Approved: 2/8/96
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairman Bill Mason at 3:30 p.m. on January 23, 1996 in Room 519-S of the Capitol.

All members were present except: Dale Swenson (absent)

Committee staff present: Ben Barrett, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Dale Dennis, Department of Education
Beverly Renner, Committee Secretary

Conferees appearing before the committee: Ben Barrett, Associate Director, Legislative Research Department

Others attending: See attached list

Ben Barrett, Legislative Research presented a history of school finance with reference materials related to the School District Equalization Act (Attachment 1) Ben explained early finance formulas, budget controls and the development of enrollment categories (Attachment 2 and 3). Possible litigation has played a part in the school finance process. Ben outlined Judge Bullock's stated principles to be applied in the event of school finance cases being tried in the Shawnee County District Court (Attachment 4). This has helped to further define the school finance issue.

Questions from the committee and significant remarks by Dale Dennis, Interim Commissioner of Education were interspersed during the presentation.

The meeting was adjourned at 4:35 p.m.

The next meeting is scheduled for January 24, 1996.

HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: January 23, 1996

NAME	REPRESENTING
Robin Lehman	Olathe USD 233
Ken Bahr	4th Enrollment USDs
Don Reyer	Kaw Valley USD 321
Sue Chase	KNEA
Karen Lowery	KASB
Denise Apt	USA
Mark Tallman	KASB
Craig Grant	KNEA
Jacque Oakes	SDE
Dan Burnett	USD 501
Jim Neally	USD 512
Diane Gjerstad	USD 259
Helen Stephens	USD 229

KANSAS SCHOOL DISTRICT EQUALIZATION ACT:
Basic General State Aid Formula 1991-92
(Ignoring the "Hold Harmless" Aid)

USD General Fund Budget	Minus	District Wealth[1]	x	Local[2] Effort Rate	+	P.L. 874[3,4] Receipts	+	Motor Vehicle Tax[4]	+	Revenue Bond In-Lieu Payments[4]	Equals	General State Aid

1) Sum of assessed property valuation of property and the "formula percentage" of the taxable income of the school district for the most recent year for which both such figures are available. The formula percentage is the percentage of the income tax rebate for the taxable year preceding the taxable year in which the current school year commences. Under present law, the formula percentage is 24 percent.

2) DISTRICT'S BUDGET PER PUPIL (BPP) / BPP "NORM" FOR THE DISTRICT'S ENROLLMENT CATEGORY x 6.899% (EST.)* = LOCAL EFFORT RATE

NONE

* Set by State Board of Education within the limits of appropriations for state school equalization act.

ESTIMATED 1991-92 BPP "NORMS"

ENROLLMENT (E)	"NORM" BPP	ADJUSTMENTS
Under 200	$ 5,343[a]	
200-399	5,343[b]	$0.965 (E-200)
400-1,999	5,150[c]	$1.029 (E-400)
2,000-9,999	3,504[d]	NONE[d]
10,000 and Over	3,805[e]	NONE

a) Median of 200-399 enrollment category
b) Median of 200-399 enrollment category to median of 400-499 enrollment interval
c) Median of 400-499 enrollment interval to median used for the fourth enrollment category
d) Median in category -- after adjustment for first year of the three-year merger of the 4th and 5th enrollment categories. (4.4 percent per pupil increase for each district, not to exceed the median BPP of districts in the 5th enrollment category)
e) Median in category

Note: In 1994-95 there will be four enrollment categories, as the merger of the two largest enrollment category districts will have been completed.

3) Applicable amount determined under federal rules and regulations based upon a ratio of USD operating revenues that are "equalized."
4) Amount of prior year's receipts from these sources credited to the USD general fund.

91-509/bfb

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Attachment 1

SUMMARY OF MAIN FEATURES OF THE SCHOOL DISTRICT EQUALIZATION ACT (SDEA)

The general state aid formula of the SDEA is based upon a modification of the "power equalization" principle. This approach to school finance was adopted in 1973. The formula is applied to a school district's general operating fund. A summary of the main provisions of the SDEA follows:

I. Budget Controls

USD general fund budgets are subject to statutorily imposed controls. There are no tax levy or tax rate controls for the general fund.

The law permits a USD to increase its general fund budget per pupil (BPP) to the lesser of its budget per pupil in the preceding school year plus a "determinable percentage" of such amount (2 percent of preceding year's BPP times a factor of 3, *i.e.*, 106 percent) or 102 percent of the median BPP for the previous year of districts in the same enrollment category, whichever is lower. Any district may budget up to 102 percent of its BPP in the preceding year.

The budget control is reviewed each year by the Legislature; it often is modified for the succeeding school year. For 1991-92 the applicable budget control range is 100.75 percent to 102.25 percent. For 1992-93, it is 101 percent to 103 percent.

Budget controls are made more flexible by other provisions of the SDEA re inordinate increases in social security, utilities (water, heat, electricity), and insurance expenditures; elections to exceed basic limitations; accumulation of unused budget authority; enrollment declines; and appeals to the State Board of Tax Appeals.

II. General State Aid Computation

A USD's entitlement of general state aid is determined by subtracting its "local effort" from the legally authorized general fund budget. Local effort consists of the sum of "district wealth" times the USD's local effort rate (LER); and amounts received in the general fund in the prior year from federal impact aid (based on federally qualified percentage), from the motor vehicle tax, and from revenue bond in-lieu payments.

1. District Wealth. District wealth is the sum of the assessed valuation and the "formula percentage" of the taxable income of resident individuals within a district for the most recent year for which both such data are available. The formula percentage is the percentage of the income tax rebate for the taxable year preceding the taxable year in which the current school year begins (currently, 24 percent).

2. Local Effort Rate (LER). The LER is a percentage which is determined by the State Board of Education in accord with legislative appropriations and applied to a specified "norm" BPP, as such norm BPPs are determined under a schedule which divides USDs into enrollment categories based upon an analysis of operating costs per pupil. The LER of a USD is more or less than the LER norm for the district's enrollment category in the same proportion that a district's BPP is more or less than the norm BPP for the enrollment category.

3. Impact Aid. Impact aid funds are federal P.L. 874 funds paid to USDs to offset the adverse effects of certain federal activities on the tax base of school districts. Impact aid funds received for major disasters and for the low-rent housing program are excluded from the local effort computation.

4. Motor Vehicle Tax. The special tax on motor vehicles based on value (in lieu of a property tax) is allocated by the county treasurer proportionately to taxing units, including school districts.

5. Revenue Bond In-Lieu Payments. In some instances, school districts receive payments in lieu of property taxes relative to properties that are off the tax rolls due to the issuance of industrial or port authority revenue bonds.

III. Minimum Effort/Penalty

A district having a general fund property tax rate that is less than three-fifths of the state median loses all or a portion of certain state categorical aids (income tax rebate, transportation, food service, bilingual education, in-service education, parent education, and driver training) based on the application of the three-fifths of median threshold to the district. Added budget authority to make up for any lost categorical aid (except the income tax rebate) is provided. Any such added budget authority is for one year only and is not equalized.

