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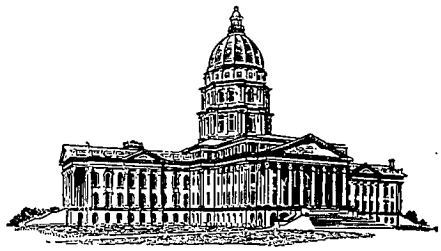

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School Finance Litigation: A Brief History of the School District Finance and Quality Performance Act

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On January 11, 2013, a three-judge panel of the district court of Shawnee County issued a ruling and order in the case of *Gannon v. State*. That ruling states that the current levels of funding for public schools under the School District Finance and Quality Performance Act (Act) violate Article 6, § 6(b) of the Kansas Constitution. The district court has ordered the State to fund public schools at a level equal to a base state aid per pupil (BSAPP) of $4,492. The district court also held the provisions pertaining to capital outlay levies and expenditures (K.S.A. 72-8801 et seq.) to be unconstitutional because of the wealth disparities created by those statutes.

This memorandum provides a brief history of the course of school finance litigation since the passage of the Act. This includes a description of the relevant constitutional provisions, the case law prior to the precedent-setting case of *Montoy v. State*, the various rulings and precedents made in the *Montoy* series of decisions, and finally their impact on the ruling in *Gannon*.

History Prior to *Montoy*

Constitutional Provisions

The legal disputes over the provision of finance for the public school system under the Act revolve around the constitutional amendments to Article 6 of the Kansas Constitution that were

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ratified by the Kansas electorate in 1966. The amendments were crafted by an 11-member citizen advisory committee that was tasked by the Legislature with examining the education system in Kansas and recommending changes in its structure and organization. Seeking to provide for the governance of the educational system as it moved into the future, the committee recommended a comprehensive system with general supervision by an elected state board and local control vested in a locally elected school board. The committee also provided for the continued governance of the Legislature through the provision of finance for the educational interests of the state. Copies of the relevant sections of Article 6 that have become the source of these legal disputes are attached to this memorandum.

First, Section 1 of Article 6 requires that the Legislature "provide for intellectual, educational, vocational and scientific *improvement* by establishing and maintaining public schools, educational institutions and related activities." (Emphasis added) This provision places responsibility for the educational interests of the state with the Legislature. The emphasized term "improvement" has been used by the courts as a basis for holding that financing the status quo does not necessarily satisfy the constitutional requirements. The Legislature is charged with providing improvement in education, thus the standard for measurement is one based on academic improvement.

Section 2 of Article 6 establishes the State Board of Education and its primary duty of general supervision of schools. Such constitutional authority has generally been held to be self-executing. The State Board of Education has authority to regulate the schools and school districts of this State.

Section 5 of Article 6 establishes local control of public schools in the locally elected boards of education. However, this section does reserve certain legislative control to the Legislature.

Finally, Section 6 of Article 6 provides that "[t]he legislature shall make suitable provision for finance of the educational interests of the state." Generally, this provision requires the Legislature to provide sufficient funding for the public school system, whether by direct appropriation therefore, by authorizing the levying of taxes at the local level, or by some other funding mechanism. Generally this is construed as requiring the Legislature to provide a "suitable education" for every public school student in Kansas.

After ratification of the revised Article 6 in 1966, various school financing laws were enacted and legal challenges arose based on alleged violations of the above-described provisions.

U.S.D. 229 v. State

In 1992, the legislature enacted the School District Finance and Quality Performance Act in response to a legal challenge to the previous school funding act. The Act was challenged on various constitutional grounds, including violations of sections 5 and 6 of Article 6. The Kansas Supreme Court (Court) upheld the Act against all of the constitutional challenges.

As to the Article 6, § 5 challenge, the Court held that Article 6 places responsibility for establishing the educational system with the Legislature and the responsibility for providing for the finance thereof. Though the plaintiff school districts tried to argue that Section 5 granted the local boards of education self-executing power for the financing of the school district, the Court held that there is no such self-executing authority found in Section 5, and that the school boards' authority to levy and collect taxes stems solely from the grant of such authority by the Legislature. Therefore, the provisions in the Act granting or restricting a school board's taxing authority were constitutionally permissible.

