

Approved: 2/15/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by Chairperson Dave Kerr at 1:00 p.m. on February 10, 1994 in Room 123-S of the Capitol.

All members were present except: Senator Anthony Hensley (Excused)

Committee staff present: Ben Barrett, Legislative Research Department  
Carolyn Rampey, Legislative Research Department  
Avis Swartzman, Revisor of Statutes  
LaVonne Mumert, Committee Secretary

Conferees appearing before the committee: Carl Gallagher, Assistant Attorney General

Others attending: See attached list

Senator Frahm made a motion that the minutes of the February 7 and February 8, 1994 meetings be approved. Senator Oleen seconded the motion, and the motion carried.

Chairman Kerr advised that Committee members would receive a memo regarding state aid for nonresident pupils in surrounding states (Attachment No. 1).

A letter from Dan Biles, Co-Counsel for the State Board of Education in the school finance litigation, was provided to the Committee (Attachment No. 2).

Carl Gallagher, Assistant Attorney General, who represents the State of Kansas in the school finance litigation, provided an update on the low enrollment weighting decision in the lawsuit. Mr. Gallagher said that once all of the parties who are appealing the decision have filed their notices of appeal, a briefing scheduled will be set by the Supreme Court. He advised that the state's attorneys have been told that the Supreme Court will take up all of the appeals as one package. Mr. Gallagher said that the state has not yet sought an extension of the July 1, 1994 deadline set by Judge Luckert primarily because they are awaiting some action authorizing a low enrollment study. It is his feeling that, absent some indication of a study on low enrollment weighting, it may be the view of the Court that a year from now, the state will be in the same position as they are at present and seek another stay because of the time required for completion of a study, review of the study by an appropriate legislative committee and action by the full Legislature. He advised that the public information officer for the Supreme Court has some doubt that the briefs of the various parties to the suit will be filed in time to allow the Court to consider the matter this spring. Mr. Gallagher, personally, is more optimistic that the briefs will be filed in a timely fashion.

Mr. Gallagher responded to questions from Committee members. He said it is his hope to file for an extension at the same time as the filing of the docketing statement, which is due February 21, and would expect a decision by the Court on the extension within 10-15 days. He explained that a brief must be filed within 30 days of filing the docketing statement. He does not think that the study needs to be limited to low enrollment weighting, but agreed that the process may be slowed if other issues are included. Mr. Gallagher said the state will argue that the low enrollment weighting is correct as it is in current law. He went on to say that the district court upheld the legality of low enrollment weighting but the "numbers" in the weighting are left to the discretion of the Legislature. He stated that he could think of no reason not to begin the study. Mr. Gallagher was asked about the questions which should frame the study, and referred to the issues outlined in Mr. Biles' written testimony. He agreed that such matters as the economic importance of schools to a community, the success of schools, etc. should be included in the study. He also agreed that the base point is the current configuration of districts. Mr. Gallagher places higher priority on the immediacy of the study than on the independence (from other issues) of the study.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION, Room 123-S Statehouse, at 1:00 p.m. on February 10, 1994.

Mr. Gallagher said he is fairly confident that a one-year delay will be granted but he prefers to have some indication of movement on a study to include in his request. It is his opinion that the Court should reverse the Judge's findings regarding low enrollment, but he feels the study would have value regardless of the Court's decision. He said the Court is aware of the deadlines for notifying teachers regarding contract renewal and for teachers notifying their local board and these deadlines add weight to the state's need for a stay.

Senator Langworthy, Chair of the Committee on School District Finance and Quality Performance, advised that the committee is meeting on February 11 with a consultant from the Education Commission of the States for the purpose of formulating the kinds of questions needed for the study. She added that the committee will then make recommendations to the Legislature.

Chairman Kerr noted that the Governor's recommended budget includes \$150,000 for a study of the "structure" of all education, but it is not clear what is intended by that study. He said that he has not pursued any action by the Senate Education Committee because of the meeting scheduled by the Committee on School District Finance and Quality Performance for February 11 but he is hopeful that the Senate Education Committee will be able to begin dealing with the issue of the study.

Dale Dennis (Department of Education) advised that his agency is seeking an emergency supplemental appropriation of \$75,000 for a low enrollment weighting study and that it is his opinion that the \$150,000 was not intended to be used for a low enrollment weighting study. It was noted that the Senate Ways and Means Committee will conduct a hearing on February 14 on the supplemental appropriation being requested by the Department of Education.