IV. Hold Harmless Aid

For 1991-92, if a district's general state aid and income tax rebate (combined) in 1991-92 is less than the per pupil amount received in 1990-91 multiplied by the district's current enrollment, the district receives "hold harmless" aid equal to 87.5 percent of the difference, subject to a $700,000 cap for any individual district.

V. Income Tax Rebate

Each USD receives from the state an amount equal to 24 percent of the state individual income tax liability after all credits, except for credits for taxes paid to another state and except for withholding and estimates, of the residents of the district.

VI. Transportation Aid

State transportation aid is paid to all districts that transport pupils who live 2.5 miles or more from the school they attend. Aid entitlements are determined by a cost-density formula, which recognizes the higher costs of transporting pupils in low-density districts. This aid is based on the lesser of 100 percent of the computed actual cost or 100 percent of the amount per pupil computed under the cost-density formula. For FY 1992, the formula is funded at 83 percent.

Kansas Legislative Research Department
June 3, 1991

91-509a/bfb

(Excerpt from "Kansas School District Equalization Act,"
June 10, 1991, Kansas Legislative Research Department)

BUDGETARY CONTROLS

Financial restraints are imposed by law on expenditures from the general fund of school districts by budgetary controls and not by limitations on the property tax levy or tax rate for such fund.* The law allows school boards to levy whatever amount may be required to finance the legally adopted budget, after taking into account anticipated receipts to the general fund from other sources.

For purposes of applying budget controls, school districts have been placed in five enrollment categories. These categories, which are explained in the following discussion of the computation of general state aid, are designed to give recognition to the fact that expenditures per pupil vary somewhat with enrollment. For example, per pupil expenditures tend to be substantially higher in the small enrollment districts than in other districts.** Also, the very large enrollment districts (10,000 or more) tend to have higher per pupil expenditures than other districts in Kansas considered to be large due to their enrollments. Over a three-year period beginning with the 1991-92 school year and ending with the 1993-94 school year, the fourth (next largest) and fifth (largest) enrollment categories are being merged. So, beginning in 1994-95 there will be only four enrollment categories.

Basic Budget Controls

The SDEA provides that a school district may increase its general fund budget per pupil to the lesser of the budget per pupil in the preceding school year plus a "determinable percentage" of such amount (2 percent of the preceding year's budget per pupil multiplied by a factor of three, *e.g.*, 106 percent) or the median budget per pupil in the previous year of all districts in its enrollment category plus 2 percent. Any district, however, may budget up to 102 percent of its budget per pupil in the preceding year. In the third enrollment category, the median budget per pupil is an amount determined by a linear transition between the median budget per pupil of districts in the second enrollment category (200-399) and the median of districts in the fourth enrollment category.

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* There are no statutory budget controls applicable to other funds of a district.

** Traditionally in Kansas, districts in the lower enrollment categories have tended to have the highest per pupil expenditures due to several factors, the two most significant being (a) the high cost per pupil in a small school district of maintaining a fully accredited educational program; and (b) the generally higher property valuation per pupil in such districts. Factor (a) results in low pupil-teacher ratios.

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Attachment 2

The 102 percent figure is referred to as the budget "floor"; the 106 percent, the budget "ceiling."*** As can be seen in Appendix I, the budget floor and the budget ceiling often have been set at levels different from those prescribed in the basic law.

Social Security, Utilities, and Insurance

A school district also may increase its general fund budget by the amount of social security, utilities (water, heat, electricity), or insurance expenditures in the preceding year, less an amount equal to the budget per pupil percentage increase that year times the actual social security, utilities, or insurance expenditures, as the case may be, in the second preceding year.

Election to Exceed Basic Budget Limitation

Any school district, in any year, is allowed to exceed the basic statutory limitation on its legally adopted budget by any amount approved by the electors.

Enrollment Decline

If the enrollment of a district in the current school year has declined by less than a specified percentage from the enrollment in the preceding school year, the amount which the district may budget and expend may be computed on the basis of the enrollment in the preceding year. If the enrollment of the district in the current year has declined more than the specified percentage from the enrollment in the preceding year, the amount which the district may budget and expend is computed on the basis of the enrollment in the preceding year, less the number of pupils by which the enrollment decrease in the current year exceeds the applicable specified percentage. The specified percentages are: 10 percent for districts in the two smallest enrollment categories (Under 200 and 200-399) and 4 percent for districts in the two largest enrollment categories (as of 1994-95, the two largest enrollment categories are merged into one such category). The percentage applicable to districts in the third enrollment category ranges between 4 percent and 10 percent, in accord with a linear transition schedule prepared annually by the State Board of Education.

(A district may appeal to the Board of Tax Appeals to retain expenditure authority under its adopted budget if such budget was based on a decline in enrollment within the applicable percentage limitation, but, due to extraordinary circumstances, the actual decrease was more than anticipated. See No. 4 under Appeals, below.)

*** Until 1987-88, the budget floor was 105 percent and the budget ceiling was 115 percent. The ceiling actually was fixed at 115 percent from 1973 until 1979 when the law was amended to require a spread of 10 percentage points between the floor and the ceiling. Amendments adopted in 1987 changed the floor from 105 percent to 103 percent and the spread between the floor and ceiling from 10 percentage points to 6 percentage points. Amendments adopted in 1991 changed the floor, beginning in 1993-1994 and thereafter, from 103 percent to 102 percent and the spread between the floor and ceiling from 6 percentage points to a multiple of three. That is, the additional amount produced by 2 percentage points multiplied by a factor of three produces the amount of the ceiling (*i.e.*, 106 percent).

Accumulation of Budget Authority

If a district does not budget in any year or years the full amount allowable under the basic limitations, excluding the election provision, the accumulated difference may be added to its legal budget of operating expenses for a later year, provided the total increase does not exceed the amount of the "determinable percentage" of its budget per pupil in the preceding school year. That is, the budget per pupil increase in the current year over the preceding year attributable to unused budget authority may not exceed an amount equal to 6 percentage points (2.25 percentage points in 1991-92 and 3.0 percentage points in 1992-93). This provision is intended to make it unnecessary for a district to budget the full amount allowable in each year, when such amount is not needed at the time, in order to protect the district's budget base for the future. All districts have equal access to use of accumulated budget authority.

Appeals

The State Board of Tax Appeals may authorize a school district to increase its legally adopted budget of operating expenses or its expenditures upon a finding by the Board that one or more of the following cause an increase in operating expenditures greater than the district is permitted to budget or expend under the budget controls:

1. construction of new or additional school facilities;

2. requirements of law to provide special education;

3. requirements of law to provide transportation of students;

4. unusual occurrences affecting enrollment (enrollment decreases must be the result of extraordinary circumstances);

5. increases in rates or charges for supplying water, heat, or electricity;

6. payment of compensation to a certificated elementary guidance counselor, which compensation was not budgeted in the preceding year;

7. establishment or enhancement of bilingual education programs;

8. maintenance of a program established under federal law and financed in full or in part by federal funds; and

9. development and establishment of new vocational education programs, enhancement of existing vocational education programs, or purchase of equipment for use in vocational education programs.

