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THREE-JUDGE PANEL DECISION ON ADEQUACY IN *GANNON V. STATE* ON REMAND FROM THE KANSAS SUPREME COURT

A three-judge panel issued its opinion in *Gannon v. State*, Tuesday, December 30, 2014. The Kansas Supreme Court remanded the case in its March 7, 2014, opinion and instructed the panel to apply the standard articulated in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), saying the adequacy component would be met “when the public education financing system provided by the legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose* and presently codified in K.S.A. 2013 Supp. 72-1127.”

This memorandum summarizes the panel opinion, the procedural history of *Gannon*, legislative action following the March 2014 opinion, and the current school finance system.

This memorandum is not intended to be a full legal analysis of the December 30, 2014, panel decision, but rather a summary discussion of important points of the decision in the context of broader school finance policy in Kansas. A full legal analysis of the panel’s decision will be provided at a later date by the Revisor of Statutes.

Opinion of the Three-Judge Panel (December 30, 2014)

The three-judge panel ruled that the Kansas public education financing system provided by the Kansas Legislature for grades K-12—through structure and implementation—is not presently reasonably calculated to have all Kansas public education students meet or exceed the *Rose* factors and, as such, fails to satisfy the education adequacy requirement contained in Article 6 of the *Kansas Constitution*.

The panel’s decision was a declaratory judgment and did not include specific instructions for remedying the inadequacy found, but rather indicated that the case should not be dismissed until the Legislature makes what the panel deemed “appropriate and necessary judgments” to adequately fund K-12 education and some time passes thereafter to gauge the effects of those judgments. The panel noted that, while the obligation to adequately fund education is imposed by the *Constitution* and is therefore unavoidable, the approach to and timeliness of compliance with the decision may depend on practicality and reasonable accommodation. The panel recommended that the parties undertake a renewed effort at mediation to identify a remedy.

In addition to the above finding and recommendations, the panel’s opinion contained several other points of analysis used in arriving at its conclusion, which includes the following.

- The principles of the *Rose* standards have been implicit in all Kansas school finance cases since 1994, have been paralleled since 2005 in Kansas statute, and were considered in the Augenblick & Meyer and Legislative Post Audit cost studies performed as part of the *Montoy* case.
- The Kansas K-12 school system was functioning to provide a constitutionally adequate education to Kansas children at the beginning of fiscal year (FY) 2009. Based upon this conclusion, the panel extrapolated several possible approaches that might ensure a “brightline” of funding and formula structure.
- The local option budget (LOB) cannot stand as constitutionally acceptable support for a constitutionally adequate education without both a fail-safe to ensure that a minimum amount of funds are provided in the event that voluntary local taxation falls short of providing those funds and a floor defining the limits of the State’s right to compel the use of such funds in meeting the adequacy requirement of Article 6.
- Due to limits in flexibility and the fact that not all districts receive them, some federal funds should not be considered in establishing a base state aid per pupil (BSAPP) amount that will adequately fund all school districts.
- The inclusion of KPERS, capital outlay, bond and interest funding, supplemental state aid, LOB revenues, and special education funding in the BSAPP cannot be considered a setoff or credit against the amount of funding required to provide a constitutionally adequate education.

In addition to the aforementioned findings and recommendations, the panel explicitly incorporated substantial portions of its January 10, 2013, ruling into its current opinion.

Gannon Procedural History

In November 2011, plaintiff school districts filed suit alleging the Legislature had failed to adequately fund K-12 education. Since FY 2009, each district lost funding due to reductions in BSAPP, the withholding of capital outlay state aid, and the proration of supplemental general state aid. A three-judge panel conducted a trial in Shawnee County District Court in June 2012, and on January 10, 2013, ruled the amount of funding appropriated from the State General Fund (SGF) was constitutionally inadequate under Section 6, Article 6 of the *Kansas Constitution*. Further, the panel held the nonappropriation of capital outlay equalization state aid resulted in an unconstitutional, wealth-based distribution of capital outlay funds, and the proration of supplemental general state aid created unconstitutional, wealth-based disparities among districts. The State and plaintiffs appealed and the Kansas Supreme Court heard oral arguments on October 8, 2013.

The Kansas Supreme Court upheld the panel’s ruling that the state created unconstitutional, wealth-based disparities by: (1) withholding all capital outlay state aid payments to which certain school districts were otherwise entitled pursuant to KSA 72-8814(c); and (2) prorating the supplemental general state aid payments to which certain districts were entitled under KSA 72-6434 for their local LOBs. In determining the state violated the requirement of adequacy in public education, however, the Court held the panel did not apply the correct constitutional standard and remanded the case on that issue.

The Court noted a number of state courts have adopted the adequacy rationale and definition articulated in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), and the Kansas Supreme Court quoted it with approval in previous litigation concerning school finance. The *Rose* opinion requires an efficient system of education to have as its goal to provide each and every child with at least the seven following capacities:

(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

The Court expressly adopted these standards for the education adequacy requirement it previously has held is contained in Article 6 and stated the adequacy component would be met “when the public education financing system provided by the legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose* and presently codified in K.S.A. 2013 Supp. 72-1127.” The Court did not express an opinion on whether the panel would need to reopen the record to make its adequacy determination, but did state that funds from all available resources, including grants and federal assistance, should be considered. Regardless of the source or amount of funding, however, the Court stated “total spending is not the touchstone for adequacy.”

