the finishing of this law the wishes and needs of the church circle have found the aforementioned consideration.”

However, things are not so rosy in neighboring states. Ernst and Notz were to function as advisers to those fighting school laws in neighboring states.

Notz was chosen as the first full-time school secretary.

July 15, 1891

“With heartfelt thanks to God who put to shame the purposes of the fanatic, native-born enemies of freedom, and unbelieving enemies of the church, out to destroy the German parochial schools, and has given to us the victory in the fight against the enemies of the Church and to the citizens the victory of freedom of knowledge, we give our readers the following explanation of the new law in a German translation”:

- 1) at least twelve weeks of school each year, except when mental or physical condition prohibits it, or as the courts allow
- 2) The fine for offenses shall be from \$3.00 to \$20.00
- 3) Truant officers shall be hired from the school fund
- 4) Fines are to be paid to the school treasurer in the city, town, or district where the offense occurred
- 5) It is the duty of school officials to take a census of all school children from age seven to age thirteen and to give reasons why those who don't attend have been excused

### III.

#### An Evaluation of the Synod's Actions

We have looked at the general history of the Bennett Law and at the Wisconsin Synod's statements in regard to the school question. What should we say about the overall role of the Synod in opposing the Bennett Law? Were its principles and methods always above reproach?

Sitting back in 1976 we would have to give the Synod a pretty fair rating. While the wording of the Bennett Law seems harmless enough, the spirit of fanatical opposition to religious schools, especially those with foreign ties has already been documented. Whether the Wisconsin officials intended to destroy the church schools or not, their bill closely resembled that initiated by those who did hate the Church. The Bennett Law closely resembled that initiated by those who did hate the Church. The Bennett Law closely examined was an attempt to restrict the freedom of religion by putting the parochial schools under state supervision in getting approved and in the subject matter they were to teach.

The Wisconsin Synod recognized the similarity of the Bennett Law to the one framed by the Boston Committee of One Hundred. It was not wrong to point out these similarities publicly. However, it was wrong to brand as a German hater and enemy of the Church everyone who supported the Bennett Law for any reason whatever. Some, no doubt, did support the Bennett Law believing they were only helping to guarantee the right of a good education to every child. Although the Wisconsin Synod should have been more restrained in their name calling, it is also true that those people who espoused a law which could be used to rob the constitutional rights of the Church *were* enemies of the Church, whether they knew it or not.

If we grant that the Bennett Law was an improper attempt to mix Church and State, we would also have to grant that any legal means could be used to fight for the repeal of the law. Two legal means suggested themselves. Either a court case could be used to test the constitutionality of the law, or the ballot box could be used to elect to public office only those who were pledged to work for the law's repeal.

Koehler did not think that the Wisconsin Synod made the right choice when it decided to fight the law with it decided to fight the law with ballots. Koehler feared dragging the Synod's name through the mud by a political campaign.<sup>26</sup> He also lamented by hindsight the loss to politics many Synodical workers who left the work of the Church after they had tasted the sweet ambrosia of political success. In spite of the drawbacks of using this process to fight the Bennett Law, the method was successful. The test case method was not used, according to Koehler, because Koerner had advised against it:

The lawyer rejected as idealistic and impractical the idea that a forceful presentation of the justice of the Church's cause and of its constitutional rights would rally the support of sober-minded American public

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<sup>26</sup> Koehler, op. cit.

opinion to its side, and prominent theologians baldly asserted: “In politics nothing counts but the number of votes, and those you get by vigorous propaganda.”<sup>27</sup>

Koehler himself answers one of his objections to using the political process when he wrote, “Of course, a political campaign can be conducted decently,” even though he did add the qualifier: “but subsequent events proved the correctness of the writer’s stand.”<sup>28</sup> Whether the Synod’s dignity was permanently damaged by the political method is hard to gauge. It seems to this writer that the subsequent repeal of the Bennett Law would only enhance the Synod’s prestige and remove most of the “bad press” the Synod had been given. And who was to say that a famous test case wouldn’t have given the Synod an equal amount of “bad press?” As to Koehler’s point that many workers were lost because of the successful political campaign, who is to say that those who carried out a successful test case might not have left church work for the legal profession or politics?

Had the political process failed to effect the removal of the distasteful Bennett Law, a court case could still have been tried. But if a court case had been lost first, a political campaign based on the challenge of a law already upheld as constitutional would probably have failed miserably.

Some of the schools of the Wisconsin Synod were deficient. The Synod officials perhaps can be criticized justly for their unwillingness to admit it. Koehler wrote:

The Church remained at a disadvantage because it had not candidly owned up to the actual shortcomings that existed despite the good individual work and offered the opponents the chance for carping criticism.<sup>29</sup>

This could be seen, said Koehler, even by the better clothes the parents bought for their children after they left parochial school and entered public school. The deficiency of quality education was also evidenced by the lack of a Synod school inspection program until World War I. The Synod did, however, begin to encourage the upgrading of its schools, especially in the field of English, even though it did not grant the state the right to do so under the Bennett Law. The Synod also began to have some of its educators produce model curricula and reading programs.

