

Approved: _____

1-24-94

Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Duane Goossen at 3:30 p.m. on January 11, 1994, in Room 519-S of the Capitol.

All members were present except: Representative Wells (excused)

New committee members were welcomed: Representatives Majure, Standifer and Lynch
Bill Reardon was acknowledged as Ranking Majority Member.

Committee staff present: Ben Barrett, Legislative Research Department
Dale Dennis, Deputy Commissioner, Dept. of Education
Avis Swartzman, Revisor of Statutes
Lois Thompson, Committee Secretary

Conferee appearing before the committee: Ben Barrett, Staff

Others attending: See attached list

Ben Barrett from Legislative Research reviewed the "Shawnee County District Court School Finance Opinion" as contained in the memorandum from Norman J. Furse, Revisor of Statutes to the Kansas Committee on School District Finance and Quality Performance. (Attachment #1)

Specific recommendations proposed by the Kansas Committee on School District Finance and Quality Performance were also reviewed by Ben Barrett. (Attachment #2)

The floor was open to questions by committee members.

The meeting was adjourned at 5:05 p.m.

The next meeting of the House Education Committee is scheduled for Wednesday, January 12, 1994, in Room 519-S.

GUEST LIST

Committee: Education

Date: 1-11-94

[illegible]

January 5, 1994

MEMORANDUM

TO: Kansas Committee on School District Finance and Quality Performance

FROM: Norman J. Furse, Revisor of Statutes

RE: Shawnee County District Court School Finance Opinion

I. CASE BACKGROUND.

- A. 1973 School District Equalization Act (SDEA). In 1973 in response to a decision of the Johnson County, Kansas, District Court which found the then current School Foundation Finance Act unconstitutional for failing to provide equalization aid sufficient to offset the disparity in either tax effort or per pupil operating expenditures, the legislature enacted the School District Equalization Act (SDEA). This Act attempted to provide resource equalization by distributing state aid based upon district wealth. Over the years, the legislature made numerous adjustments to the SDEA in response to changing circumstances and in some cases to court decisions. In 1990, several school districts and individuals challenged the constitutionality of the SDEA. In October, 1991, a Shawnee County district judge issued an opinion which set forth rules of law applicable to the case.
- B. 1992 School District Finance and Quality Performance Act (K.S.A. 72-6405 et seq.). Subsequent to the issuance of the Shawnee County district court's opinion on the SDEA and during the 1992 legislative session, the legislature enacted a new school finance act named the school district finance and quality performance act.
- C. Litigation. Within a few months after the enactment of the new legislation, 17 school districts and a total of 97 plaintiffs sought determination that the new school finance legislation was unconstitutional. The various plaintiffs and groups of plaintiffs were consolidated into four lawsuits. The trial of the first phase of the litigation concerning the constitutionality of the new act commenced during the summer of 1993. The basic framework, premises and specifics of the new act were challenged with plaintiffs raising over 70 separately enumerated objections. Fifty-five witnesses testified and boxes of over 180 exhibits were presented.

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II. OPINION IN THE CASE.

- A. Contents of Opinion. The opinion in the case was issued in two parts by the District Court. An order and summary decision of 10 pages and an order and memorandum of decision of 158 pages. The lengthy order and memorandum of decision is divided into the following parts: A general background statement; status of the lawsuits; a history of school finance; a review of the development of the current legislation; a review of the legislative history of that development; an analysis of the results under the current law; an analysis of the legal questions raised and conclusions of law; the conclusion of the court; and an appendix listing the various plaintiffs in the litigation.
- B. The court's opinion relates to the first phase of the litigation. Taxpayer claims were severed from the trial and issues relating to damages, if any, were not considered at the trial. For these reasons not all Plaintiffs' issues have been resolved.