All of the appeals except reason 4 must be approved by the Board of Tax Appeals prior to the adoption of the budget. Appeals resulting from unusual occurrences affecting enrollments are made after the budget has been adopted and school has begun; these appeals request authority to spend funds that have been budgeted in accord with budgetary constraints of the law.

Additional budget authority approved by the Board of Tax Appeals is for a district's general fund and becomes part of the budget base to which the allowable increases are applied in succeeding years. However, if an appeal is granted to finance program expenditures which must be made from a separate fund, such as the special education or transportation fund, an amount equal to the amount of such appeal must be transferred from the general fund to the separate fund. Amounts obtained by a district after an appeal must be budgeted and spent for the purpose for which the increase was granted.

Two transitional-type appeals were part of the 1973 SDEA. One was an appeal for added budget authority to provide for operation of an existing program of cooperative special education at a level equal to that in the 1972-73 school year. The second was for authority to levy a property tax for the purpose of maintaining an existing program for transportation of pupils equal to that in 1972-73, to the extent that such program could not be financed under appeal reason 3, above. The deadline for making either or both of these appeals was August 1, 1973.

School districts are prohibited from amending their general fund budgets under K.S.A. 79-2929a, as amended, by republication, unless the State Board of Tax Appeals authorizes such an increase.

Penalty

If a district expends in any school year an amount for operating expenses which exceeds the budget limitations contained in the SDEA, the excess shall be deducted from state aid payable to the district during the next school year from the State General Fund.

18-Month Budget

Because the first installment of property tax payments is not due until December 20, *i.e.*, well after the start of a school year, all districts adopt a budget of operating expenses for an 18-month period, July of the current year through December of the following year. The ratio of the amount budgeted for the last six months of that period to that budgeted for the first 12 months shall not be less than 40 percent nor more than 50 percent.

APPENDIX I

School Year	Budget	
	Floor	Ceiling
1973-74	105	115
1974-75	107	115
1975-76	110	115
1976-77	107	115
1977-78	105	115
1978-79	106	115
1979-80	106	116
1980-81	109	119
1981-82[a]	105	115
1982-83	106.25	112.5
1983-84	105	115
1984-85[b]	106	110
1985-86	105	115
1986-87	102	103.5
1987-88[c]	102	103.5
1988-89[c]	102	104
1989-90[c]	102	104.5
1990-91[c]	101	102
1991-92	100.75	102.25
1992-93	101	103

a) In the omnibus appropriations bill, the 1981 Legislature modified the ceiling for 1981-82 to allow a 3 percentage point spread between the floor and the ceiling (105 percent to 108 percent). On May 18, the Governor announced an item veto of the 105 percent to 108 percent budget control (S.B. 470, Sec. 77). The intended result of the veto was to cause the budget control to revert to the 105 percent to 115 percent range in the basic law. The Attorney General initiated litigation regarding the legality of the veto. On June 23, in *State ex rel. Stephan* v. *Carlin* 229 K. 665 (1981), the Kansas Supreme Court ruled that Sec. 77 was not an item of appropriation and that the Governor had no power to line item veto portions of Sec. 77. The Court also held that Sec. 77 was not an appropriation matter, but was unrelated and not germane to an appropriation measure. Since the Legislature had no power to include an amendment to the SDEA in an appropriation measure, the section was determined to be of no force or effect. The budget control for 1981-82 thus reverted to the 105 percent to 115 percent range in the basic law.

b) For the 1984-85 school year only, a school district was authorized to deposit interest earned on moneys in the capital outlay fund to the general fund. Any such interest deposited in the general fund was to be used for operating expenses in the same school year. This interest was not subject to the budget per pupil controls applicable to the 1984-85 school year for the school district general fund; it was used in the determination of a district's budget per pupil for the purpose of computing budget controls for the 1985-86 school year; *i.e.*, it was equalized in the following school years.

c) For the 1987-88 school year only, a school board was authorized up to an additional 1 percent per pupil in budget authority, subject to a protest petition/election provision. In order to obtain this additional budget authority, the board had to adopt a resolution authorizing the increase and publish

it once a week for three consecutive weeks in a newspaper having general circulation in the district. The resolution had to specify the amount and the percentage of the proposed increase in the budget per pupil. If a protest petition was filed within 30 days following the last publication of the resolution by at least 5 percent of the qualified electors of the district, the budget per pupil increase was not authorized unless approved at an election on the question. A 1988 amendment continued the additional 1 percent per pupil budget authority for 1988-89. The publication requirement was altered so that only one publication was required. A 1989 amendment continued the additional 1 percent per pupil budget authority for 1989-90, and a 1990 amendment continued the additional 1 percent per pupil budget authority for 1990-91.

(Excerpt from "Amendments to the 1973 School District Equaliation Act (1974-1991), June 10, 1991, Kansas Legislative Research Department)

ENROLLMENT CATEGORIES

In 1973, the law set out three enrollment categories for the 1973-74 school year and prescribed a procedure for determining the enrollment categories (minimum of three) in subsequent years. All except the lowest enrollment category (Under 400) were determined each year by the State Board of Education, based upon an analysis of the budget per pupil of the districts. Enrollment categories are used for: (a) applying budget controls; and (b) determining local effort rates.

In 1978, the lowest enrollment category (Under 400) was divided in order to establish categories of Under 200 and 200-399. As a result, there were then four (rather than three) enrollment categories. The median budget per pupil of districts in the 200-399 category applied to all districts with less than 400 pupils for budget control purposes and to districts with less than 200 pupils for calculation of the local effort rate.* These changes provided additional budget authority to districts which had enrollments of less than 400 and relatively low per pupil expenditures among districts in the two lowest enrollment categories. Also, some districts which had enrollments of less than 400 and relatively low district wealth received increased equalization aid.

A 1980 amendment provided that for determination of the local effort rate (and, therefore, the general state aid entitlement) of the four largest enrollment districts -- Wichita, Shawnee Mission, Kansas City, Topeka -- the median budget per pupil would be 100.5 percent of the median budget per pupil of all districts in the largest enrollment category. The effect of this amendment was to recognize somewhat the higher costs in these districts by increasing their general state aid entitlements. This recognition was continued in 1982 when legislation was adopted to create a new "fifth" enrollment category for districts with 10,000 or more enrollment (Wichita, Shawnee Mission, Kansas City, Topeka, and, beginning in 1984-85, Olathe). This category is used both for determining per pupil budget controls and state aid entitlements. The change was phased in one-third at a time during the 1982-83, 1983-84, and 1984-85 school years. In addition, a new linear transition for budget control purposes was added for districts in the third largest enrollment category. This change also was phased in one-third at a time during the 1982-83, 1983-84, and 1984-85 school years.

