

STATUTORY PROVISIONS PROHIBITING COURTS FROM CLOSING SCHOOLS

This memorandum provides the legislative history and historical background for the two Kansas statutes enacted during the 2005 special session that prohibit Kansas courts from closing schools as a remedy in school finance litigation under Article 6 of the Constitution of the State of Kansas. It also provides a brief background of *Montoy v. State* which was the impetus of such legislation.

CURRENT STATUTES

Kansas has two statutes that prohibit Kansas courts from closing schools as a remedy in school finance litigation under Article 6. These statutes were enacted during the 2005 special session in response to the district court's remedial order in *Montoy v. State* that enjoined the use of all statutes related to the distribution of funds for public education, effectively closing schools.¹ K.S.A. 72-64b03 applies specifically to the district court panel and those persons appointed by the panel, but does not apply to the Kansas Supreme Court. The other statute, K.S.A. 60-2106, applies specifically to appellate courts, including the Kansas Supreme Court.

In the 2005 special session, two bills were introduced that aimed to prohibit courts from closing or effectively closing school districts as part of a judicial remedy in school finance cases. The language that was ultimately passed and codified in statute is a hybrid of those bills.² Neither K.S.A. 72-64b03 nor 60-2106 has been amended since they were enacted in 2005. No Kansas court has addressed their constitutionality.

K.S.A. 72-64b03

In 2005 regular session, the Legislature enacted new section 22 of Senate Bill No. 43 (SB 43) requiring the appointment of a three-judge panel for cases alleging the State violated Article 6. That same year during the 2005 special session, the Legislature amended new section 22 in House Substitute for Senate Bill No. 3 (SB 3) and added subsection (d) prohibiting the judicial panel or any master or other person appointed by the panel in school finance cases from having

¹ *Montoy v. State*, No. 99-C-1738, Shawnee Co. Dist. Ct. (Dec. 2, 2003).

² See Special Session 2005 House Substitute for Senate Bill No. 3 as amended by House Committee of the Whole and Special Session 2005 Senate Bill No. 5.

“the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.”³

K.S.A. 72-64b03(d) states:

As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the judicial panel or any master or other person or persons appointed by the panel to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.

K.S.A. 60-2106

When K.S.A. 60-2106 was originally enacted in 1963 it contained general provisions regarding Kansas Supreme Court decisions and did not include any school finance remedy provisions. In the 2005 special session, the Legislature added subsection (d) to prohibit appellate courts from closing schools as part of a judicial remedy for Article 6 violations.

K.S.A. 60-2106(d) states:

As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court or any master or other person or persons appointed by the appellate court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.

³ 2005 Special Session Senate Bill No. 3 as amended by Senate Committee of the Whole

MONTROY V. STATE BACKGROUND

In *Montroy v. State*, after a bench trial, Shawnee County district court judge Terry Bullock entered a Preliminary Interim Order on December 2, 2003, holding that the Kansas school funding scheme, as it then existed, was unconstitutional in violation of Article 6.⁴ At the time of the opinion, the court withheld final judgment and gave the legislative and executive branches an opportunity to enact legislation that would comply with the Article 6 requirement that the “legislature make suitable provision for finance of the educational interests of the state.”⁵

The Legislature did not address the district court’s order during the 2004 legislative session. As a result, on May 11, 2004, the district court issued its remedial order. The district court’s chosen remedy was to “enjoin the use of all statutes related to the distribution of funds for public education, this time with the schools closed” until a constitutionally valid school funding scheme was enacted.⁶ On May 19, 2004, the Kansas Supreme Court stayed the district court’s remedial order pending an appeal.

On appeal, the Kansas Supreme Court in *Montroy II* affirmed the district court’s decision that “the legislature has failed to meet its burden as imposed by Art. 6, § 6 of the Kansas Constitution.”⁷ However, the Supreme Court retained jurisdiction over the remedy and stayed “all further proceedings to allow the Legislature a reasonable time to correct the constitutional infirmity in the present financing formula.”⁸

Ultimately, the Legislature responded during the 2005 legislative session by enacting House Bill 2247 and SB 43, both of which amended the School District Finance and Quality Performance Act (SDFQPA) and included other school finance and policy legislation. However, the Supreme Court in *Montroy III* declared the legislation inadequate and ordered an increase in school funding of \$285 million, but did not enjoin statutes related to the distribution of funds for public education.⁹ In response, Governor Kathleen Sebelius called a special session to respond to the Court’s ruling.