Second, the Court adopted the district court's analysis with respect to the Section 6 challenge on the suitability of the financing for education. The Court found that "suitability" was most closely akin to adequacy. After examining adequacy standards in other states with similar constitutional provisions, the Court held that the quality performance accreditation standards enumerated in the Act provided a sufficient means of judging whether the education being provided was "suitable." The Court was not willing to substitute its judgment of what constituted "suitable" for that of the Legislature and held that the Act did not violate Section 6.

The *Montoy* Case

Montoy I

After the *U.S.D. 229* decision was issued in 1994, various amendments were made to the Act. These changes led to the case of *Montoy v. State* being filed on December 14, 1999 in Shawnee County district court. Relying primarily on the decision in *U.S.D. 229*, the district court summarily determined that no constitutional violations were to be found and dismissed the

lawsuit. On appeal, the Kansas Supreme Court held that the plaintiffs' amended petition contained sufficient factual allegations that when coupled with the changes in the school finance laws since the *U.S.D. 229* decision provided a case that could not be summarily dismissed (*Montoy I*). The Court noted that the suitability of school finance is not a fixed issue, but one that should be monitored and reevaluated as needed. Because of the numerous changes in the school finance laws, the Court decided that *Montoy* was sufficiently removed in time from *U.S.D. 229* that the issue of the suitability of school finance warranted being examined again. Reversing the district court's dismissal, the Court sent the case back to district court for trial.

Prior to trial, the Legislature directed that a professional cost study be conducted to analyze the cost of providing a suitable education. The study was conducted by the firm of Augenblick & Myers. The ten quality performance accreditation standards for education had been removed for the Act and replaced with a statute requiring the State Board of Education to design and develop an accreditation system "based upon improvement in performance that reflects high academic standards and is measurable." These accreditation standards along with performance measures determined by the Legislative Educational Planning Committee were the criteria used in the evaluation of the level of school finance in the Augenblick & Myers cost study (A&M study).

At trial, the district court found several societal and legislative changes had occurred since the *U.S.D. 229* decision. The societal changes included shifts in the demographics of public school students and higher admission standards at postsecondary institutions. Legislative changes included modification of several of the finance formula weightings over the years. These modifications did not appear to correlate to the societal changes noted by the district court. The district court also noted the removal of the ten enumerated quality performance accreditation standards and a statute that had provided for a school finance oversight committee. Using the A&M study as a its cost basis and taking into account the various changes since the *U.S.D. 229* decision, the district court ruled that the Legislature had failed to "make suitable provisions for finance" of the educational interests of the state.

Montoy II

On appeal for a second time (*Montoy II*), the Kansas Supreme Court first looked at the standard for determining when an Article 6, § 6 violation has occurred. A "suitable education"

has many aspects. One aspect is found in Section 1 of Article 6, which requires that the Legislature provide for educational "improvement." The Court noted that the Legislature had originally recognized this aspect by adopting ten goals of education in the Act. However, those standards were removed and replaced with the statute requiring the State Board of Education to design and develop an accreditation system. The Court also noted the Legislature's own definition of "suitable education" expressed in K.S.A. 46-1225(e), which has since been repealed.

Using such findings as the standard for the definition of "suitable education," the Court began its analysis of the evidence presented at trial. It concluded that there was substantial competent evidence, including the A&M study, supporting the district court's ruling that the Legislature had failed to provide for the finance of a suitable education for Kansas students. Specifically, the Court agreed with findings that the school finance formula failed to adequately provide funding for school districts with high proportions of minority, at-risk, and special education students. The Court also noted evidence showing that school districts were using local option budgets to finance general education expenses even though that revenue source had been enacted with the intent that it finance those expenses of a school district that are above and beyond general operating expenses.

Additionally, the Court agreed with the district court's finding that no actual costs of education had been used in formulating the school finance formula. The district court found that instead, the weightings and other variables of the formula were determined based on prior spending levels and political compromise. The lack of an actual cost basis for the formula distorted various weightings, including low-enrollment, special education, vocational education, bilingual, and at-risk weightings.

The Court's opinion was issued in January immediately before the start of the 2005 Legislative Session. Because of this and the Court's opinion on the constitutionality of the school finance formula, the Court stayed all orders and retained jurisdiction so as to reexamine the issues again after the Legislature had had time to convene and respond through legislative changes to the formula.

