

Approved: 2-7-06
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 11, 2006 in Room 231-N of the Capitol.

All members were present except:
Senator John Vratil- excused

Committee staff present:
Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:
Tuck Duncan, KS Wine & Spirits Wholesalers Assoc.

Others attending:
See attached list.

Mary Torrance, Revisor of Statutes Office, provided an explanation and implications of the 2005 U.S. Supreme Court case dealing with shipment of interstate and intrastate wine. (Attachment 1) *Graholm v. Heald*, #03-1116, May 16, 2005, the laws were challenged as violating the Commerce Clause of the United States Constitution. The states argued the Twenty-first Amendment to the Constitution, which grants states broad power to regulate liquor, and allowed them to treat in-state and out of state producers differently, also argued that the laws were justified by legitimate states' interest in prevention of underage drinking and collection of tax revenue. The Court held that the states' bans against shipment by out of state wineries violated the Commerce Clause, were not authorized by the Twenty-first Amendment to the U.S. Constitution and were not necessary to further the interests asserted by the states.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, spoke on the future legislative impact of the 2005 U.S. Supreme Court case on shipment of wine in state and out of state in Kansas. (Attachment 2) The states argued that any decision invalidating their direct-shipment laws would call into questions the constitutionality of the three-tier system. The three-tiers are producers, wholesalers and retailers; this system was formed by states to prevent the recurrence of marketing abuses that characterized supplier-retailer relationships before Prohibition and thus establishing the wine and spirits wholesaler as the middle tier separating producer from retailers. The three-tier was created by federal and state legislatures as a regulatory control over the distribution and availability of beverage alcohol that deters underage access.

"The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system shipment of out of state wine" *Midcal, supra*, at 110. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out of state goods, state policies are protected under the Twenty-first Amendment when the states treat liquor produced out of state the same as its domestic equivalent. The choices are:

- Ban all alcohol shipments outside the regulated system; or
- Permit alcohol sales outside the regulated, accountable, state created system...or
- Equalize treatment by imposing "evenhanded" restriction on all

Information was provided on several cases and other states pending legislation and the status of those cases.

Athena Andaya, Legislative Research Department, reviewed for the committee the 2005 Legislative session and 2005 Special session dealing with state-owned and operated gaming. (Attachment 3) A spread sheet was provided that compared the bills to each other and the status of each bill at the end of the Special Session.

The committee was adjourned at 11:40 am. The next scheduled meeting is January 12, 2006.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE 1/11/06

Lindsey Douglas	Hein Law Firm
Ron Hein	Hein Law Firm, Chgo
Amy Ginnell	Kansas Association of Beverage Dealers
Ross Schimmel	Standard Beverage
Curt Baniel	Gluggis of Kansas
Phil Bradley	KLBA
Charles E. McGRIGG	WIPE INSTITUTE
Neg Whitaker	KS Beer Wholesalers Assn
Rebecca Rice	KS Beer Wholesalers Assn
U. W. Kip Gooch	K. E. Retirees &
Tom Groneman	ABC
John Robinson	Anheuser Busch
Whitney Damron	Distilled Spirits Council
John O. Bettenberg	Miller Brewing
Carole Jordan	KDA
Richard Samiriyed	Kearney & Assn.

Office of Revisor of Statutes

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MEMORANDUM

To: Senate Committee on Federal and State Affairs
From: Mary Torrence, Senior Assistant Revisor of Statutes
Date: January 11, 2006
Subject: United States Supreme Court Wine Shipment Case

Michigan and New York laws prohibited out-of-state wineries from making direct shipments to consumers while allowing direct shipments to consumers by in-state wineries. In *Granholm v. Heald* (#03-1116, May 16, 2005), those laws were challenged as violating the Commerce Clause of the United States Constitution.

The states argued that the Twenty-first Amendment to the Constitution, which grants states broad power to regulate liquor, allowed them to treat in-state and out-of-state producers so differently. They also argued that the laws were justified by legitimate state interests in prevention of underage drinking and collection of tax revenue.


The Court held that the states' bans against shipments by out-of-state wineries violated the Commerce Clause, were not authorized by the Twenty-first Amendment to the United States Constitution and were not necessary to further the interests asserted by the states. In short, the Court said that "if a State chooses to allow direct shipment of wine, it must do so on evenhanded terms."

