

Approved _____

2-5-90

Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

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

3:30 ~~xxx~~/p.m. on February 1, 1990 in room 519-S of the Capitol.

All members were present except:

All present.

Committee staff present:

Avis Swartzman, Revisor of Statutes Office
Ben Barrett, Legislative Research
Dale Dennis, Department of Education
Thelma Canaday, Secretary to the Committee

Conferees appearing before the committee:

Dr. Dan Thompson, Director, University Council for Educational Administration Center
for Education Finance, Kansas State University

The meeting was called to order by Chairman Crumbaker.

Chairman Crumbaker brought HB 2678 before the committee and said the sponsor of the bill had asked the committee to report the bill adversely. HB 2678 concerns school districts, plans providing for a school term scheduled on trimestral or quarterly basis, amending school district equalization act.

Representative Bowden moved to report HB 2678 adversely. Representative Williams seconded the motion. Motion carried.

Chairman Crumbaker called on Mr. John Koepke to introduce the presenter, Dr. Dan Thompson.

Mr. Koepke said our state is fortunate to have a center at Kansas State University doing research on funding of school facilities and welcomed Dr. Thompson who has done considerable research on the funding of school facilities.

Dr. Thompson said educational finance litigation is increasingly encompassing how school facilities are constructed and maintained. He shared these critical issues:

- 1) What is the overriding single concern?
- 2) What are the other states doing?
- 3) What are the courts saying?
- 4) What are the dimensions elsewhere and in Kansas?
- 5) How do current funding levels compare with needs in Kansas?
- 6) How adequate is facility funding in Kansas?
- 7) If common equity models were implemented, which ones best satisfy adequacy and equity requirements?
- 8) What would be the estimated cost of each model?
- 9) What are the possible solutions?
- 10) What should Kansas do?

Dr. Thompson elaborated on each of these issues. (Attachment 1)

A period of discussion followed Dr. Thompson's presentation.

The meeting was adjourned by the chairman at 4:42 p.m.

The next meeting will be February 5, 1990 in Room 519-S at 3:30 p.m.

Ten Critical Questions Regarding Financing Facilities in Kansas

David C. Thompson
Codirector UCEA Center for Education Finance
Kansas State University and the University of Florida

Presented to the
Kansas House and Senate Education Committees

February 1, 1990

*Attachment 1
House Education
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WHAT ARE THE ISSUES?

Educational finance litigation is increasingly encompassing how school facilities are constructed and maintained.

There have been more than twenty challenges within recent years, and the sum total of finance-related litigation exceeds 100 cases.

THE EVIDENCE SUGGESTS

- Extensive documented needs, increasing court interest, and expanding research into equity point to the currency of the topic.
- There is widespread need which may include the State of Kansas.
- Legal concepts of ADEQUACY and EQUITY may apply to facilities.
- EQUAL OPPORTUNITY MAY BE APPLIED, AS ALL FACETS OF THE EDUCATIONAL ENTERPRISE AFFECT OPPORTUNITY.

THE TEN CRITICAL ISSUES

1. WHAT IS THE OVERRIDING SINGLE CONCERN?
2. WHAT ARE THE OTHER STATES DOING?
3. WHAT ARE THE COURTS SAYING?
4. WHAT ARE THE DIMENSIONS ELSEWHERE AND IN KANSAS?
5. HOW DO CURRENT FUNDING LEVELS COMPARE WITH NEEDS IN KANSAS?
6. HOW ADEQUATE IS FACILITY FUNDING IN KANSAS?
7. IF COMMON EQUITY MODELS WERE IMPLEMENTED, WHICH ONES BEST SATISFY ADEQUACY AND EQUITY REQUIREMENTS?
8. WHAT WOULD BE THE ESTIMATED COST OF EACH MODEL?
9. WHAT ARE THE POSSIBLE SOLUTIONS?
10. WHAT SHOULD KANSAS DO?

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WHAT IS THE OVERRIDING SINGLE CONCERN?

