

Approved

Date

Stephen R. Cloud 2-25-86

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Stephen R. Cloud at
Chairperson

9:02 a.m./~~p.m.~~ on Wednesday, February 19, 1986 in room 522-S of the Capitol.

All members were present except:

Representative Graeber - Excused
Representative Sprague - Excused

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research Dept.
Julian Efird - Legislative Research Dept.
Russ Mills - Legislative Research Dept.

Conferees appearing before the committee:

Representative Hassler
Joyce Romero, Secretary, Department on Aging
Al Bramble - Concerned citizen and past director of the State Office on Aging
Hattie Norman Kansas State Advisory Council on Aging
Morton Noe - Concerned citizen
Mary Jane Hamilton - Concerned Citizen, Silver Haired Legislator
Representative Walker

The meeting of the House Governmental Organization Committee was called to order at 9:02 a.m. by Representative Stephen R. Cloud, Chairman. Minutes of the February 12 meeting were approved on a motion by Representative Love, with a second by Representative Sughrue. February 18 minutes were distributed.

Representative Hassler, Chairperson of the subcommittee on the Department on Aging, began the subcommittee report. She exercised her teacher's prerogative and began on page 2, number 5, with the services made available by the area agencies, with plans created that fit a particular area; number 6 encourages area agencies in the continuation of their efforts to try to reach each area with a needed service. She returned to number 1, nutrition. The state should anticipate a reduction in federal funds that will be lost through the enactment of Gramm, Rudman and Hollings and try to make up the funds for nutrition programs. On number 7, the subcommittee supports the continued funding of vehicles to transport the elderly. The subcommittee supports number 2, continuation of the job programs OKEP and JTPA. As shown on number 3, the subcommittee commends the Department on Aging for curbing administrative costs at 8.3 of its total operating budget for fiscal year 1985. Number 4 notes that advisory councils are helping curb expenses by input and advice on agency plans and operations. Numbers 8 and 9 express appreciation to the Secretary on Aging and staff and, since the Department is discharging its duties in a responsible manner, recommends the Department's continuation for 8 years. (See Subcommittee 1 Report-Attachment A)

Many questions were asked concerning federal funds, vehicle purchasing, nutrition, home bound, health care and job programs. Ron Harper, Special Assistant, Department on Aging, and Lyndon Drew, Director, Department on Aging, answered several questions and gave further information on the home health care and nutrition areas of the Department.

Representative Hassler moved the adoption of the subcommittee report. Representative Sughrue gave a second to the motion. The motion carried.

The Committee turned to HB 2699, continuing in existence the office of secretary and the department on aging. Joyce Romero, Secretary, Department on Aging, commented that she was present, along with staff, to answer any questions the Committee might have. She was asked by one of the committee members about telephone call-ins to the elderly. She touched on how the Department is working with the Kansas Medical Society and firms such as Southwestern Bell for a state-wide system of contact for the home bound. This lifeline concept is fairly new and the private sector's role and responsibilities have not, as yet, been clearly defined.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,

room 522-S, Statehouse, at 9:02 a.m./~~p.m.~~ on Wednesday, February 19, 1986

Al Bramble, former director of the State Office on Aging, spoke of the opportunities for involvement and participation by the state's older citizens that has been engendered by the Department on Aging. He urged the Department be continued because of its proven effectiveness. (See Attachment B)

Hattie Norman, Vice Chairman, Advisory Council on Aging gave a few brief comments centering on the nutrition program and the many who have benefited from it.

Morton Noe, Holton, Kansas and Mary Jane Hamilton, Topeka, Kansas, expressed support for the Department and commended it for its efforts on behalf of older Kansans.

Representative Walker, an advisory council member, added his comments of approval.

As there was no one else present who wished to speak on HB 2699, the Chairman declared the hearing ended and the Committee proceeded with the Subcommittee Report on HCR 5028. Representative Walker proceeded with the presentation, giving background and history and citing that HCR 5028 will clarify that authority does rest exclusively with the legislature. The Kansas Association of School Board and the Kansas-National Education Association are coming to the conclusion that the legislature should have control of education in the State of Kansas. The State Board of Education 'midly' opposes it. Senator Harder has been actively involved with this as well as Representative Crumbaker. Both are Chairmen of the respective Senate and House Education Committees. The Commissioner of Education would be subject to Senate confirmation. This is not currently being done.

Representative Walker moved the adoption of the Subcommittee Report on HCR 5028.
Representative Bowden gave a second to the motion. The motion carried.

Avis Swartzman, Revisor, indicated where HCR 5028 needed a couple of technical amendments.

Representative Sutter moved to amend HCR 5028. Representative Walker gave a second to the motion. The motion carried.

Representative Walker moved to pass HCR 5028 as amended. Representative Roper gave a second to the motion. The motion carried.

The meeting was adjourned at 10:10 a.m.

GUEST LIST

COMMITTEE: GOVERNMENTAL ORGANIZATION

DATE: FEBRUARY 19, 1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
HATTIE NORMAN	308 TEFFT	SAC
<i>Suellen Wbler</i>	<i>610 W. 10th</i>	<i>KDOA</i>
JOICE V. ROMERO	610 W. 10th	KDOA
Lyndon Drew	610 W. 10th	KDOA
AL BRAMBLE	1924 Louisiana LAWRENCE, KS. 66044	—
<i>Ron Kasper</i>	610 W 10th	KDOA
Alice KNATT	610 W 10th	KDOA
Thirkelle HOWARD	610 W 10th	KDOA
Hanna J. Kidd	1195 Buchanan	JAAA
Mary Jane Hamilton	4445 Quincy	cong. Slattery
Jocelyn O. Lyons	1195 Buchanan	JAAA
<i>Phyllis Miller</i>	1144 Webster	NCOA
<i>John Brane</i>	Topika	KS Home Foraging
<i>Dan Stegelman</i>	Topika	KDOA
<i>Melissa Hungerford</i>	Topika	KHA

SUBCOMMITTEE REPORT

February 14, 1986

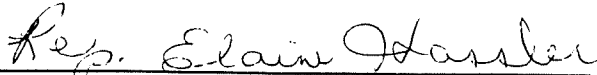
TO: House Governmental Organization Committee
FROM: Subcommittee 1
RE: Kansas Department on Aging

The Subcommittee makes the following recommendations pursuant to its Sunset review of House Bill No. 2699:

- x 1. With respect to the Older Americans Act (OAA) Nutrition program, which is financed in part from the State General Fund, the Subcommittee recommends that the Legislature make an effort to supplant with State General Funds federal funds lost through the enactment of Gramm, Rudman and Hollings. As a result of this act, the Kansas Department on Aging anticipates a reduction of \$172,692 in federal funds for the OAA Nutrition program in FY 1986.
- x 2. The Subcommittee notes the distinction between the state-funded Older Kansans Employment Program (OKEP) and the federally-funded Older Workers Job Training Partnership Act (JTPA) program. Both programs attempt to place older workers 55 years of age and older in jobs and train them in job-seeking skills. In addition, both programs assist employers in hiring older workers. Moreover, funds appropriated to the Kansas Department on Aging for these senior employment programs are not used to pay for the salaries of older workers. The JTPA program differs from OKEP in that to be eligible for JTPA, older workers must meet income guidelines. There is also an extensive training program and job placement is targeted to the private sector. No income guidelines govern the eligibility of participants in the Older Kansans Employment Program and placement efforts involve part-time and full-time positions in both the public and private sectors. The Subcommittee understands that the coordinated efforts of both programs, despite their different focuses, assist a maximum number of elderly Kansans. The Subcommittee therefore recommends continued support of both programs.
- x 3. The Subcommittee commends the Kansas Department on Aging for curbing its administrative costs at 8.3 percent of its total operating budget in FY 1985.
- x 4. The Subcommittee also notes that administrative expenses of area agencies are curbed due to a provision in the Older Americans Act (OAA) requiring area agencies on aging to establish advisory councils responsible for advising them on matters relating to the development and administration of the area agency plan and the operations conducted under the plan.

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Attachment A

- x 5. The Subcommittee notes the vast array of social services provided by area agencies on aging in FFY 1985. These included advocacy, Alzheimers support services, counseling, education and training, escort services, housekeeping, hospice, legal assistance, nutrition services, ombudsman, outreach, personal care, repairs, and many others. Many elderly are not informed about the various services offered by area agencies on aging. Therefore, it is recommended that the area agencies enhance their efforts through the use of newsletters and mailings to notify as many elderly as possible about the services offered.
- y 6. The Subcommittee recognizes the efforts made by area agencies to remain informed about the services provided in each planning and service area and encourages the continuation of such efforts.
- x 7. The Subcommittee notes that local communities can apply to the Kansas Department of Transportation for federal funds to purchase vehicles to transport the elderly. These federal funds are available to communities on a matching basis, and federal funds from the Older Americans Act can be used to finance a portion of the required matching support. The Subcommittee supports continued funding for such services.
- x 8. The Subcommittee appreciates the cooperation and assistance provided by the Secretary of Aging and the agency staff. Their expertise and understanding of agency operations proved invaluable to the Subcommittee in compiling its recommendations.
- x 9. The Kansas Department on Aging appears to be discharging its responsibilities efficiently and cost-effectively. In addition, the population of elderly (60 years and older), when compared to the total population of Kansas, was 17.4 percent in 1980 and will continue to increase in future years. In light of changing demographics and the agency's proven competence in addressing the needs of the elderly, the Subcommittee recommends that the Office of the Secretary of Aging and the Department be continued in existence until July 1, 1994.

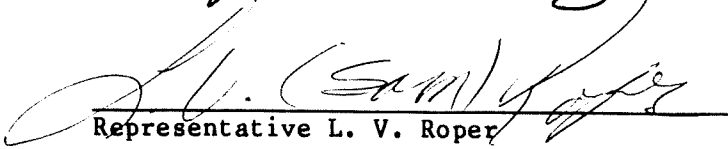


Representative Elaine Hassler
Subcommittee Chairperson

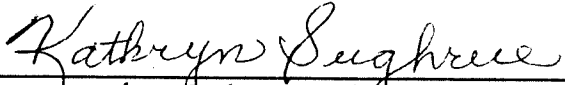
Representative Clyde Graeber



Representative Alfred Ramirez



Representative L. V. Roper



Representative Kathryn Sughrue

Testimony on HB 2699
Governmental Organization Committee
February 19, 1986

I am A. F. Bramble. As the director of the State Office on Aging I was directly involved in the movement that resulted in the Legislature establishing the Department on Aging. Originally I supported and promoted the establishment of a Department because of the rapidly increasing numbers of elderly. The problems and concerns of 325,000 of your citizens warranted a Department that could represent them and through which they could make their contribution to our State.

Now, with 430,000 Kansans over 60 years of age, the fact that the most rapidly increasing portion of our State's population is the elderly, the Department on Aging is of increasing necessity and importance.

The existence of a Department has engendered increasing and creative participation and contribution on the part of older citizens. Part of which is a Silver Haired Legislature that responsibly addresses itself to a wide spectrum of issues that affect our State. That participation more than warrants the continuation of our Department on Aging.

The presence and operation of the Department has resulted in many benefits to our State. Before it was a Department the State Office on Aging could not directly approach legislators with the concerns of our elderly. Issues and concerns were subjected to the decision and oftentimes lack of action of others not directly involved in Aging. Now, we can be represented more directly and effectively. And our concerns can be communicated directly to you legislators who are concerned for all ages in our State.

Because of the proven effectiveness of the Department on Aging, I urge it be not only continued but also encouraged.

