

## MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Dwayne Umbarger at 1:35 p.m. on March 11, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Hensley (excused)

Committee staff present: Ben Barrett, Legislative Research  
Carolyn Rampey, Legislative Research  
Theresa Kiernan, Revisor of Statutes  
Dale Dennis, Deputy Commissioner of Education  
Judy Steinlicht, Secretary

Conferees appearing before the committee: Representative Ralph Tanner  
Dale Dennis, Deputy Commissioner, Board of Education  
Dan Biles, Attorney, Board of Education  
Dr. James Christman, USD 499, Galena

Others attending: See Attached List

### **SB483--School finance; reimbursement of special education and related services**

Senator Vratil made a motion to amend SB483 according to the attachment and in the manner discussed at the rail March 8, 2002. Seconded by Senator Schodorf. Motion carried. (Attachment 1)

Senator Teichman made a motion to pass favorably SB483 as amended. Seconded by Senator Schodorf. Motion carried.

### **Review of School District Capital Improvements Program**

Representative Ralph Tanner addressed the Committee with his concerns and views of the state match for school district construction on bond issues. Rep. Tanner had a hearing on **HB2865** which would stop all state match on construction bond issues effective 7-1-2002, but he does not plan another hearing at this time. Rep. Tanner stated he has no problem helping school districts that are in areas where there is a low tax evaluation per student to build or refurbish school buildings, but the problem is that no one except the local school board is making the decision. An example is a school that cannot afford health care, but they were able to pass a bond issue at a time when enrollment was on a decline. Rep. Tanner feels that someone needs to sit in joint decision with the local school board to determine if a building is needed and how it will to be paid for.

Another bill in the House Education Committee is for facilities weighting. Problems occur with transitioning into the new facilities. Bond issues generally do not include cost of furnishing, utilities and start up costs. The only way Rep. Tanner knows to address the problem is to include funds in the bond issues to enable furnishing the building and funds for start up costs. (no attachment)

Dale Dennis, Deputy Commissioner, State Board of Education, explained the formula used to pay bond and interest state aid to school districts. One matching rate applies to bonds issued prior to July 1, 1992 and a different matching rate applies during the life of bonds issued on or after July 1, 1992. The amount of state aid paid to a district is recalculated each year based on the assessed valuation per pupil of that district. The attachment shows a history of bond and interest expenditures and bond and interest state aid payments. Examples of the calculation used for payment of state aid are also included in the attachment. (Attachment 2)

Dan Biles, Attorney for the State Board of Education, spoke about legal issues the state could face if the legislature were to discontinue the school district capital improvement fund. Mr. Biles believes two arguments could be anticipated; one, failure to provide any state aid for school facilities violates Article 6

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION at on March 11, 2002 in Room 123-S of the Capitol.

(6b) of the Kansas Constitution that states the legislature make suitable provision for financing public education; and two, failure to provide any state aid for school facilities violates state and federal equal protection principles. In the attachment, Mr. Biles explains the law and his findings in previous cases. (Attachment 3)

Dr. James Christman, Superintendent, Galena USD 499, advised the Committee that his district benefitted greatly from the equalization of state revenues. This was a definite factor in voter approval of their bond issue. The district approved a bond issue in support of a \$3,250,000 construction project. The approval of the bond issue resulted in a variety of improvements, such as, ADA compliance issues, closing a building built in 1936, seven new classrooms to relieve overcrowding, a new combination gymnasium and cafeteria, handicapped accessible restrooms and locker rooms, additional seating in a gymnasium, a new music classroom and a performing arts auditorium. Research confirms that students do better academically when they are able to function within a positive environment.