In response to a question, Mr. Gallagher said he believes there is very little chance that other areas of the school finance law will be declared unconstitutional on appeal because all weightings were found to be rationally based and noted that the low enrollment weighting itself was not found to be unconstitutional but rather the Court raised the issue of the cut-off numbers in the weighting.

The meeting was adjourned at 1:40 p.m. and Committee members toured the exhibits of the Education Technology Fair and viewed selected technology presentations. The next meeting is scheduled for February 14, 1994.

SENATE EDUCATION COMMITTEE

TIME: 1:00 PLACE: 123-S DATE: 2/10/94

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Kim Baker	Topeka	4th Enrollment USD's
Jim Allen	"	KFLC
Connie Hunsick	Topeka	SEB of Co
Mark Tallman	Topeka	KASB
Carrie Fitts	Topeka	AG
Terry Lewallen	Lawrence	Th Co Leadership
Jane Schwen	Colby	TH Co Leadership
Henry Augustini	Colby	TH Co Leadership
MARC SMITH	COLBY	TH. CO. LEADERSHIP
HAROLD PITS	TOPEKA	AAKP-CETF
Patrick J. Weirley	Topeka	XLC
Dena McFarland	Overland Park	OP Chamber of Commerce
Brad Wade	Pretty Prairie	USD #311
David Brax	Pretty Prairie	USD 311
David Voss	Colby Ks	Leadership Thomas Co.
Mark Winger	Colby	" " "
Hal Kitcher	Colby	" " "
Lilani Thomas	Colby	UTC
Jack L. Bittner	Hanover	USD #223
Rod Ditz	Manhattan	USD # 278
Mel Brown	Manhattan	USD # 278
Julie Long	Manhattan	Associated Press
Tom Waldschmidt	Colby	Leadership Thos Co.
Martin Bickner	Colby	" " "

SENATE EDUCATION COMMITTEE

TIME: \_\_\_\_\_ PLACE: \_\_\_\_\_ DATE: \_\_\_\_\_

## GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
R.D. Cogswell	<del>Manhattan</del>	KSU Student - KAEYC
LAURIN HILL	MANHATTAN	KSU Student - KAEYC
KARL KATZENBERGER	"	KSU / KAEYC
Dayna Krannawitter	Manhattan	KSU / KAEYC
Kelly Reynolds	Manhattan	KSU / KAEYC
Kim Perkins	Topeka	Intern / Olean

**KANSAS LEGISLATIVE RESEARCH DEPARTMENT**

**300 S.W. 10th Avenue  
Room 545-N -- Statehouse**

**Phone 296-3181**

February 9, 1994

**TO:** Senator Dave Kerr

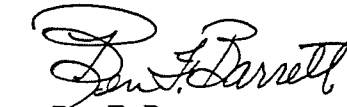
**Office No. 120-S**

**RE:** School Finance -- Surrounding States -- Aid for Nonresident Pupils

As per your request, I have contacted staff of the education agencies in the surrounding states to determine if the general school funding programs in those states provide state aid on behalf of enrollments of out-of-state students.

The response from Colorado, Oklahoma, and Missouri was that no state aid is paid on behalf of out-of-state students enrolled in such state's school districts. In Nebraska, an out-of-state pupil is counted in a district's enrollment for purposes of the state's school aid program. If the district in which the pupil is enrolled qualifies for equalization aid and if tuition charged to the pupil is less than the need-based cost per pupil of the school district, the district would receive equalization aid equal to the difference between the tuition charged and the formula funding level.

I hope this information will be helpful to you. Please do not hesitate to contact me if I can be of further service.

  
Ben F. Barrett  
Associate Director

BFB/jar

# GATES & CLYDE, CHARTERED

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THOMAS KELLY RYAN  
MARY D. CURTIS

February 9, 1994

Senator Dave Kerr  
Chairman, Senate Education Committee  
Kansas State Capitol  
Topeka, Kansas 66612

**RE: School Finance Litigation**

Dear Senator Kerr:

I am writing in response to your request that I, along with the other lawyers representing the defendants in the school finance litigation, appear before the Senate Education Committee this Thursday. Unfortunately, my father is being discharged from the hospital after unexpected orthopedic surgery, and I must be with him in Wichita. However, Assistant Attorney General Carl Gallagher, counsel for the State of Kansas in this litigation, will appear in order to respond to committee inquiries. Also present at the committee meeting will be Rod Bleker, Director of Legal Services for the State Department of Education, who serves with me as co-counsel for the State Board of Education in this case.