2/19/86 Hs. Gov. Org.
Attachment B

MEMORANDUM

February 17, 1986

TO: House Governmental Organization Committee
 FROM: Kansas Legislative Research Department
 RE: Programs of Kansas Department on Aging

<u>Agency Program</u>	<u>Mandated or Optional and Legal Authority</u>	<u>FY 1986 Governor's Recommended Funding</u>
Older Americans Act Nutrition Program -- meals	<u>Mandated</u>	
	OAA Sec. 306a(1)	\$ 6,056,219 (federal)
	OAA Sec. 307a(13)	
	OAA Sec. 307b(1)	
	OAA Sec. 331 and 336	
	CFR 1321.71	
	CFR 1321.9b	\$ 483,814 (SGF)
	K.S.A. 75-5902(e) K.S.A. 75-5903(a) K.S.A. 75-5908(d)	
Older Americans Act Nutrition Program -- transportation	<u>Mandated</u>	
	OAA Sec. 306a(1)	\$ 174,328 (SGF)
	OAA Sec. 306a(2a)	
	OAA Sec. 307a(13D)	
	OAA Sec. 321a(2)	
	CFR 1321.9b	
	K.S.A. 75-5902(e)	
	K.S.A. 75-5908(d)	
In-Home Nutrition Program	<u>Optional</u>	
	K.S.A. 75-5902(e)	\$ 449,860 (SGF)
	K.S.A. 75-5908(b,c,e) K.A.R. 26-5-1 <u>et seq.</u>	
Older Kansans Employment Program	<u>Mandated</u>	
	K.S.A. 75-5902(e)	\$ 100,000 (SGF)
	K.S.A. 75-5908(e)	
	K.S.A. 75-5924 K.A.R. 26-6-1 <u>et seq.</u>	
Older Workers Job Training Partnership Act	<u>Mandated</u>	
	P.L. 37-300	\$ 500,385 (federal)
	Sec. 124 and 626 <u>et seq.</u>	
	K.S.A. 75-5902(e) K.A.R. 26-6-7 and 8	

<u>Agency Program</u>	<u>Mandated or Optional and Legal Authority</u>	<u>FY 1986 Governor's Recommended Funding</u>
Long Term Care Ombuds- man Program	<u>Mandated</u> OAA Sec. 307a(12) K.S.A. 75-5916 <u>et seq.</u> CFR 1321.33(5)	Both programs are funded by \$141,899 (federal)
and		
Legal Services Developer	<u>Mandated</u> OAA Sec. 306a(2c) OAA Sec. 307a(15-18) OAA Sec. 321a(6 and 16) CFR 1321.73 CFR 1321.96 K.S.A. 75-5902(e) K.S.A. 75-5908(d)	
Training	<u>Mandated</u> OAA Sec. 307a(17) OAA Sec. 411 CFR 1321.33(4) K.S.A. 75-5908(d,f)	\$ 35,649 federal Training Grant
Alzheimer's Disease Task Force (1 year)	<u>Mandated</u> 1985 SCR 1618	\$ 50,000 (federal)
General Grants to Area Agencies	<u>Mandated</u> OAA Sec. 306(a)(1 and 2) OAA Sec. 307 CFR 1321.9	\$ 2,633,118 (federal)
Authority to KDOA to disburse federal funds	K.S.A. 75-5908(d,k)	
Literacy Intended for Elders (1 year)	<u>Optional</u> K.S.A. 75-5908(d) allows KDOA to apply for federal grants	\$ 33,681 (federal)
Health and Wellness for Elders (1 year)	<u>Optional</u> K.S.A. 75-5908(d) allows KDOA to apply for federal grants	\$ 5,000 (federal)

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.

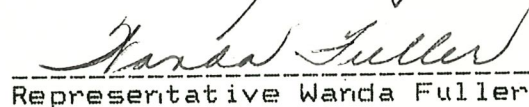
Subcommittee Recommendations

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.

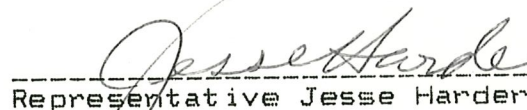
Subcommittee Members:



Representative Dale Sprague, Chairman



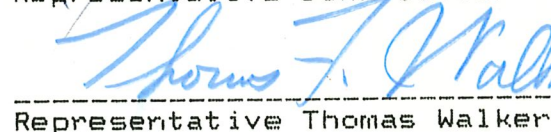
Representative Wanda Fuller



Representative Jesse Harder



Representative John Sutter



Representative Thomas Walker

January 27, 1986

Memorandum

To: House Committee on Governmental Organization

Re: House Concurrent Resolution No. 5028

HCR 5028 proposes to revise Article 6 of the Kansas Constitution relating to education.

The principal change is to make it clear that it is the Legislature which provides for the public interest in the educational policy of this state and for the State Board of Education's powers, duties and authority in the supervision of the public schools and other educational interests of the state, except for those educational functions delegated by law to the State Board of Regents.

In 1973, the Kansas Supreme Court, in State, ex rel., v. Board of Education (212 Kan. 482), ruled on the meaning of the following provision 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. (Emphasis added)

By contrast, Section 2(b) provides:

The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. (Emphasis added)

The Supreme Court determined that Section 2(a) is "self-executing," i.e. that the 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. 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

Supreme 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.

In response to an inquiry by the chairman of the State Board of Education, the Attorney General issued an opinion (No. 81-236), based largely on the Supreme Court decision described above, 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 on its constitutional authority and disregarding any statutory authority or lack thereof. According to the opinion, the Legislature may not prescribe, amend, modify or otherwise alter the content of such rules and regulations.

Prior to the fall of 1981, the only time the State Board of Education had used its constitutional legislative power was to adopt a rule that led to the Supreme Court decision discussed above. 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 became effective as temporary regulations on January 8, 1982, and became effective as permanent regulations on May 1, 1982. Since that time, the State Board has increasingly relied on its constitutional authority in the adoption of rules and regulations which govern the operation of the public schools in this state.

The main issue being addressed by HCR 5028 is where legislative authority in the field of education should be placed. HCR 5028 proposes to clarify that such authority rests with the Legislature. Presently, pursuant to the Kansas Supreme Court decision described herein, that authority is divided, imprecisely, between the Legislature and the State Board of Education.

One other amendment with major policy implications is the amendment to section 4, which provides for Senate confirmation of the appointment of the commissioner of education. It is questionable whether such a provision could be made statutorily.

Other amendments are technical in nature.

STATE OF KANSAS

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 Governmental Organization
FROM: Representative Elizabeth Baker and Representative Ron Fox
DATE: January 28, 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, 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. 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

Julian E. N
545-N 4

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

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.

KANSAS GUBERNATORIAL APPOINTMENTS

<u>Agency</u>	<u>K.S.A.</u>	<u>Membership</u>	<u>Appointed by Governor</u>	<u>Senate Approval Required</u>
Abstracters', Board of Examiners	74-3901	3	3	
Accountancy, State Board of	1-201	7	7	
Adjutant General	48-203	1	1	X
Administration, Secretary of	75-3702a	1	1	X
Adult Authority, Kansas	22-3707	5	5	X
Advanced Technology Commission, Kansas	74-5035	13	5	
Aging, Secretary of	75-5903	1	1	X
Aging, Advisory Council on	75-5911	19	15	
Agreement on Detainers, Administrator	22-4407	1	1	
Agricultural Labor Relations Board	44-820	3	2	
Alcoholic Beverage Control Board of Review	41-203	3	3	X
Sports Hall of Fame Board of Trustees	74-2906a	7	7	
Animal Health Board, Kansas	74-4001	7	6	
Applied Remote Sensing, Kansas Commission on	1984 H.B. 2670	17	3	
Arkansas River Commission, Kansas-Oklahoma	82a-528	3	3	
Arkansas River Compact, Administration	82a-520	3	3	
Armory Board	48-315	9	6	
Arts Commission, Kansas	74-5202	12	12	
Bank Commissioner, State	75-1304	1	1	X
Banking Board, State	74-3004	9	9	X
Barber Examiners, State Board of	74-1805	5	5	
Behavioral Sciences Regulatory Board	74-7501	7	7	
Big Blue River Compact Administration, Kansas-Nebraska	82a-529	2	1	
Building Advisory Commission, State	75-3780	7	5	
Capitol Area Plaza Authority	75-2237	11	6	
Central Kansas Library System	75-2550	1 or more from each system member	1 or more from each county in the system	
Children and Youth Advisory Committee	38-1401	15	5	

<u>Agency</u>	<u>K.S.A.</u>	<u>Membership</u>	<u>Appointed by Governor</u>	<u>Senate Apprc Requi</u>
Civil Rights, Commission on	44-1003	7	7	X
Civil Service Board, State	75-2929a	5	5	X
Commissioners to take Depositions and Acknowledgments	53-201		1 or more	
Community College Advisory Council	71-901	11	11	
Consumer Credit Commissioner	16-403	1	1	X
Corn Commission, Kansas	2-3002	9	9	
Corporation Commission, State	74-601	3	3	X
Corrections Ombudsman Board	74-7401	10	2	
Corrections, Secretary of	75-5203	1	1	X
Cosmetology, Kansas State Board of	74-2701	5	5	
Credit Union Administrator	17-2233	1	1	X
Credit Union Council, Kansas	17-2232	7	7	X
Crime Victims Reparation Board	74-7303	3	3	X
Crippled Children's Advisory Commission	75-5643	5	5	
Deaf and Hearing Impaired, Kansas Commission for the	75-539	16	9	
Dealer Review Board, Motor Vehicle	8-2412	8	8	
Deferred Compensation, Advisory Committee on	75-5522	5	2	
Delta Dental Plan of Kansas, Inc., Board of Directors	40-19a03	10	2	
Dental Board, Kansas	74-1404	5	5	
Developmental Disabilities Services, State Planning Council on	74-5501	Not more than 15	Not more than 15	
District Court, Judges of	20-2911 and 2913			
Economic Development, Advisory Com- mission to the Department of	74-5019	9	9	
Economic Development, Secretary of	74-5002a	1	1	X
Education Commission of the States	72-6012	7	2	
Embalming, State Board of	74-1701	5	5	
Emergency Medical Services Council	65-4316	18	11	
Employment Security, Board of Review	44-709(f)	3	2	X
Environment, Advisory Commission on	75-5615	7	7	
Fire Marshal, State	75-1510	1	1	X
Fire Protection, Personnel Standards and Education, Governor's Com- mission on	31-151	7	7	
Fiscal Agent, Incoming Governor	75-3719	1	1	
Fish and Game Commission	74-3301	5	5	X

<u>Agency</u>	<u>K.S.A.</u>	<u>Membership</u>	<u>Appointed by Governor</u>	<u>Senate Approval Required</u>
Service and Lodging Standards, Advisory Committee on	75-5629	9	9	
Governor's Residence Advisory Commission	75-129	7	1 or spouse	
Grain Advisory Commission, State	34-121	5	5	
Grain Inspection Department, State Director of	75-1701	1	1	X
Grain Sorghum Commission, Kansas	2-3002	9	9	
Hazardous Waste Disposal Facility Approval Board	65-3432	5	2	X
Healing Arts, State Board of	65-2812	13	13	
Health, Advisory Commission on	75-5614	7	7	
Health Coordinating Council, Statewide	65-4705	28	28	
Health and Environment, Secretary of	75-5601	1	1	X
Hearing Aid Examiners, Kansas Board of	74-5802	5	5	
Highway Advisory Commission, State	75-5002	12	12	
Highway Patrol Superintendent	74-2113	1	1	X
Historic Sites Board of Review, State	75-2719a	11	9	
Human Resources, Secretary of	75-5701	1	1	X
ments' Defense Services, State Board of	22-4519	9	9	X
Interstate Compact on the Placement of Children, Administrator	38-1203	1	1	
Interstate Compact on Juveniles, Administrator	38-1003	1	1	
Interstate Cooperation, Governor's Committee on	46-403	6	2	
Interstate Agricultural Grain Marketing Commission	2-3101	3	1	
Interstate Oil Compact Commission, Representative	55-865	1	1	
Interstate Parole Compact	22-4101	1	1	
Judge Advocate General	48-2106	1	1	
Juvenile Offender Programs, Advisory Commission on	75-5388	13	4	
Law Enforcement Training Commission on Peace Officers' Standards and Training, Kansas	74-5606	12	10	
Librarian, State	75-2535	1	1	X
Library Advisory Commission	75-2546	8	7	
oy Network Board	75-2578	10	7	
Low-Level Radioactive Waste, Advisory Board on	65-34a03	10	2	
Mental Health and Retardation Services and Community Mental Health Programs, Advisory Commission on	75-3302d	12	12	

<u>Agency</u>	<u>K.S.A.</u>	<u>Membership</u>	<u>Appointed by Governor</u>	<u>Senate Approval Required</u>
Mexican-American Affairs, Advisory Committee on	74-6502	7	7	
Military Advisory Board, Kansas	48-214	9	3	
Military Disability Board, Kansas	48-261	At Least 5	At Least 5	
Milk Advisory Committee, State	65-737b	6	5	
Mined-Land Conservation and Reclamation Board	49-404	13	12	
Mo-Kan Metropolitan Development District and Agency Compact	12-2518	5	5	X
Municipal Accounting Board, State	75-1118	7	7	
National Guard, Generals	48-208			X
Nonprofit Medical Service Corporation Directors	40-1902	15	2	
Nonprofit Optometric Service Corporation Directors	40-19b03	10	2	
Nonresident Violator Compact, Administrator of	8-1220	1	1 (Secretary of Revenue or Director of Vehicles)	
North Central Kansas Library System Board	75-2550	1 or more from each system member	1 or more from each county in the system	
Northeast Kansas Library System Board	75-2550	1 or more from each system member	1 or more from each county in the system	
Northwest Kansas Library System Board	75-2550	1 or more from each system member	1 or more from each county in the system	
Nuclear Board, Midwest	48-2002	varies	1	X
Nursing, State Board of	74-1106	11	11	
Oil and Gas, Advisory Committee on Regulation of	55-153	10	1	
Optometry, State Board of Examiners in	74-1501	4	4	
Pardon Attorney	75-3102	1	1	
Park and Resources Authority, State	74-4504	9	5	X
Pharmacy, State Board of	74-1604	6	6	
Physical Therapists, State Examining Committee for	65-2904	5	3	
Podiatry, Advisory Committee on	74-2807	3	3	
Political Party, State Committee	25-3804	varies	1	
Political Party, State Committee, Executive Committee	25-3805	varies	1	
Pooled Money Investment Board	75-4221a	3	2	X

