

Approved: April 25, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Barbara Lawrence at 1:30 p.m. on February 14, 1996 in Room 123-S of the Capitol.

All members were present except: Senator Anthony Hensley

Committee staff present: Ben Barrett, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Jennifer Bishop, Committee Secretary

Conferees appearing before the committee: Representative Tom Sloan
Representative Ralph Tanner
Representative Tony Powell

Others attending: See attached list

HCR 5021: Amend section 2 of article 6 of the constitution of the state of Kansas, relating to the State Board of Education

Representative Sloan addressed the committee as a proponent of **HCR 5021**. Representative Sloan and Representative Tanner offered some alternative language for the committee's consideration, which would offer the voter several reasons to remove the Board of Education's self-executing powers. Representative Sloan gave information to why it was important that Education representatives be included in the governor's Cabinet (Attachment 1).

Representative Tanner addressed the committee as a proponent of **HCR 5021**. Representative Tanner stated that he has supported the measures of the bill as it first appeared in the House in 1995. He stated that he and Representative Sloan wanted to settle the question of self-executing authority, and in the bargain, to bring the administrative arms of education at all levels to the same table as other administrative agencies. This is why they asked the Revisor to prepare a House Concurrent Resolution which would address those concerns (Attachment 2).

Representative Tony Powell addressed the committee as a proponent of **HCR 5021**. He believes that when the Education Article was proposed and approved by the voters, there was no intent to in essence create a fourth branch of government, which is the practical effect of the Peabody case. Because of the Supreme Court's decision, both the Legislature and the Governor are shut out of many of the policy issues currently impacting on education. He believes that this is not what the state's Founders wanted, and it is something that the committee can correct with the amendment. A good example of why the Constitution needs changing is the debate on QPA. The Legislature has spent a considerable amount of time on this issue to no avail, since the State Board can do what it wants. Whether supporting or opposing QPA, the Legislature and Governor should have a say in how the important issue should be addressed. Under the current law, the State can do what it wants (Attachment 3).

The meeting adjourned at 2:34 p.m.

The next meeting is scheduled for February 15, 1996.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: February 14, 1996

NAME	REPRESENTING
Bill Meek	USD #230 Spring Hill
Bert Goering	" "
Mark Tallman	KASIS
Sue Chase	KNEA
Anne Aquino	KNEA
Bruce Gordon	KANSAS NEA
Rob White	KNEA
Jacque Oakes	SOE
Diane Gjerstad	U.S.D. 259, Wichita
Ed Walkman	Walkman Co
Tom Young	KNEA - R
Craig Grant	HNWA
Bill Land	KNEA
Judy Lapp	KNEA
Chris Reitz	KNEA
Lee Quisenberry	KNEA
Sharon Gard	KNEA
Tony White	KNEA
Donna Ferguson	KNEA

Hellie McKinley

KNEA

Donna L. Carter

KNEA - ~~USD~~ AEA AUGUSTA

Joan M. Stephens

Augusta Educ Assoc., Walnut Valley Union - KNEA

Harold R. Hoyer

KSEBE

(over)

BILL MUSICK
Friend S. McMillon

KEVIN P. GILMORE

CINDY DUCKETT

JIM McDAVITT

ST Bd Ed
St. Bd. J Ed.

" " " "

parent USD 259

Ks Ed Wash

TOM SLOAN
 REPRESENTATIVE, 45TH DISTRICT
 DOUGLAS COUNTY

STATE CAPITOL BUILDING
 ROOM 446-N
 TOPEKA, KANSAS 66612-1504
 (913) 296-7677
 1-800-432-3924
 772 HWY 40
 LAWRENCE, KANSAS 66049-4174
 (913) 841-1526



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: AGRICULTURE
 LOCAL GOVERNMENT
 ENERGY & NATURAL RESOURCES

TESTIMONY ON HCR 5021

February 14, 1996

Thank you, Madame Chairman, Members of the Committee. On several occasions the Legislature has passed proposed constitutional amendments eliminating the State Board of Education's self-executing powers. Each time the voters have rejected the proposal. While I believe the voters have not perceived the value in making such a change, the point is that HCR 5021 essentially offers the voters nothing different from the previous attempts. It offers no incentive for the voters to reject the status quo and it does not materially improve the status of education or the accountability of education officials to the citizenry.

Rep. Tanner and I offer alternative language for the committee's consideration which actually offers the voter several reasons to remove the Board of Education's self-executing powers.

