Approved: 4-11-97
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 20, 1997 in Room 519-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:
Mark Tallman - Kansas Association of School Boards, U.S.D. 501, & U.S.D. 512
Sue Chase - Kansas National Education Association

Others attending: See attached list

Hearings on **HCR 5021 - Resolution directing the state board of education to define an essential core curriculum, determine costs of provision, and report to the education committees of the legislature,** were continued.

Staff provided the committee with a report on the school finance litigation, 1990-1994. (Attachment 1)

Mark Tallman, Kansas Association of School Boards, U.S.D. 501, & U.S.D. 512, appeared before the committee in support of the resolution. He believes that it would have a positive effect on the state because there should be some minimum budget support from the state for all students that reflects suitable educational services. He suggested several amendments to the resolution. (Attachment 2) He commented that the State Board of Education has determined outcomes for every student to meet. The local boards should be allowed to pick what programs they feel will help the student meet the outcomes, and the state should fund those programs. However, if the school district doesn't meet those outcomes then there should be repercussions.

Sue Chase, Kansas National Education Association, appeared before the committee as an opponent of the resolution. She stated that the resolution would bring back the industrial assembly line model, where a student is taught only what is needed to know and then passed on to the next grade. The state currently measures how well students are performing by the state assessment tests and because these tests are mandatory they determine what every student should know. Every district should be able to pick and choose what they will be teaching and that if a district fails to prepare students to meet the outcomes then a process should be in place that would deal with those districts. Currently the State Board of Education is looking at solutions, including the possibility of not reaccrediting the school. Other possibilities are to change the educational leadership of the school, or get rid of a teacher that is not doing his/her job. (Attachment 3)

Hearings on **HCR 5021** were closed.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for March 24, 1997.

HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: March 20, 1997

NAME	REPRESENTING
Arun Bennett	USA
Bob Vancrum	USD 229 Blue Valley Dist.
Hershel Roar	Cit.
Jim Yonally	USD #512
Dorothy Rockefeller	LOWV
Jacque Oakes	SDE
Sue Chase	KNEA
Denise Cope	USA
Mark Tallman	KASB
Maureen White	KASB
Sue Gamble	KASB

MEMORANDUM

Kansas Legislative Research Department

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Revised: December 20, 1994

STATUS REPORT ON SCHOOL FINANCE LITIGATION, 1990-1994

School Finance Case Filings

In 1990, three school finance lawsuits challenging the School District Equalization Act (SDEA) were filed. They were: *Mock et al. v. State of Kansas* (90-CV-0918), *Hancock et al. v. Stephan et al.* (90-CV-1795), and *Newton USD 373 et al. v. State of Kansas* (90-CV-2406). These cases were consolidated in Division 3 of the Shawnee County District Court.

On June 25, 1991 another case was filed, this one by the Wichita school district (USD 259). Initially filed in the Sedgwick County District Court, the case subsequently was transferred to the Shawnee County District Court. In August, the Wichita case, *USD 259 v. State of Kansas* (91-CV-1009) was consolidated with the other school finance cases, all of which were assigned to Division 6 of the Shawnee County District Court. Subsequently, Turner (USD 202) and Olathe (USD 233) joined Wichita as plaintiffs in that case. Terry Bullock was the Division 6 Judge.

The Wichita litigation, among other things, requested the Court to issue an injunction to prohibit the distribution of school aid under the then current version of the SDEA. In an August 9, 1991 ruling, Judge Bullock denied the injunction. Judge Bullock's decision was appealed to the Kansas Supreme Court, which, in a ruling on December 18, 1991, deferred action on the matter pending the outcome of the school finance litigation in the Shawnee County District Court. Subsequently, Wichita (USD 259) voluntarily dismissed this appeal.

Initially, Judge Bullock set the trial date for the school finance consolidated cases for the week of October 28 through November 1, 1991. However, one of the events scheduled prior to commencement of the trial was a conference held on October 14, 1991, in the Kansas Supreme Court Chambers at which Judge Bullock announced a series of ten rules of law the District Court would apply in deciding the pending school finance issues. As requested by Judge Bullock, the conference was attended by the Governor and leaders of the Legislative Branch of state government, as well as by certain other state officials and by attorneys involved in the litigation. This conference provided the opportunity for the elected state officials to advise the judge as to whether the trial should be commenced as scheduled or whether it should be deferred until after the 1992 Legislature had the opportunity to review the school finance law and to consider the issues posed in the litigation in view of the rules regarding interpretation of the law that the judge stated he would apply.

The response of these state leaders was to embrace the option of using the opportunity to further consider the school finance issues before judicial review was commenced. As evidence of a

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commitment to this course of action, it was agreed the Governor would create, by executive order, a 16-member Task Force on Public School Financing. This Task Force was composed of eight gubernatorial appointees and eight legislators appointed by the legislative leadership, with the chairperson (Representative Rick Bowden) being named by the Governor.

Although the Governor had set December 9 as the target date for the preliminary report, the Task Force was able to complete its work a bit earlier. The Task Force held meetings on November 1, 7, 8, and 13 and submitted its report to the Governor and to the Legislative Coordinating Council on November 21, 1991.