A 1987 amendment provided that for the purpose of determining the local effort rate (and, therefore, the general state aid entitlement) and budget controls of districts in the fourth (next largest) enrollment category, the median budget per pupil used for this purpose was increased by 1.5 percent. This amendment directly impacted both the third and fourth enrollment categories. Under the previous law, the median budget per pupil of districts in the fourth enrollment category, without any adjustment, was used for determining the local effort rate and the per pupil budget control. With respect to the third enrollment category, the median budget per pupil in the fourth enrollment category also served as the ending point of the linear transition applicable to the third enrollment category which for state aid purposes begins at the median budget per pupil of districts in the 400-499 enrollment interval and for budget control purposes begins with the median budget per pupil of districts having enrollments of 200-399. The linear transition formula is used for determining local effort rates and budget per pupil controls of districts in the third enrollment category. As a general principle, increasing the median budget per pupil in the fourth enrollment

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* Under the 1973 law, the budget control and the norm local effort rate for the Under 400 enrollment districts were based on the median of the 400-499 enrollment interval.

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Attachment 3

category benefitted most districts with the larger enrollments in the third enrollment category and most districts in the fourth enrollment category with respect to general state aid distributions and budget authority.

A 1989 amendment provided that for the 1989-90 and 1990-91 school years, the median budget per pupil of the fourth enrollment category districts would be increased by 2.5 percent for both general state aid and budget control purposes. After 1990-91, the actual median budget per pupil of districts in the fourth enrollment category would be used for these purposes. (These adjustments replaced the permanent 1.5 percent adjustment enacted in 1987.) Then, in 1990, a further amendment provided that for the 1990-91 school year, the median budget per pupil of the fourth enrollment category would be increased by 7.1 percent. Under the 1990 legislation, in 1991-92 and in subsequent school years, the fourth enrollment category median was to be the larger of the actual median budget per pupil of such category or 107.1 percent of the 1989-90 median. The 7.1 percent increase was designed to bring the median budget per pupil of the fourth enrollment category to a level approximately equal to 95 percent of the median of the fifth (largest) enrollment category. This change affected 1990-91 school district general fund budgets but not general state aid distributions inasmuch as such aid was not being distributed in accord with the wealth equalization principle in that year.

Legislation enacted in 1991 changed the direction of efforts to improve the status of the fourth enrollment category districts. Beginning with the 1991-92 school year, there is a three-year phased-in merger of the fourth (next largest) and fifth (largest) enrollment categories. To accomplish this merger, after application of the budget controls, the budget per pupil of each district in the fourth enrollment category will be increased by adding in 1991-92 an amount per pupil equal to the amount obtained by determining one-third of the difference between the median budget per pupil of the fourth and fifth enrollment categories in the preceding year, and in 1992-93, by adding one-half of such difference. In 1993-94, the remaining amount of the difference between the median budget per pupil of the fourth and fifth enrollment categories in the preceding year is added to the district's budget per pupil. This phased adjustment to the budget per pupil in the fourth enrollment category is subject to the limitation that the adjustment cannot cause a fourth enrollment category district's budget per pupil to exceed the median budget per pupil of the fifth enrollment category. In 1994-95, the actual preceding year's median budget per pupil of all the districts which comprise the fourth enrollment category (includes school districts which previously comprised the fourth and fifth enrollment categories) will serve as the basis for applying budget controls. During this phase-in period, general state aid determinations will reflect the adjustments described above.

In The District Court of Shawnee County, Kansas
Division 6

ROBERT MOCK, et al., Plaintiffs, v. STATE OF KANSAS AND KANSAS STATE BOARD OF EDUCATION, Defendants.	Case No. 90-CV-0918
LLOYD HANCOCK, et al., Plaintiffs, v. ROBERT T. STEPHAN, et al., Defendants.	Case No. 90-CV-1795
NEWTON UNIFIED SCHOOL DISTRICT NUMBER 373, et al., Plaintiffs, v. STATE OF KANSAS, et al., Defendants.	Case No. 90-CV-2406
UNIFIED SCHOOL DISTRICT NO. 259 SEDGWICK COUNTY, STATE OF KANSAS Plaintiff, UNIFIED SCHOOL DISTRICT NO. 202 WYANDOTTE COUNTY, KANSAS, et al., Intervenor v. THE STATE OF KANSAS, et al., Defendants	Consolidated Case No. 91-CV-1009 [MEMBERS OF THE HOUSE and SENATE EDUCATION COMMITTEE]

OCTOBER 14, 1991

Principles announced by JUDGE Bullock to be applied in the event the school finance case is tried in the Shawnee County District Court.

A task ~~force~~ is to be announced to TAKE THE school finance ISSUE under advisement

House Education
1/23/96
Attachment 4

FOR your information
B. L. Burnett

OPINION OF THE COURT ON QUESTIONS OF LAW PRESENTED IN ADVANCE OF TRIAL

Introduction

The various plaintiffs in these consolidated cases, in the aggregate, challenge the constitutionality of the entire scheme of financing the public schools (grades kindergarten through twelve) of Kansas. They raise various arguments in support of their claims of unconstitutionality, including three key claims:

> **1) The financing scheme violates the requirements of the education article of the Kansas constitution.**
>
> **2) The financing scheme violates the equal protection clauses of the Kansas and United States constitutions.**
>
> **3) The system of taxation used to finance public schools violates the "uniform laws" clause of the Kansas constitution.**

Additional sub-arguments include a claim that the cap on "hold harmless" funds, a part of the School District Equalization Finance Act, violates the equal protection clause of the Kansas and United States constitutions and a claim that the school district plaintiffs lack standing to raise the issues presented.

Because of the magnitude of the challenges made in these cases, and because of the impact which a decision of these issues may have on the financial and other affairs of the State and its schools, the Court has elected to identify and decide the essential questions of law in advance of trial. In this endeavor, the Court

had the unanimous consent and cooperation of all parties and their counsel, for which the Court is profoundly grateful. All parties have now briefed the various issues and the Court is now prepared to decide the issues thus submitted.

Scope of Review

Preliminarily, it is important to observe that legislative enactments are presumed to be constitutionally sound. Before the Court can declare any statute unconstitutional, the legislative act must clearly violate some provision of the constitution. It is, however, the duty of the Court to declare legislation unconstitutional when it does fail to meet the requirements of the constitution. Barker v. State, 249 Kan. 186, 191-92 (1991).

The Education Article of the Kansas Constitution

Because the penultimate issue presented in the cases at bar is the constitutional validity of the entire financing scheme for Kansas public schools, it seems appropriate to begin our deliberations with a careful consideration of the history and textual development of the education article of the Kansas constitution.

Early School History

The history of education in Kansas pre-dates statehood. Pioneer schools existed even prior to the time the territory was organized. In fact, schools were

often organized and built well before taxes were collected for their operation. Heritage of Kansas, (Emporia, Kansas State Teachers College, 1963). Provisions in the Organic Act and the Act for the Admission of Kansas Into the Union included provisions related to public schools. The Organic Act, Section 34, provided that certain sections of land should be reserved for educational purposes.

The Act for Admission of Kansas Into the Union, in paragraph three, repeated this reservation of land for educational purposes. During territorial days, the territorial legislature created the office of Territorial Superintendent of common Schools. This officer subsequently was authorized to certify teachers and to organize local school districts. Education has always been a very high priority for Kansans. In fact, shortly after statehood there existed over nine thousand schools and over twenty-seven thousand school board members. Every child had a school within walking distance of his or her home. (U.S.D. No. 259 Plaintiff's brief, page 27, footnote 3.)