Montoy III

In response to the Court's decision in *Montoy II*, the Legislature enacted 2005 HB 2247 and 2005 SB 43. These enactments made changes to the BSAPP, various weightings, the local option budget (LOB) limits, and limits on capital outlay levies. The Legislature also established the 2010 Commission to oversee the school finance system and ordered a cost study to be performed by the Division of Legislative Post Audit (LPA study). A total of $142 million would be added for school funding for the 2005-2006 school year through these amendments.

In June of 2005, the Court issued its third opinion on the Act (*Montoy III*). The Court began its analysis of the legislative enactments by reaffirming that since the case had moved into the remedial phase – the Court had held the formula unconstitutional in January of 2005 and had given the Legislature an opportunity to present a legislative remedy – the burden was now on the State to prove that its proffered remedy was constitutional. The Court also held that its review of the 2005 legislation was not a violation of separation of powers as it has been long settled in law that it is the judiciary's duty to determine the constitutionality of legislative enactments.

The Court then looked at the various amendments made by the Legislature in comparison to the data of the A&M study. The Court's general conclusion was that the changes in the BSAPP and the weightings fell short of the actual cost data supplied by the A&M study. It also concluded that without appropriate equalization measures the property tax amendments to the LOB and the capital outlay provisions had the potential to exacerbate the wealth disparities among school districts. Based on these conclusions, the Court held that the legislative enactments of the 2005 session were not constitutional under Article 6, § 6.

Using the A&M study as the basis for its remedy, the Court concluded its opinion by ordering the State to increase funding for schools by at least $285 million for the 2005-2006 school year. This was $^1/_3$ of the amount of total funding increases recommended by the cost study to the State Board of Education in July of 2002. The Court also retained jurisdiction once again to review the Legislature's actions if necessary.

Montoy IV

During a special session of the Legislature in the summer of 2005, the Legislature passed SB 3, which when combined with the $142 million added by HB 2247 brought the total increase in

school funding to $289 million. At a hearing on July 8, 2005, the Court reviewed SB 3 and found that it complied with the Court's earlier order. The Court allowed most of the provisions of HB 2247 as modified by SB 3 to be effective for the 2005-2006 school year. The Court also once again retained jurisdiction to review further legislative action on this issue in the future.

During the 2006 Legislative Session the Legislature received a new cost study conducted by the LPA and enacted SB 549, which significantly altered the school finance formula. In May of 2006, the Court once again reviewed the school finance issues in yet another remedial hearing. In its subsequent opinion (*Montoy IV*), the Court found SB 549 to "materially and fundamentally" change the school funding scheme in Kansas. Specifically, the Court noted that SB 549 implemented a three-year funding scheme by incorporating increases in the BSAPP over a three-year period. It also added new weightings, adjusted others, and broadened the flexibility of school districts to spend money received for certain programs. SB 549 also addressed the local wealth disparities by significantly revising the LOB caps and equalization formula, and declaring that such funds are to be used for general education purposes.

Due to the extensive changes in the school funding formula, the Court held that the constitutionality of SB 549 was not an issue to be decided by the Court. The Court's review in this final opinion was to determine whether the Legislature was in compliance with the Court's order in *Montoy III*. Any constitutional challenge to SB 549 would have to be brought in a new lawsuit.

As to the issue of compliance with *Montoy III*, the Court held that while the Legislature could not ignore the LPA study, it was not required to implement the findings and conclusions of the study. The Legislature considered the cost conclusions of the study and in doing so complied with *Montoy III*. Noting the complexities of funding public education, the Court held that the Legislature had substantially complied with its previous orders and dismissed the case.

Legislative Responses to *Montoy*

Responses During the Case

As noted above, the Legislature passed two acts during the 2005 Legislative Session – HB 2247 and SB 43 – that made substantial changes to the school finance formula. The total amount of additional funding for public schools under these enactments was $142 million. The

Legislature then enacted SB 3 during the 2005 Special Session, which added another $147 million in school funding.

Additionally, the House of Representatives adopted two resolutions – HR 6006 and HR 6007 – that directly addressed the Court's decision in *Montoy III*. HR 6006 stated that the Court had infringed on the right and responsibility of the Legislature to determine the provision of finance for public education. HR 6007 went further by making several findings regarding the A&M study, the consideration of costs by the Legislature, and the definition of "suitable education."