<u>Agency</u>	<u>K.S.A.</u>	<u>Membership</u>	<u>Appointed by Governor</u>	<u>Senate Approval Required</u>
Disclosure Commission	25-4119a	5	1	
Public Employee Relations Board	75-4323	5	5	X
Public Employees' Retirement System, Kansas	74-4905	7	7	X
Real Estate Commission, Kansas	74-4201	5	5	
Recreation, Joint Council on	74-4528	15	7	
Regents, State Board of	74-3201	9	9	X
Regents, State Board of, Additional Members to Carry out Federal Act	74-3236	indefinite	indefinite	
Revenue, Secretary of	75-5101	1	1	X
Savings and Loan Commissioner	74-3104	1	1	X
Savings and Loan Board	74-3113	7	7	X
Securities Commissioner	75-6301	1	1	X
Social and Rehabilitation Services, Secretary of	75-5301	1	1	X
South Central Kansas Library System Board	75-2550	1 or more from each system member	1 or more from each county in the system	
East Kansas Library System Board	75-2550	1 or more from each system member	1 or more from each county in the system	
Southwest Kansas Library System Board	75-2550	1 or more from each system member	1 or more from each county in the system	
Soybean Commission, Kansas	2-3002	7	7	
State and School District Purchases, Committee on	75-3318	5	2	
Supreme Court, Nominating Commission	Kansas Constitution, Art. 3, 2f; K.S.A. 20-124	11	5	
Tax Appeals, State Board of	74-2433	5	5	X
Technical Professions, State Board of	74-7004	9	9	
Transportation, Secretary of	75-5001	1	1	X
Turnpike Authority, Kansas	68-2003	5	2	
Vehicle Equipment Safety, Commissioner	8-1205	1	1	
Veterans' Commission, Kansas	73-1208a	3	3	X
Veterinary Examiners, State Board of	47-818	5	5	
Washburn University, Board of Regents	13-13a04 and 13-13a06	9 or 10	3 or 2	
Water Authority, Kansas	74-2622	16	8	
Water Authority, Kansas, Chairperson	74-2622	1	1	X
Water Office, Director	74-2613	1	1	X

<u>Agency</u>	<u>K.S.A.</u>	<u>Membership</u>	<u>Appointed by Governor</u>	<u>Senate Appro' Requi.</u>
Wheat Commission, Kansas	2-2603	7	7	
Wichita University, Board of Trustees	76-3a16	9	9	

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

TESTIMONY ON HCR 5028

before the

House Governmental Organization Committee

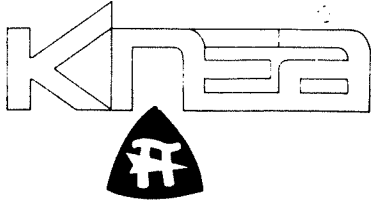
by

Bill Curtis, Assistant Executive Director
Kansas Association of School Boards

January 28, 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 Governmental Organization
Committee

January 28, 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.

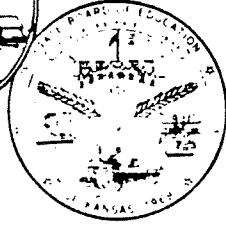
Kansas-NEA does not believe that the state will experience much if any change in the developing and supervising the educational policy of this state. The legislature would delegate much, if not all, of the general operation of our schools to the state board and local school districts. However, it seems 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

raig Grant Testimony Before House Governmental Organization Committee,
January 28, 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

January 27, 1986

Marion (Mick) Stevens
District 10

TO: House Governmental Organization 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.

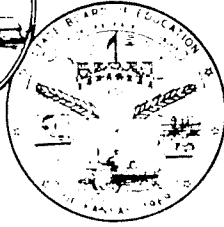
The State Board of Education has made every effort to obtain public input on any major issues being considered for implementation by holding hearings. Notices of all public hearings are made available to all school districts, community colleges, and area vocational-technical schools prior to implementation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

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.

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**THE EDUCATION AMENDMENT
TO THE KANSAS CONSTITUTION**

Publication No. 256

December 1965

Kansas Legislative Council

F O R E W O R D

The purpose of this report is to provide information about the legal basis for the educational system of the state and the need for strengthening and improving the system.

The report is a result of consideration given by the Committee on Education to Proposal No. 24, a study of the scope, functions and organization of agencies of the state supervising and coordinating educational programs. The study was authorized by 1965 House Concurrent Resolution No. 537, which directed that it should include a study of constitutional provisions. Difficulties arising from the fundamental law have become increasingly apparent to board members, administrators and legislators during the last few years, and can no longer be ignored. The 1965 Legislature recognized that consideration should be given to rebuilding the legal foundations of the educational system, and adopted the resolution providing for the study.

The basic recommendation of this report is that the 1966 budget session of the legislature approve and submit to a vote of the people in November, 1966, the question of adoption of a proposed amendment rewriting Article 6 of the present Kansas Constitution relating to education. If the legislature submits the proposed amendment to the electorate, the Committee intends to continue its study of the changes that would be required in the statutes. Recommendations of statutory provisions needed to implement the new constitutional article will be prepared for the consideration of the legislature.

The proposed new article would establish a framework capable of providing for a modern educational system, possibly for the next 100 years. It would eliminate obsolete provisions, nullify portions of Article I relating to the election of the state superintendent, give the legislature greater freedom in dealing with educational problems, and provide constitutional guarantees of local control of local schools.

The Committee gives primary credit for the development of the proposed revision of Article 6 to the Education Advisory Committee, chaired by Mr. John H. Colburn, of Wichita. All of the eleven members of the advisory committee deserve the thanks of the people of the state for the many hours devoted to the study between the time of their appointment in June and the submission of their final report in October. Our Committee has borrowed extensively from the material in the advisory committee's report in preparing the text of this report. In the main, the members of the Committee on Education found themselves in agreement with the advisory committee, and recommended only a few major changes in the proposal which was submitted to the Legislative Council.

PART II

EXPLANATION OF THE PROPOSED CONSTITUTIONAL AMENDMENT

This part of the report contains the highlights of the study relating to the proposed new constitutional provisions on education. Accompanying the text of each section of the recommended amendment of Article 6 of the constitution, there is a summary of findings and background information, and explanatory remarks concerning the principal considerations that influenced the Committees in their recommendations.¹ Sometimes an introductory statement precedes the text of the section, which also may be followed by further explanation.

In addition, explanation is included regarding decisions of the education committee which differed in a few cases from the recommended actions of the advisory committee. Similarly, reference is made to the amendments adopted by the Legislative Council at the November session. Much of the material is taken from the report of the Education Advisory Committee. Some additional comments, observations and information have been included to amplify or clarify specific problems.

ARTICLE 6

SECTION 1 -- Schools and Related Institutions and Activities

- (a) The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

This subsection is essentially the same statement of public policy now expressed in Article 6, Section 2, of the present constitution. The new language is designed to recognize modern developments and current concepts of education that writers of the 1861 constitution could not anticipate. For example, the term "common schools" is omitted as it no longer describes the type of schools we now have. Instead, the subsection merely directs the legislature to provide for a system of schools and educational institutions, and authorizes the reorganization of the system as changing conditions require. The language in (a) is limited to a short, precise policy statement. Some state constitutions comment in more detail about the importance of a diffusion of knowledge, patriotism, religion or morality to the maintenance of a republican form of government and the rights, liberties and happiness of the people.

¹ For convenience of the reader, each section of the proposed new constitutional provisions is indented. The text of the present provisions of Article 6 of the Kansas Constitution are included in the Appendix A at the end of this report.

- (b) There shall be no discrimination on the basis of race, creed, sex or national origin of persons in the public schools or public educational institutions.

Subsection (b) is a new constitutional provision incorporating an old and widely accepted concept in harmony with the guarantee of "equal rights" and the prohibition against slavery. It is included because of a need for a basic policy statement against discrimination in education in the organic law of the state. It is consistent with the landmark U. S. Supreme Court decision of Brown v. Board of Education of Topeka,¹ in 1954 and 1955, but in general does not go beyond the scope of that ruling. As written, the provision does not infringe upon rights of religious freedom guaranteed in the Kansas Bill of Rights in Section 7.

The reference to sex goes beyond the limitation already in the Kansas constitution under Article 2, Section 23 (which prohibits the legislature from making distinctions "between the rights of males and females") by prohibiting any kind of discrimination.

¹ 347 U.S. 483 (1954) and 349 U.S. 294 (1955).

SECTION 2 -- State Board of Education and State Board of Regents

This section provides for two constitutional boards, a State Board of Education and a Board of Regents. Two boards are needed and should have constitutional stature because of their importance.

The educational advisory committee explored suggestions for one overall board for elementary-secondary, vocational education, junior college, and higher education. However, it concluded the board's task would be so big that the members would serve virtually fulltime without compensation. Such an obligation would make it practically impossible to obtain competent and outstanding lay citizens to serve on the board.

The committee also studied and rejected a proposal for three separate policy-making educational boards, the third one to supervise community junior colleges. The major argument against this arrangement is that it ignores the problem of coordinating programs of area vocational-technical schools and community junior colleges. Without a single supervisory board for vocational-technical schools and community junior colleges there are serious dangers of conflicts and costly competition.

The proposed Board of Regents and the Board of Education, can develop a liaison on an administrative basis, and formal procedures can be worked out for liaison between the community junior colleges and four-year colleges and universities. The newly created (1965) Advisory Council for Community Junior Colleges might provide helpful assistance in this regard.

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.¹

The proposal abolishes the elective constitutional office of state superintendent of public instruction² and places responsibility for both general education and vocational education, now separately administered, under one authority - a state board of education. It also places the Schilling Technical Institute under the State Board of Education.

The function of the Board of Regents is somewhat different from that of the Board of Education: The latter board would supervise schools which are operated and controlled by local boards, whereas the Regents are responsible for the actual operation of institutions of higher education. In the case of institutions of higher education, legislative policies will continue to be implemented by the State Board of Regents.

¹ The board would be authorized by section 2 (a) to perform such other duties as may be prescribed by law.

² Section 8 (b) of the proposed constitutional amendment provides that no state superintendent shall be elected after January 1, 1967.

Functions of the State Board of Education

2. (a) The legislature shall provide for a state board of education which shall have general supervision of all the public schools, educational institutions and related activities. Such general supervision shall be inclusive of vocational schools, community junior colleges, all the educational interests of the state and all aspects of education, except institutions of higher education supervised by the state board of regents. The state board of education shall perform such other duties as may be provided by law.

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 board would thus replace a single officer, the state superintendent of public instruction, who has general supervision over the educational interests of the state under the present constitution. Its authority would extend to all educational programs below the four-year college level. It would implement decisions and determine matters of policy as directed by the statutes. It would not have general authority over private schools.

The present statutorily created State Board of Education, which is basically an advisory body with respect to general educational programs, would be abolished. In reality the present Board has two functions. As noted previously, in matters of general education, it is advisory to the state superintendent, but it cannot legally initiate proposals of its own. Its second function is as a Board for Vocational Education. When it sits in this capacity, the Board has complete authority to supervise public vocational and rehabilitation programs within the limits of state and federal statutes. As an illustration, the Board selects the director of vocational education, adopts policies for vocational education programs at the state and local level, and allocates money to various schools. This dual role adds to policy-making confusion.

The present state superintendent, members of the State Board of Education, and the former director of vocational education, all testified that they favored a single state board as a policy-making body with authority to appoint the chief state school officer, who would administer all phases of elementary-secondary and vocational-technical education.

Specific Types of Education

Subsection 2 (a) is broader in scope than the present constitutional provisions in that it recognizes specific types of education. These are discussed in the following paragraphs:

Public Schools. The term "public schools" is substituted for common schools," which originally meant only elementary schools. "Public schools" is more descriptive of current actual practice since it includes kindergarten, elementary, junior high schools, senior high schools, community

*Implementation Of The
Education Amendment*

Report Of The Education Advisory Committee

KANSAS LEGISLATIVE COUNCIL

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Vacancies occurring by reason of resignations, death, or other cause would be filled by elections in the district for the unexpired term to retain the regular rotation of member district elections. However, interim appointments until the next election should be made by the Governor to assure representation of all sections of the state in Board deliberations.

Enactment of Implementing Legislation

Enact at the 1967 Session legislation creating commissions to nominate members of the State Board of Education and providing a special election of members in 1968. Postponement of this legislation would work an undue hardship in completing implementation of the amendment by July 1, 1969.

The Constitution requires that the district from which members are elected must consist of "four contiguous senatorial districts". The four senatorial districts comprising each of the ten districts should be both contiguous and compact to maintain the unity of metropolitan and rural areas.

Functions and Powers of the State Board of Education

Transfer statutory powers and duties from the State Superintendent of Public Instruction to the State Board of Education. Direct the commissioner of education to execute the Board's policy decisions and supervise administrative functions and procedures.

Eliminate the present Department of Vocational Education and place it as a division under the new State Board so that it will be an integral part of the state's total education program. The State Board should be given all school financial authority now exercised by the State Superintendent and the State Board for Vocational Education.

Authorize the State Board of Education to review and approve operating procedures of state agencies whose functions and activities are related to public schools, and to establish a liaison system to coordinate programs with other educational agencies.

