

Approved March 5, 1986

Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Representative Don E. Crumbaker at
Chairperson

3:43 ~~4:43~~ p.m. on February 27, 1986 in room 519-S of the Capitol.

All members were present except: Rep. Polson, Bowden, who were excused

Committee staff present: Avis Swartzman, Revisor of Statute's Office
Ben Barrett, Legislative Research
Lynda Cory, Secretary to the Committee

Conferees appearing before the committee:

Rep. Elizabeth Baker	Craig Grant
Rep. Dale Sprague	Bob Wootton
Bill Curtis	Connie Hubbell

The Chairman invited Rep. Baker to present HCR 5028. Under current law it was pointed out that the Legislature is advisory to the State Board of Education. HCR 5028 would change it so that the State Board of Education is advisory to the Legislature. The Legislature could then delegate supervision of public schools, educational institutions and educational interests in the state to the State Board of Education. (Attachment 1)

Rep. Dale Sprague was in support of HCR 5028 since he was chairman of the sub-committee that studied this bill. (Attachment 2)

Bill Curtis from Kansas Association of School Boards supported HCR 5028. It retains an elected State Board and the appointment of the Commissioner of that board, but removes the "self-executing" powers of the State Board of Education. (Attachment 3)

Craig Grant from K-NEA was in support of HCR 5028 in that it was consistent with other state agencies and felt the funding body should have control over the system. He felt that the Legislature would be delegating much of the general operation to the State Board anyway. (Attachment 4)

Bob Wootton, aide to Governor Carlin, supported a change in the constitution that clarified between the State Board of Education and the Legislature as HCR 5028 does.

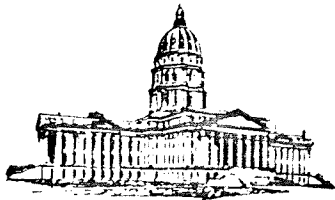
Connie Hubbell, State Board of Education, opposed HCR 5028 because the State Board's sole interest was in education, where the Legislature is not, and in the future may over-ride a State Board program. (Attachment 5)

The Chairman concluded the hearings for HCR 5028.

He asked that the minutes for February 24, 25, and 26 be approved. Rep. Reardon moved, Rep. Mayfield seconded; motion carried.

The meeting adjourned at 4:22 p.m.

ELIZABETH BAKER
 REPRESENTATIVE, EIGHTY-SECOND DISTRICT
 SEDGWICK COUNTY
 1025 REDWOOD RD
 DERBY, KANSAS 67037



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER ELECTIONS
 EDUCATION
 LOCAL GOVERNMENT

TO: House Education Committee
 FROM: Representative Elizabeth Baker and Representative Ron Fox
 DATE: February 25, 1986
 RE: HCR 5028

HCR 5028 is a proposition to revise Article 6 of the Kansas Constitution, relating to education. The significance of the proposed resolution is embodied in line 38 where the supervision of the public schools, educational institutions and educational interests of the state become the responsibility of the legislature. Included with this testimony is a letter, obtained from the Joint Committee on Administrative Rules and Regulations. This letter gives important background information as to why this proposed constitutional change is needed. A 1973 Kansas Supreme Court decision in State, ex rel., v. Board of Education (212 Kan. 482), more commonly known as the "Peabody" case determined that Article 6, section 2a was a "self-executing" provision, ie., that the Constitution grants the State Board of Education authority to exercise "general supervision" of the public schools, educational institutions and educational interests of the state, except educational functions delegated by law to the State Board of Regents. It is our belief that this was not the legislative intent and page 3 of this same letter states, "Our Committee cannot seriously entertain the notion that the drafters of this constitutional provision ever intended to assign legislative powers to the State Board of Education which are superior to those of the Legislature. Certainly no such proposal would have been urged without some effort having been made to define or describe the legislative domains of the State Board and the Legislature.