In 2006, the Legislature passed SB 549, which made significant changes to the school finance formula as noted by the Court in *Montoy IV*. These changes enacted a three-year plan for school funding and made substantial changes to the LOB provisions and the equalization of local tax levies. The total additional funding for public schools over the three-year period would be $466 million.

Legislative Enactments After the Case

In 2008, the Legislature passed SB 531 increasing the BSAPP from $4,433 to current statutory amount of $4,492. This is the BSAPP amount cited by the district court in the *Gannon* case, and which is referred to in the orders issued in that case.

In 2009, the Legislature recognized the BSAPP may not be funded at the statutory amount, and so passed SB 84 to provide an alternative calculation for LOB authority. The LOB of a school district is contingent upon the state financial aid that a school district is entitled to receive, which is in turn contingent upon the amount of the BSAPP provided by the State. Thus, SB 84 provided that if the BSAPP appropriated in a given year was below $4,433, the school district could still calculate its LOB authority based on a fictional BSAPP of $4,433 so as not to lose LOB authority and the local revenue that comes with it.

In 2011, the Legislature passed House Substitute for Substitute for SB 111 (SB 111) to give school districts more flexibility in spending the cash reserves held in various school district funds. School districts have a number of funds which have statutory restrictions on how the money in those funds can be spent. Financial analysis showed that there were unencumbered balances in these funds in a number of school districts, but that the districts could not spend the money because

of the statutory restrictions. SB 111 removed these restrictions for the 2011-2012 school year thereby giving school districts flexibility in their spending. This legislation was then extended in 2012 to apply to the 2012-2013 school year.

Part of the rationale behind SB 111 was to release unencumbered funds for school districts to use at a time when general state aid was being reduced during the period of the recession. It was this reduction in general state aid – most notably through reductions in the BSAPP – that led to the filing of the current lawsuit in 2010.

The *Gannon* Case

The plaintiffs in *Gannon v. State*, which consist of four unified school districts and certain students attending schools 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.

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 decisions. The district court cited the opinions from the *Montoy* case for the legal requirement that the State, and more particularly the 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, 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 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 BSAPP below the statutory amount of $4,492;

(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.

Conclusion

The litigious history of the School District Finance and Quality Performance Act revolves primarily around the Article 6, § 6(b) obligation that the Legislature make suitable provision for the finance of the educational interests of the state. Much of this litigation has subsequently rested on what constitutes a "suitable education." One can draw the following conclusions from myriad of court decisions:

(1) Under the current constitutional provisions as interpreted by Kansas courts, the Legislature is responsible for the provision of financing for the suitable education of the public school students of Kansas, and that suitable education entails improvement in public education.

(2) A suitable education in Kansas is defined by standards for a quality education established by the Legislature and the actual costs required to meet those standards.

(3) In order to fulfill its constitutional obligations the Legislature is required to use actual costs in determining the adequate amount of school funding to be provided by the State.

(4) Any funding scheme which utilizes local tax levy authority must be equalized appropriately to account for the property wealth disparities among the various school districts.

vote at precincts established prior to cession. Herken v. Glynn, 151 K. 855, 868, 881, 101 P.2d 946: Apparently overruled by Evans v. Cornman, 398 U.S. 419, 26 L.Ed. 370, 90 S.Ct. 1752.

6. Citizen may change residence temporarily or permanently; acts and intentions govern. State, ex rel., v. Corcoran, 155 K. 714, 719, 128 P.2d 999.

7. Rational state policy justified districts differing in population under state census from ideal; no proof of discrimination in taking census. Winter v. Docking, 373 F. Supp. 308.

8. "Temporarily residing" as used in theft insurance policy construed. Winsor v. Hartford Fire Ins. Co., 6 K.A.2d 397, 400, 628 P.2d 1080 (1981).

§ 4. Proof of right to vote. The legislature shall provide by law for proper proofs of the right of suffrage.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; L. 1974, ch. 462, § 1; Aug. 6, 1974.

Cross References to Related Sections:

Registration of voters, see ch. 25, art. 23.

Research and Practice Aids:

Elections ⇐ 59 et seq.
Hatcher's Digest, Elections §§ 1, 2, 12.
C.J.S. Elections § 16.

Attorney General's Opinions:

Registration of voters; purging of registration lists. 80-93.

Elections; registration of voters; registration by naturalized citizens. 80-266.