Commissioner of Education

The commissioner of education, appointed by the State Board of Education, would serve at its pleasure as executive officer and administrative head of the agency. No qualifications should be specified in the statutes other than that the commissioner should have a broad educational background and administrative experience. It is recommended strongly

The principal problem for legislative decision is arranging combinations which will result in districts with homogeneous populations, and similar economic, social, cultural, and educational interests. Although there is no constitutional requirement for compact districts, compactness is preferred and strongly recommended by the Committee. Adjacent city senatorial districts, for example, should be kept together as a voting unit insofar as possible. This will minimize the domination of rural and small town areas by populous urban and metropolitan regions, or vice versa, and will provide representation on the Board to certain distinctly rural and urban areas.

Powers and Jurisdiction of the State Board of Education

The functions of the State Board of Education are described in Section 2(a) of the Constitutional amendment as follows: "The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all of 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."

X Scope of Authority and Activities. Within this broad authority, the legislature must prescribe the specific powers and duties of the Board.

As a guide, the Committee recommends that all powers should be conferred on the Board with the Commissioner of Education directed to execute the Board's policy decisions and supervise the administrative processes.

In general, the powers now exercised by the State Superintendent of Public Instruction and the present State Board of Education should be assigned to the new State Board. They would include:

1. The State Board should be given broad authority to organize and prescribe the duties of its officers and employees.
2. The Board should have the authority to adopt rules and regulations relating to schools, standards for courses of study, curriculum, school libraries, textbooks and educational materials, the certification of teachers and administrators, and the accreditation of schools and educational institutions directly under its supervision and certification of institutions of higher education which offer curricula or degrees for school teacher education. It should also be given authority to create advisory groups.
3. Other duties that the Board would perform include publication of the school laws, preparation and furnishing of forms and blanks for uniform operation of the school system, preparation of an annual report, auditing and inspecting local schools, cooperation with the federal government in making surveys of school facilities, and receipt and distribution of federal

funds. Also it should administer all state programs for financial aid to local school districts, junior colleges, and municipal universities (e.g., the local school foundation program, special education funds, the driver training fund, the state annual school fund, and the state scholarship fund).

The school unification laws prescribe various duties to be performed by the State Superintendent of Public Instruction which now would become a responsibility of the new State Board of Education. These include the review and approval of plans for unification, issuance of orders organizing unified districts and disorganizing component districts, and transferring territory from one unified district to another.

Integration of Vocational Education. The present State Board of Education also serves as the Board of Vocational Education and is the governing body of the separate Department of Vocational Education. This Department should be placed directly under the new State Board as a separate division. Such a move will enhance the standing of vocational programs by constituting them as an important and essential part of the general educational program of Kansas, and would conform to the accepted practice in 47 of the states.

Specific recommendations on vocational educational programs are outlined in Chapter III.

Educationally Related Activities. There are several educationally related activities and functions which are performed or administered by other state agencies or by private groups for which Article 6 of the Constitution envisions the State Board of Education would have some responsibility or direct interest. Examples are the State School Retirement Board which administers the school employees retirement system, the State Library which is developing library systems and administering federal funds for community libraries, the school bus inspection and safety programs of the State Highway Commission and the State Highway Patrol, and the school health, sanitation, and fire safety programs of other state agencies.

The Committee recommends that no change be made in the administration of any of these activities at this time. The new State Board and commissioner, however, should develop liaison with these agencies and coordinate programs. At a later date administrative changes may be desirable.

Special mention must be made of extra-curricular student activities sponsored and supervised by the Kansas State High School Activities Association. Its purpose is to establish and enforce reasonable rules governing the various forms of extra-curricular and interscholastic competition which have become an accepted part of a comprehensive educational program.

Included are not only the standard sports but such other activities as debate, music and drama festivals, and service clubs.

Inasmuch as these activities place demands on students, they have a direct effect on programs offered during the regular class hours. Consequently, these activities should come within the supervisory jurisdiction of the State Board of Education. The Committee does not believe, however, that any change is necessary in the present statutory authority of the Association, but its general operations and policies should be reviewed and approved by the State Board of Education on the same basis as with other agencies.

Financing Education. The administration of general school finance at the state level, which heretofore has been a responsibility of the State Superintendent of Public Instruction, will now become the responsibility of the State Board of Education. These financial programs are prescribed in the statutes in considerable detail, and administration has been largely of a ministerial nature. The one major exception concerns state and federal vocational education funds, which have been apportioned at the discretion of the State Board for Vocational Education acting through the state Director of Vocational Education. With the department of vocational education under it, as recommended above, the State Board of Education should assume all the financial authority exercised previously by the Board for Vocational Education.

While not a matter of major import for this report, numerous changes in the statutes will be necessary to harmonize the provisions of the present laws relating to state school financial aid and assistance with the spirit and terms of the new constitutional provisions.

The Commissioner of Education

Nature and Character of the Office. Successful school administration at the state level will depend in some areas as much upon the commissioner of education as upon the State Board of Education. As executive officer of the Board, administrative head of the state department of education, and chief professional person in the agency, the commissioner should be a person who can exercise leadership on a state-wide basis and share this important responsibility and privilege with the members of the State Board of Education. He should exercise executive and ministerial functions subject to the rules, regulations, and policy determinations of the Board; and, in particular, he should have the responsibility for day-to-day management of employees and programs. The Board should not become involved in administration. If the commissioner's performance is not satisfactory to the Board, he should be removed and another commissioner appointed.

REPORTS
OF
CASES ARGUED AND DETERMINED
IN THE
SUPREME COURT
OF THE
STATE OF KANSAS

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No. 46,799

THE STATE OF KANSAS, *ex rel.*, VERN MILLER, Attorney General of Kansas; THE STATE BOARD OF EDUCATION OF KANSAS, et al., *Appellant*, v. BOARD OF EDUCATION OF UNIFIED SCHOOL DISTRICT NO. 398, MARION COUNTY (PEABODY) KANSAS, *Appellee*.

(511 P. 2d 705)

SYLLABUS BY THE COURT

1. CONSTITUTIONAL LAW—*Amendment to Constitution—Broad Powers Vested in Board of Education.* The adoption by the people of this state of the 1966 amendment to article 6 of the Kansas Constitution vested broad powers of supervision in the state board of education.
2. SAME—*Self-executing or Not Self-executing.* A constitutional provision may be self-executing in part or not self-executing in part.
3. SAME—*Self-executing Provision—Nature of.* A self-executing provision of a constitution is a provision requiring no supplementary legislation to make it effective and leaving nothing to be done by the legislature to put it in operation.
4. SAME—*Determining Whether Provision Is Self-executing—Intention.* Intention has an important bearing when it comes to determining whether a constitutional provision is self-executing, and in considering the question of intention account is to be taken of the language used, the object to be accomplished by the provisions and all surrounding circumstances.
5. SAME—*Self-executing Provision—Provision Addressed to Legislature.* Whether or not a provision is self-executing depends on whether the language is addressed to the courts or to the legislature, that is, whether it is intended as a present enactment or contemplates subsequent legislation to give it effect.
6. SAME—*Provision Granting Board of Education Authority — Self-executing in Effect.* That part of article 6, § 2 (a) of the Kansas Constitution granting to 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, is self-executing in effect.
7. SAME—*Provision Self-executing—Enacting Legislation to Assist Operation.* Where a constitutional provision is self-executing the legislature may enact legislation to facilitate or assist in its operation, but whatever legislation is adopted must be in harmony with and not in derogation of the provisions of the constitution.
8. STATUTES—*State Board of Education—Power to Supervise Schools—Function of Local Boards.* The statutes of this state, as well as provisions of the constitution, contemplate that the state board of education shall have authority to supervise the public schools and to adopt regulations for that purpose, while local boards of education are to provide for the government and operation and maintenance of the public schools subject to such supervision.
9. CONSTITUTIONAL LAW—*State Board of Education—Powers Granted.* As used in article 6, § 2 (a) of the Kansas Constitution, general supervision

means the power to inspect, to superintend, to evaluate, to oversee for direction.

10. STATUTES—*“General Supervision” Defined.* As found and employed both in the constitution and in the statutes of this state the term “general supervision” means something more than to advise and confer with but something less than to control.
11. SCHOOLS—*Regulation Adopted by State Board of Education—Validity.* The record is examined in an action challenging the validity of a regulation adopted by the state board of education and for reasons disclosed in the opinion it is held the trial court erred in holding the regulation to be invalid.

Appeal from Marion district court, division No. 1; JOHN M. RUCH, Judge. Opinion filed June 26, 1973. Reversed.

Erle W. Francis, assistant attorney general, argued the cause, and Vern Miller, attorney general, and John Johnson, assistant attorney general, were with him on the brief for the appellant.

Fred W. Rausch, Jr., of Topeka, argued the cause, and was on the brief for the appellee.

Ward D. Martin, of the firm of Crane, Martin, Claussen & Hamilton, of Topeka, was on the brief *amicus curiae*.

The opinion of the court was delivered by

FONTRON, J.: The issue to be decided in this appeal is whether a regulation adopted by the State Board of Education relating to school conduct is or is not valid. The trial court held the regulation to be void, and its ruling has been appealed.

On a date not shown by the record, the board promulgated K. A. R. 91-15-1, to become effective January 1, 1971. The rule reads as follows:

“The boards of education of every unified school district and boards of control of every area vocational-technical school in Kansas shall adopt rules which: (a) Govern the conduct of all persons employed by or attending such institutions, and (b) provide specific procedures for their enforcement.

“Each governing body shall submit such rules to its legal counsel for review to assure compliance with city ordinances, statutory and constitutional requirements.

“After the adoption of such rules, copies thereof and the approval of the board’s legal counsel shall be filed with the state commissioner of education no later than March 31, 1970; and in subsequent years any amendments thereof with legal counsel’s approval shall be filed with said commissioner immediately after adoption.”

The Board of Education of Unified School District No. 398, Marion County (Peabody), Kansas, took issue with the State Board

Education contending that it lacked authority to enact or enforce such a regulation and that the same was void, and without force or effect. Hence, this lawsuit for a declaratory judgment was filed by the State of Kansas in conjunction with the State Board of Education.

We shall refer to the State of Kansas as the state or plaintiff, to the State Board of Education as the state board, and to the Board of Education of Unified School District No. 398, Marion County (Peabody), Kansas, as the district board or defendant.

The state board contends that K. A. R. 91-15-1 is a proper exercise of its power of general supervision granted both by constitutional and statutory provisions. Resolution of this contention will require consideration of pertinent constitutional and statutory provisions. Before that task is undertaken, it may not be out of place to observe that, apparently, certain philosophical differences exist between the state board and district boards of education with respect to the proper relationship between the state and the public schools, particularly as to the powers, duties and functions appertaining to the state board on the one hand and local school boards on the other. We shall attempt to delineate their respective positions as we proceed with this opinion.

Article 6 of the Kansas Constitution relates to the field of education. In the Wyandotte Constitution adopted July 29, 1859, provision was made for a superintendent of public instruction. The duties of this constitutional officer were broadly outlined in § 1 of article 6 as follows:

"The State Superintendent of Public Instruction shall have the general supervision of the common school funds and educational interests of the State, and perform such other duties as may be prescribed by law. . . ."

It will be noted that the state superintendent was not endowed by this section of the constitution with general supervision of the public schools.

The constitutional provisions relating to education remained stable and unchanged for many years and it was not until the constitution was amended by vote of the people, November 8, 1966, that the superintendent of public instruction was phased out of public life and the state board of education made its appearance. Since the 1966 amendment went into effect, article 6 contains the following provision pertinent to the present lawsuit:

"§ 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.

"(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or post-baccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

"(c) Any municipal university shall be operated, supervised and controlled as provided by law.

"§ 5. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature."

There can be little doubt that the 1966 amendment made significant changes in the area of public schools and educational institutions. A greater sense of obligation on the part of the state to participate in the support of public schools and in the general field of public education seems to be implicit in the language of article 6, § 1:

"The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law."

As we understand the general educational pattern contemplated by the 1966 amendment, the state board of education shall have general supervision over the public schools and educational interests of the state except functions delegated by law to the board of regents; the state board of regents is to exercise control and supervision over public institutions of higher education, as provided for by the legislature; municipal universities are to be operated, controlled and supervised as provided by the legislature; and local public schools are to be maintained, developed and operated by locally elected boards of education under supervision of the state board of education.

In *Brickell v. Board of Education*, 211 Kan. 905, 508 P.2d 996, we recognized the constitutional mandate relating to the state board of education in these words:

". . . [T]he adoption in 1966 of the amendment to Article 6 of the Kansas Constitution bestowed broad supervisory powers in the State Board of Education. . . ." (p. 917).

The state board has taken the position in this case that the provisions of article 6, § 2 (a) are self-executing so far as its power of general supervision is concerned and that, in addition, it is authorized by statute to exercise supervisory powers over local public schools. The district board takes a quite contrary view and insists that the regulation encroaches upon the authority granted local boards by § 5 of article 6 of the constitution.

At the trial level, the defendant district board prevailed. The trial court held (1) that § 2 of article 6 was not self-executing and (2) the state board had no statutory authority to issue the regulation in question.