A. KEY POINTS OF HCR 5040:

1. The State Board of Education's self-executing power is removed.
2. Members of the State Board of Education continue to be elected as in the past, but will recommend up to three (3) persons to the Governor for selection as Commissioner of Education. The Commissioner of Education is then specifically included in the Governor's cabinet.

Almost 50% of State General Fund expenditures are for assistance to local units for K-12 education. This proposed constitutional language places education on the same basis as SRS, Health and Environment, and other cabinet agencies. Education interests can now be prioritized within the Governor's budget and overall state policies. This not only would be beneficial for education, but also would be an advantage that the voters could recognize and support.

3. The Commissioner of Education would serve at the discretion of the Governor, but the State Board of Education continues to have the role of nominating up to three (3) persons for the position of Commissioner. Thus, both the State Board and Governor must cooperatively define the direction education will take. This check and balance is identical to that being successfully used by the Secretary/Department of Agriculture. Sec. Devine indicated in personal conversations that she, the Department, and the Department's constituencies benefit tremendously by being in the Governor's Cabinet and having the advisory board.

SENATE EDUCATION
 2-14-96
 ATTACHMENT 1

4. The Board of Regents also will nominate up to three (3) persons to the Governor for appointment as Commissioner of Higher Education and a seat in the Cabinet. The Board of Regents remains in place as a primary advocate of higher education institutions and processes, as well as being one of the most prestigious posts to which any Kansan can aspire. Nothing in this resolution changes that status.

Higher Education receives over 13% of State General Funds. The third highest percentage (behind K-12 and SRS) and should be included as an integral part of the Governor's cabinet. A representative of Higher Education could be appointed to the Cabinet without a constitutional amendment. By tying the Commissioner of Education and Commissioner of Higher Education together, we add representatives of over 63.6% of the budget to the Cabinet and provide the voters additional reasons to support the proposed constitutional amendment.

The Board of Regents also is included in this proposal because it would be inappropriate for Higher Education to be excluded from the Cabinet if the representative of K-12, the community colleges, and the specialized educational institutions are included at "the table". Education is too important to further divide them or to continue excluding them from the Cabinet.

- B. Why is it important that Education representatives be included in the governor's Cabinet?
 1. The State Board of Education is the only state entity which has the power to establish policies independent of legislative authorization and Gubernatorial approval, or the Rules and Regulations procedures. This independence makes the education process less accountable to the citizens of Kansas. (Few citizens can correctly name their State Senator and Representative, significantly fewer can name their State Board of Education representative.)
 2. Cooperation between the Department of Education and Board of Regents will increase because of the required face-to-face interactions, Gubernatorial influence, and increased public awareness of education issues. This also will make both agencies more responsive to their constituent interests - students, teachers, administrators, taxpayers, and prospective employers.
 3. The State Board of Education and the Board of Regents both remain independent advocates for education and the Senate will hold confirmation hearings on the Commissioner of Education, the Commissioner of Higher Education, as well as appointees to the Board of Regents.
 4. The voters of Kansas will have positive reasons to support this constitutional amendment repealing the State Board of Education's self-executing powers, raising the status of education issues, and holding all parties more accountable for their performance on behalf of educating our children and young adults.

STATE OF KANSAS

TOPEKA ADDRESS:
STATE CAPITOL—181-W
TOPEKA, KANSAS 66612-1504
(913) 296-7660
BALDWIN CITY ADDRESS:
1201 NINTH ST.
BALDWIN CITY, KANSAS 66006
(913) 594-3502



THE CAPITOL

HOUSE OF
REPRESENTATIVES

RALPH M. TANNER
DISTRICT 10

COMMITTEE ASSIGNMENTS
MEMBER EDUCATION
GOVERNMENTAL ORGANIZATION &
ELECTIONS
VICE CHAIR SELECT COMMITTEE ON HIGHER
EDUCATION
TOPEKA HOTLINE
DURING SESSION : 1-800-432-3924

TESTIMONY ON HCR 5021

Senate Committee on Education

February 14, 1996

Madam Chair and Members of the Committee:

I am honored to appear before you today in support of the ends sought in HCR 5021. I should make it clear that I supported this measure as it first appeared in the House of Representatives in 1995.

There were several motives which very likely moved members of the House last session to support this bill. Not the least of these was the expressed unhappiness of many House members with the directions being taken by the State Board of Education in the Quality Performance Accreditation program.