CASE ANNOTATIONS

1. Majority of votes cast presumed will of majority of electors. County Seat of Linn Co., 15 K. 500.

2. Registration law of 1879 enacted in pursuance hereof, and valid. The State v. Butts, 31 K. 537, 550, 2 P. 618.

3. Section cited in determining qualification of elector to petition for abandonment of manager plan. State, ex rel., v. Dunn, 118 K. 184, 235 P. 132.

4. Cited in holding absentee-voters acts within legislative power and valid. Lemons v. Noller, 144 K. 813, 824, 832, 63 P.2d 177.

5. Absentee voters' act held valid although no provision for challenging voter. Burke v. State Board of Canvassers, 152 K. 826, 827, 833, 841, 107 P.2d 773.

§ 5.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; Repealed, L. 1972, ch. 393, § 1; Aug. 1, 1972.

Revisor's Note:

Section related to duelists, prohibiting their holding an office of trust or profit.

CASE ANNOTATIONS

1. Section cited in determining right of legislature to name qualifications of county superintendents. Jansky v. Baldwin, 120 K. 332, 243 P. 302. Rehearing denied: 120 K. 728, 244 P. 1036.

2. Silence of constitution on a subject is not a prohibition; legislature may prescribe qualifications of voters; constitution limits, rather than confers, powers. Lemons v. Noller, 144 K. 813, 816, 817, 63 P.2d 177.

§ 6.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; eliminated by revision, L. 1974, ch. 462, § 1; Aug. 6, 1974.

Revisor's Note:

Section related to bribery to procure election.

CASE ANNOTATIONS

1. Section cited in considering "veterans' preference law." Goodrich v. Mitchell, 68 K. 765, 769, 75 P. 1034.

2. Bribed votes cannot be counted. Hunt v. Gibson, 99 K. 371, 377, 161 P. 666.

3. Section cited in determining right of legislature to name qualifications of county superintendents. Jansky v. Baldwin, 120 K. 332, 243 P. 302. Rehearing denied: 120 K. 728, 244 P. 1036.

4. Silence of constitution on a subject is not a prohibition; legislature may prescribe qualifications of voters; constitution limits, rather than confers, powers. Lemons v. Noller, 144 K. 813, 816, 817, 63 P.2d 177.

§ 7. Privileges of electors. Electors, during their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest in all cases except felony or breach of the peace.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; L. 1974, ch. 462, § 1; Aug. 6, 1974.

Research and Practice Aids:

Arrest ⇐ 60.
C.J.S. Arrest § 3.
Am. Jur. 2d Arrest § 100.

§ 8.

History: L. 1911, ch. 337, § 1; eliminated by revision, L. 1974, ch. 462, § 1; Aug. 6, 1974.

Revisor's Note:

Section related to women's right to vote and hold office.

Article 6.—EDUCATION

Revisor's Note:

The 1966 amendment to this article replaced original sections 1 to 7 and eliminated sections 8, 9 and 10. Annotations to former sections are omitted as directed by L. 1969, ch. 426, § 2.

CASE ANNOTATIONS

1. Cited in opinion considering L. 1982, ch. 282, relating to community colleges and municipal universities. State ex rel. Stephan v. Board of Lyon County Comm'rs, 234 K. 732, 733, 676 P.2d 134 (1984).

§ 1. Schools and related institutions and

activities. 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.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; 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 state and county superintendent of public instruction.

For annotations to original section, see K.S.A. Vol. 6, p. 936; copyright 1964.

Research and Practice Aids:

Schools and School Districts ⇐ 9.
Hatcher's Digest, School Districts §§ 1 to 5.
C.J.S. Schools and School Districts §§ 13, 15.

Law Review and Bar Journal References:

Discussed in comment on the 1973 Kansas School District Equalization Act by James L. McNish, 22 K.L.R. 229, 235 (1974).

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 442, 459 (1977).

"Constitutional Law: Privacy Penumbra Encompasses Students in School Searches [New Jersey v. T.L.O., 105 S.Ct. 733 (1985)]," J. Lynn Entriken Goering, 25 W.L.J. 135, 142 (1985).

Attorney General's Opinions:

Public television; works of internal improvement. 80-55.

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Education; state board of education. 81-236.

State board of education; gifts and bequests; management and expenditure through trust fund. 83-58.