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Attachment 1

The States argue that any decision invalidating their direct-shipment laws would call into question the constitutionality of the three-tier system. This does not follow from our holding. “The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.” *Midcal, supra*, at 110. A State which chooses to ban the sale and consumption of alcohol altogether could bar its importation; and, as our history shows, it would have to do so to make its laws effective. States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system. We have previously recognized that the three-tier system itself is “unquestionably legitimate.” *North Dakota v. United States*, 495 U.S., at 432. See also *id.*, at 447 (“The Twenty-first Amendment ... empowers North Dakota to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler”). State policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent.”



In conclusion

“States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on *evenhanded terms*.”



The Choice begins HERE !



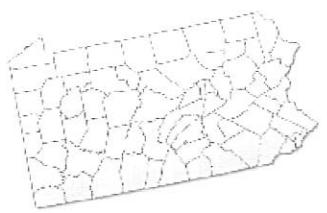
- **Ban all alcohol shipments outside the regulated system; or**
- **Permit alcohol sales outside the regulated, accountable, state-created system... or**
- **Equalize treatment by imposing “evenhanded” restrictions on all.**

What's Happened Since!

Michigan



Pennsylvania



Texas



California



New York

See Descriptions of Each on Disc

Costco litigation: certain challenges to Washington's state law will be the subject of a trial in March, 2006

The Court ruled December 21, 2005 on preliminary matters:

- (1) Costco's motion for summary judgment is DENIED. There are disputed issues of material fact on whether the challenged restraints may be preserved under the Twenty-first Amendment.
- (2) Defendants' motion for summary judgment is DENIED. Defendants have not demonstrated that this matter should be dismissed on antitrust immunity grounds.
- (3) The WBWWA's motion for summary judgment is DENIED. The WBWWA has not demonstrated that the challenged restraints are permissible under the Sherman Act.

The court stated that:



“The aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time.”

Comparison of Bills Concerning State Owned and Operated Gaming During the 2005 Legislative Session

	SB 168 (Federal and State Affairs)	SB 170 (Federal and State Affairs)	SB 294 (Ways and Means)	HB 2415 (Rep. Yonally, et. al)	Senate Substitute for HB 2481 (Ways and Means)
Games Authorized	Electronic gaming machines, Destination casino games, Video lottery terminals (VLTs)	Electronic gaming machines, Lottery Facility Games	Electronic gaming machines, Lottery Facility Games, Video lottery terminals (VLTs)	Electronic gaming machines, Destination casino games, Video lottery terminals (VLTs)	Electronic gaming machines, Lottery Facility Games, Video lottery terminals (VLTs)
Authorized Locations	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South central zone—Sedgwick county. Parimutuel Tracks, Veterans Clubs.	Lottery Gaming Facilities (unlimited), Facilities restricted to one manager within a 20 mile radius of each other. Certain restriction applies to specific counties in Kansas.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South Central zone—Sedgwick county; Southwest zone—Ford county; North central zone—Geary county. Parimutuel Tracks.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South central zone—Sedgwick county. Parimutuel Tracks, Veterans Clubs.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South Central zone—Sedgwick county; Southwest zone—Ford county; North central zone—Geary county. Parimutuel Tracks.
Regulatory Agencies	Kansas Lottery; Kansas Racing and Gaming Commission	Kansas Lottery	Kansas Lottery; Kansas Racing and Gaming Commission	Kansas Lottery; Kansas Racing and Gaming Commission	Kansas Lottery; Kansas Racing and Gaming Commission
County Election Required	Yes	Yes	Yes	Yes	Yes
Required Payout	At least 87 percent for electronic gaming machines. VLTs payout at least 87 % and not more than 95% and up to 99% if authorized by the Lottery Director.	At least 87 percent.	At least 87% for electronic gaming machines. At least 87% for VLTs.	At least 87 percent for electronic gaming machines. VLTs payout at least 87 % and not more than 95% and up to 99% if authorized by the Lottery Director.	At least 87% for electronic gaming machines. At least 87% for VLTs.
Accelerated payment	\$15,000 for each electronic gaming machine (except veterans).	\$15,000 for each authorized electronic gaming machine.	\$15,000 for each authorized electronic gaming machine. \$15,000 for each authorized VLT.	\$15,000 for each electronic gaming machine (except veterans).	\$15,000 for each authorized electronic gaming machine. \$15,000 for each authorized VLT.
Limits on Number of Machines	VLTs—not more than 4,000 at all parimutuel locations and not more than 500 at all club locations. No limit on casinos.	Not less than 300 per facility.	Not less than 300 electronic gaming machines per facility. VLTs—not more than 2,000 at a parimutuel licensee location in Wyandotte county; not more than 1,500 at a parimutuel licensee location in Crawford county; and not more than an aggregate of 500 at a parimutuel licensee location in Greenwood and Harper counties.	VLTs—not more than 4,000 at all parimutuel locations and not more than 500 at all club locations. No limit on casinos.	VLTs—not more than 2,000 at a parimutuel licensee location in Wyandotte county; not more than 1,500 at a parimutuel licensee location in Crawford county; and not more than an aggregate of 500 at a parimutuel licensee location in Greenwood and Harper counties.
Effective Date	<i>Kansas Register</i>	<i>Kansas Register</i>	<i>Kansas Register</i>	<i>Kansas Register</i>	<i>Kansas Register</i>