It was suggested that I put my comments to the committee in writing since I have been the one most active in preparing a study plan as a possible response to the December 16, 1993 order of the Shawnee County District Court regarding the low enrollment weighting component of the School District Finance and Quality Performance Act. We have been advised this is one of the areas of your committee's interest in having counsel appear. The plan of study also is directly relevant to any efforts to request a delay in the implementation of the court's order striking down the Act because of the low enrollment weighting problems, should the District Court's opinion be affirmed on appeal.

Sen. Ed.  
2/10/94  
Attachment 2



### Background

As you are aware, the Shawnee County District Court issued on December 16, 1993, a 158-page Order and Memorandum Decision and a 12-page Order and Summary Decision addressing approximately 70 separate challenges to the new school finance law passed by the Legislature in 1992, and amended in 1993. The court affirmed in all respects, but two, the provisions of the law. The court found unconstitutional the provisions of the law which extended the uniform mill levy beyond two years, and the specific low enrollment weighting calculations used in the law.

As it relates to low enrollment weighting, the court found the concept of having a low enrollment weight to be permissible. However, the court also found the legislature appeared to carry the concept too far by extending the low enrollment weight to districts with enrollments as high as 1,900 students.

The court said the evidence showed there is a rational basis, in general, for a low enrollment weighting. (Memorandum of Decision, p. 103). Judge Luckert said the evidence demonstrated low enrollment weighting recognizes and compensates for the higher fixed and operating costs per pupil necessary to provide an educational program in low enrollment districts. The court wrote:

"Such districts (which almost always have small schools) are unable to achieve the efficiencies or economies of scale normally associated with large enrollment schools and school districts. Such small districts must have more revenue per pupil than large districts if they are to offer comparable educational programs." (*Id.* at p. 103).

The problem with this particular low enrollment weighting provision is its failure to have a rational basis "grounded upon education theory for distinguishing between districts larger than 1,900 and smaller schools, especially those districts with an enrollment between 400 and 1,899." (*Id.* at p. 106). Judge Luckert said the strongest argument in favor of this low enrollment weighting was that it was based upon historical funding data by use of a curve which flattened out between districts of 1,800 to 2,000 students. However, the "strongest" argument was not enough to overcome the problems. The court found from the evidence that school districts between 2,000 and 10,000 were "drastically affected" by disparities in the previous funding system. (*Id.* at p. 109). The court noted several legislative committees had recognized these disparities, therefore, it was wrong to use historical funding data

without adjusting for this disparity. Otherwise, the disparity of SDEA is perpetuated by the new law. We disagree with this conclusion of the court, and this will be one of the points on appeal.

### **The Study Plan**

Immediately upon receipt of the court's order, we began articulating options to respond to the court's order in addition to the obvious one which was to appeal the determination of unconstitutionality. What was clearly apparent was that any reasonable response to the low enrollment weighting issues would require additional study to provide sufficient justification to the court for the low enrollment weighting component, if it were to continue to be used in any Kansas school finance formula. Given the fact the court had upheld the concept of low enrollment weighting, we thought the legislature would want to continue use of a low enrollment weight in the future. Therefore, the options were equally obvious. They were (1) do nothing pending the outcome of the appeal of the court's order and begin the study only in the event the Supreme Court upholds the District Court; or (2) conduct a study concurrently as the appeal progresses, so that the results are available to the appropriate legislative bodies at approximately the same time as the appeal is concluded. This latter option would permit immediate response by the legislature, if that were necessary, in the event the Supreme Court affirms the District Court, or even if the District Court were reversed and the existing low enrollment component upheld, the study results would be available to the legislature for its continued use.

We next began discussions with nationally-recognized school finance experts regarding the length of time that would be necessary to appropriately conduct a study addressing the low enrollment issues raised by the court. Our only criteria was that any such study be performed in a manner which would be both beneficial to the legislature and defensible in court. Within a week of the court's order, we put together a proposal for a study plan involving a team of three experienced school experts. The team consists of a school finance expert, a school economics expert and a expert in rural education. In addition, and strictly for litigation purposes, we would intend to retain another expert to work independently from the study team to review the team's efforts. This would provide outside "validation" for our later use in court, which should be anticipated.

In order to assure the study be as rational as possible, and as uncontaminated by past practices as possible, the study plan has a number of distinct components.