It has been established that the primary responsibility for educating the children of Kansas is a state responsibility along with local efforts. With the assistance of the state and the local decision to incur debt, it has been made a reality for his district to attain an equitable and quality education for their children. (Attachment 4)

Discussion followed each of the presentations. Senator Huelskamp attended the Committee meeting and was invited to join in the discussion with Committee members. This hearing was at the request of the Senate Ways and Means Committee. It was thought that there were some problems of abuse on this issue, but no one has come forward. Chairman Umbarger urged that if there is adverse information to be presented, that it should be brought forward. Sen. Oleen recommended that this subject be held open for a few more days to see if anyone comes forward. It was discussed as to whether there has actually been abuse or if the state just cannot afford the program. The state does not know how many bond issues will be approved during the year and this leaves an open end in tight budget times. At the end of the week, the Committee will report back to the Subcommittee and the Senate Ways & Means Committee.

The meeting was adjourned at 2:30 p.m.



New Sec. 1. (a) As used in this section, "school district" means a school district which was the sponsoring school district of a special education cooperative during school year 2001-2002 and which school district adopted a local option budget in an amount which equals the maximum state prescribed percentage for school year 2001-2002 and the next succeeding two school years.

(b) The maximum amount of a local option budget of a school district for school year 2002-2003, shall be determined by the state board as follows:

(1) Determine the amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto, for school year 2001-2002, and subtract the amount of the local option budget of such district under K.S.A. 72-6433, and amendments thereto, for school year 2002-2003.

(2) If the difference obtained under paragraph (1) is a positive number, multiply the difference by  $\frac{2}{3}$  and add the product to the maximum amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto. The sum shall be the maximum amount of the local option budget of the district for school year 2002-2003.

(3) If the difference obtained under paragraph (1) is zero or less, the maximum amount of the local option budget of the district for school year 2002-2003, shall be the maximum amount allowed under K.S.A. 72-6433, and amendments thereto.

(c) The maximum amount of a local option budget of a school district for school year 2003-2004, shall be determined by the state board as follows:

(1) Determine the amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto, for school year 2001-2002, and subtract the amount of the local option budget of such district under K.S.A. 72-6433, and amendments thereto, for school year 2003-2004.

(2) If the difference obtained under paragraph (1) is a positive number, multiply the difference by  $\frac{1}{3}$  and add the product to the maximum amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto. The sum shall be the maximum amount of the local option budget of the district for school year 2003-2004.

(3) If the difference obtained under paragraph (1) is zero or less, the maximum amount of the local option budget of the district for school year 2003-2004, shall be the maximum amount allowed under K.S.A. 72-6433, and amendments thereto.

*Senate Education*  
3-11-02  
Attachment 1



Kansas State Department of Education

120 S.E. 10th Avenue
Topeka, Kansas 66612-1182

March 11, 2002

TO: Senate Education Committee
FROM: Dale M. Dennis, Deputy Commissioner
SUBJECT: Bond and Interest State Aid

Bond and interest state aid is based on an equalization principle which is designed to provide state aid inversely to school district assessed valuation per pupil. One matching rate is applicable for the bond and interest payments associated with bonds issued prior to July 1, 1992. A different matching rate applies during the life of bonds issued on or after July 1, 1992.

For the school district having the median assessed valuation per pupil, the state aid ratio is five percent for contractual bond and interest obligations incurred prior to July 1, 1992, and 25 percent for contractual bond and interest obligations incurred on July 1, 1992, and thereafter.

This factor increases (decreases by one percentage point for each \$1,000 of assessed valuation per pupil of a district below (above) the median.

Table with 4 columns: DISTRICT BOND AND INTEREST PAYMENT OBLIGATION FOR SCHOOL YEAR, times, STATE AID PERCENTAGE FACTOR, equals, CAPITAL IMPROVEMENTS STATE AID

Attached are school district examples for calculating bond and interest state aid as well as the worksheets used by unified school districts when preparing their budgets each year.

Listed below is a history of bond and interest expenditures and state aid payments.

Table with 3 columns: School Year, Bond and Interest Expenditures, Bond and Interest State Aid. Rows include years from 1992-1993 to Est. 2001-2002.