We turn to the point first raised by the plaintiff: Is article 6, § 2 (a) self-executing as it concerns the exercise of general supervision over the public schools, educational institutions and educational interests of the state except, of course, as to functions delegated to the state board of regents? Our answer is that in the restricted sense of exercising general supervision, article 6, § 2 (a) is self-executing. In other words it is our view that the state board may exercise its constitutional power of supervision without ancillary legislation and that its authority in that limited respect could not be thwarted by legislative failure to adopt supplementary legislation.

In *State, ex rel., v. Deck*, 106 Kan. 518, 521, 188 Pac. 238, this court defined a self-executing constitutional provision as "simply a provision which needs no supplementary legislation to make it effective." This terse definition accords with that found in legal encyclopedias. In 16 C. J. S., Constitutional Law, § 48, p. 143, the rule is expressed this way:

"A provision is self-executing when it can be given effect without the aid of legislation and there is nothing to indicate that legislation is contemplated in order to render it operative. . . . constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed. . . ."

Similar language is found in 16 Am. Jur. 2d, Constitutional Law, § 94, p. 280:

"A constitutional provision is self-executing if no legislation is necessary to give effect to it, and if there is nothing to be done by the legislature to put it in operation. . . ."

A constitutional provision may be self-executing in part and not self-executing in another part. (16 Am. Jur. 2d, Constitutional Law, *supra.*) This principle was recognized in *State, ex rel., v. Deck*,

supra, where this court observed that various self-executing provisions were to be found in certain parts of the constitutional provision being considered. We believe the rule is applicable here; § 2 (a) is self-executing in part, but not in its entirety; for instance, it is the legislature which must provide for the establishment of the state board of education in the first place and which must delegate to the board "such *other* duties as may be provided by law." (Emphasis supplied.)

Intention has an important bearing when it comes to determining whether a constitutional provision is, or is not, self-executing. The role which intention plays in ascertaining if a provision of the constitution is self-executing in nature is well expressed in 16 C. J. S., Constitutional Law, § 48, pp. 146, 147, in this way:

"Whether or not a provision is self-executing depends on whether the language is addressed to the courts or to the legislature,—whether it indicates that it is intended as a present enactment, complete in itself as definitive legislation, or contemplates subsequent legislation to carry it into effect; and this requires a consideration both of the language used and of the intrinsic nature of the provision itself. The question is always one of intention and, in order to determine the intent, the general rule is that courts will consider the language used, the objects to be accomplished by the provision, and the surrounding circumstances. . . ."

In measuring the thrust of § 2 (a) by the yardstick of intention, we note the distinction between the power granted to the board of education and that allocated to the board of regents. We assume the difference in treatment accorded the two boards was carefully thought out and was meant to have meaning. Section 2 (a) reads that the legislature *shall provide* for a state board of education *which shall have general supervision* over the public schools *except functions delegated to the board of regents*. The language embraced in § 2 (b) is quite different. This section states that the legislature *shall provide* for a state board of regents *and for its control and supervision* of public institutions of higher learning. We view the differences as significant. In our opinion § 2 (a) contemplates, overall, that the supervisory powers of the state board of education should be self-executing, once the legislature has established that board, while the control and supervision accorded to the board of regents under § 2 (b) would require legislative implementation.

We are aware of *Woodworth v. Bowles*, 61 Kan. 569, 60 Pac. 331, and *State, ex rel., v. Deck*, *supra*, both of which the defendant has cited in opposition to the state's contention. Even though this court

determined in those two cases that the respective constitutional provisions under examination were not self-executing, we do not consider those decisions as being of controlling impact here. Without going into detail, we believe it sufficient to say that in neither case was the constitutional provision similar in character or kind to the one before us now.

In arguing that § 2, article 6, is not self-executing, the defendant calls attention to K. S. A. 72-7503 (c). The statute reads:

"The state board of education shall have the powers that it is specified to have in the constitution as such powers are more specifically described and defined by law."

With respect to this statute the defendant says in its brief: "Nothing could be more clear than this declaration by the legislature that the 'general supervisory' powers of the state board of education found in Section 2 of Article 6 in the Kansas constitution are not self-executing and were meant to be implemented by statute."

We do not place the same interpretation on the statute. The general rule, as we understand it to be, is that even when a constitutional provision is self-executing the legislature may enact legislation to facilitate or assist in its operation, but that whatever legislation is adopted must be in harmony with the provisions of the constitution.

A good many years ago an Oklahoma court speaking on this subject in *Nowakowski v. State*, 6 Ok. Cr. 123, 116 Pac. 351, stated:

"It is not every self-executing provision of a Constitution which exhausts legislative power upon the subject with which it deals. There are many such where legislation in aid of or in addition to the provision is both permissible and desirable. Certainly the Legislature can enact nothing in derogation of the constitutional provision; but unless such provision, in addition to being self-executing, is also a limitation upon the power of the Legislature, it may enact laws in aid of and in addition to the provision and extending its terms. . . ." (p. 129.)

Later cases express a similar view. Speaking in *Roberts v. Spray*, 71 Ariz. 60, 223 P. 2d 808, the Arizona court said:

". . . The fact that a constitutional provision is self-executing does not necessarily exhaust legislative power on the subject but such legislation must be in harmony with the spirit of the constitution. . . ." (p. 69.)

In a California case, *People v. Western Air Lines, Inc.*, 42 C. 2d 621; 268 P. 2d 723, the Supreme Court of that state expressed itself in these words:

"Although a constitutional provision may be self-executing the Legislature

may enact legislation to facilitate the exercise of the powers directly granted by the Constitution. . . ." (p. 637.)

(See, also, 16 Am. Jur. 2d, Constitutional Law, § 95, p. 280; *Gherna v. State*, 16 Ariz. 344, 146 Pac. 494.)

We do not see K. S. A. 72-7503 (c) as an attempt to detract from the constitutional grant of power, but rather as a declaration of legislative intent to facilitate *in futuro*, the board's exercise of supervisory powers. In any event the legislature could not thwart a self-executing provision of the constitution and we will not infer that such was its intention.

In our opinion the statutes of this state, as well as the constitution, endow the state board with authority to supervise the public schools and to adopt regulations for that purpose.

It will pay us to look at a few of those statutes. K. S. A. 72-7514 provides:

"The state board is hereby authorized to adopt rules and regulations not in conflict with law on any and all matters within its jurisdiction, except as is otherwise specifically provided by law."

K. S. A. 72-7513 reads as follows:

"In general, *but not by way of limitation*, consonant with other applicable statutory provisions, the state board of education shall:

"(a) Adopt and maintain standards, criteria, guidelines or rules and regulations for the following:

"(1) School libraries and textbooks and other educational materials;

"(2) Courses of study and curriculum;

"(3) Accredited schools including elementary, secondary and junior colleges, public and nonpublic;

"(4) Certification of administrators, teachers, counselors and supervisors of school districts and of the state department of education and of teachers and administrators of nonpublic schools;

"(5) Have general supervision of school nurses.

"(b) Administer the laws of this state concerning the matters named in this section and all other matters *relating to the general supervision of the public schools and institutions under supervision of the state board of education.*" (Emphasis supplied.)

K. S. A. 72-8205 provides in pertinent part as follows:

". . . Except as otherwise provided in the unification acts the [unified district] board [of education] shall have and may exercise the same powers and authorities as were immediately prior to this act conferred uniformly upon boards of education in cities of the first class, and, in addition thereto, the powers and authority expressly conferred by law. The [unified district] board [of education] shall have authority to prescribe courses of study for each year of the school program and provide rules and regulations for teaching in the unified district and general government thereof, and to approve and adopt suit-

able textbooks and study material for use therein subject to the plans, methods, rules and regulations formulated and recommended by the state board of education. . . ." (Emphasis supplied.)

K. S. A. 72-1623, provides in material part:

"The board [of education in cities of first and second class] shall establish and maintain a system of free public schools for all children residing in the city school district and may make all necessary rules and regulations for the government and conduct of such schools, *consistent with the laws of the state.* . . ." (Emphasis supplied.)

Construing the provisions of K. S. A. 72-8205 and 72-1623 in conjunction with each other the district board insists it has sole authority to make all necessary rules and regulations for the government and conduct of the public schools within its district. The board overlooks that part of 72-8205 which is italicized above relating to state board recommendations, as well as the clause italicized in 72-1623: "consistent with the laws of the state." Both K. S. A. 72-8205 and 72-1623 were enacted prior to adoption of the 1966 amendment. The laws relating to schools and school matters have undergone significant change since 1966, and state supervision has come into the picture. The rules and regulations adopted by district boards must be consistent with present laws, including those which now provide for supervision by the state board of education.

It appears that the present statutory pattern, quite aside from constitutional provisions, is one of entrusting the operation of local public schools to local boards of education subject to the general supervision of the state board of education, such supervision being restricted, however, by the limitations which inhere in the nature of supervision.

We see no flaw in the statutory pattern by reason of the legislature having listed in 72-7513 (a) five general areas in which the state board should adopt and maintain standards, criteria, guidelines, or rules and regulations. The statute makes it clear that the enumeration is "not by way of limitation." Legislative intent is made even plainer in this respect by subsection (b) which provides that the state board shall administer the laws concerning the matters named and all other matters relating to the general supervision of the public schools.

The question remains: Did the state board exceed the scope of its general supervisory authority in adopting K. A. R. 91-15-1? We find little legal authority to assist us in determining what is com-

p: within the term "supervision." In common parlance we sup-

pose the term would mean to oversee, to direct, to inspect the performance of, to superintend. (See Webster's International Dictionary, Third Edition; American Heritage Dictionary.) It is difficult to be exact as to the legal meaning of the term, for much depends on the context in which it is set out.

In *Continental Casualty Company v. Borthwick*, 177 So. 2d 687, 689 (Fla. App.), the court stated;

"A reference to recognized lexicographies reveals that the word 'supervision' is capable of definition—that is, by the use of general, comprehensive words. For example, in Webster's Collegiate Dictionary, the definition of supervision is two-fold: namely, as 'Act of supervising' and as 'The direction and critical evaluation of instruction, esp. in public schools.'"

In *Commonwealth of Pennsylvania v. Brown*, 260 F. Supp. 323, 348, the federal court speaks of supervision as importing regulation.

Perhaps the case most helpful in getting at the problem is *Great Northern R. Co. v. Snohomish County*, 48 Wash. 478, 93 Pac. 924, where the Washington Supreme Court said:

"What is meant by *general supervision*? Counsel for respondents contend that it means, to confer with, to advise, and that the board acts in an advisory capacity only. We cannot believe that the legislature went through the idle formality of creating a board thus impotent. Defining the term 'general supervision' in *Vantongerren v. Heffernan*, 5 Dak. 180, 38 N. W. 52, the court said:

"The secretary of the interior, and, under his direction, the commissioner of the general land office has a general "supervision over all public business relating to the public lands." What is meant by "supervision?" Webster says supervision means "To oversee for direction; to superintend; to inspect; as to supervise the press for correction." And, used in its general and accepted meaning, the secretary has the power to oversee all the acts of the local officers for their direction; or as illustrated by Mr. Webster, he has the power to supervise their acts for the purpose of correcting the same; and the same power is exercised by the commissioner under the secretary of the interior. It is clear, then, that a fair construction of the statute gives the secretary of the interior, and, under his direction, the commissioner of the general land office the power to review all the acts of the local officers, and to correct, or direct a correction of, any errors committed by them. Any less power than this would make the "supervision" an idle act,—a mere overlooking without power of correction or suggestion."

"Defining the like term in *State v. Fremont etc. R. Co.*, 22 Neb. 313, 35 N. W. 118, the court said:

"Webster defines the word "supervision" to be "The act of overseeing; inspection; superintendence." The board therefore, is clothed with the power of overseeing, inspecting and superintending the railways within the state, for the purpose of carrying into effect the provisions of this act, and they are clothed with the power to prevent unjust discriminations against either persons or places."

"It seems to us that the term 'general supervision' is correctly defined in these cases. . . ." (pp. 484, 485.)

Considering the frame of reference in which the term appears both in the constitution and the statutes, we believe "supervision" means something more than to advise but something less than to control. The board of regents has such *control* over institutions of higher learning as the legislature shall ordain, but not so the board of education over public schools; its authority is to *supervise*. While the line of demarcation lies somewhere between advice and control, we cannot draw the line with fine precision at this point; we merely conclude that the regulation which is the bone of contention between the state and district boards in this case falls within the supervisory power of the state board of education.

As forcefully pointed out in the brief of *amicus*, the regulation makes no attempt to prescribe what the rules of conduct shall be or what procedures are to be adopted for enforcing compliance with the rules adopted. As is stated in the brief, "The content of such rules and regulations was left entirely to the discretion of the local board."

Conditions existing on many campuses during recent years have illustrated only too well the needs for rules of conduct within educational systems, as well as procedures to insure compliance therewith. The rules of conduct and procedures which are adopted must not offend against public laws or violate constitutional rights. To insure that codes comply with local, state and federal laws it is not unreasonable to require they be submitted to legal counsel before being filed with the state board.