Constitutional History

There were four constitutional conventions, the first three of which were unsuccessful. It is important to note, however, that all three constitutions issuing from these ill-fated conventions contained mandatory provisions for education.

In 1859, the Wyandotte Constitutional Convention met to draft a constitution to submit to a vote of the residents of the Kansas territory. The constitution used as a model the Ohio constitution, which itself was modeled after the New York constitution. Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka, Ks. 1920) at page 697.

The Ohio constitution, however, contained only two short sections on education. Id. at 687. Our founders desired more and thus premised their proposed education article on a combination of provisions from Iowa, Oregon, Michigan, Wisconsin and California. Id. In explaining the scope and effect intended for the proposed constitution, one framer stated, "It has been the aim of the majority of this body to make this Constitution the draft, the outline of great civil truths and rights." (emphasis added) Solon O. Thacher quoted in Kansas Constitutional Convention at 569.

Constitutional Provisions Adopted in 1859

In the Ordinance to the Constitution (the official legislative act which adopted the constitution), three of eight sections, including the first section, dealt directly with elementary public education. The new constitution contained an entire article, Article 6,

solely concerned with education. Section 2 stated "The legislature shall encourage the promotion of intellectual, moral, scientific and agricultural improvement, by establishing a uniform system of common schools". The bulk of the remainder of the article dealt with the financing of schools.

Some of the original constitutional provisions on education have since been amended. The relevance of the earlier text to this case is that it clearly demonstrates the treatment of public school education as a paramount duty of the legislature which has been continuous from the beginning of statehood and before.

Amendments to the Educational Article in 1966:

The Current Text

The present text of Article 6, the education article, dates from amendments made in 1966. House Concurrent Resolution No. 537 stated the intent of the legislature in seeking amendment of the education article: "[t]hat the Kansas legislative council is hereby directed to make a study of the scope, function, and organization of the state in supervising education to comply with the constitutional requirement of a uniform system of public schools, ...". The Education Amendment to the Kansas Constitution, Publication No. 256, Dec. 1965 Kansas Legislative Council, page v.

The committee assigned to review and recommend changes to the education article stated that by

including an article on education in the original Kansas Constitution "the people secure[d] to themselves what is of first importance by placing binding responsibilities on the legislative, executive, and judiciary departments." Education Amendment at page 2. The Committee further noted, "[t]he constitution of 1861 placed a responsibility on the legislature to establish a uniform system of schools", and that "equality of educational opportunity is a goal which has been generally accepted." (emphasis added) Id. at 3.

After several floor amendments, the current Education Article was finally adopted, submitted to a popular vote, and ratified by the people, all in 1966. A careful examination of the current text of the article reveals four essential, clear, and unambiguous mandates from the people (the source of all power in our democratic form of government):

> **Section 1. Schools and related institutions and activities.** The legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools ... which may be organized and changed in such manner as may be provided by law. (emphasis added).
>
> **Section 2. State board of education and state board of regents.** (a) The legislature shall provide for a state board of education which shall have general supervision of public schools ... and all the educational interests of the state, except educational functions delegated by law to the state board of regents. (emphasis added).

> **Section 5. Local public schools.** 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. (emphasis added).
>
> **Section 6. Finance.** (b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. (emphasis added)

Kansas Case Law

No controlling authority exists in Kansas interpreting the meaning of these constitutional provisions. Diligent research, however, discloses the following general statements of principles from our high court which help light the path to understanding.

In the context of a challenge to unequal educational opportunities based on race, Justice Valentine, in 1881 (more than seventy years before Brown v. Board of Education, 347 U.S. 483 (1954)), rhetorically asked,

> And what good reason can exist for separating two children, living in the same house, equally intelligent, and equally advanced in their studies, and sending one, because he or she is black, to a school house in a remote part of the city, past several school houses nearer his or her home, while the other child is permitted, because he or she is white, to

go to a school within the distance of a block? Board of Education v. Tinnon, 26 Kan. 1, 21 (1881).

More recently the Kansas Supreme Court stated "[t]he ultimate State purpose in offering a system of public schools is to provide an environment where quality education can be afforded to all." Provance v. Shawnee Mission U.S.D. No. 512, 231 Kan. 636, 643 (1982). In a similar vein, the Kansas Supreme court has also held "[t]he general theory of our educational system is that every child in the state, without regard to race, creed, or wealth shall have the facilities for a free education." (emphasis added) State v. Smith, 155 Kan. 588, 595 (1942).

Although the constitutions of the other states of the union vary in content and wording, and in fact none contain the same precise text as that set out in the present Kansas Education Article, it is, nonetheless, instructive for us to examine, preliminarily, relevant authorities from other states, applicable at least by analogy. (For a complete catalog of the various comparative constitutional provisions, see generally Pauley v. Kelley, 255 S.E. 2d 859 (W. Va. 1979) at page 884.)

The Cases from Our Sister States

Forty-nine of our fifty states include education provisions in their constitutions. San Antonio

Independent School District v. Rodriguez, 411 U.S. 1, 112 (1973) (Justice Marshall, in dissent). The lone state currently without such a provision, South Carolina repealed its education article in response to the decision of the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483 (1954). Of these forty-nine states, at least ten with school financing systems somewhat similar to that existing in Kansas have ruled those systems unconstitutional for varying reasons. See DuPree v. Alma School Dist. No. 30, 279 Ark. 340, 651 S.W. 2d 90 (1983); Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P. 2d 1241 (1971); Horton v. Meskill, 172 Conn. 615, 376 A. 2d 359 (1977); Rose v. Council for Better Educ., 790 S.W. 2d 186 (Ky. 1989); Helena Elementary School Dist. No. 1 v. State, 769 P. 2d 684 (Mont. 1989); Robinson v. Cahill, 62 N.J. 473, 303 A. 2d 273, cert. denied, 414 U.S. 976, 94 S.Ct. 292, 38 L. Ed. 2d 219 (1973); Seattle School District No. 1 v. State, 90 Wash. 2d 476, 585 P. 2d 71 (1978); Pauley v. Kelley, 162 W. Va. 672, 255 S.E. 2d 859 (1979); Washakie County School Dist. No. 1 v. Herschler, 606 P. 2d 310 (Wyo.), cert. denied, 449 U.S. 824, 101 S.Ct. 86, 66 L. Ed. 2d 28 (1980); and Edgewood Independent School District v. Kirby, 777 S.W. 2d 391 (Tex. 1989).