The single overriding concern is that we may have problems in Kansas which we should address before we are potentially forced to address them belatedly. The arguments stem from:

- Educational finance litigation is increasing.
- Litigation is encompassing facility finance methods.
- In the past two years, every finance case has included facilities as an equity claim.
- Given documentation of needs and court interest, a lack of awareness of an issue cannot be successfully advanced.
- Part of those needs are alleged to exist in Kansas.
- Whether under the heading of equal opportunity, equity, or school safety, the issue deserves consideration by the State's policymakers.

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WHAT ARE THE COURTS SAYING?

What is equitable? In general, equity is based in three dimensions:

- **RESOURCE ACCESSIBILITY:** do students have equal access to appropriate resources to meet educational needs?
- **WEALTH NEUTRALITY:** are variations in revenue unacceptably related to local wealth factors?
- **TAXPAYER EFFORT:** does equal effort produce equal yield, thereby guaranteeing equal protection?

WORKING DEFINITION

Students should have equal access to resources appropriate to their needs regardless of residence, and that taxpayers have a right to expect the state to support education to such an extent that variations in local wealth will not have an adverse effect on local ability to pay for education.

THE QUESTION

The question becomes whether the issue, already established in federal and state courts as applicable to general fund financing, also applies to capital outlay. There is a history of litigation which intimates that it does.

RODRIGUEZ v. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT (1973)

SERRANO v. PRIEST (1971)

SHOFSTALL v. HOLLINS (1973)

ROBINSON v. CAHILL (1972)

BOARD OF EDUCATION OF THE CITY OF CINCINNATI v. WALTER (1979)

PAULEY v. KELLY (1979)

JENKINS v. STATE OF MISSOURI (1987)

ABBOTT v. BURKE (1988)

TENNESSEE SMALL SCHOOL SYSTEMS v. McWHERTER

ROSE v. COUNCIL FOR BETTER EDUCATION, INC. (1989)

EDGEWOOD v. KIRBY (1989)

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WHAT ARE THE DIMENSIONS ELSEWHERE AND IN KANSAS?

- In Ohio, districts have sought \$38 million in state bail-out.
- A Texas panel has recommended \$100 million in emergency funds.
- California voters have approved \$800 million four different times.
- A South Carolina court has approved lease-purchase to relieve \$1 billion in needs.
- Maine has approved \$200 million over the next three years.
- Oklahoma estimates \$622 million. If extended, \$125 million short.
- North Carolina has \$3.2 billion in needs, and a new legislative package of \$793 million now and \$3 billion over 10 years.
- Texas estimates \$5 billion by 1995.

SUMMATIVELY IN THE NATION

- 25 percent of buildings are totally inadequate.
- 33 percent are rapidly becoming inadequate.
- Of inadequate buildings, 61 percent need major repair, 43 percent are obsolete, 42 percent hold environmental hazards, and 13 percent are structurally unsound.
- National replacement cost is \$422 billion. \$125 billion is needed now to repair and retrofit.
- Constructing a national picture is difficult because of low or incomplete data.
 - 12 states have statewide facility plans.
 - 31 states have facility inventories.
 - 4 states are now creating inventories.
 - 13 states have one or fewer state-level facility persons.
 - 3 states inspect facilities.
- Experts declare five life stages of buildings:
 - 0-20 years: minor repairs.
 - 20-30 years: increased maintenance and equipment replaced.
 - 30-40 years: most original equipment should be replaced.
 - 40-50 years: accelerated deterioration.
 - 50+ years: reconstructed or abandoned.

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WHAT ABOUT KANSAS?

- Kansas fits the stereotype of the nation.

BUILDING AGE

Age	Rural	Urban	State
0-10	56	75	131
10-20	97	90	187
20-50	335	361	696
50+	153	100	253

BUILDING CONDITION

Condition	Rural	Urban	State
New	35	32	67
Good	411	489	900
Fair	151	58	209
Poor	51	15	66

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KANSAS SCHOOLS

Needs estimates show rural schools have \$60 million in deferred maintenance for:

- Roof repair.
- HVAC.
- Window and energy replacement.
- Environmental hazards.
- General renovation.
- Structural repair.
- Major cause: wealth and debt level and age.