During the 1992 Session, the Legislature and Governor understood that if the system of school finance was not altered, or if any of the plaintiffs were dissatisfied with changes made, the litigation would resume in Judge Bullock's court soon after the conclusion of the 1992 Session.

Subsequent to the passage of 1992 Senate Sub. for Senate Sub. for H.B. 2892 (L. 1992, Ch. 280) and H.B. 2835 (L. 1992, Ch. 284), on May 11, 1992, Judge Bullock conducted a status conference with the attorneys to the pending consolidated lawsuits. At that conference, all of the attorneys, except for one, represented that their clients favored dismissal of the litigation. However, the attorney representing Newton and five other school districts asked the Court to delay the trial for one year, but not to dismiss the lawsuit. In response, Judge Bullock indicated the Court "will retain jurisdiction, at least for a while." However, the scheduled June 1, 1992, trial of the pending cases was canceled. Also, pending motions to intervene by various school districts and individuals were denied by the judge. As a consequence of the Court's actions, the pending cases, while not dismissed, remained dormant to allow implementation of the new law. In an August 24 communication, Judge Bullock noted that he had become heavily involved in the property appraisal litigation. As a consequence, the Judge announced that he was passing the school finance litigation on to another judge of the Shawnee County District Court -- Judge Marla Luckert, the Division 3 judge.

On August 24, 1992, the Blue Valley (USD 229) school district and certain individuals filed suit in Division 3 of the Shawnee County District Court challenging the constitutionality of various provisions of L. 1992, Ch. 280, the School District Finance and Quality Performance Act. About the same time, Judge Bullock dismissed all but one of the four consolidated cases that were pending before him. The remaining case (*Newton et al.*) was transferred to Judge Luckert. Plaintiffs in that case were permitted to amend their petition to challenge the new school finance legislation. The plaintiffs filed their amended petition on October 15, 1992.

On September 9, 1992, the Burlington (USD 244) school district and certain patrons, taxpayers, board members, and students filed suit challenging the constitutionality of the new school finance law and, on September 15, 1992, nine western Kansas school districts and certain citizens/taxpayers and students also filed suit challenging the new law.

On October 16, 1992, Judge Luckert announced that the three 1992 cases had been consolidated and that the *Newton et al.* case (90-CV-2406) also had been consolidated with the other three cases. On March 1, 1993, Judge Luckert severed the claims of the plaintiffs relating to assessment, valuation, and exemption of property for property tax purposes and transferred them to Division 6 of the Shawnee County District Court to be considered in the pending case *State ex rel. Stephan v. Kansas Department of Revenue, et al.*, 92-CV-796. The judge noted that the transfer did not foreclose further proceedings on these issues in her court, should such proceedings be appropriate (see below). In another March 1 order, Judge Luckert denied the defendants' efforts to secure dismissal of school boards and school

districts from the school finance litigation on the basis of the principle that these governmental units lack standing to sue the state.

On May 11, the Burlington (USD 244) school district filed an action seeking an order of injunctive relief from Judge Luckert to prevent operation of the excess local effort remittance provision of the school finance law. On May 20, nine southwest Kansas school districts joined the action. This remittance is required of the affected districts on June 1 of the school year. On May 28, Judge Luckert issued an order denying the requested relief.

The trial, conducted principally from June 28 to July 14, was concluded on August 18. The opinion was issued on December 16. The judge found two constitutional infirmities in the law:

1. The uniform school district general fund tax levy was construed to be a state property tax and, as such, subject to a constitutional provision which limits such levies to two years in duration.

   The provision relating to the levy for 1994 was severed from the act.

2. The low enrollment weight was found constitutionally deficient because it perpetuated inequities caused by the previous school finance law and the enrollment eligibility was set at too high a level. (However, the principle of an enrollment weight to reflect economies of scale was recognized as an acceptable means of adjusting a school finance plan.)

Upon finding that the low enrollment provision was so intertwined with other provisions of the formula that, as a practical matter, it could not be severed, the Court found the entire act unconstitutional. However, the Court stayed the effective date of the finding until July 1, 1994, thereby giving the 1994 Legislature an opportunity to fashion a remedy for the problem.

In addition, by a separate order, Judge Luckert informed the plaintiffs that she had vacated her orders of March 1 and 12, 1993 in which various tax-related claims had been severed from the school finance litigation. The expectation was that those claims would have been resolved in *State ex rel. Stephan v. Kansas Department of Revenue, et al.*, 92-CV-796. However, the plaintiffs asserted their claims were not resolved. Judge Luckert determined that plaintiffs would be given the opportunity to litigate any such claims that were not moot. That litigation remained inactive until December of 1994. The Newton plaintiffs then removed themselves from the litigation. Judge Luckert and the remaining litigants were engaged in determining the course of this ligation on two remaining issues as the year ended.

In late December 1993, litigants filed appeals of Judge Luckert's opinion with the Kansas Court of Appeals. Subsequently, a request to the Kansas Supreme Court that it hear the case was granted. On March 31, 1994, the Supreme Court stayed until July 1, 1995, the Shawnee County District Court deadline for legislative compliance with that Court's ruling. The oral argument before the Supreme Court occurred on September 14, 1994. The Court's decision, which was unanimous, was issued on December 2, 1994.