Senate Education
3-11-02
Attachment 2

## EXAMPLES

DISTRICT 1				DISTRICT 2			
B&I Payment Obligations				B&I Payment Obligation			
Before 7-1-92		\$100,000		Before 7-1-92		\$100,000	
After 7-1-92		\$ 80,000		After 7-1-92		\$ 80,000	
District AVPP		\$ 34,268		District AVPP		\$ 46,268	
<b>so</b>				<b>so</b>			
Before 7-1-92	\$100,000	After 7-1-92	\$ 80,000	Before 7-1-92	\$100,000	After 7-1-92	\$ 80,000
Percentage Factor (From Table)	x 10%	Percentage Factor (From Table)	x 30%	Percentage Factor (From Table)	x NA	Percentage Factor (From Table)	x 17%
B&I State Aid	\$ 10,000		\$ 24,000	B&I State Aid	NA		\$ 13,600
Total B&I Payment Due for Fiscal Year		\$180,000		Total B&I Payment Due for Fiscal Year		\$180,000	
Amount from State Aid		\$ 34,000		Amount from State Aid		\$ 13,600	

### PARTIAL TABLE TO ILLUSTRATE BOND AND INTEREST STATE AID PROGRAM PRINCIPLE

	Bond and Interest State Aid Percentages			State Aid Percentage Factor
	AVPP	Bond and Interest Obligations Prior to July 1, 1992	Bond and Interest Obligations On and After July 1, 1992	
	29,268	15	35	
	30,268	14	34	
	31,268	13	33	
	32,268	12	32	
	33,268	11	31	
	34,268	10	30	
	35,268	9	29	
	36,268	8	28	
	37,268	7	27	
	38,268	6	26	
Median AVPP	38,768	5%	25%	
	39,268	4	24	
	40,268	3	23	
	41,268	2	22	
	42,268	1	21	
	43,268	0	20	
	44,268		19	
	45,268		18	
	46,268		17	
	47,268		16	
	48,268		15	



KANSAS STATE DEPARTMENT OF EDUCATION

FORM 241  
 BOND AND INTEREST FUND #1

2001-02

ESTIMATED BOND AND INTEREST FUND STATE AID PAYMENTS  
 (Bonds Issued prior to July 1, 1992)

Does not include asbestos bonds and capital outlay bonds. State aid applies only to general obligation bonds passed in a referendum.

1. Estimated 2001-2002 bond and interest fund payments = \_\_\_\_\_
2. Estimated bond and interest state aid. Line 1 \_\_\_\_\_ x factor \_\_\_\_\_ = \_\_\_\_\_  
 (see table below)
3. Less prior year overpayment - \_\_\_\_\_
4. Estimated bond and interest fund state aid payment = \_\_\_\_\_  
 (July 1, 2001 through June 30, 2002) (Line 2 - Line 3)