Needs estimates show urban schools have \$321 million in deferred maintenance for:

- HVAC - \$13.3 million.
- Parking areas - \$5.2 million.
- Roofs - \$16 million.
- New construction - \$241 million.
- Major cause: age, safety, tax limits, curriculum.

HOW SAFE ARE KANSAS SCHOOLS?

No one knows. No data collection or inspection exists. We have only volunteer reports plus other needs estimates. It's an unknown quantity.

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HC DO CURRENT FUNDING LEVELS COMPARE WITH NEEDS IN KANS. HOW ADEQUATE IS FACILITY FUNDING IN KANSAS?

The concepts of AVERAGE PRACTICE and NEED must be distinguished.

AVERAGE PRACTICE can be defined in two ways:

- THE CURRENT LEVEL as sufficient - in this instance \hat{z} BPP/Np
- A picture of TAX BASE CONSTRAINTS.

ACTUAL NEED may differ markedly:

- Preliminary research in Kansas - \hat{z} \$\$NEED/Np

These concepts may be contrasted by looking at what ASSESSED VALUATION * .004 will yield.

AVERAGE PRACTICE AND ESTIMATED NEED MODELS

Measure	Rural	Urban	State
APM	\$83.50	\$53.50	\$61.51
ENM	\$611.30	\$1064.30	\$953.08

CONCLUSIONS ABOUT AVERAGE PRACTICE AND REAL NEEDS

- Under uniform mill rates, .004 yields \$12.50 and \$2,380.80
- To fund the APM on mills, the range is from .0001 to .00896.
- To fund the ENM on mills, the range is .0095 to .11827.
- Current practice underfunds rural needs by 732%.
- Current practice underfunds urban needs by 2000%
- Current practice underfunds statewide needs by 1500%.
- These conclusions must be weighed against a recognition that:
 - 80% of districts already levy significantly for c/o.
 - 54% of districts already levy significantly for B&I.
 - Districts are nearly \$400 million in debt.
 - Districts have experienced a 10% referendum failure rate.

GENERAL CONCLUSIONS ABOUT NEED AND ABILITY

- Local wealth dependency under these conditions drives decisions.
- Decisions can therefore vary in a ratio of about 190:1.
- Local wealth defines average practice and underestimates need.
- Statistical correlations do not bode well for equity:
 - Wealth to improvement decisions= .63
 - Age to condition of facilities= .59
 - Wealth to debt= .30
 - Revenue to assessed valuation= 1.00

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WHAT ARE THE OTHER STATES DOING?

Sophisticated formulas have been developed for

- General Fund
- Special Education
- Transportation
- Other Services

Yet Capital Outlay has been overlooked and underestimated.

The cause:

Tradition.
Oversight.
Last Frontier.
Enormous Costs.

The result:

Property Tax Dependence.
Low Valuations.
Statutory Debt Limits.
Mill Rate Caps.
Referenda Requirements.

OTHER STATES' RESPONSE

1901 Alabama provides aid for establishing rural schools.
1903 Delaware provides aid to construct schools for Blacks.
1909 South Carolina follows suit.
1909 North Carolina and Virginia begin loan programs.
World Wars I-II and consolidation in the 1960s.

Currently 28 states provide some true grant-in-aid assistance.

When states which also allow loans or similar mechanisms are included, the total reaches 90% of all states.

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STATE METHODS OF FACILITY ASSISTANCE

FULL STATE SUPPORT

- Implies a major assumption of costs by the state.
- Education is seen to be the state's full responsibility.
- Advantages: wealth of the entire state, broadest possible tax base, aligns with wealth neutrality.
- Disadvantages: higher than anticipated costs, loss of local control, lowered local incentive.
- States currently using this method include: California and Hawaii.

EQUALIZATION GRANTS

- Generally given on some matching or incentive method which is in inverse relationship to ability to pay.
- Advantages: significant state responsibility, retains local incentive under power equalization, sensitive to wealth neutrality.
- Disadvantages: if not power equalized, lids depress local incentives; depends on a sufficient level of state participation.
- States currently using this method include: Alabama, Arizona, Arkansas, Connecticut, Florida, Illinois, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, Utah, Washington, Wisconsin, Wyoming.