The Kansas Supreme Court ruled that the 1992 School Finance and Quality Performance Act, together with its 1993 amendments, was constitutional. The Court said ". . . the Act is within all

asserted constitutionally permissible limitations and, accordingly, is constitutional legislation." Thus, the Shawnee County District Court was reversed in its finding that the Act was unconstitutional because of the low enrollment weight provision. Also, the Court noted the trial court ruling that the *Kansas Constitution* does not allow for a uniform mill levy for a period of more than two years and observed that "infirmity" in the law had been corrected by the 1994 Legislature. (*U.S.D. No. 229 v. State*, 256 Kan._____ (1994) (Docket No. 70,931)

SUMMARY OF MAIN ISSUES IN THE 1990-1994 SCHOOL FINANCE LITIGATION

1990 and 1991 Litigation

In his October 14, 1991 order, Judge Bullock stated that the then-pending cases challenging various features of the School District Equalization Act, in the aggregate, challenged the constitutionality of the entire scheme of financing of the public schools -- grades kindergarten through 12.

The following summary provides some insight into the specific issues of greatest concern to the plaintiffs in 1990 and 1991 litigation.

Mock Case (90-CV-0918). The case focused on two main concerns: (1) the treatment under the School District Equalization Act (SDEA) of the fourth enrollment category districts, and (2) the 1990 enactment (L. 1990, Ch. 257) which, in effect, suspended the SDEA for 1990-91 in favor of what was essentially a "hold harmless" per pupil distribution.

Hancock Case (90-CV-1795). The main issues were: (1) the 1990 "hold harmless" enactment (discussed above), and (2) the fact that Kansas law did not equalize capital expenditures.

Newton Case (90-CV-2406). Initially, the case addressed three main concerns: (1) the treatment under the SDEA of the fourth enrollment category districts (discussed above in *Mock*), (2) the disproportionate burden on property wealth caused by including taxable income in the SDEA formula, and (3) the 1990 "hold harmless" enactment (discussed above). In 1991, after the conclusion of the 1991 Session, the case was expanded to assert that the entire system of financing the various school districts was too dependent upon local wealth and, thus, was unconstitutional.

Wichita Case (91-CV-1009). The case contained two main thrusts: (1) the cap of $700,000 placed on the 1991-92 hold harmless provision (the principal concern) and (2) the SDEA as a whole. (Initially there was no detailed explanation of the objection to the SDEA as a whole.)

1991 Legislation

With respect to the issues raised, the 1991 SDEA amendments addressed three of the four main concerns raised in the three cases filed in 1990 (excluding Newton's 1991 expansion). The legislation:

1. provided for the merger of the fourth and fifth enrollment categories over a three-year period;

2. reinstated the power equalization formula for the distribution of most of the general state aid appropriated for the 1991-92 school year; and

3. reduced the amount of taxable income included in "district wealth" for purposes of determining a school district's local effort.

There was no equalization of capital expenditures.

It was apparent from press accounts that Wichita felt compelled to join in the litigation due to the combined impact in that district of the amount of SDEA funding provided for the 1991-92 school year and the application of the $700,000 cap on hold harmless aid for that year.

Regardless of the motives that prompted filing of the various cases in the first place, it became clear that if the litigation proceeded as had been anticipated, at the conclusion of the 1992 Session the Court would have undertaken a review of all features of the school funding system.

1992 Litigation

The 1992 Legislature replaced the former School District Equalization Act with the new School District Finance and Quality Performance Act (Senate Sub. for Senate Sub. for H.B. 2892; L. 1992, Ch. 280). Key features of the new law included a base amount of funding for each pupil ($3,600) and use of pupil weights in order to recognize higher costs for certain educational programs and school district characteristics. In addition, optional spending authority (local option budget) was provided. Separate legislation (H.B. 2835; L. 1992, Ch. 284) provided state assistance for school district bond and interest obligations.

Blue Valley Case (92-CV-1099); Filed in Shawnee County District Court August 24, 1992

The suit filed by Blue Valley (USD 229) and certain individuals challenged various provisions of the new school finance law. The plaintiff's petition contended that certain features of the new law were ". . . arbitrary and capricious, having no basis in fact or law; because it does not take into account those facts and factors which must be considered in determining the amount reasonably necessary to suitably finance public education in each school district." It was alleged, in addition, that these provisions violated the Kansas *Bill of Rights* § 1 and Art. VI, §§ 5 and 6(b) of the *Kansas Constitution*. The provisions challenged on that basis included: Base State Aid Per Pupil (BSAPP); pupil weights for bilingual education, vocational education, low enrollment (under 1,900 pupils), at-risk pupils, and new school facilities; transitional State Financial Aid for the 1992-93 school year; and Supplemental General State Aid (state assistance for support of school district local option budgets).