III. LEGAL ISSUES AND CONCLUSIONS OF LAW.

- A. Guidelines for Constitutional Interpretation.
1. An act is presumed to be constitutional; only if the statute clearly appears unconstitutional, may the act be stricken; and, unless the act is clearly unconstitutional, any doubt must be resolved in favor of its constitutionality. (Blue v. McBride, 252 Kan. 894 (1993)).
 2. Courts are not to substitute their social and economic beliefs for the judgment of legislative bodies and are not "concerned with the wisdom, need, or appropriateness of legislation." (Blue v. McBride, ante).
 3. It is the duty of the court to declare legislation unconstitutional when it fails to meet the requirements of the constitution. (Blue v. McBride, ante).
- B. Do the tax and budget provisions of the act violate article 6, section 5 of the Kansas Constitution by encroaching upon the power of the local school board to maintain, develop and operate local schools? Section 5 of article 6 of the Kansas Constitution provides, in part, that local public schools

under the general supervision of the State Board of Education are to be maintained, developed and operated by locally elected boards. Plaintiffs argue that this language grants local control over the district's budget, taxing, funding and fiscal accountability. Plaintiffs argue the act is unconstitutional because it impinges upon this local control by imposing a uniform state-wide tax levy, limiting the budget authority of the district and restricting the local option budget. The court concludes that whatever powers locally elected boards have over raising funds are granted by the legislature; that local boards are subject to the supervision of the State Board of Education; that a local school board's duties under section 5 of article 6 of the Kansas Constitution are "not self-executing but are dependent upon statutory enactments of the legislature" (Unified School District 380, Marshall County v. McMillen, 252 Kan. 451 (1993)); and that the legislature in exercising its power to finance public schools did not unconstitutionally impede the power of locally elected boards.

- C. Do the quality performance provisions violate article 6, section 5? A number of plaintiffs challenged the quality performance accreditation (QPA) provisions of the act as an unconstitutional restriction upon the authority of locally elected boards to maintain, operate and develop the school district. The court finds that the act's QPA focuses upon the performance of students in increasing their academic and skill levels through legislation which establishes 10 statutorily-defined outcomes; that these outcomes are based upon widely recognized educational concepts; that these statutory outcomes result in accountability for the expenditure of Kansas tax dollars; that QPA standards established by the State Board of Education are within the state board's constitutional mandate to evaluate and supervise the public schools; and that neither the statutorily-defined outcomes nor the state board's QPA standards infringe upon the constitutional powers of the local school boards.
- D. Does the requirement of school site councils violate article 6 of the Kansas Constitution? K.S.A. 72-6439 mandates a council in all districts with multiple schools and allows districts with one site to establish a council. Plaintiffs argue that the legislature has unduly interfered with local school boards by requiring school site councils. The court found that under the statutes locally elected school boards have wide discretion in selection, size, makeup, organization and role of the councils and that the statute does not unduly interfere with the constitutional duties of local school boards.

- E. Do other school reforms violate article 6 of the Kansas Constitution? Some of the plaintiffs contended that the provisions of the act which generally lengthen the school year and impose requirements on the amount of in-service training of the professional staff are unconstitutional. The court finds that these provisions are within the legislature's power to maintain schools, do not unduly interfere with the locally elected district and are constitutional.
- F. Does the act violate section 6, article 6 of the Kansas Constitution by failing to provide "suitable" financing? Under section 6 of article 6 of the Kansas Constitution, the legislature is required to make "suitable provision for finance of the educational interests of the state." Some of the plaintiffs contend that the legislature violated this section in the legislation by not providing "suitable" financing and that this failure infringes upon local control. Plaintiffs point out that several of the plaintiff school districts were forced to cut expenditures under the new school finance legislation. The court found that the judicial issue to be determined is whether the act satisfies the constitutional provision that the legislature is to make "suitable provision" for financing education and not whether the level of finance is optimal or the best policy decision. After considering the definition of "suitability" and using the quality performance accreditation standards for judging the suitability of the education, the court concludes that the act does not violate the "suitable" financing requirement of section 6 of article 6 of the Kansas Constitution.
- G. Does the act violate the one-person-one-vote rule? The court sees this issue as related to the control which the Kansas Constitution gives to the legislature over the tax, funding and budget issues, that the plaintiff school district which raised this issue has representation in the Kansas Legislature to the extent guaranteed under the Kansas Constitution and that the act does not violate the one-person-one-vote principle.
- H. Does the act violate the equal protection provisions of the Kansas and United States Constitutions?
1. The 14th Amendment to the United States Constitution provides, in part, that no state shall "deny any person within its jurisdiction the equal protection of the laws," while the Kansas Constitution in section 1 of the Bill of Rights provides: "All men are possessed of

equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Equal protection considerations are extremely complicated and the court spends 44 pages of the opinion discussing this concept and applying it to the legislation.

2. Legislation is not enacted in a vacuum and much legislation creates classifications of one type or another. Persons may be subject or not subject to legislation, they may benefit from legislation or be burdened by legislation, they may be specifically or by implication included within legislation or specifically or by implication excluded from the application of legislation.
3. In considering a vast number of equal protection cases, courts have formulated standards by which to review this type of litigation. Where fundamental rights or interests are involved, a court will apply a "strict scrutiny" analysis to determine if the classification is necessary to serve a compelling state interest. If the interest or right affected by the classification is not fundamental a "reasonable basis" test is applied to determine whether the classification is rationally related to a legitimate objective and if any state of facts reasonably may be conceived to justify the relationship, the classification is not unconstitutional. Recent court interpretations have developed a third test where the classification is "quasi-suspect" where a substantial, direct relationship between the classification and an important governmental objective must be established.
4. The burden of proof in cases involving the rational or reasonable basis test is upon the party attacking the statute to prove the statute is unconstitutional, while in cases involving "suspect classifications" or "fundamental interests" the burden of proof is upon the party to the litigation attempting to uphold the constitutionality of the statute to demonstrate a compelling state interest which justifies the classification.
5. After an extensive discussion and review of Kansas cases and cases from other jurisdictions, the court found that in this case the rational basis test should be applied. In addition, the court states that "while there may be a fundamental right to the constitutional guarantee of an education, the legislature met this right and the lesser rational basis standard should be applied to the examination of the equity of the

financing."

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6. The court applied the equal protection standards to the classifications of low enrollment weighting, local option budget, transportation weighting and other weighting factors. The court found that there was a rational basis for all of these classifications except for the low enrollment weighting. The court found that the low enrollment weighting classification of the formula creates a disparity between classes of districts which "undermines the equal protection and due process provisions of the Kansas Constitution and is, therefore, unconstitutional." In addition, the court found that this provision of the act cannot be severed from the act without destroying legislative intent and because of this, the court stayed its holding on this matter until July 1, 1994.
- I. Does the act violate due process because it lacks a rational basis? Under the due process clauses of the Kansas and United States Constitutions, a statute must not be unreasonable, arbitrary or capricious. Similar standards are used for the analysis of due process issues as are used in the analysis of equal protection questions. Following the equal protection analysis, the court applies a rational basis test to the due process arguments in this case in considering the school finance formula's bilingual weighting, vocational education weighting, at-risk weighting, new facility weighting and base state aid per pupil and finds that there is a rational basis and, hence, no constitutional problem under the due process clause with these aspects of the school finance formula.
- J. Does the act violate the constitution by including multiple subjects in one bill? Section 16 of article 2 of the Kansas Constitution reads, in part, as follows: "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes." Plaintiffs argue the inclusion in the legislation of amendments to various tax statutes and the quality performance sections of the law violate the one-subject rule. After a review of the relevant case law, the court found that the school finance formula, the accreditation provisions, the school reform provisions and the tax provisions of the law were legitimately connected and did not violate the single-subject rule of section 16 of article 2 of the Kansas Constitution.
- K. Does the act violate article 11, section 4? This section of the Kansas Constitution provides: "The legislature shall provide, at each regular session, for raising sufficient