Grave fear is voiced by the defendant that the regulation in question is but the forerunner of efforts by the state board to encroach upon the constitutional powers entrusted to local boards by article 6, § 5, and that eventually public boards of education will be reduced to adopting budgets dictated by the state board, paying bills and handing out diplomas.

We will not impute future bad faith to the state board of education. There is room enough for every person, every group, every public agency interested in the education of our young people to have a significant and meaningful role in this vital area of national concern.

The people of this state, by constitutional fiat, have placed the maintenance, development and operation of local public schools with locally elected school boards, subject to the general super-

vision of the state board of education. Local boards of education as well as the state board of education, will have sufficient duties to perform and will find plenty of authority to exercise without getting into each other's hair or without encroaching upon each other's domain. The need to educate our young persons is far too urgent a priority for the members of either state or local boards to permit relations between them to deteriorate and become abrasive.

The judgment of the lower court is reversed.

FROMME, J., dissenting. The majority have quietly and effectively removed any vestige of authority from local school boards. The constitutional provision (Art. 6, Sec. 5) which states that local public schools "shall be maintained, developed and operated by locally elected boards" is now emasculated. This emasculation is accomplished by the court by the simple declaration contained in Syllabus ¶ 6 making Art. 6, Sec. 2 (a) self-executing and by the further holding that "general supervision" of public schools by the state board includes the right to require local school boards to adopt rules to govern the conduct of teachers, students and employees. Heretofore these have been considered matters to be left to the local school board or to the legislature. This is no longer true.

The constitutional provision which directs the legislature to provide for a state board of education with general supervision over public schools is not, in my opinion, a self-executing provision for the intention expressed therein contemplates subsequent legislation to give it effect.

The state of Kansas serves an area containing both urban centers and rural areas. The background and needs of the students and teachers in our individual local schools are varied. The problems arising in the areas of internal control and operation of these educational facilities are best solved by local school boards. The rule with which this court is presently concerned was promulgated by the state board of education and on the surface the rule is innocuous, but it does pertain to matters of local control and operation. The rule, with this court's present decision, has become the vehicle for placing control of local schools in the hands of the state board. When we approve the state board's rule making authority in this case the board is assured of the power to control local schools. The local school board in the present case was directed by the state board to adopt rules of conduct for its teach-

ers, students and employees. It was further directed to provide specific procedures for enforcing the rules and to have legal counsel approve the same. When this is accomplished these rules are required to be filed with the state board.

Once "general supervision" by the state board, as mentioned in the constitution, is recognized by this court to include areas pertaining to local management and operation the camel has his head in the tent. The local board's authority to operate its schools will slowly but surely be crowded into a corner by the state board. The local board's right of control then becomes permissive, dependent upon how far the state board desires to enter the area of local control. If the state board can require promulgation of rules of local concern, they can require such to be uniform in this state. If such rules are to be made uniform in this state the state board will have to dictate their contents and will do so.

The legislature has already launched itself into the area of general supervision of public schools. As mentioned in the majority opinion the legislature in K. S. A. 72-7513 has authorized the state board of education to adopt guidelines or rules in certain defined areas of "general supervision". These areas include libraries, text books, courses of study, accreditation of schools, certification of teachers, employees and school nurses. All of these areas of general supervision recognized by the legislature are of statewide interest where uniformity directly affects the overall general quality of education in the state. None are related directly to internal matters of local operation. If the state board is not attempting to dictate matters of local conduct, as it now contends, and if it will be satisfied with such rules of conduct as the local boards see fit to adopt under K. A. R. 91-15-1, why then is the state board not satisfied to rely on K. S. A. 72-7513 (b) as authority for adoption of the present rule. The state board does not do so. Instead it argues, and this court accepts the premise, that the constitutional provision under which the state board is created is self-executing in the area of general supervision of the schools. I cannot agree.

Kansas has a few cases discussing self-executing constitutional provisions. In *Higgins v. Cardinal Manufacturing Co.*, 188 Kan. 11, 360 P.2d 456, the court found the right to work amendment (Art. 15, Sec. 12) to be self-executing. In *Higgins* it was said:

"It is a settled rule of constitutional construction that prohibitive and restrictive constitutional provisions are self-executing and may be enforced by courts independent of any legislative action, unless it appears from the

language of the provision that the enactment of legislation is a requisite to give it effect. . . ." (p. 18)

In accord, see 16 C. J. S. Constitutional Law, § 49, p. 147. The provision of Art. 6, Sec. 2 (a) with which we are presently concerned is not a prohibitive or restrictive constitutional provision and in that sense is not self-executing.

In *State, ex rel., v. Deck*, 106 Kan. 518, 188 Pac. 238, the court discussed self-executing clauses in the context of the recall amendment to the constitution (Art. 4, Sec. 3-5). The general rule is stated as follows: ". . . A self-executing provision of the constitution is simply a provision which needs no supplementary legislation to make it effective. . . ." (106 Kan. at 521.) The court found certain details of the amendment were self-executing but that the provisions for calling a recall election were not, and in that detail it was said the amendment "must await supplementary legislation to give it potency". The case clearly recognizes that a constitutional provision may be partially self-executing and partially not self-executing, but it is not controlling authority in the present case. (To the same effect, see 16 C. J. S., Constitutional Law, § 48, p. 143 and 16 Am. Jur. 2d, Constitutional Law, § 94, p. 280.)

In the course of the *Deck* opinion, the court quoted from 6 Ruling Case Law, at page 61, as follows:

"In adopting constitutions the people frequently leave to the legislature the enactment of statutes as to detailed matters, in order to make the provisions fully operative. . . . Where constitutional provisions wholly omit the detailed provisions needed to make them effective, the rule is established that they will not be considered as self-executing. As illustrations may be mentioned constitutional commands directed to the legislature to pass suitable laws providing for religious instruction in schools, and to establish election machinery for enacting legislation by the initiative and referendum. It has likewise been held that a constitutional mandate is not self-executing which provides that property should be uniformly taxed, but that it is otherwise as to a provision that the general assembly should levy a capitation tax equal to the tax on property valued at a designated amount. Among other illustrations of mandatory constitutional provisions which are not self-executing may be mentioned those that direct that the fitness of persons to be appointed to public office shall be ascertained as far as practicable by competitive civil service examinations. Such provisions are merely announcements of a general principle clearly requiring legislation for its enforcement.'" (p. 525)

Sections 1, 2 (a) and 2 (b) of Article 6 are all prefaced by the statement, "The legislature shall provide for" and each section clearly requires legislation for enforcement.

In *State, ex rel., v. Highwood Service, Inc.*, 205 Kan. 821, 473 P. 2d 97, in discussing the constitutional ban against lotteries, (Art. 15, Sec. 3) this court recognized that while a constitutional provision “. . . may be self-executing, it is not self-defining. That function is judicial in nature, . . .” (205 Kan. at 825) (See also *State v. Nelson*, 210 Kan. 439, 502 P. 2d 841.) Thus if the provision is self-executing the definition of this somewhat ambiguous term, general supervision, is left to this court.

Perhaps the most interesting Kansas case for present purposes is *Woodworth v. Bowles*, 61 Kan. 569, 60 Pac. 331. That case deals with the provision of Art. 12, Sec. 2 which states that “Dues from corporations *shall be secured* by the individual liability of the stockholders to the amount of stock owned by each stockholder, and such other means as shall be provided by law; . . .” (Emphasis supplied.)

The court in *Woodworth* recognized that if the provision was held to be self-executing, the legislature might adopt procedures to grant a remedy to creditors, but if those legislative procedures were inadequate or conflicting with the constitutional provision, the latter would control. In *Woodworth* it was said:

“. . . If the legislative enactments are not up to the requirements of the constitution, and if the constitution be self-operative to the ends sought to be reached, this court must carry out the mandate of the organic instrument. . . . Although the legislature might rightfully devise a mode of procedure adapted to the end in view, yet, in the lack of such legislative enactment, the constitution, through its self-operative force, would seize upon and appropriate to its purposes such general forms of action as had been already provided for similar cases, . . .” (61 Kan. 573)

Thus, in the present case, if Art. 6, Sec. 2 is self-operative so as to give the state board general supervision of the public schools, then, while the legislature may act, any legislation must be in harmony with that power of supervision and may not detract from that power or limit it in any way. (See also 16 Am. Jur. 2d, Constitutional Law, § 95, p. 280.)

The *Woodworth* court found the provision was not self-executing, and deemed it only a direction to the legislature. The court said:

“. . . As a rule, constitutional provisions, unless expressed in negative form or possessed of a negative meaning, are not self-assertive. They usually assume the form of a command to the legislature, and legislative action becomes necessary to give them effect. The one under consideration is an instance of the latter kind. The constitution does not ordain in terms of the present tense the individual liability of stockholders for the debts of corpora-

tions, but it ordains it in terms of the future tense. It declares that ‘dues from corporations *shall be secured*,’ etc., not that ‘dues from corporations are secured.’ When the constitution declares that a right shall be secured or a thing shall be done, it means that it shall be secured, or shall be done, by the legislature. In such case, the constitution places upon the legislature the obligation to carry out its ordinances by appropriate enactment.” (61 Kan. p. 574)

This “present tense—future tense” distinction is relevant to the constitutional provision now under consideration. Art. 6, Sec. 2 provides that “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, . . .” (Emphasis supplied) The amendment does not say *there shall be a state board of education which has general supervision*. Under the reasoning of the *Woodworth* case, by its use of the future tense the clause requires the legislature to provide for the board and further requires that the legislature give to the board general supervision of the public schools. As such, the clause is not self-executing. It leaves to the legislature responsibility for establishing guidelines for the board’s exercise of general supervision. That the constitution reserves to the legislature ultimate control of the public schools is made clear from the statement in Art. 6, Sec. 1 that “The legislature shall provide for . . . educational, . . . improvement by establishing and maintaining public schools, . . . which may be organized and changed in such manner as may be provided by law.” Under Art. 6, Sec. 6, the legislature has responsibility for financing the state’s educational interests. Under Sec. 5, the legislature must sanction and may review certain contracts of local boards, though they are to be operated under the state board’s general supervision. The legislature cannot possibly perform these constitutionally mandated duties if the state board of education has a power by virtue of the constitution of general supervision of the public schools independent of legislative guidelines.

The reason for giving general supervisory authority to the state board is apparent. The legislature is functionally unsuited to exercise the day-to-day decision making necessary in the supervision of a statewide system of public schools and for this reason a state board of education is logically needed. However, Art. 6, taken as a whole, clearly vests in the legislature the authority to determine by statute the scope of the state board’s general supervision.

In 16 Am. Jur. 2d, Constitutional Law, § 98, p. 283, it is stated:

"Since a constitutional provision which depends upon legislative action for its effectiveness is ipso facto not self-executing, it follows that in determining whether a provision is self-executing, the question in every case is whether the language of a constitutional provision is addressed to the courts or to the legislature. . . ."

In 16 C. J. S., Constitutional Law, § 54 (*d*), p. 162, it is said:

"A grant of powers to an officer is usually self-executing. . . . A constitutional provision granting the legislature authority to confer specified powers on a commission does not of itself give the commission any powers. . . ."

In the present case the constitutional provision is addressed to the legislature and it pertains to powers of a board or commission. Two things stand out clearly in my mind. First, the authority of the state board of education mentioned in the constitution is limited to general supervision of the public schools and any authority encompassed by such reference is not intended to be self-executing. Second, the term "general supervision of public schools" must now, under the court's present decision, be defined and limited by this court, not by the legislature.

The majority of this court now decide the authority of general supervision includes the authority to require all local school boards to adopt rules of local conduct to govern their students, teachers and employees, to require the adoption of specific procedures for enforcement of such rules and to require approval of said rules by legal counsel. After reading the court's decision, I am unable to determine what authority remains in the hands of the legislature and what self-executing constitutional authority resides in the state board of education. This problem will continue to plague not only this court but the legislature as well.

The legislature had previously set forth in K. S. A. 72-8901, *et seq.*, rules of conduct pertaining to students. Does the legislature now have that authority or does it now reside in the state board of education? The legislature has previously outlined specific procedures for the enforcement of rules governing student conduct and authorizing suspension or expulsion. (K. S. A. 72-8902.) Does the legislature now have that authority or does it now reside in the state board of education?

If the state board has this authority to require the local boards to adopt additional rules of conduct to govern students and to provide specific procedures for their enforcement under its self-executing

constitutional grant it has the ultimate authority in this area. It may be exercised independently of any legislative action.

In *Blaine v. Board of Education*, 210 Kan. 560, 502 P. 2d 693, this court said:

"Article 6, § 5 of the Constitution of the State of Kansas provides that local public schools shall be maintained, developed and operated by locally elected boards.

"In compliance with the Kansas constitutional mandate the legislature has established a system of local public schools which are placed under the supervision of locally elected boards of education.

"The legislature has authorized boards of education to suspend or expel any student guilty of violating published regulations adopted by the board, and has provided a due process hearing for students suspended or expelled. (K. S. A. 1971 Supp. 72-8901 *et seq.*)" (Syl. ¶¶ 1, 2 and 3.)