Rev. 05/25/01

5 PERCENT ASSESSED VALUATION TABLE

USD	Percent	USD	Percent	USD	Percent	USD	Percent	USD	Percent	USD	Percent
101	0.20	249	0.22	303	0	355	0.13	408	0.12	460	0.05
102	0.01	250	0.01	304	0	356	0.19	409	0.08	461	0.23
103	0	251	0.09	305	0.02	357	0.25	410	0.08	462	0.13
104	0	252	0.06	306	0	358	0.17	411	0.11	463	0.08
200	0	253	0.16	307	0.13	359	0.05	412	0	464	0.11
202	0.15	254	0	308	0.07	360	0.06	413	0.2	465	0.11
203	0.17	255	0	309	0.01	361	0.09	415	0.03	466	0
204	0.12	256	0.14	310	0	362	0	416	0	467	0
205	0.14	257	0.21	311	0.03	363	0	417	0.05	468	0
206	0	258	0.09	312	0.03	364	0	418	0	469	0.15
207	0.43	259	0.02	313	0.03	365	0.04	419	0.02	470	0.22
208	0	260	0.1	314	0	366	0.05	420	0.17	471	0.16
209	0	261	0.24	315	0	367	0.17	421	0.13	473	0.11
210	0	262	0.17	316	0	368	0.02	422	0	474	0
211	0.16	263	0.23	317	0	369	0.01	423	0	475	0.28
212	0	264	0.02	318	0	371	0	424	0	476	0
213	0	265	0.14	320	0.13	372	0.18	425	0.07	477	0
214	0	266	0.14	321	0	373	0.12	426	0.04	479	0.03
215	0	267	0.11	322	0.05	374	0	427	0.01	480	0.12
216	0	268	0.2	323	0.2	375	0	428	0.11	481	0.11
217	0	269	0	324	0.06	376	0.07	429	0.22	482	0
218	0	270	0	325	0.08	377	0.05	430	0.22	483	0
219	0	271	0.07	326	0	378	0.13	431	0.13	484	0.1
220	0	272	0.09	327	0.09	379	0.12	432	0	486	0.11
221	0	273	0	328	0	380	0.1	433	0	487	0.21
222	0.13	274	0	329	0	381	0.18	434	0.19	488	0.04
223	0	275	0	330	0.05	382	0.07	435	0.08	489	0
224	0	278	0.12	331	0.02	383	0	436	0.24	490	0.11
225	0	279	0	332	0	384	0.02	437	0	491	0.15
226	0	280	0	333	0.13	385	0.04	438	0.02	492	0.05
227	0.03	281	0.03	334	0	386	0.03	439	0.21	493	0.06
228	0	282	0.05	335	0.17	387	0.1	440	0.03	494	0
229	0	283	0.18	336	0.18	388	0	441	0.09	495	0.08
230	0.05	284	0	337	0.24	389	0.06	442	0.02	496	0
231	0	285	0.05	338	0.2	390	0	443	0.15	497	0
232	0	286	0.17	339	0.18	392	0.09	444	0	498	0.16
233	0	287	0.15	340	0.17	393	0.12	445	0.04	499	0.31
234	0.17	288	0.18	341	0.19	394	0.24	446	0.1	500	0.15
235	0.21	289	0.08	342	0.09	395	0	447	0.24	501	0.04
237	0.01	290	0.12	343	0.06	396	0.25	448	0	502	0
238	0.05	291	0	344	0.2	397	0	449	0.14	503	0.17
239	0.05	292	0	345	0	398	0.08	450	0.06	504	0.21
240	0.16	293	0.09	346	0.11	399	0	451	0.16	505	0.21
241	0	294	0	347	0	400	0.06	452	0	506	0.22
242	0	295	0	348	0.12	401	0	453	0.11	507	0
243	0.09	297	0	349	0.05	402	0.18	454	0.19	508	0.18
244	0	298	0	350	0	403	0	455	0	509	0.2
245	0	299	0	351	0	404	0.16	456	0	511	0
246	0.2	300	0	352	0	405	0.14	457	0.11	512	0
247	0.17	301	0	353	0.16	406	0.18	458	0.14		
248	0.18	302	0	354	0.12	407	0.03	459	0		

KANSAS STATE DEPARTMENT OF EDUCATION

FORM 242  
 BOND AND INTEREST FUND #1

2001-02

ESTIMATED BOND AND INTEREST FUND STATE AID PAYMENTS  
 (Bonds Issued After July 1, 1992)

Does not include asbestos bonds and capital outlay bonds. State aid applies only to general obligation bonds passed in a referendum.