The language presently found in Article 6 section 2(a), was added as a part of the revision of the Education Article which was approved by the electors in 1966. The amendment grew out of the work of an Education Advisory Committee which worked in conjunction with the Education Committee of the Legislative Council. In its report entitled The Education Amendment to the Kansas Constitution (Pub. No. 256 - December, 1965), that Committee, in its explanation of the proposed amendment, states:

The legislature's responsibility will be to establish the broad basic framework and policies for education in Kansas. The State Board of Education would be responsible for their implementation, and a commissioner of education, appointed by the State Board, would administer them.

Later, the report states:

Section 2(a) confers on a broadly representative policy-making state board of education, general supervision over public schools, under directives adopted by the legislature. (Emphasis added.)

These statements suggest to us that the prevailing interpretation of the constitutional provision does not square with the intent of those responsible for developing and urging adoption of the amendment."

Two predominant facts arise: First, with this letter we know the original legislative intent in 1966, was not what the Supreme Court interpreted it to be in 1974. Second, it is inconsistent and inconceivable that the Legislature should control funding of public education and not the general supervision of public education.

I urge you to recommend HCR 5028 favorably for passage.

EB/bs



TOPEKA

HOUSE OF
REPRESENTATIVES

January 4, 1982

Representative James Lowther
1549 Berkeley Road
Emporia, Kansas 66801

Dear Representative Lowther:

On behalf of the Joint Committee on Administrative Rules and Regulations, we wish to call to your attention a matter regarding the authority of the State Board of Education which we believe the Legislature should address during the 1982 Session. In our view, initiative for consideration of this matter properly resides with the Education Committee. Therefore, we will appreciate any guidance that your Committee can provide to the 1982 Legislature to resolve the concerns we are expressing.

As you know, in response to an inquiry by the chairman of the State Board of Education, the Attorney General recently issued an opinion (No. 81-236 — copy enclosed) which stated that the State Board of Education has the authority to:

...adopt rules and regulations governing certification of teaching, administrative and other supportive personnel of unified school districts, relying upon its constitutional authority and disregarding any statutory authority or lack thereof. The Legislature may not prescribe, amend, modify or otherwise alter the content of such rules and regulations. (Emphasis added.)

The Attorney General also determined that the present provisions of K.S.A. 77-415, et seq., relating to procedures that apply to the adoption of agency rules and regulations, do not apply to regulations issued by the State Board of Education pursuant to its power and authority under the Kansas Constitution. However, the Legislature can establish procedural requirement that the State Board will have to follow in issuing rules and regulations based upon its constitutional authority. You might be interested to know that the Joint Committee will be recommending legislation to accomplish this. In the meantime, the Attorney General has advised the State Board that it would be desirable for the Board to adopt similar procedures so that there will be adequate notice and an opportunity for a hearing.

In the preparation of this opinion, the Attorney General relied heavily upon the 1973 Kansas Supreme Court decision in State, ex rel., v. Board of Education (212 Kan. 482), more commonly known as the "Peabody" case. At issue in that case was a 1970 rule adopted by the State Board of Education which required all school district boards and the boards of area vocational-technical schools to adopt rules governing the conduct of employees and students. The State Board of Education contended that the

regulation was a proper exercise of its power of "general supervision" granted by both constitutional and statutory provisions. The Court ruled in favor of the State Board.

At the heart of the controversy in the Peabody case and in the recent Attorney General's opinion is the language of the Kansas Constitution (Article 6, section 2(a)):

The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

The Kansas Supreme Court determined that the above provision is "self-executing," i.e., that the Constitution grants the State Board of Education authority to exercise "general supervision" of the public schools, educational institutions and educational interests of the state, except educational functions delegated by law to the State Board of Regents. A self-executing provision requires no supplementary legislation to make it effective and leaves nothing to be done by the Legislature to put it in operation. Thus, according to the Court, the Legislature may enact legislation to facilitate or assist in the operation of the constitutional provision, but any such legislation must be in harmony with and not in derogation of the constitutional provisions.

Based upon the decision in the Peabody case, the Attorney General stated the opinion that:

...it is the State Board of Education, and not the Legislature, that possesses 'general supervision of the public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the State Board of Regents.'