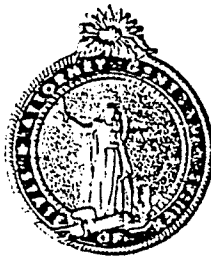
The thrust of our present decision raises serious doubts as to the efficacy of our holding in *Blaine* and will create grave difficulties for the local boards in the future. By holding that the general supervisory power granted in the constitution is self-executing, and by not being able to define the term precisely, we make it necessary in the future for this court to pass upon the constitutionality of each legislative act and each rule of the state board relating to control and operation of the public schools to determine if they are encompassed in the term "general supervision".

The ink is hardly dry on our opinion in *Brickell v. Board of Education*, 211 Kan. 905, 508 P. 2d 996, where this court said:

"Education is the title of Article 6 of our constitution which specifically delegates responsibility for all aspects of the subject to the legislature. . . ." (p. 913.)

We now have decided the legislature no longer has this full responsibility. *Brickell* hereafter must be read as holding our constitution delegates responsibility to the legislature for all aspects of the subject, except those which this court may hereafter determine to be in the area of general supervision of public schools. This latter area, under the court's present decision, is now reserved exclusively to the state board of education under the newly declared self-executing provisions of our constitution.

The people of this state had no intention of giving up all control of their local schools to the state board of education when they approved the new constitutional article on education. An intention is clearly expressed in the constitution to have the legislators provide the guidelines for general supervision of the schools. In my opinion the constitutional provision is not self-executing and I would affirm the district court's judgment.



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ATTORNEY GENERAL OPINION NO. 81-236

Mr. Floyd L. Grimes, Chairman
State Board of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Education--
State Board of Education

Synopsis: The State Board of Education lawfully may adopt rules and regulations governing the certification of teaching, administrative and other supportive personnel in 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.

Although the procedures prescribed in K.S.A. 77-415 et seq. do not apply to regulations issued by the State Board of Education pursuant to the authority possessed by the State Board under Article 6, Section 2(a) of the Kansas Constitution, the State Board would be well advised to adopt similar procedures in order to provide adequate notice and opportunity for hearing. Cited herein: K.S.A. 1980 Supp. 77-415 (as amended by L. 1981, ch. 365, §1), K.S.A. 1980 Supp. 77-421 (as amended by L. 1981, ch. 324, §33), Kan. Const., Art. 2, §1, Art. 6, §§1, 2.

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Mr. Floyd L. Grimes
Page Two

Dear Mr. Grimes:

On behalf of the State Board of Education, you inquire: (1) whether the State Board of Education lawfully can adopt rules and regulations governing the certification of teaching, administrative and other supportive personnel in unified school districts, relying upon its constitutional authority and dis-regarding any statutory authority; and (2) whether the State Board of Education, operating in strict compliance with the constitutional authority granted it, may adopt rules and regulations relating to the certification of teachers, administrators and supportive staff, without complying with the statutory laws relating to the promulgation of rules and regulations.

A consideration of Article 2, Section 1 and Article 6, Sections 1 and 2 of the Constitution of the State of Kansas, together with decisions of the Kansas Supreme Court regarding those sections of the constitution, is necessary to answer your inquiries.

By Article 2, Section 1 of the Kansas Constitution, the "general legislative power" of this state is vested in the House of Representatives and the Senate. See, e.g., Hines et al. v. City of Leavenworth et al., 3 Kan. *186 (1865). The Kansas Supreme Court has referred to this section of our constitution as "the general grant of legislative power to the legislature." See, e.g., Leek v. Theis, 217 Kan. 784, 813 (1975). In Theis, supra, the Court held: "All governmental sovereign power is vested in the legislature, except such as is granted to the other departments of the government, or expressly withheld from the legislature by constitutional restrictions." Id. at Syl. ¶7. Thus, except for such sovereign power as is granted to other departments of the government or as is expressly withheld from the legislature by constitutional restrictions, the legislature possesses all governmental sovereign power.

In addition to the general grant of legislative power by Article 2, Section 1, Article 6, Section 1 of the Kansas Constitution charges the legislature with the duty to "provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law." Thus, the state constitution not only grants general legislative power to the legislature, but also requires the legislature to exercise that power to provide for education by establishing and maintaining public schools and related activities.

Also, Article 6, Section 2(a) of the Kansas Constitution states:

"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."
(Emphasis added.)

By requiring the establishment of a state board of education, this constitutional provision imposes another positive duty upon the legislature in regard to the matter of education. However, the balance of this section has been viewed as a limitation on legislative authority. In State, ex rel., v. Board of Education, 212 Kan. 482 (1973), commonly referred to as "the Peabody case," the Kansas Supreme Court held:

"That part of article 6, §2(a) of the Kansas Constitution granting to 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, is self-executing in effect." Id. at Syl. ¶6.

The Court also stated: "A self-executing provision of a constitution is a provision requiring no supplementary legislation to make it effective and leaving nothing to be done by the legislature to put it in operation." Id. at Syl. ¶3.

Moreover, the Court held:

"Where a constitutional provision is self-executing the legislature may enact legislation to facilitate or assist in its operation, but whatever legislation is adopted must be in harmony with and not in derogation of the provisions of the constitution." Id. at Syl. ¶7.

Thus, based upon the Peabody case, we must conclude it is settled that, while Article 2, Section 1 of our Constitution grants general legislative power to the Legislature and Article 6, Sections 1 and 2 require the exercise of legislative power to establish public

schools, educational institutions, related activities and the State Board of Education, the portion of Article 6, Section 2(a), emphasized above, is self-executing. Consequently, we also must conclude that this portion of Article 6, Section 2(a) leaves nothing to be done by the Legislature to put it in operation, i.e., it requires no enabling legislation. Finally, we must conclude that, while the Legislature may enact legislation to facilitate or assist in the operation of these self-executing provisions, the Legislature is powerless to adopt legislation which is not in harmony with said provisions. In short, pursuant to the above-emphasized provisions of Article 6, Section 2(a) of the Kansas Constitution, it is the State Board of Education, and not the Legislature, that possesses "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." (Emphasis added.) Kan. Const., Art. 6, §2(a).

However, NEA-Fort Scott v. U.S.D. No. 234, 225 Kan. 607 (1979), makes it absolutely clear the power of the State Board of Education as to "general supervision" is not a carte blanche grant of authority. Instead, "Article 6, section 2 limits the power of the State Board of Education to 'general supervision' of public schools." Id. at 612. Thus, it is only within the limited sphere of "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," that the State Board of Education's power is inviolate by legislative interference.

Having thus delineated the respective constitutional powers of the State Board of Education and the Legislature, all that remains to answer your inquiries is to determine whether the subject of each inquiry is in the exclusive "general supervision" domain of the State Board. If so, the State Board is free to regulate the subject as it sees fit, without interference by the Legislature. State, ex rel. v. Board of Education, supra.

You first inquire whether the State Board of Education lawfully can adopt rules and regulations governing the certification of teaching, administrative and other supportive personnel in unified school districts, relying upon its constitutional authority and disregarding any statutory authority.

In NEA-Fort Scott v. U.S.D. No. 234, supra, the Court was called upon to determine whether the 1977 amendments to the Teachers' Collective Negotiations Act, which gave the Secretary of Human Resources a prominent position in the negotiation and mediation process between teachers and school boards, conflicted with the

State Board of Education's "general supervision" of the educational interests of the state. In answering this question in the negative, the Court said:

"The authority granted the secretary in no way conflicts with the basic mission of the State Board of Education. The board's [basic] mission is to equalize and promote the quality of education for the students of this state by such things as statewide accreditation and certification of teachers and schools. See K.S.A. 1978 Supp. 72-7513. The functions of the Secretary of Human Resources under the act are limited and confined to professional negotiations, an area not considered by this court to be within the basic mission of the public schools of this state." (Emphasis added.)
225 Kan. at 610-611.

Based upon the above-quoted statements of the Court, we conclude the subject of certification of teachers, administrators and other supportive personnel in public schools is an area within the basic mission of the State Board of Education. Consequently, it is a matter subject to the general supervisory powers of the State Board of Education, under Article 6, Section 2(a) of the Kansas Constitution. Therefore, we are of the opinion the State Board of Education lawfully may govern this matter pursuant to the State Board's constitutional authority, notwithstanding any statutory authority or lack thereof.

You also inquire whether the State Board of Education, operating in strict compliance with the constitutional authority granted it, may adopt rules and regulations relating to the certification of teachers, administrators and supportive personnel, without complying with the statutory laws relating to the promulgation of rules and regulations. By this inquiry, we assume you are asking us to state the procedures to be followed by the State Board of Education in adopting measures governing the certification of teachers and other school personnel.

Accordingly, we note that Article 6, Section 2(a) of the state constitution does not prescribe, nor relate to, procedures to be followed in the exercise of the general supervisory power granted therein to the State Board. Moreover, those constitutional provisions neither expressly nor impliedly prohibit the Legislature from prescribing the procedure to be followed by the State Board of Education in adopting rules and regulations relating to any matter within the exclusive jurisdiction of the State Board.

We are of the opinion the procedure to be followed by any state agency, in imposing conditions, limitations, requirements, or other restrictions on the citizens of this state, are a matter of general public concern. Such procedures have nothing to do with the basic mission of the State Board of Education. Consequently, we believe such procedures are a matter rightly subject to the Legislature's sovereign power under Article 2, Section 1 of the Kansas Constitution. Thus, while we do not believe the Legislature may prescribe, alter, amend or modify the content of rules and regulations adopted by the State Board of Education under the authority of Article 6, Section 2(a) [State, ex rel., v. Board of Education, supra], we do believe the Legislature may prescribe the procedures to be followed by all state agencies, including the State Board of Education, in adopting rules and regulations. See, e.g., NEA-Fort Scott v. U.S.D. No. 234, supra.

In K.S.A. 77-415 et seq., the Legislature has prescribed a detailed procedure to be followed in adopting "rules and regulations," as that term is defined in K.S.A. 1980 Supp. 77-415(4), as amended by L. 1981, ch. 365, §1. In that statute, "rule and regulation" generally is defined thusly;

"'Rule and regulation,' 'rule,' 'regulation' and words of like effect mean a standard, statement of policy or general order, including amendments or revocations thereof, of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency." (Emphasis added.)

In Attorney General Opinion No. 75-35, it was said in regard to the above-quoted provisions:

"Thus, rules and regulations subject to the provisions of K.S.A. 77-415 et seq. are those adopted either 1) to implement or interpret . . . legislation enforced or administered by the agency, or 2) to govern the organization or procedure of the agency. A regulation which is adopted to implement or interpret a self-executing constitutional provision, and not to implement or interpret statutory provisions, is not one which falls within the scope of K.S.A. 77-415 et seq." Id. at 5.

We agree with that conclusion, and it is our opinion the State Board of Education, when proceeding under the constitutional authority granted it by Article 6, Section 2(a), may establish requirements which must be met, and procedures which must be followed, by persons desiring to be certificated by the State Board of Education as a teacher, administrator or other school professional, without complying with the requirements of K.S.A. 77-415 et seq. However, we hasten to reiterate our opinion that the Legislature, without infringing upon the authority of the State Board of Education under the provisions of Article 6, Section 2(a), can specify the procedure to be followed by the State Board of Education in issuing requirements concerning certification and other matters within the jurisdiction of the State Board. Due to this fact, we recommend the State Board of Education follow the notice and hearing requirements of K.S.A. 1980 Supp. 77-421, as amended by L. 1981, ch. 324, §33. In relevant part, that statute provides:

"(a) . . . [T]he adopting state agency shall give at least 15 days' notice of its intended action The notice . . . shall contain a statement of the terms, or the substance of the proposed rules and regulations or a description of the subjects and issues involved. Such notice shall state the time and place of the public hearing to be held thereon and the manner in which interested parties may present their views thereon. . . .

"(b) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. When requested to do so, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto. . . .

. . . .

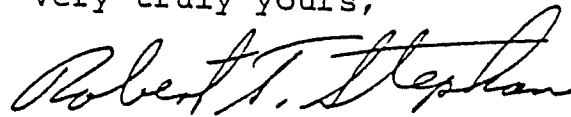
"(d) No rule and regulation shall be adopted except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted unless it shall receive approval by roll call vote of a majority of the total membership of the adopting board, commission, authority or other similar body."

Mr. Floyd L. Grimes
Page Eight

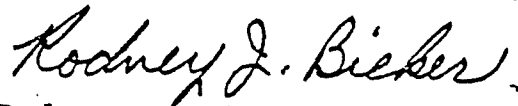
By following the procedures of this statute, the State Board would be acting in accordance with "rule and regulation" adoption procedures currently mandated by the legislature for other state agencies, which procedures could be extended to apply to the State Board of Education.