1. Estimated 2001-2002 bond and interest fund payments = \_\_\_\_\_
2. Estimated bond and interest state aid. Line 1 \_\_\_\_\_ x factor \_\_\_\_\_ = \_\_\_\_\_  
 (see table below)
3. Less prior year overpayment - \_\_\_\_\_
4. Estimated bond and interest fund state aid payment = \_\_\_\_\_  
 (July 1, 2001 through June 30, 2002) (Line 2 - Line 3)

Rev. 05/25/01

25 PERCENT ASSESSED VALUATION TABLE

USD	Percent	USD	Percent	USD	Percent	USD	Percent	USD	Percent	USD	Percent
101	0.40	249	0.42	303	0.02	355	0.33	408	0.32	460	0.25
102	0.21	250	0.21	304	0	356	0.39	409	0.28	461	0.43
103	0	251	0.29	305	0.22	357	0.45	410	0.28	462	0.33
104	0	252	0.26	306	0	358	0.37	411	0.31	463	0.28
200	0	253	0.36	307	0.33	359	0.25	412	0.12	464	0.31
202	0.35	254	0.19	308	0.27	360	0.26	413	0.4	465	0.31
203	0.37	255	0.13	309	0.21	361	0.29	415	0.23	466	0.08
204	0.32	256	0.34	310	0	362	0	416	0.1	467	0.03
205	0.34	257	0.41	311	0.23	363	0	417	0.25	468	0.15
206	0.17	258	0.29	312	0.23	364	0.2	418	0.17	469	0.35
207	0.63	259	0.22	313	0.23	365	0.24	419	0.22	470	0.42
208	0.12	260	0.3	314	0	366	0.25	420	0.37	471	0.36
209	0	261	0.44	315	0.18	367	0.37	421	0.33	473	0.31
210	0	262	0.37	316	0.15	368	0.22	422	0	474	0
211	0.36	263	0.43	317	0.07	369	0.21	423	0	475	0.48
212	0.17	264	0.22	318	0.2	371	0.04	424	0	476	0
213	0	265	0.34	320	0.33	372	0.38	425	0.27	477	0.16
214	0	266	0.34	321	0	373	0.32	426	0.24	479	0.23
215	0	267	0.31	322	0.25	374	0	427	0.21	480	0.32
216	0	268	0.4	323	0.4	375	0.02	428	0.31	481	0.31
217	0	269	0.03	324	0.26	376	0.27	429	0.42	482	0
218	0	270	0.16	325	0.28	377	0.25	430	0.42	483	0
219	0.05	271	0.27	326	0.16	378	0.33	431	0.33	484	0.3
220	0	272	0.29	327	0.29	379	0.32	432	0.18	486	0.31
221	0	273	0.18	328	0	380	0.3	433	0.1	487	0.41
222	0.33	274	0.07	329	0.16	381	0.38	434	0.39	488	0.24
223	0.13	275	0	330	0.25	382	0.27	435	0.28	489	0.18
224	0.14	278	0.32	331	0.22	383	0.15	436	0.44	490	0.31
225	0	279	0.11	332	0	384	0.22	437	0.08	491	0.35
226	0	280	0	333	0.33	385	0.24	438	0.22	492	0.25
227	0.23	281	0.23	334	0.07	386	0.23	439	0.41	493	0.26
228	0.05	282	0.25	335	0.37	387	0.3	440	0.23	494	0
229	0	283	0.38	336	0.38	388	0.17	441	0.29	495	0.28
230	0.25	284	0	337	0.44	389	0.26	442	0.22	496	0.06
231	0.16	285	0.25	338	0.4	390	0	443	0.35	497	0
232	0.11	286	0.37	339	0.38	392	0.29	444	0	498	0.36
233	0.06	287	0.35	340	0.37	393	0.32	445	0.24	499	0.51
234	0.37	288	0.38	341	0.39	394	0.44	446	0.3	500	0.35
235	0.41	289	0.28	342	0.29	395	0.1	447	0.44	501	0.24
237	0.21	290	0.32	343	0.26	396	0.45	448	0.2	502	0
238	0.25	291	0.02	344	0.4	397	0.13	449	0.34	503	0.37
239	0.25	292	0.01	345	0.18	398	0.28	450	0.26	504	0.41
240	0.36	293	0.29	346	0.31	399	0	451	0.36	505	0.41
241	0.05	294	0.12	347	0.03	400	0.26	452	0	506	0.42
242	0	295	0	348	0.32	401	0	453	0.31	507	0
243	0.29	297	0.09	349	0.25	402	0.38	454	0.39	508	0.38
244	0	298	0.2	350	0.16	403	0	455	0.11	509	0.4
245	0.14	299	0.12	351	0	404	0.36	456	0.2	511	0.01
246	0.4	300	0	352	0.17	405	0.34	457	0.31	512	0
247	0.37	301	0	353	0.36	406	0.38	458	0.34		
248	0.38	302	0	354	0.32	407	0.23	459	0.17		