Other components of the law considered violative of the above-mentioned constitutional provisions included the "local effort" calculation for purposes of determining school district general state aid (Art. VI, §§ 5 and 6(b)), local option budget spending authority (*Bill of Rights* § 1 and Art. VI, §§ 5 and 6(b)), and tax exempt property purchased or constructed with the proceeds of revenue bonds and not included in the assessed valuation of the district (*Bill of Rights* § 1 and Art. VI, §§ 5 and 6(b)).

Finally, the litigation contended that the valuation and assessment of real property in Kansas was not in substantial compliance with applicable laws and constitutional provisions and thus resulted in nonuniform taxation under the school district general fund property tax levy (32 mills in 1992) -- in violation of the *Bill of Rights* § 1 and Art. II, § 17 and Art. XI, § 1(b) of the *Kansas Constitution*.

The plaintiffs contended that education under the *Kansas Constitution* was a fundamental right. The presumed purpose of this was to subject the challenged provisions of the law to a "strict scrutiny" test. (In his October 14, 1991 order, Judge Bullock had opted for the less stringent "rational basis" test when he noted that if the Legislature provides for a disproportionate distribution of financial resources for the education of children and if the plan is challenged, the Legislature must articulate a "rational educational explanation" for the differential.) The plaintiffs called for a "temporary and/or permanent" injunction from administration of the law.

Selected excerpts from the *Kansas Constitution* -- from Blue Valley petition:

***Bill of Rights* § 1**

Equal Rights. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

Article II, § 17

Uniform Operation of Laws of a General Nature. All laws of a general nature shall have a uniform operation throughout the state . . . .

Article VI, § 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 . . . . (Emphasis added.)

Article VI, § 6(b)

Finance. 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.)

Article XI, § 1(b)

System of Taxation; Classification; Exemption . . . . Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation . . . .

***Newton Case (90-CV-2406)*: Filed in Shawnee County District Court December 20, 1990; Amended Petition Filed October 15, 1992**

Subsequent to the Blue Valley filing, Judge Bullock dismissed all but one of the previously consolidated cases that were pending before him. The remaining case (referred to herein as the *Newton Case*) was transferred to Division 3 of the Shawnee County District Court where the plaintiffs were authorized to amend their petition to challenge the new law. An amended petition was filed on October 15, 1992. Plaintiff school districts included Newton (USD 373), Hays (USD 489), Dodge City (USD 443), Winfield (USD 465), Pittsburg (USD 250), and Leavenworth (USD 453). Other plaintiffs included a variety of citizen/taxpayers and students of these districts.

The amended petition contained two main parts. One part continued the challenge to the former School District Equalization Act (discussed earlier in this memorandum), wherein there was the allegation that during the period 1982-83 through 1990-91 the plaintiff school districts unconstitutionally were denied in excess of $15.0 million in state aid. The second part challenged the new School District Finance and Quality Performance Act.

The suit contended that provisions of the new law violated the equal protection clause of the Fourteenth Amendment to the *U.S Constitution* and various provisions of the *Kansas Constitution*, including the *Bill of Rights* §§ 1 and 2, Art. II § 17, and Art. VI §§ 1 and 6. The plaintiffs contended that education was a fundamental interest under the *Kansas Constitution*, thus requiring a strict scrutiny standard of review.

The plaintiffs focused on provisions of the law pertaining to the base state aid per pupil; the various pupil weights used in determining a district's enrollment adjustment; the 1992-93 state financial aid controls; the school district local effort determination, including the property tax levy for the general fund budget; and the local option budget financing provisions. It was alleged that these provisions were arbitrary and capricious and had no basis regarding appropriate funding levels within the *Kansas Constitution's* mandates. The main contentions were that:

- the law unconstitutionally favored some districts (other than the plaintiff districts) on the basis of wealth, size, enrollment, and political advantage (in this regard, plaintiffs stated specifically that the law encouraged and favored school districts with lower enrollments);

- specifically, local option budgets and supplemental general state aid were subject to the wealth and political advantage of each district (this portion of the law unconstitutionally impacted ". . . poorer districts, those districts which have been economically distressed, and those districts which have not demonstrated the ability to pass additional local levies in their district.");

- the "suitable provision" mandate of the *Kansas Constitution* had not been met in the plaintiff districts as the school finance law produced unequal and unsuitable treatment and resulted in unsuitable treatment of students; and

- the law violated constitutional requirements relating to property taxation.*

***NOTE:** Shaded material denotes claims severed by Judge Luckert's March 1, 1993 order. These claims were transferred to Division 6 of the Shawnee County District Court for consideration in the case of *State ex rel. Stephan v. Kansas Department of Revenue et al.*, 92 CV 796. On December 15, 1993, the March 1 order was vacated. In December, 1994, the Newton plaintiffs removed themselves from the litigation.

Generally, the plaintiffs sought declaratory and injunctive relief, judgment that the enumerated provisions of the law violated the *Constitution*, compensatory damages in excess of $50,000, and plaintiffs' costs and attorney fees.