First, the plan should include a literature review that examines the existing studies that have been undertaken of the relationship between school district size and expenditures. We believe the best summary of the studies that have been done on this topic was completed by William F. Fox. Using his work as a point of departure, it is important to review the theoretical and practical studies that have focused on the issue. In addition, it would be useful to review the studies that have been undertaken in particular states as they considered alternative approaches to dealing with the issue.

Second, it would be helpful to review the approaches other states use to deal with issues of size, sparsity, and change in enrollment level. Some states have a long experience of providing added support to districts designed to respond to the impact of economies of scale. The most recent summary of the characteristics of state school finance systems is the work of Steve Gold. We would contact several states that appear to have addressed this issue to better understand the alternative approaches and the bases for their development.

Third, an econometric study using Kansas data should be undertaken to learn about the magnitude of the relationship between school district size and expenditure level. As the court pointed out, because of the relationship between revenues (which have been provided in part based on the very approach that the court has found to be unacceptable) and expenditures, it is inappropriate simply to examine the relationship between enrollment level and per pupil expenditures. The purpose of an econometric study is to examine the systematic relationship between objects that vary as a result of choice, such as instructional expenditures, course offerings, or salary levels, and uncontrollable factors that might cause such variation. While an econometric study is likely to use sophisticated statistical approaches, it is important to undertake such a study to serve as one basis for developing an appropriate factor to address economies of scale. More important, it is possible to conduct such a study with existing data.

Fourth, it makes sense to discuss issues of enrollment level, economies of scale, sparsity, expenditure levels, educational opportunity, and so on with several school superintendents in Kansas. We believe data analysis provides useful but limited information that should be supplemented by discussion with the people who actually are responsible for providing services. We propose that several "focus group" meetings be conducted that would bring together small groups of superintendents to discuss the problems they face in providing education services, the cost pressures they confront, and the role that resources play in overcoming such forces.

Fifth, a report should be prepared summarizing the work that is undertaken that can be widely disseminated and serve as the topic of discussion as policy makers consider options. In other states, it is not unusual to find that few people are aware of the bases of specific policies, particularly when such policies were put into place many years ago. It makes sense to have a point of reference in the event that whatever policy is developed comes into question in the future.

Sixth, in order to assure that policy makers are informed about the study, and have the opportunity for input, it makes sense to have study team members travel to Kansas on several occasions to discuss progress. This can include an initial trip to more fully describe the study and how it is proceeding, along with the focus groups and any presentations desired by legislative committees regarding preliminary results as soon as they emerge, and obviously one or more meetings to present final results. It is our assumption that the study results then will need to be reviewed by the legislature, with whatever hearings may be deemed appropriate.

It is our best judgment that a study such as we have proposed above will require several months to complete. Even though we worked immediately after the court's decision to put this study proposal together, and were prepared to begin work in early January, it was not expected that any reliable results could be available during the 1994 legislative session, and certainly not before school districts' April 10th deadline for giving notice of nonrenewal of school teacher contracts under the continuing contract law, K.S.A. 72-5410 et seq.; and the Teacher Due Process law, K.S.A. 72-5436, et seq.

### Conclusion

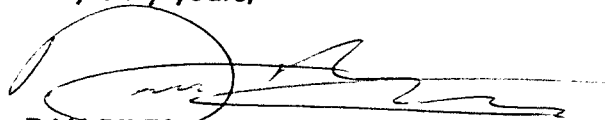
The attorneys handling the defense of the school finance litigation would respectfully recommend legislative support in permitting this low enrollment weighting study to go forward immediately for many reasons, including the following:

1. Such a study will provide the strongest supporting basis for requesting a stay of the implementation of the District Court's order in that such a study documents what is actually involved in responding appropriately to that order, and illustrates our continued good faith in the conduct of this litigation.
2. Regardless of the outcome of the appeal, such a study will be a valuable asset to the legislature in its on-going review and refinement of the school finance formula.

3. This study should not in any way impede any additional review of any other aspect of the school finance formula which the legislature may deem necessary. However, since the low enrollment weighting component of the Act is now a central focus due to Judge Luckert's opinion, a study of that specific component should proceed immediately and independently from review of other financing components because any changes made regarding low enrollment districts will likely be reviewed by our courts. The process employed in producing such changes will come under close scrutiny.

Once again, I apologize for not being personally available to the committee.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan Biles", with a large circular flourish on the left side.

DAN BILES  
for  
GATES & CLYDE, CHARTERED

DB/skz

cc: State Board of Education Members