In the 2005 special session, the Legislature passed House Substitute for SB 3 which amended the SDFQPA, appropriated additional funds to the Department of Education, and contained the provisions prohibiting Kansas courts from closing schools as part of a remedy. The

⁴ *Montroy v. State*, No. 99-C-1738 at 11, Shawnee Co. Dist. Ct. (Dec. 2, 2003).

⁵ Art. 6 § 6(b) of the Constitution of the State of Kansas

⁶ *Montroy v. State*, No. 99-C-1738 at 11, Shawnee Co. Dist. Ct. (Dec. 2, 2003).

⁷ *Montroy v. State*, 278 Kan. 769, 120 P.3d 306 at 308 (2005).

⁸ *Id* at 310.

⁹ *Montroy v. State*, 279 Kan. 817, 112 P.3d 923 (2005).

Supreme Court held this legislation cured the Article 6, Section 6 constitutional infirmities and was in substantial compliance with the Court's orders.

SENATE ACTION

Senate Bill No. 5 (SB 5) was the first bill introduced during the 2005 special session to prohibit a court from ordering a remedy that would close or effectively close schools. Section 1 of SB 5 stated, "No court of this state, nor any master or other person or persons appointed by a court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law...shall have the authority...to make or enforce any order or remedy that would result in the closure of public schools or otherwise enjoin the use of all statutes related to the distribution of funds for public education." SB 5 was not passed by the Senate, but the language of section 1 of SB 5 was amended into new section 19 of SB 3 by the Senate Committee of the Whole. SB 3 passed the Senate on June 23, 2005. At this point in the legislative process, SB 3 included only one such provision and it applied to all courts.

HOUSE ACTION

The House Select Committee on School Finance began discussing SB 3 on June 23, 2005 and after several days of discussion, substituted the Senate's version of SB 3. House Substitute for SB 3 contained three separate provisions prohibiting courts from closing schools. Section 35 of the substitute bill contained the language of section 1 of SB 5 in its entirety. K.S.A. 72-64b03 was amended to include the following: "As a part of a remedy, preliminary decision or final decision, the judicial panel shall not have the authority to order a school district or any attendance center within a school district to be closed." K.S.A. 60-2106 was amended to include the following: "As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court shall not have the authority to order a school district or any attendance center within a school district to be closed."

The minutes from the Select Committee on School Finance meetings on SB 3 provide no discussion of these provisions. The minutes state only that a staff member from the Kansas Legislative Research Department confirmed the language added by the Senate was the same as

section 1 of SB 5. When the House passed SB 3 on June 30, 2005, it contained three provisions to prohibit Kansas courts from ordering a remedy that would result in the closure of schools.

CONFERENCE COMMITTEE ACTION

On June 30, 2005, the Senate nonconcurred to the amendments made by the House to SB 3 and requested a conference committee to which the House acceded. There are no minutes or formal documentation of the discussions held during the conference committee on SB 3. An Agree to Disagree was adopted by both chambers on July 2, 2005 and second conferees were appointed. The conference committee report adopted by both chambers on July 6, 2005, contained two provisions addressing the ability of the courts to remedy any action brought under Article 6 and no longer included the exact language from section 1 of SB 5. The provisions combined language from prior versions of SB 3 and the language from section 1 of SB 5. These provisions are codified at subsection (d) of K.S.A. 60-2106 and subsection (d) of K.S.A. 72-64b03. SB 3 was approved by the governor on July 20, 2005.

THE PROPOSED PROVISIONS

The 2005 special session Legislature looked at several different provisions to prohibit courts from closing schools as part of a remedy in school finance litigation cases. The following are the provisions considered by the Legislature:

“As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the judicial panel or any master or other person or persons appointed by the panel to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.” (K.S.A. 72-64b03).

“As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court or any master or other person or persons appointed by the

appellate court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.” (K.S.A. 60-2106(d)).

“No court of this state, nor any master or other person or persons appointed by a court of this state to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, nor a judicial panel appointed pursuant to the provisions of section 22 of 2005 Senate Bill No. 43, and amendments thereto, shall have authority in the case of *Montoy v. State of Kansas*, No. 04-92032-S or any other case involving a violation of Article 6 of the Kansas Constitution to make or enforce any order or remedy that would result in the closure of public schools or otherwise enjoin the use of all statutes related to the distribution of funds for public education.” (2005 Senate Bill No. 5 Sec. 1)

“As a part of a remedy, preliminary decision or final decision, the judicial panel shall not have the authority to order a school district or any attendance center within a school district to be closed.” (2005 House Substitute for Senate Bill No. 3 sec. 23(e)).

“As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court shall not have the authority to order a school district or any attendance center within a school district to be closed.” (2005 House Substitute for SB 3 section 33(d)).

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