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July 1, 1988

ATTORNEY GENERAL OPINION NO. 88- 90

The Honorable Don Montgomery
State Senator, Twenty-First District
218 Main
Sabetha, Kansas 66534-1835

Re: Schools--School District Equalization Act; Determination of General State Entitlements; Equal Protection

Synopsis: In determining whether the school district equalization act (SDEA) denies equal protection under the federal or state constitutions, the standard to be applied is the rational basis test. School districts may experience diminishing general state aid by application of the SDEA formula and changing conditions. A legislative act which reduces this effect satisfies such a test, and therefor disparities in aid between districts do not deny equal protection under the federal or state constitutions. In addition, the legislature may direct how money may be spent in an appropriations bill. Cited herein: K.S.A. 1987 Supp. 72-7042, as amended by L. 1988, ch. 282, §2; K.S.A. 1987 Supp. 72-7043, as amended by L. 1988, ch. 282, §3; L. 1988, ch. 33, §44(a); Kan. Const., Bill of Rights, §1; U.S. Const., Amend. XIV, §1.

* * *

Dear Senator Montgomery:

As State Senator for the Twenty-First District, you have requested our opinion concerning school finance. Specifically, you ask whether the provisions of L. 1988, ch. 282, which amend the Kansas school district equalization act (SDEA), violate the state or federal constitutions in light of the wealth disparities which might arise.

The SDEA, K.S.A. 72-7030 et seq., as amended by L. 1988, ch. 282, provides the formula for distributing state money to local districts to supplement local effort. General state aid entitlements are determined pursuant to K.S.A. 1987 Supp. 72-7043, as amended by L. 1988, ch. 282, §3. Subsection (b) provides that, subject to other provisions of the statute, a district is entitled to receive in general state aid the amount of the legally adopted budget of operating expenses for the current school year less the amount of the district's local effort. Local effort is defined by K.S.A. 72-7042(c), as amended by L. 1988, ch. 282, §2. The income tax rebate for the year is then added to the general state aid.

Your question arises from application of subsection 3(d) of the law, the so-called "hold harmless aid," to which some districts may be entitled. In general terms, if the combination of general state aid and income tax rebate for the 1988-89 school year is less than the amount received in the 1987-88 school year, a percentage of the difference is added to the total state aid for the 1988-89 year in order to lessen the affects of the reduction. The hold harmless aid is determined on a scale which depends on the mill levy assessed by the district. For each mill below the median general fund tax rate for all districts (55.65 mills), the aid provided by subsection 3(d) is reduced by ten percent. Therefore, a district having a general fund tax rate of less than 45 mills will not receive the hold harmless aid, and a district having a general fund tax rate of more than 55.65 mills will receive one-half of the difference between last year's and this year's aid. In summary, the hold harmless aid is distributed not on the basis of wealth equalization, but on the basis of the amount a district received in the previous year.

We believe that the SDEA system of providing general state aid with the additional hold harmless aid withstands a challenge based on the equal protection clause of the United States Constitution. See U.S. Const., Amend. XIV, §1. In San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), the Court upheld the Texas system of funding public schools where a dual funding system, comprised of state and local effort, resulted

in interdistrict disparities in school expenditures throughout the state. Equal protection analysis did not invalidate the system even though there was disparate treatment. The court declined a heightened scrutiny test, as no suspect classification existed based on wealth, and no fundamental right to education existed under the federal constitution. 411 U.S. at 28, 35, 36 L.Ed.2d at 40, 44. The applicable standard of review was therefore whether there was a rational relationship to a legitimate state interest. 411 U.S. at 44, 36 L.Ed.2d at 49. More than a decade after Rodriguez, the Mississippi system of funding education came under constitutional attack in Papasan v. Allain, 478 U.S. 265, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986). In Papason, the Court held that an allegation that equal protection was denied by distribution of trust income derived from federal public school land grants was sufficient to withstand a motion to dismiss for failure to state a claim. The case was remanded for further proceedings to determine whether the variations were rationally related to a legitimate state interest. 478 U.S. at 289, 92 L.Ed.2d at 234. We believe that there is a rational basis for the hold harmless aid provided by L. 1988, Ch. 282, § 3(d). This additional aid reduces the effect to districts experiencing diminished general state aid which results from application of the SDEA formula and changing conditions. The hold harmless aid is effective for one year only, allowing for a gradual orientation to the diminished general state aid distribution.