The Attorney General cited a 1979 case (NEA-Fort Scott v. U.S.D. No. 234 (225 Kan. 607)), in which the Kansas Supreme Court made it clear that the authority of the State Board as to general supervision is not "carte blanche," but is limited to the sphere of "general supervision." Thus it must be determined in each instance whether a subject is in the exclusive "general supervision" domain of the State Board. To date, the Attorney General has said only that certification falls into this domain.

Our concern, and the concern we are asking you to address, goes to the very basic distribution of powers under our state constitution. Should all legislative powers relating to the field of education be vested in the Legislature? Or, should some of these powers be reserved to the State Board of Education? Presently, pursuant to the Kansas Supreme Court's Peabody decision, these powers are divided. The nature of this division is not clear; it can only be clarified by further court decisions. How much of current education legislation is, in essence, an empty shell that can be disregarded by the State Board of Education? We do not know. How much existing legislation is in derogation of the present constitutional provision? We do not know.

Our Committee cannot seriously entertain the notion that the drafters of this constitutional provision ever intended to assign legislative powers to the State Board of Education which are superior to those of the Legislature. Certainly no such proposal would have been urged without some effort having been made to define or describe the legislative domains of the State Board and the Legislature.

The language presently found in Article 6, section 2(a), was added as a part of the revision of the Education Article which was approved by the electors in 1966. The amendment grew out of the work of an Education Advisory Committee which worked in conjunction with the Education Committee of the Legislative Council. In its report entitled The Education Amendment to the Kansas Constitution (Pub. No. 256 — December, 1965), that Committee, in its explanation of the proposed amendment, states:

The legislature's responsibility will be to establish the broad basic framework and policies for education in Kansas. The State Board of Education would be responsible for their implementation, and a commissioner of education, appointed by the State Board, would administer them.

Later, the report states:

Section 2(a) confers on a broadly representative policy-making state board of education, general supervision over public schools, under directives adopted by the legislature. (Emphasis added.)

These statements suggest to us that the prevailing interpretation of the constitutional provision does not square with the intent of those responsible for developing and urging adoption of the amendment.

Prior to this Fall, the only time the State Board of Education had used its constitutional legislative power was to adopt the rule that resulted in the Peabody decision. On December 9, 1981, the State Board adopted some revised certification regulations, citing constitutional rather than statutory authority as the basis for them. These regulations become effective as temporary regulations on January 8, 1982, and as permanent regulations on May 1, 1982.

You might remember that in 1974, subsequent to the Peabody decision, the Legislature adopted a concurrent resolution proposing to amend Article 6, Section 2 of the state constitution in two areas (copy enclosed). The principal amendment was to propose changing the phrase "The legislature shall provide for a state board of education which shall have general supervision. . ." to "The legislature shall provide for a state board of education and for its general supervision. . ." It is our understanding that this change was designed to resolve the question regarding the matter of legislative authority. That amendment was defeated at the 1974 primary election.

While the historical basis for the concern we are expressing to you is interesting, it is not the main issue. The main issue is where legislative authority in the field of education should be placed. We are asking that your Committee consider this matter and provide guidance and direction to the 1982 Legislature concerning it.

Sincerely,

Representative Sandy Duncan, Chairman
Joint Committee on Administrative Rules
and Regulations

Senator Merrill Werts, Vice Chairman
Joint Committee on Administrative Rules
and Regulations

SUBCOMMITTEE REPORT

TO: House Governmental Organization Committee

FROM: Subcommittee C

RE: H.C.R. 5028

The Subcommittee makes the following recommendations pursuant to its review of H.C.R. 5028:

H.C.R. 5028 is a proposition to revise Article 6 of the Kansas Constitution. The resolution has two policy implications. First, H.C.R. 5028 addresses legislative authority in the field of education. The resolution would clarify that such authority rests exclusively with the Legislature. Presently, as a result of a state Supreme Court decision, that authority is divided between the Legislature and the State Board of Education. Second, H.C.R. 5028 provides for Senate confirmation of the Commissioner of Education. Presently, the State Board of Education's appointment is not subject to Senate review.