	SB 168 (Federal and State Affairs)	SB 170 (Federal and State Affairs)	SB 294 (Ways and Means)	HB 2415 (Rep. Yonally, et. al)	Senate Substitute for HB 2481 (Ways and Means)
Disposition of Lottery Gaming Facility Revenue (Destination Gaming Casinos)	Destination Gaming Casinos Lottery Commission Oversight 2 % Problem Gambler 0.5 % City and County 4 % Operating Expenses to be determined Residual 50%	Destination Gaming Casinos Gaming Facility Manager Expenses and Interest on Bonds 50% Residual 50% (if expenses exceed 50%, the state pays 75% and the manager pays 25% of overage of expenses.) (if there are excess funds after expenses and interest on bonds are paid, then those excess funds would be distributed 25 % to the Facility Manager and 75 % to the State)	Destination Gaming Casinos Problem Gambler 0.5 % City Up to 2 % County Up to 2 % Operating Expenses to be determined Residual 50%	Destination Gaming Casinos Lottery Commission Oversight 2 % Problem Gambler 0.5 % City and County 4 % Operating Expenses to be determined Residual 50%	Destination Gaming Casinos Problem Gambler 0.5 % City Up to 2 % County Up to 2 % or County if no City Up to 4 % Operating Expenses to be determined Residual 50%
Disposition of Residual Lottery Gaming Revenue (Destination Gaming Casino)	Destination Gaming Casinos SGF not less than 22% of the destination casino revenue Destination Casino Manager negotiated by contract	Destination Gaming Casinos Lottery Gaming Facility Manager 25% Trust fund account for elementary, secondary and higher education 75%	Destination Gaming Casinos Lottery Gaming Facility Manager Not more than 35% Trust fund account for elementary, secondary and higher education Not less than 65%	Destination Gaming Casinos SGF not less than 22% of the destination casino revenue Destination Casino Manager negotiated by contract	Destination Gaming Casinos Lottery Gaming Facility Manager Not more than 22% Education Opportunity Fund Not less than 78% residual or 24% lottery gaming facility revenue, whichever is greater
Disposition of Lottery Gaming Revenue (Video Lottery Terminals at Parimutuel)	Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % Problem Gambler 0.5 % Parimutuel Manager negotiated by contract Lottery Commission Oversight to be determined SGF not less than 35% (After all of the expenses are paid, the remainder shall be transferred to the SGF, but not less than 35% and will be used for funding of elementary and secondary public education.)		Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % Problem Gambler 0.5 % Lottery Parimutuel Sales Agent 25 % Plus expenses Lottery Commission Oversight to be determined Parimutuel Licensee to be determined (After all of the expenses are paid, the remainder shall be transferred to the trust fund account for elementary, secondary and higher education.)	Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % Problem Gambler 0.5 % Parimutuel Manager negotiated by contract Lottery Commission Oversight to be determined SGF not less than 35% (After all of the expenses are paid, the remainder shall be transferred to the SGF, but not less than 35% and will be used for funding of elementary and secondary public education.)	Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % or County if no City 3.0 % Problem Gambler 0.5 % Lottery Parimutuel Sales Agent 22 % Plus expenses Lottery Commission Oversight to be determined Parimutuel Licensee to be determined Crawford County Parimutuel Licensee 2% (After all of the expenses are paid, the remainder shall be transferred to the trust fund account for elementary, secondary and higher education.)

