

MINUTES OF THE SENATE EDUCATION COMMITTEE

A joint caucus of Senate Republicans and Democrats was called to order by Chairman Jean Schodorf at 1:35 p.m. on January 13, 2005, in Room 313-S of the Capitol.

Committee members absent:

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Dan Biles, Attorney for the State Board of Education
Alan Rupe, Attorney at Law
Curtis L. Tideman, Lathrop & Gage L.C.

Senator Schodorf noted that the format for the meeting of the Senate Education Committee was changed to a caucus of Senate Republicans and Democrats to give all senators an opportunity to hear the conferees' overview of the recent Kansas Supreme Court ruling on *Montoy v. State of Kansas*, which relates to the Legislature's constitutional burden to make a suitable financial provision for public schools.

Dan Biles, attorney for the State Board of Education, said the Court's decision could be summarized as an expanded judicial standard for Kansas Constitution Article 6, Section 6(b), which requires that the Legislature make a suitable provision for school finance. He explained that the Supreme Court retains jurisdiction to review what, if anything, the Legislature does by an April 12, 2005, deadline. He went on to discuss the two primary holdings under the constitutional provision for equal protection (fairness) and the two primary holdings under Article 6 (adequacy). In his opinion, with the Court's decision, equal protection now plays much less of a role in school funding cases with the emphasis now being placed on Article 6 to determine whether school funding formulas comply with the constitution. After discussing the legal aspects of the ruling, Mr. Biles noted that the Court said, "The concept of a 'suitable provision for finance' encompasses many aspects." He discussed the "many aspects" under the following headings: Improvement, Established Educational Criteria, and Other Factors (Cost Analysis and Equity and Constant Monitoring). In conclusion, he discussed the components required to remedy the Article 6 violation. (Attachment 1)

Alan Rupe identified himself as one of the attorneys who represented the plaintiff school districts in the school finance lawsuit. He concurred with Mr. Biles' interpretation of the Supreme Court's decision. He commented, "There is no way to read this opinion without coming to the conclusion that this group needs to spend substantially more money on education to live up to your Article 6 constitutional obligation. That's the fact of this case. And it's not the State Board of Education or your constituents that are looking over your shoulder; it's the Supreme Court." He went on to say that it was clear that the Supreme Court has expanded its role and has taken an equal protection analysis of fairness and inserted it under Article 6 of the Constitution. He noted that adequacy and equitable distribution are the key words in the Court's opinion. He further noted that the decision tells the Legislature to focus on the actual cost of delivering education. He explained that the Supreme Court said that the mid and large size districts are not receiving their share and that the local option budget is not being used for the extras for which it was intended but, instead, is being used for essentials. He noted that, in addition, the Court said that the low enrollment weight, special education weight, bilingual weight, and at-risk weights must be adjusted to reflect the actual costs and that distribution must not be based upon political and other factors not relevant to education. (Attachment 2)

Mr. Rupe commented, "One of the things that I think it is imperative that you look at in this section is the magnitude of the fix that's going to be required. The question is, how much do you spend? And I think this opinion is very clear when it indicates the road map for how to fix the problem. It is going to take somewhere in the neighborhood of a billion dollars to fulfill your Article 6 responsibilities. And that's not my words, that's not Schools For Fair Funding words; that's where the Court directs this group to Augenblick and Myers because you have done a cost study, and you did it in 2001. If you take the Augenblick and Myers' base number of \$4,650 and adjust it for inflation, it's \$5,261. If you look at the consumer price index starting in 1992 and just bring it forward adjusting for inflation, the current base is \$1,000 short per kid in Kansas." He

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went on to note that the Supreme Court recognized Judge Bullock's finding as to what was inadequate in Kansas' current system. Mr. Rupe urged legislators to consider testimony regarding the cost given at trial by Bruce Baker from the University of Kansas and Winston Brooks from USD 259. He suggested that they could also get direction from other states such as Arkansas and New York which were recently given the same instruction on how to provide adequate education. In conclusion, he emphasized that the Court's decision clearly concluded that there must be more funding and more equity and that the focus should be on actual costs to deliver adequate education. He said, "The consequence of inaction by this group by April 12 is one of three things – (1) the Supreme Court retains jurisdiction, (2) the Court may appoint a special master, or (3) the Court may return it to Judge Bullock." He pointed out that, in terms of the decision, one of the avenues that cannot be taken by the Legislature is an attempt to redefine suitability. He reiterated that the only avenue under the Court's decision is a substantial increase in funding.