The proposed resolution would clarify that the Legislature provides for the State Board of Education and for its supervision of the public schools, educational institutions and educational interests of the state, except educational functions delegated by law to the State Board of Regents. The resolution would delete language in Article 6 of the Kansas Constitution which the state Supreme Court has interpreted to mean that the State Board of Education has "self-executing" powers, i.e. that the Kansas Constitution grants the State Board authority to exercise "general supervision" of the public schools, educational institutions and educational interests of the state, except functions delegated by law to the State Board of Regents.

The state Supreme Court's 1973 decision in *State, ex rel., v. Board of Education* (212 Kan. 482) -- commonly referred to as the "Peabody" case -- held that Article 6, section 2(a) was a "self-executing" provision.

The "self-executing" provision requires no supplementary legislation to make Article 6, section 2(a) operative and leaves nothing to be done by the Legislature to put it into operation. Thus, according to the state Supreme Court, the Legislature may enact legislation to facilitate or to assist in the operation of the constitutional provision, but any such legislation must be in harmony with and not in derogation of the constitutional provision.

Background

The Subcommittee heard testimony and reviewed public documents about Article 6, section 2(a). The language presently found in the state Constitution was added as a part of the revision of the Education Article which was approved by the electors in 1966. The amendment arose from the work of an Education Advisory Committee which worked in conjunction with the Educational Committee of the Legislative Council. In its report entitled "The Education Amendment to the Kansas Constitution," the Education Committee states "Section 2(a) confers on a broadly representative policy-making state board of education, general supervision over public schools, under directives adopted by the Legislature."

The phrase "under directives adopted by the Legislature" is cited as an indication of legislative intent which is counter to the state Supreme Court interpretation of the constitutional provision. The 1973 Supreme Court decision was based on comparing non-parallel language in Article 6 which authorizes the State Board of Education in section 2(a) and the State Board of Regents in section 2(b) to exercise power over certain aspects of the state's education. The state Supreme Court ruling that the State Board of Education has "self-executing" powers led some members of the Subcommittee to conclude that a drafting error or at least an inconsistency in the language of section 2(a) when compared with section 2(b) is the sole basis of this issue. None of the public documents from 1965 or 1966 which the Subcommittee reviewed tend to support the interpretation that the Legislature intended to give the State Board of Education greater authority than were given to the State Board of Regents.

Prior to 1981, the only time the State Board of Education had used its constitutional legislative power was to adopt a rule that led to the state Supreme Court's 1973 decision in the "Peabody" case.

In response to an inquiry by the chairman of the State Board of Education in 1981, the Attorney General issued Opinion No. 81-236 which stated that the State Board of Education has the authority to adopt rules and regulations based on its constitutional authority and disregarding any statutory authority or lack thereof. Based largely on the 1973 state Supreme Court decision, the Attorney General's opinion held that the Legislature may not prescribe, amend, modify or otherwise alter the content of such rules and regulations.

Since 1981, the State Board has increasingly relied upon its constitutional authority in the adoption of rules and regulations which govern the operation of public schools in the state.

Subcommittee Review

The Subcommittee held four sessions on H.C.R. 5028.

January 20, 1986. General background discussion and direction to staff to gather public documents.

February 5, 1986. Conferees Bob Wootton from the Governor's Office, Senator Joe Harder, and Representative Don Crumbaker discussed the 1966 amendment and self-executing power. All three conferees supported H.C.R. 5028. Distribution of public documents was made by staff.

February 6, 1986. The State Board of Education, Kansas National Education Association, and Kansas Association of School Boards presented written statements on H.C.R. 5028. Connie Hubbell, the legislative chairperson for the State Board of Education, Craig Grant of the Kansas National Education Association, and Bill Curtis of the Kansas Association of School Boards answered questions about the position statements.

February 11, 1986. Subcommittee discussion of H.C.R. 5028 and directions to staff for final report.