***Burlington Case (92-CV-1175)*: Filed in Shawnee County District Court September 9, 1992**

The suit, filed by Burlington (USD 244) and certain patrons, taxpayers, board members, and students, contended that the new school finance law (L. 1992, Ch. 280) violated the equal protection clause of the Fourteenth Amendment to the *U.S. Constitution* and various provisions of the *Kansas Constitution*, namely the *Bill of Rights* §§ 1 and 2, Art. II, § 17, Art. VI, and Art. XI, §§ 1, 4, and 5. The contentions were that the law:

- contravened the *Kansas Constitution* as it relates to the role and responsibilities of local boards of education (Art. VI, especially § 5);

- was general in nature but did not operate uniformly throughout the state, imposed a tax which caused disparate treatment of persons or property of the same class, and subjected persons or property to improper or preferential treatment due to tax exempt property* (Art. II, § 17, Art. XI, §§ 1 and 5, and equal protection clause of the Fourteenth Amendment);

- diluted the capacity of the school board's exercise of the constitutional duties (*Bill of Rights* §§ 1 and 2, Art. VI, and equal protection clause of the Fourteenth Amendment); and

- used locally generated property taxes on a statewide basis with no relationship between the school district program and the taxes levied, provided for raising revenue to defray state expenses for in excess of two years, and diminished the local ad valorem tax base by requiring the school district board to levy ad valorem taxes in excess of the amount needed by the district with the excess revenue being used for state purposes (*Bill of Rights* §§ 1 and 2, Art. XI, §§ 1 and 4).

Generally, the plaintiffs sought an injunction against implementation of the new school finance law (L. 1992, Ch. 280).

As 1994 ended, Judge Luckert and the remaining litigants had resumed exploration of how to proceed on two remaining issues.

*__NOTE:__ Shaded material denotes claims severed by Judge Luckert's March 1, 1993 order. These claims were transferred to Division 6 of the Shawnee County District Court for consideration in the case of *State ex rel. Stephan v. Kansas Department of Revenue et al.*, 92 CV 796. On December 15, 1993, the March 1 order was vacated. In December, 1994, the Newton plaintiffs removed themselves from the litigation. As 1994 ended, Judge Luckert and the remaining litigants had resumed exploration of how to proceed on two remaining issues.

***Rolla Case* (92-CV-1202): Filed in Shawnee County District Court September 15, 1992**

The suit was filed by boards, citizens/taxpayers, and students of the following districts: Rolla (USD 217), Lakin (USD 215), Hugoton (USD 210), Satanta (USD 507), Holcomb (USD 363), Johnson (USD 452), Elkhart (USD 218), Ulysses (USD 214), and Moscow (USD 209). The plaintiffs commented on the diversity found within Kansas and noted that during the history of the state the educational opportunities provided to children had been disparate but that Kansas children ". . . were always afforded a high quality educational opportunity." A special point was made of the necessarily higher cost of education in the smaller enrollment school districts. Their challenge to L. 1992, Ch. 280 and K.S.A. 12-1742 and K.S.A. 79-201a cited the following provisions of the *Kansas Constitution*: *Bill of Rights* § 1, Art. II, § 17, Art. VI, §§ 1, 5, and 6(b), and Art. XI, § 1(b).

With respect to "educational issues," the contention that L. 1992, Ch. 280 was unconstitutional was based upon arguments that the new law:

- destroyed the concept of local control of local schools;
- deprived Kansans who lived in sparsely populated areas of their right to "adequate" schools; and
- required local property taxes raised in one district to be spent for the education of children in another district.

The plaintiffs also attacked certain taxation and education funding issues in a series of three alternative pleadings:

- the valuation and assessment of real property in Kansas violated the "uniform and equal" provision of the *Kansas Constitution* which resulted in unequal and nonuniform taxation of property under the uniform mill rate requirements of the new school finance law (*Bill of Rights*, Art. II, § 17, and Art. XI, § 1(b));
- if the Court determined that property taxes raised under the new school finance law were a state (rather than local) concern, the legislative delegation of authority to cities under K.S.A. 12-1742 and K.S.A. 79-201a to remove certain properties from the tax rolls as related to the school tax legislation and laws providing that property exempt from ad valorem taxes could not be included in the computation of assessed valuation of a school district were unconstitutional (*Bill of Rights* § 1 and Art. VI, §§ 5 and 6(b));* and

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***NOTE:** Shaded material denotes claims severed by Judge Luckert's March 1, 1993 order. These claims were transferred to Division 6 of the Shawnee County District Court for consideration in the case of *State ex rel. Stephan v. Kansas Department of Revenue et al.*, 92 CV 796. On December 15, 1993, the March 1 order was vacated. In December, 1994, the Newton plaintiffs removed themselves from the litigation. As 1994 ended, Judge Luckert and the remaining litigants had resumed exploration of how to proceed on two remaining issues.

- if the Court determined that all Kansans had a constitutional right to an equal educational opportunity, the law (L. 1992, Ch. 280) was unconstitutional as it deprived sparsely populated areas of an equal educational opportunity because, due to economies of scale, sufficient funding was not provided to students who lived in sparsely populated areas as compared with students who lived in the more densely populated urban areas.

The plaintiffs sought to have the school finance law declared unconstitutional and unenforceable and for the Court to order what it determined to be just and equitable relief.