revenue to defray the current expenses of the state for two years." The School Finance Act provides that boards of each district will levy an ad valorem tax at the rate of 32 mills for the 1992-93 school year, at a rate of 33 mills in the 1993-94 school year and at a rate of 35 mills in the 1994-95 school year. Under the Kansas Supreme Court case State ex rel. Dawes v. Bailey, 56 Kan. 81 (1895), in which the Kansas Supreme Court held that this constitutional provision prohibited legislation which imposes a state property tax for a period in excess of two years, the court found that the three-year levy of an ad valorem tax was unconstitutional. The provision relating to the mill rate in the 1994-95 school year is not valid but the provisions relating to the mill rate in the prior two years are not invalidated by this decision. The court made this holding effective immediately.

- L. Does the act result in a taking in violation of the 5th and 14th Amendments? At issue here is the "recapture" funds under K.S.A. 72-6431. These funds are an amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid. These funds are remitted to the state treasurer and deposited in the state school district finance fund and from that fund are remitted to those districts which do not have sufficient local effort to fully fund the district's state financial aid. Plaintiffs contend that taxpayers residing in the recapture districts pay taxes to educate students who do not reside within the recapture district. The court found that the plaintiffs' argument highlights the tax inequities which had developed under the SDEA, but does not establish that under the current system any taxpayer is being burdened in disproportion to the benefits received." Therefore, the recapture provisions of the act do not violate the 5th and 14th Amendments of the United States Constitution.
- M. Does the act fail to operate uniformly throughout the state and thus violate article 2, section 17? This section of the Kansas Constitution provides, in part, that all laws of a general nature shall have a uniform operation throughout the state. Plaintiffs argument points out that under the act different school districts receive a different amount of the ad valorem tax revenue generated by the state-wide mill levy, budget differently, some receive state aid and others do not, some must remit recapture funds, and receive other differing treatment under the formula. The court points out that this constitutional provision requires laws to apply uniformly throughout the state, that if a locality is treated differently a rational justification for this treatment preserves the constitutionality of the statute and that under the new legislation the model adopted

by the legislature is one of funding per pupil and not of funding based upon school districts. Applying these rules to the present case the act applies uniformly throughout the state, in most respects is geographically uniform and where classifications result in geographic differences, rational justifications exist for the classifications. Therefore, the act does not violate section 17 of article 2 of the Kansas Constitution.

N. Other Issues.

1. Section 5 of article 11 of the Kansas Constitution prohibits the levy of property tax for one purpose and the use of the funds raised by the tax for another purpose. The object of the tax must be stated in the tax levy statute. The court finds that the act clearly prescribes the purposes for which the tax funds are to be used and the formula for their allocation and that section 5 of article 11 of the Kansas Constitution is not violated by these provisions of the law.
2. Additional arguments by plaintiffs raise policy questions concerning the "spend-or-lose" aspects of the act, concerns that education would become lost in other demands for state moneys and the difficulty of making long-range plans based upon annual legislative appropriations. The court points out that these are policy decisions made by the legislature and it is not the role of the court to judge the wisdom of these decisions.
3. All other issues raised by a plaintiff and not mentioned in the memorandum decision and order were determined by the court not to render the act unconstitutional.

IV. SUMMARY OF DECISION.

- A. Over 70 separately enumerated objections were made by plaintiffs to the school district finance and quality performance act. Of these, the court found merit in two of the contentions:

First, the court found that the Kansas Constitution prohibits legislation which imposes a state property tax for a period in excess of two years. K.S.A. 72-6431 requires the board of each school district to levy an ad valorem tax upon the taxable tangible property of the district at a rate of 32 mills in the 1992-93 school year, 33 mills in the 1993-94 school year and 35 mills in the 1994-95 school year and in each school year thereafter. This language imposes a

state property tax for a period in excess of two years. The court found the third year of this tax levy exceeds the two-year limitation and violates the constitution. The court's opinion would sever from the act the provision relating to the mill levy for the 1994-95 school year.

