

# KENTUCKY



## CONSTITUTIONAL PROVISIONS

### Compelled Support Clause

"[N]or shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion ...." KENTUCKY CONST. § 5.

### Blaine Amendment

"No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school." KENTUCKY CONST. § 189.

### Education Articles

"No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to the legal voters, and the majority of the votes cast at said election shall be in favor of such taxation: Provided, The tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law." KENTUCKY CONST. § 184.

"All funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school districts and its use for public school purposes." KENTUCKY CONST. § 186.

### Other Relevant Provisions

"Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax ...." KENTUCKY CONST. § 171.

"Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose." KENTUCKY CONST. § 180.

## EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

703 Kentucky Administrative Regulations  
5:120

Charter Schools: **No**

Private School Choice: **No**

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## RELEVANT CASE LAW

*Neal v. Fiscal Court, Jefferson County, 986 S.W.2d 907 (Ky. 1999)*

The Kentucky Supreme Court held that the Jefferson County fiscal court's plan to allocate funds for the transportation of private elementary school students did not violate Kentucky's Blaine Amendment. Distinguishing the earlier *Brady* decision, the court noted that funds were paid to the transportation system administered by the board of education, not directly to individual schools, and benefits flowed "toward the safety and welfare of elementary age school children and not into the accounts of non-public schools."



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NO  
VOUCHERS



YES  
TAX CREDITS

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*Fiscal Court of Jefferson County v. Brady*, 885 S.W.2d 681 (Ky. 1994)

The Kentucky Supreme Court held that the Jefferson County fiscal court's direct payment of county tax revenues to private schools for school transportation subsidies violated the Kentucky Blaine Amendment.

*Fannin v. Williams*, 655 S.W.2d 480 (Ky. 1983)

The Kentucky Supreme Court held that a Kentucky statute that provided state-supplied textbooks to children in private schools violated the Kentucky Blaine Amendment.

*Butler v. United Cerebral Palsy of Northern Kentucky, Inc.*, 352 S.W.2d 203 (Ky. 1961)

The Kentucky Court of Appeals, which was then the state's highest court, held that a statute authorizing public aid to private schools for exceptional children did not violate, among other constitutional provisions, Kentucky's Blaine Amendment because the funds were for children's "welfare" rather than "education."

*Rawlings v. Butler*, 290 S.W.2d 801 (Ky. 1956)

The Kentucky Court of Appeals held that (1) a county school board's rental of school buildings from a church, where the church did not attempt to influence or control the schools, did not violate the Kentucky Blaine Amendment; and (2) county fiscal courts may contribute tax funds to subsidize the transportation of private school students without violating the Kentucky Constitution, but may not use tax funds raised for public school purposes for the transportation of private school students.

*Hodgkin v. Board for Louisville & Jefferson County Children's Home*, 242 S.W.2d 1008 (Ky. 1951)

The state's highest court held that a shelter maintained by the city of Louisville and Jefferson County did not constitute a "common school" and was therefore not entitled to receive funds from the Common School Fund. However, the court specifically noted that nothing in the Kentucky Constitution prevented the state from funding such an institution through other sources of public money.

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*Sherrard v. Jefferson County Board of Education*, 171 S.W.2d 963 (Ky. 1942)

The Kentucky Court of Appeals held that the portion of a Kentucky statute requiring that students attending private school be given the same transportation rights as students of public schools violated Kentucky’s Blaine Amendment.

*Pollitt v. Lewis*, 108 S.W.2d (Ky. 1937)

The Kentucky Court of Appeals held that a statute purporting to give a private junior college organization the power to levy property taxes without submitting the question to the electorate violated Section 184, one of the Kentucky Constitution’s education articles. The junior college was not a “public school” within the meaning of Section 184, and the statute contained no provision for submitting the proposed tax to the voters.

*Williams v. Board of Trustees of Stanton Common School District*, 191 S.W. 507 (Ky. 1917)

The Kentucky Court of Appeals ruled that an arrangement between a county board of education and a religious college, under which the college was paid tuition fees and building maintenance fees for the education of county high school students out of public school funds, violated Kentucky’s Blaine Amendment.

*Opinion of the Attorney General 83-184* (Ky. AG 1983)

The Kentucky Attorney General opined that parents of a disabled child are not entitled to reimbursement from a school district for the cost of a private school education until they demand and are refused accommodation by the local school district.

*Opinion of the Attorney General 83-247* (Ky. AG 1982)

The Kentucky Attorney General concluded that parochial school students could not ride on public school buses even when they too were being transported to the local public school: “[I]f school district money in any respect and in any amount is used to transport nonpublic school children the Kentucky Constitution would be violated.”

## ANALYSIS AND RECOMMENDATIONS

Tax credit programs are a viable school choice option in Kentucky. The restrictive language of Kentucky’s Constitution with respect to education funding and the more restrictive interpretation of Kentucky’s state religion clauses make instituting a general voucher program difficult, if not impossible.

\*The education funding provision, Section 184, appears to foreclose a general voucher option because it requires that all funds raised for educational purposes be spent on public schools, unless the voters approve the expenditure by referendum. *Butler*, however, may create a limited exception for programs directed to special education students. The funding for such a program should explicitly come from a source other than the “common school fund,” and the money should be allotted to parents rather than schools. Most importantly, the program’s purpose should be couched in language other than “education,” such as child “safety” (the language of *Neal*) and child “welfare” (the language of *Butler*).

*Model Legislation: Special Needs Scholarship Program, Autism Scholarship, Great Schools Tax Credit Program, Family Education Tax Credit Program*