

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 1:37 p.m. on January 28, 2004 in Room 123-S of the Capitol.

All members were present:

Committee staff present:

Carolyn Rampey, Legislative Research
Kathie Sparks, Legislative Research
Theresa Kiernan, Office of the Revisor of Statutes
Judy Steinlicht, Committee Secretary

Conferees appearing before the committee:

Alan Rupe, Attorney, Kutak Rock LLP, Wichita
John Robb, Attorney, Somers, Robb & Robb, Newton

Others attending:

See Attached List

Summary of Judge Bullock's Decision on Education Funding

Senator Umbarger introduced attorneys Alan Rupe and John Robb, who represent USD 305 (Salina), USD 443 (Dodge City) and students & families who filed suit against the state of Kansas and others regarding the formula for school funding.

Judge Bullock ruled that the current system of school finance formula was inequitable; that it provides inadequate funding; and that the way the formula distributes money has a disparate impact on minorities. The Judge found that the kids with the most needs received the least amount of money in the way that the formula works. Mr. Rupe advised that in this case, the court did not look at averages, but looked at individual kids. The constitution says we must provide a "suitable" education for all of our kids, not just some of them.

Mr. Rupe told the Committee that the rumor that Judge Bullock had his mind made up before trial ever began is not the case. He said when the trial was to start two and one-half years ago, Judge Bullock dismissed the case on his own, and he indicated there was no change in the formula; no change in circumstances; and that it was a Legislative decision and the court should have no input. The decision was appealed to the Kansas Supreme Court. The Supreme Court unanimously instructed Judge Bullock to have a trial and take up the change of circumstances and the issue of the constitutionality of the school finance formula. The Supreme Court's discussion was that the school finance formula continued to have wide variances of revenue distribution and in some districts the number of minorities dramatically changed. Dodge City's school population is over one-half minorities. Another change the court noted was the achievement gap. Data showed the performance of minorities was considerably lower and evidence showed that over 50% of all kids were performing at an unsatisfactory level. In the matter of funding, evidence showed that the money Kansas spent was not sufficient to provide a "suitable" or "adequate" education. The Augenblick & Myers (A&M) study showed that Kansas was 800 million dollars short of what was necessary to provide an adequate education.

Mr. Rupe showed the Committee three charts containing the information he wanted the Committee to take away from the meeting today. The first chart showed the districts that received the premium low enrollment weighting because they are below 1725 students. They are not against low enrollment weighting, but they are against money spent when it is not needed. The second chart shows where the kids are that Kansas schools educate and that kids are distributed pretty evenly across the state. The third chart shows where the kids are with special needs. They are concentrated in the mid-size and large districts and the evidence at trial shows that those kids cost the most to educate and they are the ones that are receiving the least amount of money under the formula. The conclusion from looking at the three charts is that the money is not being sent where the money is needed.

Judge Bullock looked the A&M report when assessing equity, adequacy and disparate impact. The A&M report was the first study on the cost of education rather than what is spent on education. Mr. Rupe showed another chart showing what they feel is the problem with low enrollment weighting. Districts

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with less than 1725 students receive the low enrollment money. Some of the schools in western Kansas with a small number of students need the money, but the diagram shows that some of the low enrollment districts are in suburban white districts that do not have the kids with special needs and receive the premium low enrollment money and that is what Judge Bullock ruled as unconstitutional. (Schools for Fair Funding; Montoy vs. State of Kansas, Plaintiff's Perspective booklet containing charts used in the presentation will be on file in Senator Umbarger's office)

Mr. Rupe answered questions clearing up reading and understanding of some of the charts. The question was asked as to how the definition of a "suitable" education was to help the Legislature determine the money necessary for each school district. Mr. Rupe answered that in the court's opinion, the definition set the bar as to what was adequate. The definition of a Constitutional suitable education, much like an efficient education or adequate education as provided for in the Constitution of our sister states, "must provide all Kansas students commensurate with their natural abilities the skills necessary to understand and successfully participate in the world around them, both as children and later as adults." A&M testified that this was a working definition.

Mr. Rupe was asked why, since the Legislature has to fix the school funding problem, was the Legislature not asked to participate in the case and were they represented? Mr. Rupe answered that the Legislature is the state and they were very well represented. The state's attorney was appointed by the Attorney General.

Mr. Rupe was asked to explain four additional charts in his handout. The charts are a comparison of what happens with the current funding, Governor Sebelius' Education Plan and the A&M study. He stated that he absolutely admired the Governor's commitment to education, but Mr. Rupe does not believe the problems will be fixed without a change in the formula and adopting the recommendations of A&M in some fashion. Schools for Fair Funding have their own plan and it is along the lines of the A&M study.

Mr. Rupe was asked to explain his comment that no new taxes needed to be raised to fully fund education. Mr. Rupe said that what he said was that the Kansas Constitution has an education article and the state and the people of Kansas say that education is a constitutional issue and a constitutional obligation. There is money spent in the Legislature that is not spent on constitutionally required "stuff." There is not a highway article in the constitution so in terms of what you have to spend money on to meet constitutional requirements, there is money that could be directed to education. His point was that in terms of priorities, education is number one; it is close to half of the state's budget and it is constitutionally required, so in terms of obligations, there is money that could be directed to education before the other "stuff" that is not constitutionally required.

Mr. Rupe was asked what would be the point of the Legislature considering the Governor's plan or the State Department of Education Plan if it is the Judge's opinion that the only satisfactory outcome is the A&M recommendation. Mr. Rupe advised that the Judge asked almost every witness what study do I look to if I wanted to know what education should cost. Every witness said there was only one study and that was the A&M study.

The Committee time ran out and Chairman Umbarger asked Mr. Rupe and Mr. Robb if they could stay and continue questions after session at 3:30 p.m. Mr. Rupe & Mr. Robb agreed to stay.

Chairman Umbarger recessed at 2:30 p.m.

The meeting reconvened 3:30 p.m.

Mr. Rupe was asked if other schools could enter into this case. Mr. Rupe advised that it would take a court order for anyone else to join the suit.

In questioning, Mr. Rupe advised that there was a bill being drafted that includes the A&M components that would be necessary to alter the school finance formula and to provide adequate funding plus the mechanisms to do it. The goal of the bill is to include everything in the A&M study. Asked if other states had studies by A&M, Mr. Robb advised that Myers is currently working on a study in Missouri and that the State of Maryland had asked for the same study as Kansas, with very similar results. The recommendations were implemented prior to 9/11 and the court was not involved in Maryland.

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Mr. Rupe was asked for a better understanding of why the Legislature would not want to move forward with the appeal & why the Judge's position would be to wait until July. Mr Rupe believes the court has decided most of the case but not the remedy. He believes the Judge wanted to wait to see if the Legislature would address the problem. The judge does not have to give a remedy, he could just declare the school finance law unconstitutional. Mr. Rupe believes one could file a motion to seek clarification of the Judge's order, but Mr. Biles believes the order was clear.

Mr. Rupe and Mr. Robb advised they have been working on the case now for 4 ½ years. The question was asked how could the Legislature be expected to come up with a solution in 90 days when they have 165 people that need to become informed and find a workable solution. Mr. Rupe believes the Legislature has been aware of the problem even longer than when the case began.

Mr. Rupe said this was the first time since the case began that they had been invited to come before the Committee and he and Mr. Robb appreciated the opportunity.

The meeting adjourned 4:03 p.m. The next meeting is scheduled for January 29, 2004.