In defense of the poor quality of some of the Wisconsin Synod schools it must be said that many public schools of that time were also deficient. Why didn’t the superintendents first concentrate on improving them? Koerner’s pamphlet was very careful to point out that English instruction was being given in all but 139 of the 346 German protestant schools. Not only that, but many children in the schools with no English instruction also attended a public school held at a different time of the year. Some children had attended public school until confirmation. Whyte also noted that even in German-only schools, much English was learned:

The answer to the reporters showed that of children with German parents seventy per cent could not speak English when they came to school, but after the second grade that language was used in general conversations.<sup>30</sup>

On the whole German language question, we must admit that the German language was often too closely connected with the essence of religion by those who attacked the Bennett Law. The feeling was understandable, if not correct. The people had learned about God in German, worshipped God in German, and thus thought that if their children were not instructed in German they would likely lose their faith. The 1890 Dubuque official statement of the Iowa Synod said:

Not considering the fact that we wish to preserve for our children the precious blessing of the German language, the instruction in this our language could not be given up if we observe the present state of our

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid., p. 186.

<sup>30</sup> Whyte, op. cit., p. 378.

congregations, which consist mostly of recently immigrated members, if we wish to preserve our children for the Lutheran Church.<sup>31</sup>

It was one thing to oppose direct supervision of parochial schools on the basis of the first amendment. To attack those who wanted more English and less German with the charge that they were robbing the religious liberty of the German people was more tenuous. However, the Bennett Laws anti-German position could be opposed because the state had attempted to demand specific curricula with such a heavy emphasis on English that German or even religious instructions might have been crowded out of the schedule of parochial schools.

The state *does* have the right to set up standards and goals for public and private schools so that all citizens will be capable of handling the English language. The private and parochial schools will try to meet these goals and standards, out of obedience to the government, and due to the necessity of competing with the education given in the public schools, lest parents hesitate to send their children to parochial schools, if it becomes obvious that the parochial education is inferior to that given in the public schools. But the state *does not* have the right to enter into parochial and private schools and dictate what curricula they must use. The state does not have the right to “approve” or fail to approve parochial schools according to the whim of possibly biased school boards.

That the Bennett Law had unjust features has already been shown from Synod publications. Some of the Unjust demands were the order to send children to schools in their district only, the order to send them during specifically chosen weeks, the imprecise language which limited too severely the legal excuses for not sending a child to school during the compulsory period, and the provision which removed the right of trial by jury and substituted trial by school board for all charged with breaking the Bennett Law.

In short, the cause of the Wisconsin Synod in opposing the Bennett Law of 1889 was just. The means it used to get this law repealed were generally honorable. We must thank and admire our spiritual forefathers for their vigilance and diligence, which insured the continued free existence of our parochial schools, at least for a time.

We don't determine our policy and practice from church history. Policy and practice should be determined by the word of God alone. But church history can show us how past generations successfully or unsuccessfully acted to carry out the principles they found in Scripture, History is a valuable teaching tool.

What use can we make of the Wisconsin Synod's anti-Bennett Law campaign in our own day? Attacks on the Church and its schools will never cease. And generally people will not attack the Church and its schools openly or directly, but will veil their true purposes under nice sounding goals which many friends of the Church will even wait to support, such as: “We only want every child to have a fair chance to receive a decent education.” This was the case with the Bennett Law, and it will continue to be the case. In Illinois last year the new public school superintendent urged legislation to empower him to supervise education in all Illinois schools, “public and private.” The Illinois Advisory Board, a group made up of private school leaders, was understandably concerned about having the words “and private” deleted. I don't know how successful they have been but this incident just goes to show how necessary it is for Christians to keep politically informed, even on the state and local levels. The opportunities to protest state intervention into private schools will continue to present themselves:

Another moral issue which our Synod faces today is the abortion question. Court cases thus far have proved incapable of outlawing abortion. The killing of unbaptized human beings probably will have to be fought with ballots. It is the opinion of some political analysts that abortion might become a hot issue in the next presidential campaign. The time seems right for pro-life groups and all Christians to unite and take a stand similar to the one taken by all the opponents of the Bennett Law. What if our church encouraged its members to use their voting rights to fight abortion? What if our Synod took a more public stand, as a corporate fruit of our collective faith, to challenge the legal sanction of sins against the Fifth Commandments? The government, by legalizing killing, has gone directly against its God-given function of protecting life. Who will lead the State to reverse directions if not Christians, the light and salt of the earth?

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<sup>31</sup> Beck, op. cit., p. 239.

As the opening quotation of this paper stated, “We reject any views that look to the Church to guide and influence the State directly in the conduct of its affairs.” However, we might ask ourselves, are we so careful to avoid that extreme that we now fail to properly inform and encourage our people to be salt and light as citizens also? Are we perhaps failing to guide and influence the state indirectly through our people? I would submit that we are.

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