1993 Litigation

On May 11, 1993, Burlington (USD 244) filed a motion in the Shawnee County District Court seeking a temporary injunction to restrain the state from collecting the "excess" ad valorem taxes (actually, excess local effort) generated under the school finance law. Subsequently, nine additional districts joined the motion: Moscow (USD 209), Hugoton (USD 210), Ulysses (USD 214), Lakin (USD 215), Rolla (USD 217), Elkhart (USD 218), Holcomb (USD 363), Stanton County (USD 452), and Satanta (USD 507). (The excess local effort is the amount by which a school district's local effort exceeds its state financial aid.) The excess local effort remittance is due on June 1 of the school year.

An order issued on May 28 denied the injunctive relief. The order noted:

- the parties had not met the burden of establishing the "irreparable harm" prerequisite for temporary injunctive relief; and

- the injunctive relief sought, if granted, would be contrary to the public interest.

On the basis of these findings, Judge Luckert's order noted that it was not necessary to consider whether other prerequisites for granting the injunction had been met.

The judge issued the opinion in the consolidated school finance litigation on December 16, 1993 (Cases: 90-CV-206; 92-CV-1099; 92-CV-1175; and 92-CV-1202). The Court discerned two constitutional flaws in the school finance plan:

- The provision of law which contained the levy, construed as a state property tax, exceeded the two-year limit contained in the *Kansas Constitution*. The 1992 and 1993 levies (32 mills and 33 mills, respectively) were within constitutional bounds but the 1994 levy (35 mills) violated the two-year limitation and was severed from the act. The Legislature was required to act to impose the levy in 1994 and would be required to continue to do so at least in two-year intervals.

- The low enrollment weight was determined to be unconstitutional. Because it was so intertwined with other aspects of the formula, it was determined that provision could not be severed, and the entire act had to be declared unconstitutional. However, the holding was stayed until July 1, 1994. Prior to that time, the Legislature would be

required to re-enact the provisions of the school finance law with modification of the provisions regarding the low enrollment weight.

The Court engaged in a rather extensive review of the 1992 School District Finance and Quality Performance Act. With the exception of the two issues discussed above, the determination was that the act met various state and federal constitutional standards. Some selected key findings were the following:

- The finance provisions, the statutory accountability provisions, and the State Board of Education's standards applicable to public schools did not usurp the constitutional powers of local public school boards. In this regard, the constitutional provision which recognizes local school boards (Art. VI, § 5) was not self-executing.

- The law did not violate the "suitable" financing standard of the *Kansas Constitution*. (It was noted that the Kansas "suitable" requirement is most comparable to the "adequacy" requirement found in several state constitutions.) In applying this standard, the Court relied upon standards enunciated by the Legislature and State Board of Education and found from the evidence that all schools were able to meet this standard. The Court warned, however, that the issue of suitability is not stagnant but that the issue needed to be closely monitored.

- The classifications contained in the law were to be evaluated by use of the rational relationship test. Applying this test resulted in a determination that the following features were in compliance with the *Constitution*: transportation weight, at-risk pupil weight, bilingual education weight, vocational education weight, new facilities weight, Base State Aid Per Pupil, and local option budget. (The Court noted that a low enrollment weight was permissible, but the then existing statutory provision was flawed.)

- The provision which established the remittance by school districts of amounts by which local effort revenues exceeded the school district general fund budget did not contravene provisions of the Fifth and Fourteenth Amendments of the *U.S. Constitution* concerning the taking of property without due process of law.

Also, on December 15, the judge informed the plaintiffs that she had vacated orders of March 1 and 12, 1993 in which various tax-related claims had been severed from the school finance litigation. (See earlier discussion in this memorandum.) The expectation was that those claims would have been resolved in *State ex rel. Stephan v. Kansas Department of Revenue, et al.* (92-CV-796). The plaintiffs had asserted that their claims had not been resolved. Judge Luckert determined the plaintiffs would be given the opportunity to litigate any such claims that were not moot. That litigation remained inactive until December of 1994. The Newton plaintiffs then removed themselves from the litigation. Judge Luckert and the remaining litigants were engaged in determining the course of this litigation on two remaining issues as the year ended.

In late December 1993, litigants filed appeals of Judge Luckert's opinion with the Kansas Court of Appeals.

1994 Litigation

In the spring of 1994, the Kansas Supreme Court granted a request that it hear the case. On March 31, the Court stayed, until July 1, 1995, the Shawnee County District Court deadline for legislative compliance with its ruling. Oral argument before the Supreme Court occurred on September 14. The Court's decision (*U.S.D. No. 229 v. State*, 256 Kan. _____ (1994)), which was unanimous, was filed on December 2.

The Court ruled that the 1992 School Finance and Quality Performance Act, together with its 1993 amendments, was constitutional. The Court said ". . . the Act is within all asserted constitutionally permissible limitations, and, accordingly is constitutional legislation." In connection with this finding, the Court:

- reversed the lower court conclusion that the Act was unconstitutional because of the low enrollment weight provision, and

- noted the lower court ruling that the *Kansas Constitution* does not allow for a uniform mill levy for a period of more than two years and observed that "infirmity" in the law had been corrected by the 1994 Legislature.