MEMORANDUM

**TO: SENATE EDUCATION COMMITTEE**

**FROM: DAN BILES**  
**Attorney for the State Board of Education**

**DATE: MARCH 11, 2002**

**RE: REPEAL OF K.S.A. 75-2319**  
**(School Districts Capital Improvement Fund)**

State law provides a funding mechanism for mitigating the disparities in school districts' abilities to finance capital improvements. See, K.S.A. 75-2319. The question presented is whether legal issues arise if the Legislature discontinues this program effective as to new construction begun after some future date. I believe two arguments can be anticipated:

1. Failure to provide any state aid for school facilities violates Article 6, §6(b) of the Kansas Constitution that the legislature make suitable provision for financing public education; and
2. Failure to provide any state aid for school facilities violates state and federal equal protection principles.

In my opinion, the first argument is stronger than the second, but in some states, facilities disparities reached such proportions that the courts found an equal protection violation, usually by defining education as a "fundamental right" under their particular state constitution. Generally speaking, however, federal equal protection is not implicated simply because the burdens or benefits of statewide measures for financing public services fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live.<sup>1</sup> The rights of equal protection contained in §1 of the Kansas Constitution Bill of Rights are given the same construction as the federal equal protection clause. Our Kansas Supreme Court has determined for school finance purposes that education is not a fundamental right under our state constitution.<sup>2</sup> Therefore, the federal and state analysis on this question is the same. This leaves us to consider whether the legislature can meet its constitutional responsibility to make suitable provision for finance of the state's educational interests by doing nothing that responds to the obvious property wealth disparities existing in Kansas.

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<sup>1</sup> *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973); *Papasan v. Allain*, 478 U.S. 265, 287, 106 S.Ct. 2932, 2945, 92 L.Ed.2d 209 (1986); and *Robinson v. State of Kansas*, 117 F. Supp. 2d 1124, 1150 (D. Kan. 2000).

<sup>2</sup> *U.S.D. 229 v. State of Kansas*, 256 Kan. 232, 261-263, 885 P.2d 1170 (1994).

Senate Education  
3-11-02  
Attachment 3

In its 1994 opinion in *U.S.D. 229 v. State*, the Kansas Supreme Court defined what was meant by “suitable” under Article 6, §6(b) in the context of claims from school districts that they had insufficient funding for their educational programs. In its analysis, the Supreme Court quoted from a lengthy passage from the district court ruling on this same subject, which the Supreme Court adopted as its own:

“In common terms, 'suitable' means fitting, proper, appropriate, or satisfactory. Webster's New Collegiate Dictionary (1977). Suitability does not mandate excellence or high quality. In fact, suitability does not imply any objective, quantifiable education standard against which schools can be measured by a court. Rather, value judgments must be made regardless of whether the constitutional mandate requires that education be suitable, sufficient, appropriate, or adequate.”<sup>3</sup>

The Supreme Court’s quoted passage also included a discussion about the State Board’s accreditation standards, and then made this conclusion:

“Through the quality performance accreditation standards, the Act provides a legislative and regulatory mechanism for judging whether the education is 'suitable'. These standards were developed after considerable study by educators from this state and others. It is well settled that courts should not substitute judicial judgment for educational decisions and standards. *Finstad v. Washburn University of Topeka*, 252 Kan. 465, 475, 845 P.2d 685 (1992). Hence, the court will not substitute its judgment of what is 'suitable', but will utilize as a base the standards enunciated by the legislature and the state department of education.” (emphasis added).<sup>4</sup>