Second, the court found the low enrollment weighting provision unconstitutional, as a violation of equal protection. While the record substantiates support for the concept of low enrollment weighting, the number for the cutoff varied with experts but was generally within the range of 500 to 700 students, not the 1,899 maximum authorized under K.S.A. 72-6412. The court felt this disparity was in violation of the equal protection and due process provisions of the Kansas Constitution and was unconstitutional. Because this low enrollment weighting is an integral part of the formula, the court found that this provision could not be severed from the statute and therefore the entire act is affected. The court stayed this holding in the case until July 1, 1993.

Third, all other issues raised by plaintiff but not mentioned in the court's memorandum decision and order were considered and declared not to render the act unconstitutional.

B. The court directed the legislature to take the following actions:

First, because the provision relating to the mill levy for the 1994-95 school year is severed from the act, the legislature "must enact a mill levy for the 1994-95 school year and at least biannually thereafter."

Second, because the court found the low enrollment weighting provisions of the law unconstitutional and not severable from the other parts of the enactment, but stayed its holding on this provision until July 1, 1994, the court states that prior to this date the legislature "must reenact the provisions of the School District Finance and Quality Performance Act with modification of the provisions regarding the low enrollment weight. As indicated, the policy of allowing for a low enrollment weight can be justified. Therefore, a low enrollment weight may be reenacted. However, steps must be taken to document a rational basis for the manner in which the formula is constructed."

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SUMMARY OF COMMITTEE RECOMMENDATIONS

Following is a listing of the specific recommendations proposed by the Kansas Committee on School District Finance and Quality Performance as a result of its 1993 interim study:

- The 1994 Legislature should increase state support for school district inservice education. This should be considered the highest elementary and secondary education funding priority.
- The 1994 Legislature should adopt the matter of increasing the BSAPP of \$3,600 per pupil as its second highest elementary and secondary education funding priority.
- The 1994 Legislature should provide additional state financial resources for State Department of Education technical support to school districts in connection with QPA implementation. This should be the Legislature's third highest elementary and secondary funding priority.
- The school finance law should be amended to eliminate the provision which requires the LOB maximum percentage (25.0 percent) to be reduced by one percentage point for each percent increase in the BSAPP.
- The at risk pupil weight contained in the school finance law should be increased from 0.05 to 0.15.
- During the 1994 Session, the House and Senate Education Committees should review the low enrollment adjustment feature of the school finance plan.
- The State Board of Education should conduct a study designed to propose alternatives for a new system of funding for special education that utilizes pupil weights or some alternative allocation method and which is designed to avoid incentives for over-identification by school districts of exceptional pupils. Such funding alternatives should support a program results or "outcomes" orientation. The alternatives should be designed to constrain the rate of increase of special education costs. Also, the study should include specific consideration of ways to address extremely high cost cases for which the expenses of providing mandated special education services are extraordinarily great. The study, which also should include analysis of current special education costs disaggregated by category of exceptionality, should be presented to the Legislature at the earliest feasible time.
- State funding for the state's Educational Excellence Grant program should be increased.
- The State Board of Education should work with dispatch in addressing the matter of rewards and sanctions under the QPA program.
- The State Board of Education should endeavor, in the near term, to avoid making any further changes in the QPA document.
- The student assessment program being developed by the State Board of Education in accord with provisions contained in the SDFQPA is meritorious and deserves continued legislative support. In connection with this program, the State Board should improve the reporting format so that the assessment results reports are easy for teachers and the public to understand and revise the reporting schedule so that school access to assessment results better supports the instructional program.
- The State Board of Education should be commended for its progress to date in developing curriculum standards to world class levels in mathematics, science, social studies, and

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communications. The Legislature should continue its support for the work in each of these core academic areas.

- The Legislature should consider lengthening the minimum school term gradually over a period of several years.
- During the 1994 Session, the House and Senate Education Committees should review the state's student suspension and expulsion laws, especially with respect to the matter of whether provision should be made for an expulsion action to carry over from one school year to the next, and determine if changes are needed.