Regarding the low enrollment weight issue, the Court stated: "Plain common sense advises there is a rational basis for the allowance of extra funding for low enrollment situations." The Court observed the District Court had received a great deal of testimony on low enrollment weight factors and concluded that, while there was virtual unanimity in the evidence that additional funding in this area was appropriate, there was little specific evidence on where the lines should be drawn. The Court said the thrust of the Blue Valley argument was that the 1,899 low enrollment weight termination point was too high. Rather than having been devised by scientific or statistical data, it was the result of compromise aimed at getting support for additional legislators.

The Court emphasized the trial court's holding that:

[T]he record does not contain a rational basis grounded upon education theory for distinguishing between districts larger than 1,900 and smaller schools, especially those districts with an enrollment between 400 and 1,899 students. (Emphasis added.)

The Court pointed to the emphasized phrase (above) as the error in the district court's ruling. The Court observed the district court had acknowledged the historical precedent in Kansas for low enrollment weights and the means for determining such an adjustment.

The Court explained that absence of scientific evidence supporting the 1,899 cutoff for application of the low enrollment weight adjustment was not determinative of whether the Legislature had a rational basis for drawing the cut-off point it chose. The Court then concluded that there was:

> . . . a rational relationship between the Legislature's legitimate objective of more suitably funding public schools and the classifications created in the low enrollment weighting factor.

Following is a listing of the key contentions of plaintiffs that were rejected by the Court (which also had been rejected by the district court):

- the law infringes on the authority granted to local school boards to operate public schools (local control issue);
- the law does not contain "suitable provision" for finance of the educational interests of the state;
- the law violates the equal protection clause;
- the 1992 enactment contained more than one subject;
- the law's provisions for remittance of funds by districts in which property tax collections exceed the district's authorized budget constitutes an excessive "taking" of property; and
- the law violates a section of the *Kansas Constitution* requiring laws of a general nature be applied uniformly across the state.

The Court's ruling in support of broad legislative powers in fashioning a suitable school finance plan, nonetheless, contained some notes of caution that should be heeded. For example, the Court stated:

> The funding of public education is a complex, constantly evolving process. The legislature would be derelict in its constitutional duty if it just gave each school district a blank check each year. Reliance solely on local property tax levies would be disastrous for the smaller and/or poorer districts which have depended on state aid for many years.

In another place, the Court said:

> "[T]he issue of suitability is not stagnant; past history teaches that this issue must be closely monitored. Previous school finance legislation, when initially attacked upon enactment or modification, was determined constitutional. Then, underfunding and inequitable distribution of finances lead to judicial determination that the legislation no longer complied with constitutional provisions."

The Court seemed to caution against inordinate reliance on the property tax for funding education, underfunding of schools, and inequitable distribution of finances.

KANSAS ASSOCIATION OF SCHOOL BOARDS

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TO: House Committee on Education
FROM: Mark Tallman, Director of Governmental Relations
Also representing USD 501 (Topeka) and USD 512 (Shawnee Mission)
DATE: March 19, 1997

RE: Testimony on H.C.R. 5021 - Definition and Cost of Essential Core Curriculum

Mr. Chairman, Members of the Committee:

H.C.R. 5021 directs the State Board of Education to define an essential core curriculum which should be available in every school district in the state, and to determine the cost of providing that curriculum in each district.

As we stated when testifying on H.C.R. 5014, we have concerns about the specific wording of this charge to the State Board and question whether the State Board can accomplish this responsibility within the time limits specified. But we want to restate our support for the concept that the state as a whole should provide funding for a suitable education for each child. Our policy states:

> The state should determine a base or minimum budget per pupil, which should be adequate to provide a suitable level of funding for all students and districts to achieve expected outcomes, and adjusted annually to reflect changes in costs.

As we stated before, we believe this is what the constitution of our state requires, and we believe it is appropriate public policy even if the constitution does not require it. We believe the wording of this resolution is an improvement, but we continue to be concerned that reference to curriculum is too narrow in defining educational programs and costs. We believe the cost of education must include at least two other components. First, there is a basic level of health and security that each child requires in order to achieve a suitable education. Schools have been providing these services for decades and we think most Kansans believe this is appropriate. Second, schools must meet a wide range of state and federal mandates. Surely we can agree that those costs which are imposed upon school districts from higher levels of government are part of basic educational costs and are in no sense "local" choices.

We therefore recommend the several amendments similar to those we proposed for H.C.R. 5014:

First, wherever the resolution refers to "an essential core curriculum, consisting of adequate instructional programs," add "and programs which are required by state law or regulation for school accreditation, student graduation, college admission or scholarship eligibility."

Second, after the first two "Be it resolved" paragraphs, insert a new paragraph as follows: "Be it further resolved: That the State Board of Education is directed to identify components necessary for the health and safety of each child, such as, but not by way of limitation, school nurses, meal programs and

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transportation services; and to identify all state and federal mandates which have a fiscal or administrative impact on school district operations, such as, but not by way of limitation, special education services, health and child safety reporting requirements, due process requirements for students and staff, certification and inservice requirements; free textbook and transportation; compulsory attendance enforcement, collective bargaining requirements and non-discrimination requirements."