Subcommittee Recommendations

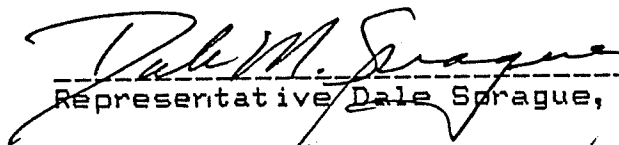
1. The resolution should be recommended favorably. The Subcommittee believes that there would be no change in the current operating relationship between the State Board and the Legislature. The Subcommittee feels that the activities of the State Board since 1966 have been appropriate and proper, and that the State Board has not used its constitutional power as a means to disregard the Legislature. However, the Subcommittee feels that ultimately it is the Legislature which should be responsible for policy decisions in education, especially since the Legislature is responsible for much of the funding.

2. The self-executing power of the State Board should be terminated and all legislative power should be returned to the Legislature. Only the representative of the State Board in a written statement of February 4, 1986, asked to continue existing constitutional provisions whereby the State Board may adopt binding policies in regard to educational issues. Statements presented by the Kansas National Education Association (February 6, 1986) and the Kansas Association of School Boards (February 6, 1986) supported the changes addressed by H.C.R. 5028. All three statements are attached to this report. The provision for eliminating the self-executing language in Article 6, section 2(a) is included in H.C.R. 5028.

3. The appointment of the Commissioner of Education should be subject to confirmation by the Senate. The Subcommittee believes that since the Commissioner is the head of a state agency as well as the chief executive officer of the State Board, confirmation of the Commissioner by the Senate would be an appropriate procedure to follow given the importance and sensitivity of the position in state government. This provision for confirming the Commissioner in the Senate is included in H.C.R. 5028.

4. The Subcommittee makes no recommendation about the issue of electing or appointing State Board of Education members. This question is not addressed in H.C.R. 5028 and the Subcommittee makes no findings with regard to the manner of selection of State Board members.

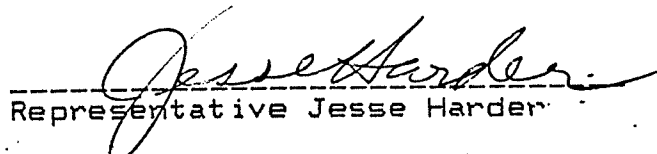
Subcommittee Members:



Representative Dale Sprague, Chairman



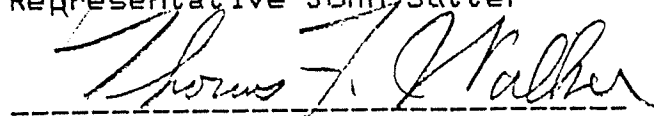
Representative Wanda Fuller



Representative Jesse Harder



Representative John Sutter



Representative Thomas Walker



TESTIMONY ON HCR 5028

before the

House Education Committee

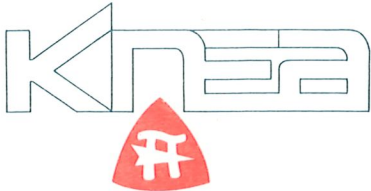
by

Bill Curtis, Assistant Executive Director
Kansas Association of School Boards

February 27, 1986

Mr. Chairman and members of the committee, we appreciate the opportunity to present the views of the school boards of Kansas on this important issue. The Kansas Association of School Boards has long had a policy provision which supports an elected State Board of Education and places the powers of the State Board clearly under legislative oversight and review. The same policy also supports a Commissioner of Education appointed by the State Board.

HCR 5028 retains an elected State Board and the appointment of the Commissioner of that board. The resolution adds that the Commissioner's appointment shall be subject to Senate confirmation. However, the major change proposed by HCR 5028 removes the self-executing powers of the State Board of Education. The Kansas Association of School Boards believes that is good public policy and consistent with existing powers granted to other state agencies. The association supports HCR 5028 and urges your support.