As to equity, the Court articulated the following test: “School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort.” Analyzing the panel’s findings under this test, the Court found those findings were supported by substantial competent evidence. The case was remanded to the panel to enforce the affirmed rulings on equity, fashion appropriate remedies, and apply the correct constitutional standard to plaintiff’s claims as to adequacy. The Court included in its opinion options for the panel on remand. If by July 1, 2014, the Legislature has:

- Fully funded the capital outlay provisions and supplemental general state aid provisions without proration as statutorily prescribed, the panel need not take further action.
- Taken action to cure—whether by statutory amendment, less than full restoration of funding to prior levels, or otherwise—the panel must determine whether the legislative action meets the equity test outlined in the opinion.
- Taken no curative action, transfers from SGF to capital outlay will occur automatically, and no district could utilize the LOB provision.

Ultimately, the Court required the panel to ensure the inequities are cured.

Legislative Action Following the March 2014 *Gannon* Opinion

Senate Sub. for HB 2506 appropriated an additional \$109.3 million for Supplemental General State Aid (LOB equalization aid) and made a revenue transfer of \$25.2 million to the Capital Outlay Fund from the SGF. Additionally, the bill states the purpose and intention of the Legislature is to provide a K-12 funding system that provides students with the seven *Rose* capacities and required the funding system to be sufficiently flexible for the Legislature to consider and use financing methods from all available resources, such as the following:

- Federal funding to school districts or schools;
- State moneys appropriated for the improvement of public education (the bill included a list of examples of such state funding sources);
- Any provision authorizing local tax levies for school funding purposes; or
- Any transfer of funds or appropriations from one object or fund to another approved for the purpose of funding public schools.

Further, the bill revised KSA 2013 Supp. 72-1127, concerning subjects and areas of instruction, to eliminate a set of goals similar, but not identical, to the *Rose* capacities, and replace these goals with the exact language of the *Rose* capacities. The revised language states the Kansas State Board of Education must design subjects and areas of instruction to achieve the goal established by the Legislature of providing every child with at least the seven *Rose* capacities.

The three-judge panel convened June 11, 2014, and found the Legislature had fully funded capital outlay and supplemental general state aid provisions and no additional action was required with regard to equity.

School Finance

Article 6, Section 6(b) of the *Kansas Constitution* requires the Legislature to “make suitable provision for finance of the educational interests of the state.” More specifically, the School District Finance and Quality Performance Act (SDFQPA) governs the computation of General State Aid and Supplemental General State Aid for the 286 unified school districts in Kansas. Historical information on amendments to the SDFQPA, can be found at:

http://kslegresearch.org/Publications/amends_to_sdfandqpa_2014.pdf

BSAPP is a baseline amount of funding determined by the Legislature multiplied by each district’s adjusted enrollment to determine a district’s foundation level of funding for each school year. Adjusted enrollment is the full-time equivalent enrollment adjusted to recognize additional costs for such things as low enrollment levels and special needs students—these generally are called “weights.” A history of BSAPP is shown below. According to KSA 72-6410 as amended by 2014 Senate Sub. for HB 2506, BSAPP currently is defined as an amount appropriated by the Legislature in a fiscal year for the designated school year, but must be at least \$3,838. Prior to

this change, BSAPP had been statutorily set at \$4,492. As the table shows, however, appropriations for the 2013-14 school year were made to fund a BSAPP of \$3,838.

School Year	Base State Aid Per Pupil
2005-06	4,257
2006-07	4,316
2007-08	4,374
2008-09	4,400
2009-10	4,012
2010-11	3,937
2011-12	3,780
2012-13	3,838
2013-14	3,838
2014-15	3,852

In addition to General State Aid, the law allows school districts to approve LOB spending in any amount up to 33.0 percent of its State Financial Aid. (Prior to statutory changes made by the 2014 Legislature, the maximum LOB was 31.0 percent.) The 2014 Legislature made the following changes regarding LOB calculations:

- Amended the statutory Base State Aid Per Pupil used in calculating the LOB from \$4,433 to \$4,490 for school years 2014-2015 and 2015-2016, then it will revert to \$4,433 on July 1, 2016;
- Excluded virtual school state aid from the amount of state financial aid used in calculating the LOB;
- Authorized USD 207, Ft. Leavenworth, to adopt an LOB in excess of 30 percent with a resolution, subject to protest petition. This resolution will expire on June 30, 2015, at which time a mail ballot election will be required to exceed an LOB of 30 percent; and

- Any school district having a 31 percent LOB on June 30, 2014, may increase its LOB to 33 percent by vote of the school board.