Upon inquiry into the authority of the legislature to regulate the Board's programming, the advice was that the Board was not susceptible to the will of the Legislature because of its "self-executing authority," which had its being in a Supreme Court decision. It was assumed, I believe, that the Legislature could "cut the lights out," but the use of the power of the purse in this manner was singularly unresponsive to the needs some of

SENATE EDUCATION
2-14-96
ATTACHMENT 2

us began to experience with regard to this important function of state government. We believe that there is really no duty of greater magnitude in the State than that of providing for education.

As the 1995 session ended, I must confess that I lost sight of the bill currently before the Committee, and began to think in terms of a new measure that might resolve the dispute over powers and responsibilities in the organizational structure of education in the State of Kansas. I believe it is essential to the orderly function of government that issues in dispute be put to rest.

(Over the course of the summer, Representative Sloan and I came to the conclusion that an appropriate point of beginning was to settle the question of self-executing authority, and in the bargain, to bring the administrative arms of education at all levels to the same table as other administrative agencies. We therefore asked the Revisor to prepare a House Concurrent Resolution which addressed our concerns.

As I speak to the measure before you, there is a Tanner-Sloan, et als., measure on file, HCR 5040, awaiting action across the Rotunda.

We have no need to muddy the water or to obfuscate the issue. This was effectively done by the Court in the January Term, 1973. We need, however, to speak to the untenable position in which the State Supreme Court placed us with its opinion in State, ex rel., v. Board of Education, 212 Kan. 482, commonly

known as the "Peabody" case. The opinion was prepared by Justice Fontron.

I have only recently begun a careful analysis of the holding in this case. I apologize for my lack of progress, but will soon complete my work. In addition to a review of the court opinion, I am looking closely at what I will call a Memorandum of Law prepared by the Revisor's office in July, 1987, for the Legislative Educational Planning Commission, and titled "The Education Article of the Kansas Constitution."

The Court set out to assay the "legislative intent" behind Article 6, the Education article, of the Constitution. In a fanciful flight into the world of linguistic analysis and textual criticism, the Court opined:

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

The Court continued, quoting the reference, "Whether or not a provision is self-executing depends on whether the language is addressed to the courts or the legislature, -- whether it indicates that it is intended as a present enactment, complete in itself as definitive legislation, or contemplates subsequent legislation to carry it into effect; and this requires a consideration both of the language used and of the intrinsic nature of the provision itself. . . ."

The people of Kansas were not well-served by the Court on the occasion of this decision. While the brief quotation above does not give us a definitive basis on which to understand fully what it was the Court was about, this case did more to unsettle the administration of the educational program of Kansas than to provide insights into the intent of the people or the Legislature in the drafting of the language of the sixth amendment.

Left without direction in a critical time -- one must understand or remember the "troubled times" of the seventies -- the State Board of Education, the State Legislature, and local school boards were in the vexing state of having no clarity given to them by the judiciary.

The Memorandum of Law, mentioned above, sets forth an outline of the legislative history of Article 6. By expending relatively little effort, the Court might have revealed legislative intent through reference to a publication entitled, "The Education Amendment to the Kansas Constitution, (Pub. No. 256 - December, 1965). The Memorandum provides us with considerable insight into a whole array of data speaking to legislative intent, and noted, ". . . the intent of the drafters was not what the Supreme Court interpreted it to be in the "Peabody" case."

And so, despite my lack of a full analysis of the materials cited, no mental gymnastics are required for me to arrive at the conclusion that our present law is the result of an accident -- an accident of the court's failure to examine the materials at hand and easily available to it -- an accident in too great a

reliance on theories of law rather than on the fact situation and legislative history -- an accident of some attorney's failure to do an accurate and complete preparation of the case before it was laid before the court -- and an accident, or abject failure -- of the legislature to craft a remedy and proclaim its availability to the people of Kansas in a constitutional amendment.

And so, members of the Committee, I urge you to set your minds on appropriate remedies and solutions. No accident in the law should be allowed to prevail over time. Regrettably, this has happened in the "Peabody" case. We have a duty to address this matter in this session.