The point here is that when faced with an Article 6, §6(b) challenge regarding educational instruction quality, the court looked first to existing legislative and State Board standards already existing in this area – primarily the State Board’s quality performance accreditation system. In the context of school facilities, which the court did not address in *U.S.D. 229*, the decision teaches that our courts should look first to whatever existing standards have been developed that

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<sup>3</sup> 256 Kan. at 257.

<sup>4</sup> *Id.*; In *Finstad*, the Kansas Supreme Court declined to recognize a tort action for educational malpractice, in part because the court found no measurable standard of care and would require the courts to oversee the day-to-day operation of the schools. 252 Kan. at 477.

are relevant to building quality. These would most likely be building codes and accreditation standards that address, or are impacted by, facilities quality. For example, if a building failed existing fire safety codes and the cause of that failure was inadequate funding capacity for capital improvements, then a court could find under *U.S.D. 229* that the legislature is not meeting its constitutional mandate. Similarly, if a building's wiring was so bad that computer technology instruction required for State Board accreditation could not be provided because of inadequate funding capacity for capital improvements, then the same conclusion could be reached. These arguments flow pretty naturally from the *U.S.D. 229* opinion.

But more disturbing would be the potential for facilities disparities to exist to an extent that the courts would be tempted to draw their own judicially-made standards to apply to the legislature's constitutional duties under Article 6, §6(b). This could happen simply because the courts might find that existing legislative or executive branch standards don't provide a measure appropriate for use by a court when considering "suitability" in the context of facilities disparities. It must be remembered that the existence of the State Board's comprehensive quality performance accreditation system made it easy for the Supreme Court to defer to those standards when considering "adequacy" challenges about educational instruction. There is no similarly comprehensive measure regarding school instructional facilities, so it is arguable that a court might look beyond simple building codes when deciding this question.

Without the benefit of the *U.S.D. 229* opinion, Shawnee County District Court Judge Terry Bullock approached the issue in 1991 more basically in his analysis as to what financial costs of educating students are included in the constitutional mandate on the legislature to provide suitable funding under the Education Article of the Kansas Constitution. Judge Bullock wrote:

"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?"<sup>5</sup>

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<sup>5</sup> *Mock v. State of Kansas*, 91-CV-1009 (Shawnee County District Court, slip op. October 14, 1991); also found at 31 Washburn L.J. 474, 501 (1992).

Judge Bullock was referring to Article 6, §1 of the Kansas Constitution, which states:

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

He also referenced Article 6, §6(b), which states, in pertinent part, that:

“The legislature shall make suitable provision for finance of the educational interests of the state.”

Judge Bullock did not specifically conclude that the legislature would fail to meet its constitutional responsibilities if it didn't provide some method of state aid for capital improvement projects, but most observers believe the court was headed to that conclusion. This view is bolstered by the fact that the legislature long ago had determined that schools with low property tax bases for educational instruction needed some form of state aid to do the job. If this principle were true as to instruction, they reasoned, it would not require a huge leap in logic to apply this principle to capital improvements.

#### Conclusion

Although not specifically addressed in *U.S.D. 229*, I believe the Kansas Supreme Court, like other state courts have done under their own constitutions, would include providing for capital improvements as a part of the legislature's responsibilities under Article 6, §6(b) to make suitable provision for the finance of the state's educational interests. If so, what the legislature does (or does not do) in this regard, if challenged, will need to be measured by a court. Under *U.S.D. 229*, I believe the court will look first to whatever school building standards have been adopted by the legislature, State Board, or other relevant entities (such as fire and safety codes) to decide the question. If the court should determine these standards are inapplicable to decide the question, then the court will be forced to adopt its own measure.