Capital outlay state aid was authorized beginning in the 2005-06 school year (KSA 72-8814). Capital outlay state aid is provided to school districts that levy a tax (not to exceed eight mills) for capital outlay expenditures. The amount of capital outlay state aid each district receives is computed based on a school district's assessed valuation per pupil (AVPP) compared to the school district having the median AVPP. Capital outlay funding pays for items such as building maintenance, school buses, and equipment. Capital outlay state aid was not funded between fiscal years 2010 and 2014. The 2014 Legislature fully funded capital outlay state aid. However, *via* the November 2014 consensus revenue estimating process, it was determined that another \$20.0 million would be needed to fully fund capital outlay state aid for the 2014-15 school year.

Supplemental General State Aid is based on an equalization principle designed to treat each school district that adopts a LOB as if its AVPP were equal to that of the district at the 81.2 percentile of AVPP (about \$116,000 in the current fiscal year). Under this formula, districts having an AVPP above the 81.2 percentile receive no supplemental general state aid. KSA 72-6434 requires the State Board of Education to prorate the amount each district is entitled to receive in any year in which the appropriation for supplemental general state aid is less than the amount each district is entitled to receive. Prior to FY 2015, the last fiscal year in which supplemental general state aid was fully funded was FY 2009. The 2014 Legislature fully funded Supplemental General State Aid.

The table below shows the funding amounts and the proration percentage, beginning with FY 2009.

School Year	Supplemental General State Aid Appropriation	Proration Percentage
2008-09	323,424,384	100.0%
2009-10	339,191,618	90.0%
2010-11	338,729,552	91.7%
2011-12	339,212,000	86.1%
2012-13	339,224,000	79.0%
2013-14	339,212,000	78.0%
2014-15	448,477,000	*

* The 2014 Legislature fully funded Supplemental General State Aid. However, because of changes in the AVPP at the 81.2 percentile determined *via* the November 2014 consensus

revenue estimating process, another \$22.0 million would be needed to provide full funding for school year 2014-15.

Additional information on school finance can be found at:

<http://kslegresearch.org/Publications/2014Briefs/2014/G-1-SchoolFinance.pdf>

Previous School Finance Litigation

The Kansas Supreme Court first considered the SDFQPA in *USD 229 v. State*, 256 Kan. 232, 885 P.2d 1170 (1994) and found the law did not violate Article 6, Section 6. The SDFQPA was amended subsequent to that opinion and was challenged again in 1999 in *Montoy v. State* when two school districts filed suit in Shawnee County District Court, alleging the State's funding formula failed to make suitable provisions to fund K-12 education. *Montoy* eventually was appealed to the Kansas Supreme Court, and in January 2005, the Court issued an opinion finding the Legislature had failed to make suitable provision for finance of public schools and that increased funding would be required. In its opinion, the Court recognized that Article 6 of the Kansas Constitution contains at least two components: equity and adequacy.

During the 2005 Session, the Legislature authorized \$141.1 million in additional funding for public schools for the 2005-06 school year. That legislation also called for the Legislative Division of Post Audit (LPA) to conduct a cost study analysis to determine the costs of delivering the K-12 curriculum, related services, and other programs mandated by state statute in accredited schools. On June 3, the Supreme Court ordered the Legislature to increase funding for schools by \$285.0 million by July 1, 2005. In arriving at that figure, the Court relied heavily on a school cost study the Legislature had commissioned in 2001 from the consulting firm of Augenblick & Myers (A&M), which had concluded both the formula and funding levels were inadequate to provide what the Legislature had defined as a suitable education. The estimated cost of implementing the recommendations in that study, updated for inflation through school year 2003-04, was computed at \$853.0 million. The \$285.0 million funding figure ordered by the Court represented one-third of this recommended amount. The Court withheld judgment on whether to require the Legislature to fund the remaining two-thirds (\$568.0 million) for the 2006-07 school year until after the LPA cost study was complete but rejected the requirements related to the 2005 cost study, saying the study was an inputs-only study. The Court said that merely determining how much it costs to pay for statutorily required programs and services did not answer the question of how much it costs to enable students to meet the educational standards adopted by the State Board of Education.

During the 2005 Special Session, the Legislature increased funding for K-12 public schools by an additional \$148.4 million, for a total increase of \$289.5 million. The Legislature also added the requirement that LPA conduct two studies, one inputs based, and the other outcomes based, to be completed before the start of the 2006 Legislative Session. Those studies can be viewed at: <http://www.kslpa.org/docs/reports/05pa19a.pdf>. Further, the legislation limited a court's remedy in school finance cases by prohibiting a court from having the authority to order a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education. In July 2005, the Court issued an order stating that bill was in substantial compliance with the Court's June 3 opinion.

In 2006, the Legislature enacted SB 549, which among other amendments, increased BSAPP over three years, added new weighting and adjusted others, and revised the LOB

equalization formula. This three-year plan was projected to increase funding by \$466.0 million. The Supreme Court reviewed this legislation and found the Legislature had been responsive to its previous order. The Court stated: “The legislature is not bound to adopt, as suitable funding, the ‘actual costs’ as determined by the A&M and LPA studies. On the other hand, the legislature cannot ignore the LPA study as it did the A&M study.”