MATCHING GRANTS

- A cost-share ratio legislatively determined.
- Advantages: state contribution allows districts to plan ahead; if open-ended, local choice is maximized.
- Disadvantages: state share tends to vary with the economy; if not open-ended, the proportion of state participation is doubly-critical.
- States currently using this method include: Alaska, Delaware, Georgia.

FLAT GRANTS

- All districts receive some legislatively determined aid.
- Advantages: politically expedient; local costs are reduced; wealth dependence is lessened.
- Disadvantages: not wealth neutral; no equity improvement; scarce resources sent to unneeded.
- States currently using this method include: Alabama, Georgia, Illinois, Mississippi, New Jersey, South Carolina, Tennessee.

STATE LOANS

- Districts qualify for state loan funds on some basis.
- Advantages: favorable interest rates and reduced costs.
- Disadvantages: preserves wealth inequities.
- States currently using this method include: Minnesota, North Carolina, Virginia, Wisconsin, Wyoming.

BUILDING AUTHORITIES/BOND BANKS

- Private capital to lease or purchase facilities.
- Advantages: no debt limits, no referenda, short timeline.
- Disadvantages: no debt limits, no referenda, higher costs.
- States currently using this method include: Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York, North Dakota, Pennsylvania, Vermont, Virginia, West Virginia.

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FIFTEEN SELECTED STATES

- ARIZONA: Equalized grant adjusted for factors, e.g.,
(Pupil count x \$197.66 x 1.399 adj= CORL).
- CONNECTICUT: Equalized aid from 40-80%.
- FLORIDA: Heavily state-funded, derived from state gross utility and
MV taxes; local bond initiatives.
- HAWAII: Full funding subject to state debt limits of 18.5% of AV.
Now spending \$203 per pupil.
- ILLINOIS: Equalized 20-70%, managed by statewide capital development
board. State sells bonds- last year \$696m, then appropriates
B&I payments.
- INDIANA: Building authorities and a flat \$40 ADA.
- LOUISIANA: No aid, but spending \$317 per ADM.
- NEW MEXICO: Almost no ad valorem tax dependence. Income, sales,
severance. Equalized matching up to \$70 per pupil.
- NORTH CAROLINA: \$3.2 billion in new taxes. Public School Building Fund (\$607m)
and Critical School Facility Needs Fund (\$186m) by earmarking
corporate income for ten years. Flat grant ADM matched 1:3
ratio by districts. Critical Needs Fund will make grants based
on needs.
- NORTH DAKOTA: Loan funds of \$12 million at 2.5% interest.
- OHIO: Matches revenue in districts unable to raise enough under 7%
AV lid. Treated as forgivable loan.
- OKLAHOMA: Although equalization formula was constitutionally
permitted in 1955, it has not been funded or statutorily enacted.
- SOUTH CAROLINA: Statute reference early as 1710. In 1951, money really began.
Currently \$80 ADA from sales tax. Balance local option.
- TEXAS: No aid, except a Bond Guarantee Program. See, however,,
Edgewood ISD v. Kirby, 1989.
- UTAH: Equalization enacted in 1977. Continuing Aid Component and
Critical Needs Component. Continuing Aid \$181/WPU.
A complex ability formula for Critical Needs.

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IF COMMON EQUITY MODELS WERE IMPLEMENTED, WHICH ONES BEST SATISFY ADEQUACY AND EQUITY REQUIREMENTS?

- Common models have been tested in Kansas for both adequacy and equity by broadbased statistical measures.

CONCLUSIONS

CURRENT METHOD = ineffectual by all measures.

FLAT GRANTS = provides tax relief.
politically useful.
no change in equity position.

STATE LOANS = small improvement in tax relief.
inequity conditions are preserved.

EQUALIZATION = if properly structured, equity is easily gained.
and The questions become political and adequacy-based
FULL FUNDING = as there is no statistical difference.

**BUILDING
AUTHORITIES =** no tests are appropriate because it is outside the
question except as the effect of state policy which
encourages avoiding the will of the electorate.