Education; legislature; authority. 83-154.

Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

School attendance; G.E.D. 87-46.

CASE ANNOTATIONS

1. Constitution grants general supervisory powers over district boards directly to state board of education. State, ex rel., v. Board of Education, 212 K. 482, 485, 495, 497, 511 P.2d 705.

2. Article construed with Article 2, Section 1; 72-7108 not unconstitutional as unlawful delegation of legislative power. State, ex rel., v. State Board of Education, 215 K. 551, 554, 555, 556, 561, 562, 564, 527 P.2d 952.

3. 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.

4. Teachers' collective negotiations within "related activities" category; constitutionality of act (72-5413 et seq.) upheld. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 609, 612, 592 P.2d 463.

§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

(c) Any municipal university shall be operated, supervised and controlled as provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

A proposition to amend this section was submitted to the electors Aug. 6, 1974 and was rejected (see L. 1974, ch. 465; SCR No. 22).

Prior to 1966, section related to the establishment of schools.

For annotations to original section, See K.S.A. Vol. 6, p. 937; copyright 1964.

Research and Practice Aids:

Colleges and Universities ⇐ 7; Schools and School Districts ⇐ 47.

Hatcher's Digest, Colleges and Universities § 3; School Districts § 68.

C.J.S. Schools and School Districts §§ 86 to 90.

Law Review and Bar Journal References:

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 447 (1977).

Attorney General's Opinions:

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Education; state board of education. 81-236.

State board of education; gifts and bequests; management and expenditure through trust fund. 83-58.

Education; legislature; authority. 83-154.

Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

CASE ANNOTATIONS

1. Cited in holding local school board authorized to close attendance facility. Brickell v. Board of Education, 211 K. 905, 916, 917, 508 P.2d 996.

2. Held partially self-executing; state board of education possesses general supervisory powers over district boards. State, ex rel. v. Board of Education, 212 K. 482, 484, 486, 487, 488, 493, 495, 496, 497, 511 P.2d 705.

3. Article construed with Article 2, Section 1; 72-7108 not unconstitutional as unlawful delegation of legislative power. State, ex rel., v. State Board of Education, 215 K. 551, 554, 555, 556, 561, 562, 564, 527 P.2d 952.

4. Applied; school board not immune from liability (under 11th amendment) to teachers for failure to afford teachers' rights under 14th amendment to pretermination hearing. Unified School District No. 480 v. Epperson, 551 F.2d 254, 260.

5. Referred to; school board not immune to teachers for failure to provide pretermination hearing. Unified School Dist. No. 480 v. Epperson, 583 F.2d 1118, 1123.

6. Authority of secretary of human resources under teachers' collective negotiations act (72-5413 et seq.) not in violation hereof. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 609, 611, 612, 592 P.2d 463.

7. Board of Regents held not subject to building code ordinances of Kansas City for construction at K.U. Medical Center. State ex rel. Schneider v. City of Kansas City, 228 K. 25, 31, 612 P.2d 578.

8. Board of regents is an employer under public employer-employee relations act. Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA, 233 K. 801, 811, 667 P.2d 306 (1983).

§ 3. Members of state board of education and state board of regents. (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; 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 the state permanent school fund and sources of revenue for fund.

For annotations to original section, see K.S.A. Vol. 6, p. 937; copyright 1964.

Research and Practice Aids:

Schools and School Districts ⇐ 47.
Hatcher's Digest, Schools and School Districts § 73.
C.J.S. Schools and School Districts § 87.

CASE ANNOTATIONS

1. Referred to in determining senate confirmation or rejection of appointees of governor under 22-3707 lawful. Leek v. Theis, 217 K. 784, 804, 539 P.2d 304.

§ 4. Commissioner of education. The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; 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 the apportionment of income from the state permanent school fund.

Research and Practice Aids:

Schools and School Districts ⇐ 47.
C.J.S. Schools and School Districts § 87.

§ 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. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

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 lease or sale of school lands.

For annotations to original section, see K.S.A. Vol. 6, p. 939; copyright 1964.

Research and Practice Aids:

School and School Districts ⇐ 51.
Hatcher's Digest, School Districts §§ 69 to 71.
C.J.S. Schools and School Districts § 105.

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 ⇐ 4, 6(1); Schools and School Districts ⇐ 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-