

# State of Kansas

## Senate Chamber



### Office of Democratic Leader

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**ANTHONY HENSLEY**  
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January 29, 2019

Attorney General Derek Schmidt  
Memorial Hall – Second Floor  
120 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612

Dear Attorney General Schmidt:

I am writing to you to inquire about school finance deadlines for the 2019 Legislative Session.

According to a *Topeka Capital-Journal* news story on December 18, 2017<sup>1</sup>, the Special Committee on a Comprehensive Response to the School Finance Decision heard from Arthur Chalmers, an attorney representing the state, who advised that the 2018 legislature should reach a decision by March 1 for resolving the school finance issues in *Gannon*. This was two months prior to the May 22, 2018, oral arguments deadline set by the Kansas Supreme Court. Chalmers told committee members that the March 1 deadline would give the state's attorneys sufficient time to develop their arguments. As I recall, when you appeared before the Special Committee you agreed with Mr. Chalmers' March 1 deadline.

In their opinion released June 25, 2018, the Kansas Supreme Court set deadlines of April 15, 2019, for concurrent briefs; April 25, 2019, for response briefs; and, May 9, 2019, for oral arguments. With the oral arguments set for two weeks earlier than the 2018 deadline, what date will your attorneys be advising the 2019 legislature reach a school finance solution?

Your guidance on this matter would be most appreciated.

Sincerely,



Senator Anthony Hensley  
Senate Democratic Leader

cc: Senate President Susan Wagle  
House Speaker Ron Ryckman  
House Democratic Leader Tom Sawyer

<sup>1</sup> *Topeka Capital-Journal*. "State of Kansas attorney lends urgency to school finance debate with tight deadline." 18 Dec. 2017.

## **State of Kansas attorney lends urgency to school finance debate with tight deadline**

**By Allison Kite**

Posted Dec 18, 2017 at 8:42 AM

An already tight state budget outlook and a closing deadline leave Kansas lawmakers with a daunting task of coming up with a solution to the state's school finance woes, legislators said Monday.

An attorney for the state of Kansas lent new urgency to a legislative debate over school finance Monday by telling legislators they should have a funding solution developed in less than three months. Arthur Chalmers represents Kansas in an ongoing school finance lawsuit brought by several school districts, called Gannon.

Chalmers said lawmakers should reach a solution by March 1 to give the state's attorneys time to develop their arguments. That is nearly two months ahead of the deadline the Kansas Supreme Court gave the Legislature when justices again ruled the state's level of school funding unconstitutional in October.

Members of an interim legislative committee have begun gathering information to get a jump start on developing a school finance solution next session, but it is unclear how they might meet the court order.

The state doesn't have enough funds left over in coming budget years to spend more on schools, and some Republicans have vowed not to increase taxes. Cutting money from other departments in order to spend it on schools would devastate other state agencies.

"It's a pretty daunting task to think that we've got to do this by March 1, but it's our own state's attorney that told us that, and so we ought to follow his advice," said Senate Minority Leader Anthony Hensley, a Topeka Democrat.

Hensley said the March 1 deadline means legislators need to have an idea of the overall budget picture and any changes to tax or revenue streams so they know what they can spend on schools. March 1 will be about halfway through the 2018 legislative session.

Rep. Blaine Finch, an Ottawa Republican and chairman of an interim committee tasked with studying the issue, said that meant there likely wasn't time for legislators to commission a study telling them what they need to spend.

“Unfortunately, the guidance is rather murky,” Finch said.

Finch said the court wants the Legislature to “show its work” or make a clear case for how and why it devises its plan, but it didn’t give them enough time to do that.

He said he thought the court had indicated it would favor analysis by the Kansas State Board of Education and the plaintiff’s attorneys that points toward adding another \$600 million for schools.

To do that, Kansas would have to find more revenue or cut expenditures elsewhere — decisions likely to be unpopular.

Agency representatives told legislators on the committee that cutting their funding enough to boost school spending would be devastating. To add \$600 million without additional revenue, legislators would have to cut other state agency spending by 18 percent.

Rep. Melissa Rooker, a Fairway Republican, said she thought it was too early to tell how legislators might comply with the court order.

“It will require very serious and thoughtful consideration of how we move the dials to get to the goal we need without completely decimating the rest of the state agencies,” she said.

Senate Majority Leader Jim Denning, an Overland Park Republican, said neither the 18 percent cut nor a tax increase would be palatable.



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April 6, 2018

Honorable Susan Wagle  
President of the Senate  
State Capitol – 3<sup>rd</sup> Floor  
Topeka, Kansas 66612

Honorable Ron Ryckman, Jr.  
Speaker of the House  
State Capitol – 3<sup>rd</sup> Floor  
Topeka, Kansas 66612

Honorable Anthony Hensley  
Senate Minority Leader  
State Capitol – 3<sup>rd</sup> Floor  
Topeka, Kansas 66612

Honorable Jim Ward  
House Minority Leader  
State Capitol – 3<sup>rd</sup> Floor  
Topeka, Kansas 66612

Dear Legislative Leaders:

As the Legislature reaches what long has been anticipated to be the final day of the 2018 regular legislative session, I write to express my profound concern that no school finance legislation intended to cure the constitutional defects identified by the Kansas Supreme Court has yet been approved.

In its October 2, 2017, opinion in *Gannon v. State*, 306 Kan. 1170, the Supreme Court established April 30, 2018, as the latest date by which both the Plaintiffs and the State must file briefs in response to whatever curative legislation the Legislature adopts. The Court specifically contemplated adjusting to an earlier filing date if the Legislature acted sooner but did not permit a later date.

The Supreme Court observed that, in comparison with prior rounds of the *Gannon* case, this time “the attendant issues are much more numerous and much more complex than those at stake [previously]... Each will likely require detailed, comprehensive analysis...” *Gannon* at 1238.

I have repeatedly informed the Legislature and members thereof, both publicly and privately, that the State’s legal team will require adequate time to prepare the State’s briefs that are due April 30. When the Legislature’s work ends, the State’s work begins. This is not a simple matter

of “plugging in the numbers” once a final school-finance bill becomes law; to the contrary, the “numerous and much more complex” issues that must be briefed will take considerable time to properly explain. That problem is exacerbated by peculiar realities: The fact that the curative legislation that currently has passed the Senate and House fundamentally differ in approach, rationale, and in dollar amount and the fact that the Legislature, as an institution, is deeply factionalized, including factions that are closely aligned with the Plaintiffs, renders any determination of the intent of “the legislature” on various provisions a near impossibility.

You already are well beyond my recommended deadline of March 1, 2018. Each day of delay further damages the State’s ability to prepare a proper defense of whatever work product the Legislature eventually produces.

I implore you: Do not adjourn for an April recess without finishing this legislation.

Sincerely,

A handwritten signature in black ink that reads "Derek Schmidt". The signature is written in a cursive, slightly slanted style.

Derek Schmidt  
Kansas Attorney General

Cc: Honorable Jeff Colyer, M.D., Governor