In addition to these recommended amendments, we continue to urge the committee to recommend that an appropriation be made to allow the State Board to accomplish this task, and that such an appropriation allow for broad public input in determining a definition for a suitable level of funding.

Please allow me to conclude with two additional comments.

First, we believe that the real focus in education should be what a students learns rather than how curriculum is organized. We believe that local school districts should be able to structure a curriculum which allows students to reach expected performance levels without state interference. The largest factors in school district costs are usually not related to curriculum. It matters very little what course or subject a teacher is teaching. The cost is based on what the teacher is paid, the number of students in the class, and the "overhead" associated with that classroom (administration, facilities, student services). Frankly, it is more appropriate to define essential student outcomes rather than essential core curriculum. (To a large extent, the State Board has already done so.)

Second, KASB believes that school districts should have the ability to enhance their educational programs through local option funding. However, we can only support this option if such funding is equalized. We do not support any measure which allows districts to supplement base funding through revenue sources based solely on local wealth. Such a system would result in a deep difference in educational quality across the state. Some communities simply have little or no local resources to draw upon. The state must insure that local funding options are truly viable options for every district.

Thank you for your consideration.

KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Susan Chase Testimony before
House Education Committee on HCR 5021
Wednesday, March 19, 1997

Thank you Mr. Chairman and members of the committee. I appreciate your allowing me to speak. I am Susan Chase and I represent the Kansas National Education Association. I am appearing in opposition to HCR 5021.

Last week I had the opportunity to hear a speech by Jamie Volmer at the business education luncheon. Many of his remarks were very appropriate for the issues we are dealing with in this legislative session. I found that much of what he had to say dealt directly with the issue before us today. More specifically, his comments around the importance of defining what a student should know and be able to do have a strong correlation to the issue of defining an essential core curriculum.

Since the early 1900s, schools have been organized around the industrial assembly line model. A student's education was designed by defining what curriculum they should be exposed to and how much time they should be exposed to that curriculum. What we have done for a decade is hold time and curriculum constant and let learning be the variable.

Lately we have begun to examine this process and decide that it no longer fits the society or work environment we have in this world. We can no longer afford to allow the learning to be the variable. We have to insist that all students achieve a certain level of performance. We must hold learning as the constant and allow time to be the variable.

We also have to understand that changing an institution that has been functioning the same way for over a hundred years takes time. We are beginning to move away from the concept of carnegie units to the idea that instruction must mirror the real world. This means we can no longer teach ideas in isolation but must synthesize subjects into real world situations. We do not deal with math or English in isolation of science, or social studies. Art and music are as inherently embedded in math and English as are science or social studies.

Just as important is the realization that the needs of businesses have changed. Very few businesses are organized and run the same way they were a decade ago. What this means is that

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teaching children the 3R's is no longer enough. According to Mr. Volmer, we must also be teaching the 3T's; thinking, teamwork, and technology.

All of this leads to the point that the responsibility of the state must also change. We must define what a student should know and be able to do and allow local districts the freedom and give them the responsibility to determine how to best secure that level of achievement in their students. Kansas has come a long way toward making that change. Much of that change has come about with the change in school accreditation and student assessments. We no longer accreditate schools according to what they offer, but according to how well their students are performing (see attachment A). Part of the measurement of how well students are performing is accomplished by the state assessments. These assessments were developed using standards and benchmarks that measure what Kansas has determined a student should know and be able to do.

For these reasons, we believe that not only is the idea of defining an essential core curriculum unnecessary it is also in direct conflict with the direction we should be going. We need to be spending our time and resources assisting districts in implementing changes that will guarantee students have reached a level of excellence by the time they graduate.

KNEA is also concerned about the idea that we can determine how to fund schools by determining the cost of an essential core curriculum and funding only those that we believe are appropriate or necessary. In doing so, the state is mandating the use of a particular curriculum and possibly a process for the implementation of that curriculum. We are continuing the idea that learning is the variable and curriculum is the constant. This is also in direct opposition to what we know is good for students.

Neither will this resolution assist with any challenges to the equity or adequacy of the state education system. A recent plan outlined in Wyoming in response to a court order is based on a per pupil basis (see attachment B). This per pupil funding level would be done by determining how much money would be spent on nearly two dozen items, including personnel, supplies, material, equipment, and special services. This amount would be adjusted for student characteristics such as limited English proficiency, school district conditions and the presence of small schools. The prevailing belief is that this system will meet the court's order. This system is much closer to our present system of funding than is the proposed ideas in this bill.

It is for the above reasons KNEA is opposing this bill and is asking this committee to not recommend this bill favorable for passage. Thank you for allowing me to speak.

Quality Performance Accreditation
Student Outcomes

Student Outcome I

All Students will demonstrate in academic and applied situations a high level of mastery of essential skills.

Student Outcome II

All Students will demonstrate effective communication skills

Student Outcome III

All students will demonstrate complex thinking skills in academic and applied situations

Student Outcome IV

All students will demonstrate the necessary characteristics to work effectively both independently and in groups

Student Outcome V

All students will demonstrate physical and emotional well-being