Other state courts have reached different results. See Shofstall v. Hollins, 110 Ariz. 88, 515 P. 2d 590

(1973); Lujan v. Colo. State Bd. of Educ., 649 P. 2d 1005 (Colo. 1982); McDaniel v. Thomas, 248 Ga. 632, 285 S.E. 2d 156 (1981); Thompson v. Engelking, 96 Idaho 793, 537 P. 2d 635 (1975); Hornbeck v. Somerset County Bd. of Educ., 295 Md. 2d 597, 458 A. 2d 758 (1983); Board of Educ., Levittown v. Nyquist, 57 N.Y.2d 27, 453 N.Y.S. 2d 643, 439 N.E.2d 359 (1982); appeal dism'd, 459 U.S. 1138, 103 S. Ct. 775, 74 L.Ed. 2d 986 (1983); Board of Educ. v. Walter, 58 Ohio St.2d 368, 390 N.E. 2d 813 (1979), cert. denied, 444 U.S. 1015, 100 S.Ct. 665, 62 L.Ed. 2d 644 (1980); Fair School Finance Council of Oklahoma, Inc. v. Oklahoma, 746 P. 2d 1135 (Okla. 1987); Olsen v. State, 276 Or. 9, 554 P. 2d 139 (1976); Danson v. Casey, 484 Pa. 415, 399 A. 2d 360 (1979); Richland County v. Campbell, 294 S.C. 346, 364 S.E. 2d 470 (1988).

A review of all the cases reveals a checkered history for equal protection challenges, while attacks grounded squarely on specific state constitution education articles have generally fared better for the challengers. In these latter cases, the precise wording of each constitutional provision has been highly important. Several cases, which this Court finds most persuasive, deserve more detailed attention.

In Rose v. Council for Better Education, 790 S.W. 2d 186 (1990), the Kentucky Supreme Court, in interpreting the education article of their

constitution held the entire public school system was unconstitutional as it was then organized and financed by the legislature. Their constitution simply stated "The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state." Rose at 200.

The rationale of the Kentucky decision was that the school system in Kentucky as operated was not "efficient" and therefore not constitutional. Rose at 203. An efficient system, in the eyes of the Kentucky court includes: sole responsibility in the General Assembly; free common schools to all children; schools available to all children; all schools substantially uniform; equal educational opportunities for all children, regardless of place of residence or economic circumstances; ongoing monitoring by the general assembly to prevent waste, duplication, mismanagement, or political influence; all children having a constitutional right to an adequate education; and the provision by the general assembly of sufficient funding to assure adequate education.

In Edgewood School District v. Kirby, 777 S.W. 2d 391 (Tex. 1989), the Texas court examined their Education Article which provided:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of

public free schools. Edgewood at 393.

In interpreting that provision the court observed:

> If our state's population had grown at the same rate in each district and if the taxable wealth in each district had also grown at the same rate, efficiency could have probably been maintained within the structure of the present system. That did not happen. Wealth, in its many forms, has not appeared with geographic symmetry. The economic development of the state has not been uniform. Some cities have grown dramatically, while their sister cities have remained static or have shrunk. Formulas that once fit have been knocked askew. Although local conditions vary, the constitutionally imposed state responsibility for an efficient education system is the same for all citizens regardless of where they live. Edgewood at 396.
>
> We conclude that, in mandating "efficiency," the constitutional framers and ratifiers did not intend a system with such vast disparities as now exist. Instead, they stated clearly that the purpose of an efficient system was to provide for a "general diffusion of knowledge." (Emphasis added.) The present system, by contrast, provides not for a diffusion that is general, but for one that is unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency. Id.

Following which, the Court held:

> Efficiency does not require a per capita distribution, but it also does not allow concentrations of resources in property-rich school districts that are taxing low when property-poor districts that are taxing high cannot generate sufficient revenues to meet even minimum standards. Id. at 397.
>
> ...
>
> Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds. Certainly, this much is required if the state is to educate its populace efficiently and provide for a general diffusion of knowledge

statewide. Id.

> Under article VII, section 1, the obligation is the legislature's to provide for an efficient system. In setting appropriations, the legislature must establish priorities according to constitutional mandate; equalizing educational opportunity cannot be relegated to an "if funds are left over" basis. We recognize that there are and always will be strong public interests competing for available state funds. However, the legislature's responsibility to support public education is different because it is constitutionally imposed. Id. at 397.
>
> ...
>
> This does not mean that the state may not recognize differences in area costs or in costs associated with providing an equalized educational opportunity to atypical students or disadvantaged students. (emphasis added.) Id. at 398.

Finally, with respect to the contentions raised concerning the importance of "local control" of Texas schools, the Court noted:

> Some have argued that reform in school finance will eliminate local control, but this argument has no merit. An efficient system does not preclude the ability of communities to exercise local control over the education of their children. It requires only that the funds available for education be distributed equitably and evenly. An efficient system will actually allow for more local control, not less. It will provide property-poor districts with economic alternatives that are not now available to them. Only if alternatives are indeed available can a community exercise the control of making choices. Id. at 398.

In Seattle Sch. Dist. No. 1 of King City. v. State, 585 P. 2d 71 (Wash. 1978), the Washington Supreme Court reviewed constitutional provisions which provided:

> It is the paramount duty of the state to make ample provision for the education of all

children residing within its borders ... (emphasis added in the original.) Seattle at 83.

In commenting upon the "duty" imposed by their constitution, the Washington court held:

> By imposing upon the State a paramount duty to make ample provision for the education of all children residing within the State's borders, the constitution has created a "duty" that is supreme, preeminent or dominant. Flowing from this constitutionally imposed "duty" is its jural correlative, a corresponding "right" permitting control of another's conduct. Therefore, all children residing within the borders of the State possess a "right," arising from the constitutionally imposed "duty" of the State, to have the State make ample provision for their education. Further, since the "duty" is characterized as paramount the correlative "right" has equal stature. (footnotes omitted.) Seattle at 91.

> "Providing free education for all is a state function. It must be accorded to all on equal terms." (See also Robinson v. Cahill, 287 A. 2d 187, 213 (N.J. 1972) citing Brown v. Board of Education, 347 U.S. 483, 493 (1954).

Relying, in part, on the state's equal protection clause the Court then concluded:

> Thus we hold, compliance with Const. art. 9, Sections 1 and 2 can be achieved only if sufficient funds are derived, through dependable and regular tax sources, to permit school districts to provide "basic education" through a basic program of education in a "general and uniform system of public schools." (emphasis added in the original.) Seattle at 97.

Finally, we note in passing the Washington court made its decision prospective only in effect. (See Seattle at pages 105-6.)

In Helena Elementary School Dist. No. 1 v. State,

769 P. 2d 684 (Mont. 1989), the Montana Supreme Court examined constitutional provisions that read:

> (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
>
> ...
>
> (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. ... It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system. Helena at 689.

The Court then held:

> Art. X, Sec. 1(3), Mont. Const., requires that the Legislature shall provide a basic system of free quality education, that it may provide various types of educational institutions and programs, and that the state's share of the cost of the basic system shall be distributed in an equitable manner. There is nothing in the plain wording of subsection (3) to suggest that the clear statement of the obligations on the part of the Legislature in some manner was intended to be a limitation on the guarantee of equal educational opportunity contained in subsection (1). The guarantee provision of subsection (1) is not limited to any one branch of government. Clearly the guarantee of equal educational opportunity is binding upon all three branches of government, the legislative as well as the executive and judicial branches. We specifically conclude that the guarantee of equality of educational opportunity applies to each person of the State of Montana, and is binding upon all branches of government whether at the state, local, or school district level. Helena at 689-90.