Craig Grant Testimony Before The
House Education Committee
February 27, 1986

Thank you, Mr. Chairman. Members of the Committee, my name is Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to speak with you regarding HCR 5028.

Kansas-NEA believes that HCR 5028 is a compromise piece of legislation that addresses a topic which has been before the legislature in the past. Both last session and as late as last Wednesday in the Senate Education Committee, legislation was introduced to not only change the constitutional powers and duties of the State Board of Education, but also to make the Board an appointed one. Most discussion last year referred to the elected status versus appointed status. HCR 5028 retains the elected Board but moves the authority to provide for the state education policy to the legislature.

Kansas-NEA does not believe that the state will experience much if any change in the developing and supervising the educational policy of this state. The legislature would delegate much, if not all, of the general operation of our schools to the state board and local school districts. However, it seems to us that the body which funds the education system has the ultimate responsibility to provide for our entire educational system. It is so evident that budget control dictates actual control that we should clarify our constitution to place the credit-or blame-for our educational

Craig Grant Testimony Before House Education Committee,
February 27, 1986 - Page Two

programs where it actually belongs. As far as the Kansas Senate confirming the appointment of the Commissioner of Education, it seems consistent with other agencies to proceed in this direction.

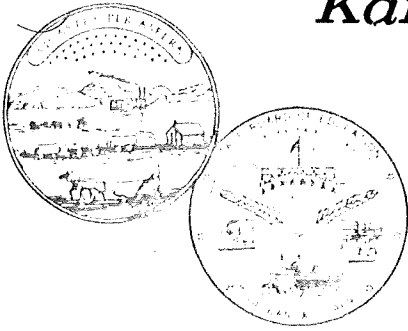
Kansas-NEA believes that HCR 5028 is a workable compromise that clarifies and updates the Kansas Constitution in a way which is consistent with reality in Kansas. We can support such a change.

Thank you, Mr. Chairman and Member of the Committee, for listening to the concerns of teachers.

Kansas State Board of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612-1103



Kay M. Groneman
District 1

Connie Hubbell
District 4

Bill Musick
District 6

Evelyn Whitcomb
District 8

Kathleen White
District 2

Sheila Frahm
District 5

Theodore R. Von Fange
District 7

Robert J. Clemons
District 9

Dale Louis Carey
District 3

February 27, 1986

Marion (Mick) Stevens
District 10

TO: House Education Committee
FROM: State Board of Education
SUBJECT: House Concurrent Resolution 5028

My name is Connie Hubbell, Legislative Chairman of the State Board of Education. I appreciate the opportunity to appear before you today on behalf of the State Board concerning House Concurrent Resolution 5028.

The State Board of Education has made a concerted effort to acknowledge both the educational needs of the community and the school districts' ability to finance any proposed changes. The educational reform movement began following the release of the "Nation at Risk" report which has initiated a good deal of publicity about the expectations and limitations of education on the national level. However, prior to the reform movement, the State Board of Education had started new programs to meet the state's expectation of education, especially increasing student achievement. During the last few years, with the cooperation of the Governor and the Legislature, we have been able to establish a precertification testing program, an inservice education program, standards to increase graduation requirements, and a plan for implementation of a teacher internship program.

In light of these accomplishments, it is the State Board's opinion that its general supervisory powers have been used wisely to respond to the educational needs of our state.

The State Board of Education has made every effort to obtain public input on any major issues being considered for implementation by holding hearings. Notices of all public hearings are made available to all school districts, community colleges, and area vocational-technical schools prior to implementation to insure that adequate input is received prior to the State Board's action.

ATTACHMENT 5 February 27, 1986
HOUSE EDUCATION COMMITTEE

We believe amending the Constitution to reduce the State Board's self-executing authority is unnecessary and not in the best interest of education. Education is a very complex and difficult area to analyze and determine the proper decisions which should be made in the best interest of students and educators. Thus, we believe that the State Board of Education which is composed of elected members whose major interest is education can adequately respond to those needs in cooperation with the Governor and the Legislature without amending the Constitution.