Assuming this type of judicial review, the decision the legislature must make is whether it is possible to meet its responsibilities without any mechanism to mitigate against what we know to be the disparities existing in school district property wealth. Please let me know if there are questions.

**TESTIMONY**  
**DR. JAMES C. CHRISTMAN, SUPERINTENDENT**  
**GALENA UNIFIED SCHOOL DISTRICT NO. 499**  
**MARCH 11, 2002**

Thank you for the opportunity to visit with you concerning state aid and Bond and Interest funds.

I am Superintendent of a school district that benefits greatly from the equalization of state revenues. Ninety-six (96) percent of our General Fund budget is state aid.

The state equalization of bonded indebtedness was a definite factor in voter approval of our bond issue. In September, 1994, the voters of Galena U.S.D. 499 approved a bond issue in support of a \$3,250,000 construction project. Support of this bond issue meant an increase in school taxes of fifty (50) percent locally. Without the state support of forty-five (45) percent, the local bond levy would have been thirty-seven (37) mills. With the support, the local bond levy was 19.8 mills. Currently the bond and interest levy is 12.6 mills with the state equalization of fifty-one (51) percent.

The construction resulting from the successful bond election included a variety of projects:

- 1) Approximately 1.1 million dollars in ADA compliance issues (students attended school in a K-2 building originally constructed in 1939, an elementary/middle school constructed in 1940, and a high school constructed in 1963).
- 2) Closed a converted gymnasium built in 1936 which was used as a kindergarten/pre-school attendance center and relocated those students to a new classroom addition at the Primary Center.
- 3) Construction of seven (7) classrooms to relieve overcrowding and a combination gymnasium and cafeteria at the Primary Center.
- 4) Handicapped accessible restrooms and locker rooms as well as additional seating at the Middle School gymnasium.

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- 5) **Construction of music classrooms to replace an existing 1970 portable classroom building and a performing arts auditorium at the high school.**

**Additional information about Galena U.S.D. 499:**

- 1) **Currently fifty-seven (57) percent of our students are identified as low socio-economic status. That figure will fluctuate between fifty-two (52) percent and sixty-five (65) percent during any given school year due to an annual transient rate of twenty-three (23) percent.**
- 2) **The current assessed valuation is \$10,735,625 which means one mill levied raises \$10,736.**
- 3) **Galena U.S.D. ranks 303 out of 304 school district as the poorest school district when you divide the assessed valuation by the student enrollment (\$14,265). Only Fort Leavenworth has a lower ratio because a majority of their property is federal land. (State wide assessed valuation per pupil runs from a low of \$597 to a high of \$492,483 with an average of \$42,109)**
- 4) **Current bonds were refinanced in 1999 at a rate of 4.23 percent. This will equate to a savings of approximately \$133,000 over the life of the bonds.**
- 5) **Galena has the highest tax levy (49.84 mills) of the nine (9) school districts in Cherokee and Crawford counties in Southeast Kansas.**

**Research will confirm students do better academically when they are able to function within a positive environment. School facilities are a critical part of that environment. For many of our students, school represents the most positive block of time in their day. I wish to communicate to you through this testimony the magnitude of the positive impact this building project had on the students, staff, and the entire community. For example, enhanced technology instruction, all areas of instruction accessible to all students, expanded opportunities for community use of facilities, health and safety issues addressed and a move from an “institution” type environment to a student friendly one. Thank you for providing that opportunity for us.**



**It has been established that the primary responsibility for educating the children of Kansas is a state responsibility. Local effort plays a part as well. Equalization of bond and interest payments is a good example of how this relationship can work to the benefit of students. It is a local decision to incur debt along with a commitment to support the project with a local tax increase but with the assistance of the state as a whole for a portion of the obligation.**

**It should not matter where you live or where you go to school in Kansas. You should be assured of an equitable and quality education. Again, thank you for making this a reality as well as a challenge to continue that support in these difficult times.**