With respect to "local control", the Montana Supreme Court noted and held:

> The State also argued that the Constitutional

directive of local control of school districts, Art. X, Sec. 8, Mont. Const., requires that spending disparities among the districts be allowed to exist. That section provides:

> School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

While Section 8 does establish that the supervision and control of schools shall be vested in the board of trustees, there is no specific reference to the concept of spending disparities. Further, as made especially apparent after the passage of Iniative 105, the spending disparities among Montana's school districts cannot be described as the result of local control. In fact, as the District Court correctly found, the present system of funding may be said to deny to poorer school districts a significant level of local control, because they have fewer options due to fewer resources. We conclude that Art. X, Sec. 8, Mont. Const. does not allow the type of spending disparities outlined in the above quoted findings of fact. Helena at 690.

Finally, in Robinson v. Cahill, 287 A. 2d 187 (N.J. 1972) the New Jersey Supreme Court was presented with a constitutional provision which recited:

> The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years. Robinson at 209.

The Court held:

> The Education Clause was intended to do what is says, that is, to make it a state legislative obligation to provide a thorough education for all pupils wherever located. (Robinson at 210.)

...

> The word "thorough" in the Education Clause connotes in common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal. (Robinson at 211).

In reviewing the "local" versus "state" tax question, the court observed:

> Although districts can be created and classified for appropriate legislative purposes ... the state school tax remain[s] a state tax even though assessed and levied locally upon local property, with revenues returned by the State to local districts. (citations omitted.) Robinson at 210.

New Jersey, like Kansas, had a "hold harmless" component in their school financing system. In commenting thereon, Justice Botter, for the Court, wrote:

> The Bateman Committee [a New Jersey committee which had reviewed school finance and had recommended a whole new "needs-based" finance scheme] sought to justify minimum aid on the ground that it would provide even wealthy districts with the incentive to improve educational programs, and to maintain them at high levels. The justification offered at trial was that the State "should do something for every district." However, as long as some districts are receiving inadequate education, below that constitutionally required, the reasons offered cannot constitute a valid legislative purpose. As long as some school districts are underfinanced I can see no legitimate legislative purpose in giving rich districts "state aid". I am satisfied by the evidence that a strong reason for minimum aid and save-harmless aid is political, that is, a "give-up" to pass the legislation. Robinson at 211.

The New Jersey Court also recognized fundamental constitutional problems with the use of the property tax to support schools:

> Even if districts were better equalized by guaranteed valuations, the guarantees do not take into consideration "municipal and county overload." ... Poor districts have other competing needs for local revenue. The evidence shows that poorer districts spend a smaller proportion of their total revenues for school purposes. The demand for municipal services tends to diminish further the school revenue-raising power of poor districts. Another general disadvantage of poor districts is the fact that property taxes are regressive; they impose burdens in inverse proportion to ability to pay. This is because poor people spend a larger proportion of their income for housing. (citations omitted.) Robinson at 213.

Finally, with the respect to the need to spend "equal dollars" on each pupil in order to achieve "equal educational opportunity", the Court observed:

> This is not to suggest that the same amount of money must be spent on each pupil in the State. The differing needs of pupils would suggest the contrary. In fact, the evidence indicates that pupils of low socio-economic status need compensatory education to offset the natural disadvantages of their environment. Robinson at 213.

The Analysis of Our Constitution

Thus informed by our history and tradition, the cited general principles of Kansas law, and the experiences of our sister states, the Court now turns to an examination and interpretation of the text of the Kansas constitution. To sharply focus our attention, the exact language of the four critical provisions of the Education Article must be restated:

> The legislature shall provide for intellectual, educational, vocational, and

scientific improvement, by establishing and maintaining public schools ... . (emphasis added).

The legislature shall provide for a state board of education which shall have general supervision of public schools ... and all the educational interests of the state, except educational functions delegated by law to the state board of regents. (emphasis added).

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. (emphasis added).

The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. (emphasis added).

Analytical Queries

A series of questions will be posed and answered to aid in understanding and interpreting the language of the text:

1) Upon what entity of government is the sole and absolute duty to establish, maintain, and finance public schools imposed by the plain language of our constitution?

On this point nothing more need be said but that the clear answer appears from the text alone: that answer is the legislature.

2) To whom is this absolute duty to establish, maintain, and finance public schools owed?

In the court's view, the answer is self-evident when the question is stated another way. For whose primary benefit are public schools created and maintained? The answer can only be the school children of Kansas.

Without doubt, much collateral benefit from education inures to the benefit of others in our society, from business, industry, the professions, and the government, to the public at large, but the essential and primary beneficiaries of an education are the students who are educated. Thus, it is clear to the Court that the duty created by the constitutional mandate is owed to the school children of Kansas.

3) If the duty to establish, maintain, and finance public schools is constitutionally owed by the legislature to the school children of Kansas, in what proportion is that duty owed to each individual child?

Once again, the answer is logically inescapable. If the duty is owed to every child, each child has a claim to receive that educational opportunity which is neither greater nor less than that of any other child.

Thus, the fundamental answer is plain: the duty owed by the Legislature to each child to furnish him or her with an educational opportunity is equal to that owed every other child.

4) What can the legislature charge each child required to attend our public schools?

The text of the constitution alone answers this

question: except for "such fees or supplemental charges as may be authorized by law", the answer is nothing.

Accordingly, the overall constitutional scheme becomes more plain: the legislature must establish and maintain free public schools, which the legislature must finance from public funds and not from tuition paid by students required to attend those schools.

5) If, then, the legislature must establish, maintain, and finance free public schools for the benefit of all Kansas school children, how must it divide its resources among districts, schools, and students?

The answer lies in the educational opportunity which the legislature owes under the constitution equally to each child. This legislative duty is not to districts, not to schools, not to towns or cities, not to voters, not to counties, not to personal constituents -- but to each schoolchild of Kansas, equally.

6) Must, then, exactly equal (per pupil) dollar amounts be furnished to each school?

Again we must review the text of the education article. Great discretion is granted the legislature to devise, change, and reform education in Kansas. Obviously, educational needs, and concomitant costs, will vary from child to child and from place to place. The mandate is to furnish each child an educational opportunity equal to that made available to every other child. To do so will unquestionably require different expenditures at different times and places.

For example, if a child lives a great way from school, the transportation cost for that child will be greater than for another child nearer to school -- just to provide him or her the same educational opportunity. Similarly, if a child cannot speak English, it may cost more to teach that child English as a second language before the child can learn math and other subjects. Again, a disproportionate expenditure may be required to afford this child an equal educational opportunity. Other examples could be given but these suffice to demonstrate that the constitutional mandate is to provide to each child an equal educational opportunity, not necessarily exactly equal dollars.

Because the legislative duty to each child is the same, however, in the court's view, a disproportionate distribution of financial resources alone gives rise to a duty on the part of the legislature, if challenged, to articulate a rational educational explanation for the differential. Any rational basis for the unequal expenditures necessitated by circumstances encountered in furnishing equal educational opportunities to each child, however, would conclude the constitutional judicial inquiry.