	SB 168 (Federal and State Affairs)	SB 170 (Federal and State Affairs)	SB 294 (Ways and Means)	HB 2415 (Rep. Yonally, et. al)	Senate Substitute for HB 2481 (Ways and Means)
Disposition of Lottery Gaming Revenue (Video Lottery Terminals at Club Locations)	<p>Video Lottery Terminals at Club Locations</p> <p>Veterans Benefit Fund 14.0 % Problem Gambler 0.5 % Club Manager negotiated by contract Lottery Commission Oversight to be determined SGF not less than 35 %</p> <p>(After all of the expenses are paid, the remainder shall be transferred to the SGF, but not less than 35% and will be used for funding of elementary and secondary public education.)</p>			<p>Video Lottery Terminals at Club Locations</p> <p>Veterans Benefit Fund 14.0 % Problem Gambler 0.5 % Club Manager negotiated by contract Lottery Commission Oversight to be determined SGF not less than 35 %</p> <p>(After all of the expenses are paid, the remainder shall be transferred to the SGF, but not less than 35% and will be used for funding of elementary and secondary public education.)</p>	

Comparison of Bills Concerning State Owned and Operated Gaming During the 2005 Special Session

	SB 2 (Ways and Means)	SB 6 (Ways and Means)	Senate Substitute for HB 2005 (Ways and Means)	HB 2014 (Federal and State Affairs)	HB 2015 (Federal and State Affairs)
Games Authorized	Electronic gaming machines, Lottery Facility Games, Video lottery terminals (VLTs)	Electronic gaming machines, Lottery Facility Games, Video lottery terminals (VLTs)	Electronic gaming machines, Lottery Facility Games, Video lottery terminals (VLTs)	Electronic gaming machines, Lottery Facility Games	Electronic gaming machines, Lottery Facility Games, Video lottery terminals (VLTs)
Authorized Locations	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South Central zone—Sedgwick county; Southwest zone—Ford county; North central zone—Geary county. Parimutuel Tracks.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South Central zone—Sedgwick county; Southwest zone—Ford county; North central zone—Geary county. Parimutuel Tracks.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties. Parimutuel Tracks.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; or South Central zone—Sedgwick county.	Destination development zones: Northeast zone—Wyandotte county; Southeast zone—Crawford and Cherokee counties; South Central zone—Sedgwick county; Southwest zone—Ford county; North central zone—Geary county. Parimutuel Tracks.
Regulatory Agencies	Kansas Lottery; Kansas Racing and Gaming Commission	Kansas Lottery; Kansas Racing and Gaming Commission	Kansas Lottery; Kansas Racing and Gaming Commission	Kansas Lottery	Kansas Lottery; Kansas Racing and Gaming Commission
County Election Required	Yes	Yes	Yes	Yes	Yes
Required Payout	At least 87% for electronic gaming machines. At least 87% for VLTs.	At least 87% for electronic gaming machines. At least 87% for VLTs.	At least 87% for electronic gaming machines. At least 87% for VLTs.	At least 87% for electronic gaming machines.	At least 87% for electronic gaming machines. At least 87% for VLTs.
Accelerated payment	\$15,000 for each authorized electronic gaming machine. \$15,000 for each authorized VLT.	\$15,000 for each authorized electronic gaming machine. \$15,000 for each authorized VLT.	\$15,000 for each authorized electronic gaming machine. \$15,000 for each authorized VLT.	\$50 million contract fee.	\$15,000 for each authorized electronic gaming machine. \$15,000 for each authorized VLT.
Limits on Number of Machines	Electronic gaming machines limited by contract. VLTs—not more than 2,000 at a parimutuel licensee location in Wyandotte county; not more than 1,500 at a parimutuel licensee location in Sedgwick county; not more than 1,500 at a parimutuel licensee location in Crawford county; and not more than an aggregate of 500 at a parimutuel licensee location in Greenwood and Harper counties.	VLTs—not more than 2,000 at a parimutuel licensee location in Wyandotte county; not more than 1,500 at a parimutuel licensee location in Crawford county; and not more than an aggregate of 500 at a parimutuel licensee location in Greenwood and Harper counties.	Electronic gaming machines limited by contract. VLTs—not more than 2,000 at a parimutuel licensee location in Wyandotte county; not more than 1,500 at a parimutuel licensee location in both Sedgwick and Crawford counties; and not more than an aggregate of 500 at a parimutuel licensee location in Greenwood and Harper counties.	Electronic gaming machines limited by contract.	Electronic gaming machines limited by contract. VLTs—not more than 2,000 at a parimutuel licensee location in Wyandotte county; not more than 1,500 at a parimutuel licensee location in both Sedgwick and Crawford counties; and not more than an aggregate of 500 at a parimutuel licensee location in Greenwood and Harper counties.
Effective Date	<i>Kansas Register</i>	<i>Kansas Register</i>	<i>Kansas Register</i>	<i>Kansas Register</i>	<i>Kansas Register</i>