Thank you Madam Chairman and Committee members. I will gladly stand for questions.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TONY POWELL
REPRESENTATIVE, 85TH DISTRICT
SEDGWICK COUNTY
7313 WINTERBERRY
WICHITA, KANSAS 67226
(316) 634-0114



TOPEKA

STATE CAPITOL, ROOM 182-W
TOPEKA, KANSAS 66612-1504
(913) 296-7694

COMMITTEE ASSIGNMENTS
EDUCATION
RULES AND JOURNAL
TAXATION
TRANSPORTATION
JOINT COMMITTEE ON
SPECIAL CLAIMS
AGAINST THE STATE

BEFORE THE SENATE EDUCATION COMMITTEE

TESTIMONY IN SUPPORT OF HCR 5021

February 14, 1996

Madam Chairman and members of the Senate Education Committee, I am pleased to come before you today as a principal sponsor of HCR 5021, a proposal to amend the Kansas Constitution to remove the State Board of Education's self-executing powers.

This measure seeks to reverse a longstanding decision made by the Kansas Supreme Court in the Peabody case which held that the Kansas Constitution, in light of the then recent constitutional amendment approved by the voters, gave the State Board of Education "self-executing" powers, meaning that it did not need to come to the Legislature for its authority.

I believe that when the Education Article was proposed and approved by the voters, there was no intent to in essence create a fourth branch of government, which is the practical effect of the Peabody case. Because of the Supreme Court's decision, both the Legislature and the Governor are shut out of many of the policy issues currently impacting on education. Impact on many educational issues must come through the power of the purse, which in my view is like trying to perform delicate surgery with an axe, when a scalpel would work much better. I believe that this is not what our state's Founders wanted, and it is something that we can correct with this Amendment,

A good example of why the Constitution needs changing is the debate on QPA. We have spent considerable time on this issue to no avail, since the State Board can do what it wants. Whether you support or oppose QPA, clearly the Legislature and Governor should have a say in how this important issue should be addressed. Under current law, the State Board can do what it wants.

This Amendment has received broad support by both Democrats and Republicans, by conservatives, moderates, and liberals alike. In fact, HCR 5021 received 91 votes in the House. Why? Because the people of Kansas are demanding reform of education, and are becoming increasingly angry at the failure of government to do something about it. Approving this Amendment will give us additional tools to promote education reform.

Please support HCR 5021. I will be happy to stand for questions.

SENATE EDUCATION
2-14-96
ATTACHMENT 3

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TONY POWELL
REPRESENTATIVE, 85TH DISTRICT
SEDGWICK COUNTY
7313 WINTERBERRY
WICHITA, KANSAS 67226
(316) 634-0114

STATE CAPITOL, ROOM 182-W
TOPEKA, KANSAS 66612-1504
(913) 296-7694



TOPEKA

COMMITTEE ASSIGNMENTS

EDUCATION
RULES AND JOURNAL
TAXATION
TRANSPORTATION
JOINT COMMITTEE ON
SPECIAL CLAIMS
AGAINST THE STATE

BEFORE THE SENATE EDUCATION COMMITTEE

TESTIMONY IN SUPPORT OF HCR 5021

February 14, 1996

Madam Chairman and members of the Senate Education Committee, I am pleased to come before you today as a principal sponsor of HCR 5021, a proposal to amend the Kansas Constitution to remove the State Board of Education's self-executing powers.

This measure seeks to reverse a longstanding decision made by the Kansas Supreme Court in the Peabody case which held that the Kansas Constitution, in light of the then recent constitutional amendment approved by the voters, gave the State Board of Education "self-executing" powers, meaning that it did not need to come to the Legislature for its authority.

I believe that when the Education Article was proposed and approved by the voters, there was no intent to in essence create a fourth branch of government, which is the practical effect of the Peabody case. Because of the Supreme Court's decision, both the Legislature and the Governor are shut out of many of the policy issues currently impacting on education. Impact on many educational issues must come through the power of the purse, which in my view is like trying to perform delicate surgery with an axe, when a scalpel would work much better. I believe that this is not what our state's Founders wanted, and it is something that we can correct with this Amendment.

A good example of why the Constitution needs changing is the debate on QPA. We have spent considerable time on this issue to no avail, since the State Board can do what it wants. Whether you support or oppose QPA, clearly the Legislature and Governor should have a say in how this important issue should be addressed. Under current law, the State Board can do what it wants.

This Amendment has received broad support by both Democrats and Republicans, by conservatives, moderates, and liberals alike. In fact, HCR 5021 received 91 votes in the House. Why? Because the people of Kansas are demanding reform of education, and are becoming increasingly angry at the failure of government to do something about it. Approving this Amendment will give us additional tools to promote education reform.

Please support HCR 5021. I will be happy to stand for questions.