Not only is this what the constitution says and seems to mean, but isn't this precisely how one would logically expect the people of Kansas to want their constitution interpreted? The Court invites the

following experiment: ask any citizen this question: "If our constitution requires the legislature to establish, maintain, and finance free public schools from public funds for all the school children of Kansas, what kind of educational opportunity would you expect the legislature to be constitutionally required by our courts to provide each individual child? This Court believes the answer you would get is: EQUAL!

7) Does this mean 100% "state financing" is required for public schools?

The clear and simple answer is "yes". The reasons are two: (a) that is what the constitution says; and (b) that is what we have always had -- for so-called local school districts are legally only political subdivisions of the state, exercising such of the state's taxing authority as the legislature delegates to them in partial fulfillment of the legislature's obligation to finance the educational interests of the state. Thus money raised by school districts through "local" taxation is still state money. It just hasn't been thought of that way.

8) What financial costs of educating students are included in the constitutional mandate placed by the Educational Article upon the legislature?

Let us return to the text of Article 6 again. The key words from section 1 are "establishing and maintaining" and from section 6(b) "suitable provision for finance". Once again, the answer is clear: all

costs, including capital expenditures are included. If only operating and maintenance costs were intended, the constitution would not say "establishing and maintaining". Furthermore, as previously demonstrated, in all events there is only the state, inasmuch as school districts are merely political subdivisions of the state. If the "state" (as thus understood to include its subdivisions) were not responsible for building needed schools -- who or what would be? And how can a school be "established" unless some edifice to house the school be built, bought, rented, or otherwise acquired?

9) Is the legislature's only duty to divide its educational resources in such a way as to provide equal opportunities for every child?

Section 6(b) of Article 6 requires the legislature to provide "suitable financing". Clearly, then, the answer is no. In addition to equality of educational opportunity, there is another constitutional requirement and that relates to the duty of the legislature to furnish enough total dollars so that the educational opportunities afforded every child are also suitable.

In other words, should total legislative funding fall to a level which the Court, in enforcing the Constitution, finds to be inadequate for a "suitable" (or "basic" as some state's decisions prefer) or minimally adequate education, a violation of the "suitable" provision would occur. In the case at bar, the question of what that "minimum" or "basic" level

will not be reached as all parties to these cases have agreed that if present funding levels are equitably divided, so as to provide every child equal educational opportunities as herein defined, no question of minimal adequacy (suitability) exists to be presented at this time. The Court notes, however, for general edification, that such a day has come in other states, most recently Kentucky. See e.g. Rose v. Council for Better Educ., 790 S.W. 2d 186 (Ky. 1990). In that state, after reviewing expert testimony, the court there held a minimally adequate education is one that has the following goals:

> 1) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
>
> 2) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
>
> 3) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state and nation;
>
> 4) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
>
> 5) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
>
> 6) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
>
> 7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in

surrounding states, in academics or in the job market. (Rose at 212-213).

10) Can the legislature be sued for "restitution" arising from past disproportionate funding?

The answer is no. The Education Article of the Kansas constitution creates no express right of action for damages. The remedy for a violation, therefore, is to strike existing laws which do not comply with constitutional provisions.

Furthermore, as an added precaution, in light of the length of time the present system has existed and the reliance placed upon it until now, should violations be found when the facts are heard, the Court has determined to make its decision in this case operate prospectively only.

Conclusion

From the foregoing, it is apparent that the interpretation given by this Court to the plain text of Article 6 of the Kansas Constitution is entirely in accord with the constitutional history and traditions of the state, the general principles of law laid down over time by our supreme court, the clear weight of reason, logic, and the modern trend of authorities in our sister states. Indeed our own Legislature, in its most recent session correctly anticipated the basic decision reached here.

In reviewing the school financing system here in

Kansas, an interim committee in its report to the 1991 Legislature specifically noted,

> It [the hold harmless component of the SDEA] is, therefore, unsuited for the task of equalizing wealth base differences among school districts. If applied over multiple years, this approach could not be expected to withstand legal challenge. (emphasis added.) Report on Kansas Legislative Interim Studies to the 1991 Legislature, School Finance Proposal No. 35, at page 314.

Further, the title of the School District Equalization Act and the legislative statement of purpose in the School Consolidation Act of 1963 reflect an understanding of the duty imposed by our Constitution. The latter provides

> The legislature hereby declares that this act is passed for the general improvement of the public schools in the state of Kansas; the equalization of the benefits and burdens of education throughout the various communities in the state; to expedite the organization of public school districts of the state so as to establish a thorough and uniform system of free public schools throughout the state .... K.S.A. 72-6734.

Indeed, the State Board of Education's own Strategic Plan for Kansas Public Education for the Year 2005 recites:

> The Kansas State Board of Education affirms it support for high quality education and learning opportunities for all Kansas citizens and for the elimination of differential access on the basis of race, sex, national origin, geographic location,age, socioeconomic status, or handicapping conditions.

The final question may arise, how could we have

come from 1861 to 1991 without having had these issues decided. There are several possible answers:

The first is simple -- no one ever asked. Courts only decide cases actually presented. Although several cases were filed over the years, none were ever prosecuted to final conclusion and thus no controlling precedent ever emerged.

Second, for many years the original system of completely supporting public schools, or nearly completely, with property tax dollars was probably constitutionally sufficient. When the assets of the state consisted virtually entirely of unimproved prairie land, and when school districts had about equal amounts of that -- the property tax likely resulted in reasonably equal educational opportunities for every child.

Third, as the assets of the state developed unevenly, various funding programs were apparently invented, by the legislature, which gave schools enough funds that they elected not to complain. Today, however, with tight budgets and many demands on the resources of the state, these plaintiffs here before the Court today have elected to chance litigation.

Finally, commencing constitutional litigation is always a high risk enterprise. As perhaps some plaintiffs today will tell you, the scope of the decision reached this day may be quite different from

what they had expected or perhaps even desired.

In any event -- here we are. The Court has been presented with the questions now and it has an absolute constitutional duty to decide. However difficult, however popular or unpopular -- that is the role of the court from which no judicial officer is permitted to retreat. There is no more solemn duty for any Court than to uphold, protect, and defend the Constitution. This duty, however, is not the sole responsibility of the judiciary. All those in government service, the Governor, Legislators, state and local school board members, even educators and teachers who are on the front lines of education, have all taken the same oath and assumed the same duty.

This Court is confident, therefore that as it today discharges its duty under the Constitution, so tomorrow will its counterparts throughout our democratic and constitutional government.

ORDER

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the rules set forth in questions one through ten, supra, are held to be the governing rules of law applicable to the controversy at bar, which rules will be applied to the facts found controlling at trial.

Because these rulings are entirely dispositive, the Court need not, and does not, reach other contentions raised, with the exception of the standing

issue, now moot in view of the holding that the legislative duty herein defined inures to the benefit of all Kansas school children, some of whom are plaintiffs in these consolidated causes. (For a sobering look at what happens in places where the guarantees of the Kansas constitution, as announced in this opinion, are not available or are not yet observed, see Savage Inequalities, Jonathan Kozol (Crown Publishers, N.Y. 1991).

Terry L. Bullock
District Judge

Done and entered
at Topeka, the
capital, this
fourteenth day of
October, 1991