

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Senate Committee on Education
House Committee on Education

From: Jason B. Long, Senior Assistant Revisor
Eunice Peters, Assistant Revisor

Re: Memorandum Opinion and Entry of Judgment in *Gannon v. State*, 10-C-1569
(January 11, 2013)

Date: January 16, 2013

The Plaintiffs in this case, which consist of four unified school districts and certain students attending school in those districts, filed suit against the State of Kansas alleging that the State violated Article 6, § 6(b) of the Kansas Constitution by failing to “make suitable provision for finance of the educational interests of the State.” The Plaintiffs also alleged other constitutional and statutory violations which stem from the State’s alleged underfunding of the public education system. The case was heard by a three-judge panel during the summer of 2012. That panel of judges issued its Memorandum Opinion and Entry of Judgment on January 11, 2013. This memorandum summarizes the district court’s opinion and judgment on the matter.

Count 1 – Article 6, § 6(b) Violations

The primary allegation by the Plaintiffs (Count 1) was that the State violated Article 6, § 6(b) of the Kansas Constitution by failing to adequately provide for the suitable finance of the educational interests of the State. The district court included a lengthy legal history of school finance litigation that focused primarily on the *Montoy* series of Kansas Supreme Court opinions. The district court cited the opinions from the *Montoy* case for the legal requirement that the

State, and more particularly the Kansas Legislature, must consider the actual costs of providing a suitable education to the students in Kansas when determining the amount of state funding to be appropriated. The district court also noted “suitable provision for finance” entails providing a level of funding that provides ongoing improvement in public education.

In its analysis of the case at hand, the district court agreed with many of the Plaintiffs’ factual findings. Those factual findings demonstrated a lack of consideration of the actual costs of a suitable education by the State. The district court noted no evidence of recent cost studies being commissioned, and that there was ample testimony of increases in demands on the educational system coupled with a decrease in education funding from the State. Based on this evidence the district court found that the Plaintiffs had met their burden of proof by showing that there was no cost analysis justifying the State’s decreases in education funding.

Addressing the State’s argued defenses to the Plaintiffs’ claim, the district court found the State failed to prove any alternative justification for the funding decreases. The State’s first defense was that the expenditures for education authorized by the State satisfied the constitutional threshold for “suitable provision for finance of the educational interests of the State.” In rejecting this defense, the district court ruled that the evidence presented on the actual costs of education demonstrated that current funding by the State was not constitutionally adequate.

The State’s second defense was that additional funding was unnecessary due to recent performance by Kansas students on assessment tests. The district court found such claims to be unsupported factually. The district court also dismissed any justification by the State based on the economic recession as illogical due to the fact the State voluntarily diminished its revenue resources by reducing income taxes in the 2012 legislative session.

Based on these findings, the district court ruled that the K-12 public education system is underfunded in violation of Article 6, § 6(b) of the Kansas Constitution. The district court did not hold the school funding formula, itself, to be unconstitutional. Rather, the formula as applied by the State (i.e. the funding of the formula) violated the Kansas Constitution. As part of its order remedying these constitutional deficiencies, the district court enjoined the State from:

(1) taking any action to change the school funding formula that would result in lowering the base state aid per pupil (BSAPP) below the statutory amount of \$4,492;

the 3 judge

*

* (2) taking any action via appropriations acts or transfers that would result in lowering the BSAPP below the statutory amount of \$4,492;

* (3) exercising any authority under K.S.A. 72-6410(b)(2) to reduce the BSAPP other than through the proper exercise of the authority granted to the Governor and the State Finance Council in times of revenue shortfall pursuant to K.S.A. 75-6704; and

* (4) taking any action either by changing the local option budget statutes or by appropriations acts that would result in providing less than statutory amount of supplemental general state aid school districts are entitled to receive.

Count 2 – Nonpayment of Capital Outlay State Aid

In addition to the Article 6 claim, the Plaintiffs alleged that the State's failure to appropriate funds for capital outlay equalization state aid payments resulted in an unconstitutional distribution of state funding for education (Count 2). The district court found that even though the state ceased equalization state aid payments under KSA 72-8801 et seq., school districts were still likely to incur the same capital outlay expenses, and without such equalization state aid school districts must raise the funds necessary to offset these expenses locally. This, the district court ruled, creates a wealth-based distribution of education funding that is unconstitutional. For this reason, the district court ruled K.S.A. 72-8801 et seq., is unconstitutional until such time as it is shown that those statutes have been amended so as to cure the constitutional deficiencies. The district court denied the Plaintiffs' claim for payment of capital outlay equalization state aid from prior fiscal years citing its lack of authority to order the payment of funds out of the state treasury absent an appropriation act authorizing such payment.