In summary, it is our opinion the State Board of Education lawfully may adopt rules and regulations governing the certification of teaching, administrative and other supportive personnel in 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. It further is our opinion that, although the procedures prescribed in K.S.A. 77-415 et seq. do not apply to regulations issued by the State Board of Education pursuant to the constitutional authority possessed by the State Board under Article 6, Section 2(a) of the Kansas Constitution, the State Board would be well advised to adopt similar procedures in order to provide adequate notice and opportunity for hearing.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 7, 1983

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ATTORNEY GENERAL OPINION NO. 83- 154

Honorable Fred L. Weaver
State Representative, First District
House Minority Leader
Rural Route No. 1
Baxter Springs, Kansas 66713

Re: Kansas Constitution--Education--State Board of
Education; Authority

Kansas Constitution--Education--Legislature;
Authority

Synopsis: Under Article 6, Section 2(a) of the Kansas Constitution, as interpreted by the Kansas Supreme Court in State ex rel. v. Board of Education, 212 Kan. 482 (1973) and NEA-Fort Scott v. U.S.D. No. 234, 225 Kan. 607 (1979), the State Board of Education is endowed with the authority to exercise general supervision of public schools and other educational institutions and all the educational interests of the state, except those functions delegated to the State Board of Regents. This authority is limited to matters which will equalize and promote the quality of education for the students of this state, including such matters as the accreditation of schools, certification of school personnel, and establishment of minimum curriculum and graduation requirements. Within such matters, measures adopted by the State Board have priority over conflicting legislation.

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The Kansas Constitution reserves to the legislature the exclusive authority over all other matters relating to education, including the establishment of public schools and other public educational institutions, and the provision for finance of all the educational interests of the state. The State Board of Education has no constitutional authority in regard to these matters. Cited herein: Kan. Const., Art. 6, §§1, 2(a) and 6.

*

*

*

Dear Representative Weaver:

You seek an opinion clarifying "the areas of potential conflict" between the legislature and the State Board of Education, and ask "how far does the state's constitutional mandate reach and is there any case law which draws some boundaries," and "if the legislature and the State Board of Education are not in agreement then . . . which has supreme authority."

Your inquiry, of course, relates to the provisions of Article 6, Section 2(a) of the Kansas Constitution. This section of the constitution provides:

"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."
(Emphasis added.)

In State ex rel. v. Board of Education, 212 Kan. 482 (1973), (commonly known as the Peabody case), the Kansas Supreme Court determined that the above-emphasized provisions of Art. 6, §2(a) are "self-executing." Id. at Syl. ¶6. This means that those provisions need no supplementary legislation to make them effective. See, e.g., State ex rel. v. Deck, 106 Kan. 518, 521 (1920). Consequently, the State Board needs no grant of authority from the legislature to exercise general supervision of public schools, educational institutions, and all the educational interests of the state. This also means that, while the legislature may enact legislation to facilitate or assist the State

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Board in exercising its power of general supervision, the legislature may not enact laws that conflict with or which are in derogation of the authority granted the State Board by the constitution. See, e.g., State ex rel. v. Board of Education, supra, at Syl. ¶7. Thus, there is a potential for conflict.

We are aware of only one case wherein the Kansas Supreme Court was called upon to determine whether a legislative enactment conflicted with the constitutional authority of the State Board of Education. The case is NEA-Fort Scott v. U.S.D. No. 234, 225 Kan. 607 (1979). This case involved certain amendments to the Teachers' Collective Negotiations Act during the 1977 legislative session. These amendments assigned negotiation and mediation functions to the Secretary of the Department of Human Resources. These functions, under previous law, had been performed by the State Board of Education.

In determining that the reassignment of these functions from the State Board to the Secretary of Human Resources was proper, the Court stated:

"The authority granted to the secretary in no way conflicts with the basic mission of the State Board of Education. The board's [basic] mission is to equalize and promote the quality of education for the students of this state by such things as statewide accreditation and certification of teachers and schools." (Emphasis added.) 225 Kan. at 610-611.

The Court also stated, in responding to the argument that the Peabody case (cited above) strongly inferred that matters such as collective negotiations between teachers and local boards of education must be supervised by the State Board of Education:

"That case [State ex rel. v. Board of Education (the Peabody case), supra] did not relate to collective negotiations and, although it is authority for holding article 6, section 2 is self-executing, the case did not hold that said constitutional provision exhausts legislative powers on all subjects related to the field of public education. In fact, the case specifically holds otherwise. It must be kept in mind the constitution limits rather than confers power. Article 6, section 2 limits the power of the State Board of Education to

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'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]." 225 Kan. at 611-612.

From the above-quoted statements of the Court, we discern that the constitutional power of the State Board of Education is limited to accomplishing its basic mission of equalizing and promoting the quality of education for the students of this state. Certainly, regulations of the State Board which are confined to matters relating to the quality of education for the students of this state are within the State Board's constitutional authority. Specifically, certain matters which relate to the quality of education, such as "statewide accreditation and certification of teachers and schools," are within the powers of the Board. NEA-Fort Scott v. U.S.D. No. 234, *supra*, at 611. To these matters, we believe it would be appropriate to add minimum curriculum and graduation requirements, applicable throughout the state. These and similar matters, in our judgment, are subjects properly addressed by the State Board under its constitutional supervisory authority.

Thus, in regard to these matters, the State Board of Education may exercise its constitutional authority without legislation or unfettered thereby. Of course, this does not mean that the legislature may not adopt legislation on these same subjects. The legislature is merely prohibited from enacting legislation which is out of harmony with or which is in derogation of the State Board's supervisory authority under the constitution. Thus, it is only in the event of a conflict between legislation and State Board regulation relating to the quality of education that the legislation would be ineffective.

However, the constitution prescribes certain matters relating to education which are solely within the control of the legislature. Article 6, Section 1 prescribes that the legislature shall provide for educational improvement "by establishing and maintaining public schools, educational institutions and related activities." Also, Article 6, Section 6(b) states: "The legislature shall make suitable provision for finance of the educational interests of the state."

These provisions, in our judgment, make it clear that all matters which relate to the establishment of public schools or other educational institutions, or which relate to the financing of such schools or institutions, are within the exclusive control of the legislature. In addition, the Court's

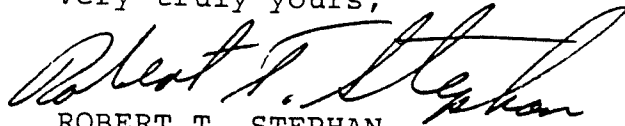
Honorable Fred L. Weaver
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decision in NEA-Fort Scott v. U.S.D. No. 234, supra, establishes that all matter relating to collective negotiations, including negotiations between school personnel and boards of education, are matters for the legislature and not the State Board of Education.

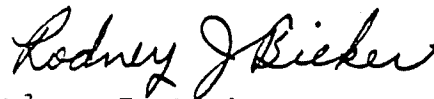
Consequently, in response to your specific inquiries, it is our opinion that based upon the provisions of sections 1, 2(a) and 6 of Article 6 of the Kansas Constitution and the decisions of the Kansas Supreme Court in State ex rel. v. Board of Education (the Peabody case), supra, and NEA-Fort Scott v. U.S.D. No. 234, supra, the State Board of Education is endowed with the authority to exercise general supervision of public schools and other educational institutions and all the educational interests of the state, except educational functions delegated to the State Board of Regents. This authority, however, is limited to matters which will equalize and promote the quality of education for the students of this state. This includes such matters as the accreditation of schools, certification of school personnel, and establishment of minimum curriculum and graduation requirements. When confined to such matters, measures adopted by the State Board have priority over conflicting legislation.

The constitution, however, reserves to the legislature the exclusive authority over all other matters relating to education, including the establishment of public schools and other public educational institutions and the provision for finance of all the educational interests of the state. The State Board of Education has no constitutional authority in regard to these matters. The State Board has constitutional authority only in matters relating to the equalization and promotion of the quality of education for the students of this state.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



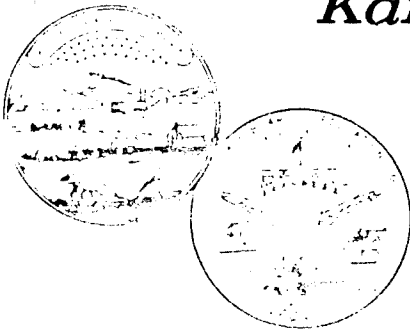
Rodney J. Bleker
Assistant Attorney General

RTS:BJS:RJB:jm

Kansas State Board of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612-1103



Kay M. Groneman
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Connie Hubbell
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Evelyn Whitcomb
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Kathleen White
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Sheila Frahm
District 5

Theodore R. Von Fange
District 7

Robert J. Clemons
District 9

Dale Louis Carey
District 3

Marion (Mick) Stevens
District 10

TO: House Governmental Organization Subcommittee on HCR 5028

FROM: State Board of Education

SUBJECT: House Concurrent Resolution 5028

DATE: February 4, 1986

Listed below are responses to the questions you raised.

1. The practical/mechanical affects of HCR 5028.

Response: Under the existing provisions of the constitution, both the legislature and the State Board of Education, each acting under its own constitutional power, may adopt binding policies in regard to educational issues. This means the State Board does not need authority from the legislature to adopt binding regulations concerning matters relating to the general supervision of elementary and secondary schools.

The State Board of Education, under the current language of the Constitution, has used its general supervisory powers to adopt regulations in the areas of teacher certification and school accreditation. This means the State Board, through its constitutional powers, has adopted rules and regulations governing certification and accreditation without regard to legislative authorization. All other rules and regulations adopted by the State Board are adopted under authority granted to the Board by statute.

In general terms, the big changes that would come about if the self-executing powers of the State Board are eliminated are that the Legislature would have the right to review, and control through legislation, State Board rules and regulations in the areas of certification and accreditation and the State Board could not address any educational matter unless the legislature had enacted a statute authorizing the State Board to act in regard to that matter. The authority of the State Board to address any education issue would be totally dependent on the Board having been granted power by the legislature. Therefore, the State Board, before taking any action, would have to determine whether it had the authority to act. Also, it would be limited in its response to the authorization granted by the legislature.

2. Political aspects. How this would affect our agency and its duties.

Response: It appears that KASB and KNEA are both supporting HCR 5028. They will probably provide some funds in helping sell the resolution to voters if it is approved by the Legislature. The State Board may not have access to the money to oppose the resolution that KASB and KNEA will have in selling the resolution.

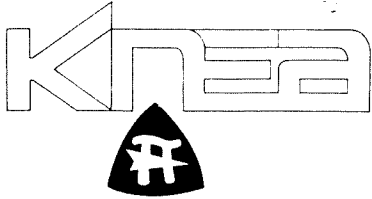
The biggest impact on the agency will be in the adoption of rules and regulations. For example, the State Board currently may adopt certain rules and regulations without approval of any legislative board or committee. If the self-executing power for the State Board is eliminated, both the rules and regulations board and the Joint Committee on Administrative Regulations would have the right to review the regulations.

3. What will the resolution do for education in the state of Kansas? Is the public's access to an elected Board any better than it is to an appointed Board? Do people talk to Regents' members the same way they talk to State Board of Education members? Would an elected Board be more accountable than an appointed one? How would Board members feel if they were only advisory?

Response: HCR 5028 does not change the selection process of State Board members; that is proposed under SCR 1634. However, in response to the question, an elected State Board is much more concerned with the opinion of their constituents due to the elective process. I believe you would have to say that an elected State Board would be more responsive to the needs of their constituents. The elected State Board would also, in many cases, be more concerned about their particular area while an appointed State Board would probably be more concerned about the state as a whole and not one particular area. Through the elective process, the State Board members are more likely to be known because they want their names recognizable at the ballot box. We believe that an elected State Board is more responsive to the needs of the people and we should continue to follow the same process by which the Governor and Legislature are elected. Finally, removing the Board's constitutional powers could result in less qualified individuals running for office since they will be serving in an advisory capacity only.

We hope this information will be of assistance to you.

FSF/4/b1



Craig Grant Statement to House
Governmental Organization Subcommittee
February 6, 1986

The question posed to the conferees was the political and practical effect of HCR 5028 if approved by the Legislature and the voters of Kansas. Kansas-NEA sees little or no actual changes in the present system. The State Board of Education would continue to operate as it has in the past by holding hearings and setting rules and regulations regarding the school districts assigned to it. The Legislature would have review capabilities over such rules and regulations; however, we do not anticipate the Legislature utilizing such authority to overturn rules and regulations.

As Senator Harder and Representative Crumbaker stated yesterday, the Legislature does not have the expertise or the desire to directly regulate the operation of our education system. They would delegate such supervision to the State Board as presently happens. The political reality would be that the holder of the purse strings would not have to use that power but would hold the ultimate responsibility for the operation of the educational system through its rules and regulations review capabilities. It seems logical that such a coupling of duties should occur.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

February 6, 1986

TO: House Governmental Organization Subcommittee on HCR 5028

FROM: Kansas Association of School Boards

For approximately the past ten years, the Kansas Association of School Boards has had a policy statement which supports placing the powers of the State Board of Education clearly under the jurisdiction of the Legislature. Twice within the last three years that policy has been reviewed by the KASB Legislative Committee, the policy development body of the association. Also, the policy statement has been voted upon by the Delegate Assembly, the policy determining body of the association.

The policy statement of the Kansas Association of School Boards is reflected in HCR 5028. It does not appear that the passage of this resolution will perceptibly change the way the State Board operates. The resolution provides a check on the State Board and the past history would indicate that it would rarely be used. Neither is it anticipated that the Legislature would become involved in the business of the State Board. KASB would urge your support of HCR 5028.