Equal protection is also guaranteed by the Kansas Constitution. See Kan. Const., Bill of Rights, §1. We believe that the rational basis test applied in regards to federal equal protection analysis is the correct test to be applied in the Kansas constitutional analysis. See, e.g., Farley v. Engelken, 241 Kan. 662, Syl. ¶3 (1987). In Knowles v. State Board of Education, 219 Kan. 271 (1976), the Kansas Supreme Court heard an appeal from the Chautauqua district court decision which had held that the 1973 SDEA violated the equal protection clauses of the Kansas and United States Constitution. The injunction which the lower court had granted was subsequently dissolved by the lower court in light of legislative amendments to the 1973 SDEA, and the controversy was dismissed as moot. The Supreme Court held that the dismissal was in error, and that the case should be remanded to determine the constitutionality of the SDEA. 219 Kan at 280. The Court did provide guidance for the district court to follow on remand, citing Rodriguez and stating,

> "The present case is one where the presumption of constitutionality which

> attends every legislative act can be overcome only by the most explicit demonstration that the method of classification and the payments made results in a hostile and oppressive discrimination against particular persons and classes." Id. at 278.

On remand, after transfer from the Chautauqua County District Court to the Shawnee County District Court, Judge Vickers found no such hostile and oppressive discrimination. Herbert Knowles, (USD 385), et al. v. State of Kansas, et al., case no. 77CV 251 (Shawnee Co. Dist. Ct., 3d Jud. Dist., Div. 3, 1981). As in Knowles, we do not perceive hostile or oppressive discrimination against particular persons or classes. Rather, as previously stated, we believe that there is a rational basis for the formula for providing general state aid and for providing the supplemental hold harmless aid.

Additionally, we note that any disparity between districts which may result from the hold harmless aid is de minimus. Appropriations for distribution pursuant to section 3(d) total approximately $1.3 million. L. 1988, ch. 33, §44. However, the appropriation for general state aid for fiscal year 1989 is approximately $489.9 million, and the estimated income tax rebate is $140.9 million, totalling $630.7 million. See Supplemental Note on Senate Bill No. 525, prepared by the Legislative Research Department. The appropriation for the additional hold harmless aid is therefore a fraction of a percent of the appropriation for the general state aid.

Your second inquiry relates to the additional state funding for the hold harmless aid found in the appropriations bill, L. 1988, ch. 33, §44(a). That subsection includes, among other items, additional state aid pursuant to subsection (d)(3) of L. 1988, ch. 282, §3 in the amount of $884,645. There is a second appropriation for additional general state aid in the amount of $442,323. The second appropriation contains the proviso that "moneys from this account shall be distributed to local school districts in the same proportion as moneys distributed pursuant to subsection (d)(3) of Section 3 of 1988 Senate Bill No. 525 [ch. 282 of the 1988 Session Laws]." L. 1988, ch. 33, §44(a). You state that the effect is to "'hold harmless' the affected school districts at the 75 percent level rather than at the 50 percent level contemplated in Senate Bill No. 525, thus amending it by implication."

We do not agree that the second appropriation item improperly amends the SDEA by implication. The hold harmless

provisions of L. 1988, Ch. 282, § 3 do include a formula which, in effect, provides for a 50 percent level. However, the language of that section cannot be read so restrictively. Subsection 3(d)(3) states that difference between (d)(1) and (d)(2) is to be divided by two (50 percent), and the resulting figure is adjusted according to the provisions which follow. The substantive law does not restrict the local district to a maximum percent or dollar amount. Rather, the additional aid provision is, by its terms, restricted by the amount appropriated for that purpose. The second additional general state aid is simply additional state aid. The legislature is authorized to give directions on how the appropriation is to be applied. In State ex rel., Stephan v. Carlin, 230 Kan. 252 (1981), the Court stated that

> "[a]ppropriation bills may direct the amounts of moneys which may be spent, and for what purposes; they may express the legislature's direction as to expenditures. . . ." 230 Kan. at 258.

In conclusion, it is our opinion that, in determining whether the school district equalization act denies equal protection under the federal or state constitutions, the standard to be applied is the rational basis test. School districts may experience diminishing general state aid by application of the SDEA formula and changing conditions. A legislative act which reduces this effect satisfies such a test, and therefor disparities in aid between districts do not deny equal protection under the federal or state constitutions. In addition, the legislature may direct how money may be spent in an appropriations bill.

Very truly yours,

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