Counts 3 through 8 – Other Constitutional and Statutory Claims

Finally, the district court ruled that the other claims brought by the Plaintiffs could not be sustained such that the district court could take any action on behalf of the Plaintiffs. These claims were based on constitutional claims that were addressed in Count 1 and could not be supported independently of that claim, or they were claims based on past actions of the Legislature for which the district court could not provide a remedy even if factually supported.

Table of contents to the Memorandum Opinion and Entry of Judgment

(for link to the opinion, see <http://www.shawneecourt.org/CivicAlerts.aspx?AID=21>)

- I. Introduction, p. 2.
 - a. Plaintiffs' claims (eight counts), p. 3.
 - b. State's defenses, p. 5.
- II. Legal history, p. 7.
- III. The court's authority and the principles underlying that authority, p. 34.
- IV. What Kansas constitutional admonishments and limitations on governmental action arises under Article 6, p. 40.
- V. Did Kansas governmental officials comply, or have they continued to comply, with article 6 (count 1), p. 55.
 - a. This court's analysis of the cost studies and funding levels, p. 86.
 - b. The local option budget (LOB) and supplemental state aid, p. 119.
 - c. The State's defenses, in part, to Montoy, p. 147.
- VI. Capital Outlay (count 2), p. 190.
 - a. Plaintiffs' claim for capital outlay payments not made, p. 198.
- VII. Plaintiffs' claim that certain omnibus appropriation acts are unconstitutional (count 3), p. 211.
- VIII. Have plaintiffs' established a substantive due process violation (count 4), p. 218.
- IX. Plaintiffs' equal protection claim (count 5), p. 220.
- X. Plaintiffs' count six claim that K.S.A. 72-64b03(d) violates the separation of powers (count 6), p. 222.
- XI. Plaintiff's counts seven and eight, p. 223.
- XII. Conclusion and summary, p. 227.
 - a. Considerations impacting any remedy, p. 235.
- XIII. Entry of judgment and order, p. 245.

Law Review and Bar Journal References:

"Students' Constitutional Rights in Public Secondary Education," Harold D. Starkey, 14 W.L.J. 106 (1975).

Attorney General's Opinions:

School textbooks; when free textbooks required. 79-122.
 Schools; buildings; compliance with municipal zoning and building code requirements. 80-14.
 Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.
 Schools; transportation of students; transportation routes. 83-180.
 Capital outlay levy, funds and bonds; procedure, protest, petition and election; effect of substitute resolution. 86-69.
 School attendance; G.E.D. 87-46.
 Organization, powers and finances of boards of education; interlocal agreements; duration of agreements. 87-119.

CASE ANNOTATIONS

1. School dress code regulating hair length of male students upheld; school boards authorized to provide rules and regulations. *Beline v. Board of Education*, 210 K. 560, 563, 571, 502 P.2d 693.
2. Cited in holding local school board authorized to close attendance facility. *Brickell v. Board of Education*, 211 K. 905, 917, 508 P.2d 996.
3. Cited; state board of education possesses general supervisory powers over district boards. *State, ex rel., v. Board of Education*, 212 K. 482, 485, 486, 492, 493, 497, 511 P.2d 705.
4. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 748, 512 P.2d 426.

§ 6. Finance. (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 59; original subject matter stricken

and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to moneys from various sources to be applied to support of common schools. For annotations to original section, see K.S.A. Vol. 6, p. 939; copyright 1964.
 Provision for a permanent tax levy for educational institutions, previously appeared in § 10 of this article.

Research and Practice Aids:

Colleges and Universities \Leftrightarrow 4, 6(1); Schools and School Districts \Leftrightarrow 16 et seq., 98 et seq.
Hatcher's Digest, Constitutional Law § 67; School Districts § 100.
C.J.S. Colleges and Universities §§ 9, 10; Schools and School Districts §§ 17 et seq., 376 et seq.
Am. Jur. 2d Colleges and Universities §§ 30, 31.

Law Review and Bar Journal References:

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 441, 442, 448 (1977).

Attorney General's Opinions:

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.
 State educational institutions; management, operation; fixing of tuition, fees and charges. 81-115.
 Education; state board of education; authority. 83-154.
 Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

CASE ANNOTATIONS

1. Order dismissing action to determine constitutionality of 1973 School District Equalization Act as moot, vacated and remanded; rights hereunder unresolved. *Knowles v. State Board of Education*, 219 K. 271, 272, 273, 547 P.2d 699.
2. Apportionment of monies contained in fund established hereunder by state finance council not unconstitutional as being a usurpation of executive powers by the legislature. *State, ex rel., v. Bennett*, 222 K. 12, 24, 564 P.2d 1281.

§ 7. Savings clause. (a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and in-