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WHAT WOULD BE THE ESTIMATED COST OF EACH MODEL?

- Without specific legislative proposals, costs are only speculative. Costs also depend on assessment of actual needs, level and method of state assistance, and many other conditions.

STATE COSTS TO FUND FOUR ALTERNATIVES¹

	CURRENT METHOD		FULL FUNDING	
	APM	ENM	APM	ENM
Req Aid	24,588,939	381,000,000	24,588,939	381,000,000
Revenue	81,824,591	81,824,591	81,824,591	81,824,591
Change	57,235,652	(299,175,409)	57,235,632	(299,175,409)
Cost	0	0	(57,235,632)	299,175,409
% Aid	0	0	100%	100%
N USDs	0	0	all	all

	EQUALIZATION		50/50 FLAT GRANT	
	APM	ENM	APM	ENM
Req Aid	24,588,939	381,000,000	24,588,939	381,000,000
Revenue	81,824,591	81,824,591	81,824,591	81,824,591
Change	57,235,652	(299,175,409)	57,235,632	(299,175,409)
Cost	8,182 ²	(299,175,409)	(32,646,713) ³	(149,587,704) ⁴
% Aid	.00001	79%	50%	50%
N USDs	1	274	all	all

Footnotes

1. Uniform levy of .004 is used.
2. Only one district eligible to receive aid.
3. State recapture: $\$81,824,591 - (2 * 24,588,939 \text{ state and local shares}) = \text{state surplus}$.
4. Districts may/must use increased local effort to generate the unfunded difference, as the state funds only one-half of need.

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SOLUTIONS AND RECOMMENDATIONS ON WHAT KANSAS SHOULD DO

It is difficult to find widespread enthusiasm for new governmental forays in an era which has engendered public dissatisfaction with:

- rising costs of regular education
- spiraling special education mandates
- tax base erosion
- demographic changes
- educational reform costs
- reappraisal of property
- decreased state revenues
- and increased expectations of schools and other governmental services.

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RECOMMENDATIONS

- The State of Kansas needs to debate the problem and determine if there is cause to launch further investigations into facility needs in the state.
- The State of Kansas should assess for itself the question of legal vulnerability, both from the perspective of school safety and from the question of equal opportunity and equity.
- The State of Kansas should consider whether or not an aid package for assisting school districts with their physical facility needs should be adopted.
- If the State of Kansas chooses to explore methods of aiding school facility maintenance and construction, we believe that any such plan should contain certain intentional characteristics. The plan should provide for:
 - A comprehensive assessment of facility conditions and needs statewide. Such a profile should be constructed and kept current.
 - A statewide project list which prioritizes needs and identifies cost projections across a specified multi-year period.
 - Establishment of emergency and long-range operational funds. Emergencies may relate to inability to pass bond issues, substandard or dangerous facilities, inaccessibility, or other criteria. Long-range funds should tie to the statewide project list which seeks to recapture lost ground on both facility needs projections and deferred maintenance items.
 - Any plan should appropriate sufficient funds to avoid tokenism or failure to genuinely redress district's needs.
 - A funding scheme should be adopted which is acceptable within the economic and political climate of the State of Kansas. As Kansas already utilizes a modified equalization formula for its General Fund expenditures, it is appropriate to consider such a mechanism for educational facility needs as well.
 - A funding scheme must additionally be sensitive to several current concerns:
 - Preserving local control and incentive.
 - Providing funding for existing debt reduction.
 - Special needs such as sparsity, density, and changing populations.

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CONCLUSION

- The problem deserves attention. Whether a lawsuit "lurks" is unknown. What is important is a reasoned and studious evaluation against four critical standards with which the State of Kansas should concern itself:
 - Safety
 - Educational Need
 - Moral and Ethical Considerations
 - Legal Jeopardy

"Lest there be any doubt, the result of our decision is that Kentucky's entire system of common schools is unconstitutional. This decision covers the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program. It covers school construction and maintenance, teacher certification - the whole gamut of the common school system in Kentucky. (Rose v. Council for Better Education, Inc.)"

Decision rendered by the Kentucky Supreme Court, June 8, 1989, p. 66.

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