Curtis L. Tideman, Lathrop and Gage L.C., expressed his opinion that the Legislature acted wisely in resisting the temptation and political pressure to remake the entire funding formula in the image of the District Court's preliminary order in 2004 because it was later found that pieces of the District Court order were wrong. He noted, "To remake the funding formula in the image of that order would have been grossly unfair to many districts who were not represented in that proceeding." He noted that the Supreme Court's brief opinion addressed four points and sided with the State of Kansas in three of the four issues addressed. He explained that, because the Supreme Court withheld its final and formal opinion, the Legislature does not have the benefit of the specific reasoning behind each of the rulings; however, the opinion does provide a degree of guidance in the areas of funding adequacy, funding equity, and actual costs. In summary, he said the Kansas Supreme Court provided valuable, although not definitive, guidance on the elements of a constitutional school finance system. (Attachment 3)

In reference to Mr. Rupe's comments, Mr. Tideman said, "I do not agree that this order contains any type of suggestion of the proper magnitude of additional funding. However, it's clear that additional funding will be required. And I'm not sure that I agree that the Court has specifically said that the LOB is only for extras. If you look at the opinion, it says that evidence of inadequate funding includes the fact that, although initially intended for extras, it's been commonplace for LOBs to be used for general education. If you read the entire opinion of the Court, they are pretty clear that they are not telling this body exactly how to do their job."

Senator Schodorf asked Mr. Tideman if he believed that "suitability" needed to be redefined. Mr. Tideman responded, "There's nothing in this opinion that specifically calls for a redefinition of suitability. It does rely on a definition, and it's a definition that was primarily drafted by the Legislature. But I'm not certain, if the Legislature were to change that definition, that the Court might not come to the same conclusion anyway."

Senator Ostmeyer expressed concern that the Legislature was simply told that more money is needed for education, but no budget solutions have been offered. In response, Mr. Rupe commented that focusing on the cost of providing an adequate education is the center point of what the Legislature needs to do. In his opinion, if the focus is on actual cost, all of the other factors will fall into place.

Senator Hensley asked how the actual cost of an adequate education would be ascertained by the Supreme Court, a special master, or Judge Bullock. Mr. Rupe responded, "The same way Augenblick and Myers did; by looking at evidence gathered from the testimony of superintendents, economists, and experts familiar with costs." He commented that the Augenblick and Myers study could be used as a basis to determine the cost and that, by focusing on costs, Augenblick and Myers solves all the equity problems. Senator Hensley asked the opinion of other conferees. Mr. Biles commented that the Augenblick and Myers study was not being forced upon the Legislature. He pointed out that the study was based on data that was now four years old. He felt that the old data was relevant but not compelling. He agreed that the study would be helpful if it became necessary for someone other than the Legislature to determine the cost. In addition, he noted that he felt that schools should be held accountable through the monitoring process.

Senator Lee commented that determining the actual cost was the most difficult part of the Supreme Court's ruling. Noting that Court's opinion prohibits the use of historical data in determining cost, she asked conferees for suggestions for determining the actual cost without using historical data. Mr. Rupe noted that Augenblick and Myers took two or three different approaches and combined them to come to the actual cost.

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Included in those approaches was simply asking educators in all sizes of schools and school districts what the actual cost was, not what funding they had received from the state in previous years.

Senator Vratil asked conferees, "To what extent did the Court in *Montoy* overrule any of the findings in USD 229, the 1994 school finance case, and if they didn't overrule anything in USD 229, are there any inconsistencies between those two opinions?" Mr. Biles responded, "I think you can expect, when the formal opinion comes down, that there are going to be parts of 229, and I think parts of *Montoy* one—that there will be some language in there that says to the extent either of those two opinions disagree with this one, that they are overruled. I don't see how they could be read consistently together."

Senator Steiniger began a discussion regarding the use of local sales tax revenue for schools. Mr. Rupe and Mr. Tideman agreed that no new money would be needed for schools if they are adequately funded. Mr. Biles said, "I'm not quite willing yet to sign on the proposition that says once the Legislature meets and provides a basic education that it's not relevant what else is happening in terms of other money getting added for extras and whether that ultimately will be decided to be irrelevant to the issue of fairness. In 229, the Supreme Court said it was appropriate for the Legislature to put a cap on the total funding flexibility the school districts had. I don't think this case deals with it, but I think it's remained an issue."

There being no further time, the meeting was adjourned at 1:40 p.m.

The next meeting is scheduled for January 18, 2005.

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