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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairman Huebert
Members of the House Committee on Education

From: Jason B. Long, Senior Assistant Revisor

Date: February 12, 2019

Subject: Authority to establish curriculum and academic standards

The question presented is to what extent the State Board of Education (State Board) and the Legislature have authority to establish curriculum and academic standards, such as graduation requirements. First, Article 2, § 1 of the Constitution of the State of Kansas (Constitution) provides that the legislative power of the state, the power to make legislation, rests with the Legislature. However, when the subject is public education, then the Legislature's Article 2 power must be read in conjunction with Article 6 of the Constitution because Article 6 delegates educational oversight to different governing bodies.

Article 6, § 1 of the Constitution grants the Legislature the authority to establish public schools. Section 2(a) delegates general supervisory authority over public education to the State Board. Section 5 provides that the local operation of public schools is to be governed by locally elected boards of education.¹ Finally, § 6 grants the Legislature the authority to provide for the finance of public education. The question then becomes under which grant of authority does the establishment of curriculum and academic standards fall.

Turning first to the general supervisory authority of the State Board, in *State ex rel. Miller v. Bd. of Educ. Of U.S.D. No. 398, Marion Co. (Peabody)*, 212 Kan. 482 (1973), the Kansas Supreme Court made several statements with respect to the extent of these powers. First, the Court held that the general supervisory powers of the Board are self-executing. No legislative enactment is necessary for the exercise of such powers, and the lack of any ancillary legislation cannot act as a bar to the exercise of such powers. Second, the Court stated that any legislation

¹ While it is not discussed fully in this memorandum, it should be noted that local school boards establish the instructional curriculum for each school district based on statutory course requirements and State Board academic standards.

enacted with respect to a self-executing power cannot "thwart a self-executing provision of the constitution." The fact that a constitutional power may be self-executing does not preclude all legislation concerning the exercise of such power. However, such legislation should facilitate, not abrogate, the exercise of such power. Finally, the Court held that the general supervisory powers of the Board "means something more than to advise but something less than to control."

Later, in *Nat'l Educ. Assoc. v. Fort Scott. Bd. of Educ., U.S.D. No. 234, Bourbon, Co.*, 225 Kan. 607 (1979), the Court held that provisions of the Teachers' Collective Negotiations Act did not conflict with the State Board's power of general supervision of public schools. Again, the Court did not attempt to enumerate those powers that fall within the meaning of general supervision. However, it did find that "[t]he board's mission is to equalize and promote the quality of education for the student of this state by such things as statewide accreditation and certification of teachers and schools." (emphasis added)

Based on this case law, Attorney General Robert Stephan opined in 1983 that in addition to accreditation and certification of teachers, "it would be appropriate to add minimum curriculum and graduation requirements, applicable throughout the state."² The opinion appears based on an interpretation by the Attorney General that curriculum and graduation requirements are a substantive part of the State Board's "basic mission of equalizing and promoting the quality of education for the students in this state."³

Returning to the *Peabody* case, the State Board's general supervisory authority does not preclude legislation in those areas where the State Board has executed its constitutional powers. Any companion legislation must facilitate and not abrogate the State Board's authority. For example, K.S.A. 72-3214 has long provided basic curriculum requirements for elementary education in Kansas. K.S.A. 72-3235 has required a course in Kansas history and government as a high school graduation requirement since 1988. Finally, K.S.A. 72-3218 establishes general academic standards for Kansas public schools. All of these statutes can be read as facilitating the State Board's mission of promoting quality education in this state.

Any legislation addressing curriculum or graduation requirements, or other academic standards, must not abrogate the State Board's general supervisory authority over such matters. Such legislation is likely constitutional provided it satisfies this standard.

² AG Op. No. 83-154 (1983).

³ *Id.*