	SB 2 (Ways and Means)	SB 6 (Ways and Means)	Senate Substitute for HB 2005 (Ways and Means)	HB 2014 (Federal and State Affairs)	HB 2015 (Federal and State Affairs)
Disposition of Lottery Gaming Facility Revenue (Destination Gaming Casinos)	Destination Gaming Casinos Problem Gambler 1.0 % Single County Zone In City City 2%; County 2% In County County 4% Multi-county Zone In City City 1.5%; County 1.5%, other counties 1% split In County County 3%; other cos. 1% split Operating Expenses to be determined Residual 50%	Destination Gaming Casinos Problem Gambler 0.5 % City Up to 2.0 % County Up to 2.0 % or County if no City Up to 4.0 % Operating Expenses to be determined Residual 50%	Destination Gaming Casinos Problem Gambler 1.0 % Single County Zone In City City 2%; County 2% In County County 4% Multi-county Zone In City City 1.5%; County 1.5%, other counties 1% split In County County 3%; other cos. 1% split Operating Expenses to be determined Residual 50%	State revenue share in an amount equal to 12% of the first \$100 million of adjusted lottery gaming revenues and 22% of adjusted lottery gaming revenues above \$100 million will be credited to the Kansas Education Opportunity Fund.	Destination Gaming Casinos Problem Gambler 1.0 % Single County Zone In City City 2%; County 2% In County County 4% Multi-county Zone In City City 1.5%; County 1.5%, other counties 1% split In County County 3%; other cos. 1% split Operating Expenses to be determined Residual 50%
Disposition of Residual Lottery Gaming Facility Revenue (Destination Gaming Casinos)	Lottery Gaming Facility Manager Not more than 22% Education Opportunity Trust Fund lottery Not less than 78% residual or 24% gaming facility revenue, whichever is greater	Lottery Gaming Facility Manager Not more than 22% Education Opportunity Fund Not less than 78% residual or 24% lottery gaming facility revenue, whichever is greater	Lottery Gaming Facility Manager Not more than 22% Education Opportunity Trust Fund Not less than 78% residual or 24% lottery gaming facility revenue, whichever is greater		Lottery Gaming Facility Manager Not more than 22% Education Opportunity Trust Fund Not less than 78% residual or 24% lottery gaming facility revenue, whichever is greater
Disposition of Residual Lottery Gaming Facility Revenue (Video Lottery Terminals at Parimutuel Locations)	Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % or County if no City 3.0 % Problem Gambler 1.0 % Lottery Parimutuel Sales Agent 22 % Plus expenses Lottery Commission Oversight to be determined Parimutuel Licensee to be determined or Crawford County Parimutuel Licensee 2% Kansas Education Opportunity Trust Fund 24% (After all of the expenses are paid, the remainder shall be transferred to the trust fund account for elementary, secondary and higher education.)	Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % or County if no City 3.0 % Problem Gambler 0.5 % Lottery Parimutuel Sales Agent 22 % Plus expenses Lottery Commission Oversight to be determined Parimutuel Licensee to be determined Crawford County Parimutuel Licensee 2% (After all of the expenses are paid, the remainder shall be transferred to the trust fund account for elementary, secondary and higher education.)	Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % or County if no City 3.0 % Problem Gambler 1.0 % Lottery Parimutuel Sales Agent 22 % Lottery Commission Oversight to be determined Parimutuel Licensee to be determined or Crawford County Parimutuel Licensee 2% Kansas Education Opportunity Trust Fund 40% (After all of the expenses are paid, the remainder shall be transferred to the trust fund account for elementary, secondary and higher education.)		Video Lottery Terminals at Parimutuel Locations Horse Supplements 7.0 % Dog Supplements 7.0 % County 1.5 % City 1.5 % or County if no City 3.0 % Problem Gambler 1.0 % Lottery Parimutuel Sales Agent 22 % Plus expenses Lottery Commission Oversight to be determined Parimutuel Licensee to be determined or Crawford County Parimutuel Licensee 2% Kansas Education Opportunity Trust Fund 24% (After all of the expenses are paid, the remainder shall be transferred to the trust fund account for elementary, secondary and higher education.)