



KANSAS · POLICY
INSTITUTE

A KANSAS PRIMER ON EDUCATION FUNDING

Volume 1: History of Education Finance

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Advocating free enterprise solutions in education, fiscal policy and health care.

Formerly known as Flint Hills Center for Public Policy, Kansas Policy Institute was founded in 1996 and advocates for free enterprise solutions and for the protection of personal freedom for all Kansans. We're in the process of changing our name to emphasize that we focus on the entire state of Kansas and not just a particular region.

Various elements of our name change will evolve over the next few months as we develop a new web site. Until then, our existing web address and e-mail addresses will remain intact; our phone numbers and mailing address will not change. We will keep you posted on our progress and hope to keep the transition as smooth as possible.

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Kansas Policy Institute is committed to delivering the highest quality and most reliable research on state and local issues in Kansas. The Institute guarantees that all original factual data are true and correct and that information attributed to other sources is accurately represented.

Preface

Perhaps no subject in Kansas has been more controversial in recent history than school funding. Years of court battles earlier in the decade culminated in 2005 with the Kansas Supreme Court ruling in favor of plaintiffs in *Montoy vs. State of Kansas* and ordering the State to increase funding by \$853 million. State aid to schools increased by \$646.1 million between the 2004-05 and the 2009-10 school years and total funding to schools has increased by \$1.36 billion. A severe decline in State tax receipts (\$498 million / 8.6% for FY 2009, with the first quarter of FY 2010 down 10.2%) prompted the Legislature and Governor Parkinson to reduce school funding for FY 2010, and schools are threatening to file yet another lawsuit as this is written.

Despite the unprecedented controversy, surprisingly little is really understood about how much money schools actually receive, how that money is spent or even the basis upon which the court ruled in the Montoy decisions.

Education is extraordinarily important to the success of our State and to each individual. It is imperative that students receive an education that prepares them to enter the workforce, whether directly into their chosen field or first into higher levels of education. But while education is of critical importance we must balance our approach to defining and funding a proper education with other essential needs; we must also have adequate funding for other necessary government services, and the revenues required to fund all services cannot be so high as to necessitate a tax burden that impedes economic growth.

A Kansas Primer on Education Funding provides a high level of transparency and analysis so that taxpayers and legislators are empowered to make informed decisions going forward. The Primer is being published in four separate volumes in October and November of 2009.

Volume 1: The History of Education Finance traces school funding developments, starting at the inception of statehood in 1863 and leading up to the filing of the above-mentioned Montoy lawsuits.

Volume 2: Analysis of Montoy vs. State of Kansas provides a detailed examination of the legal and political forces at play during the Montoy litigation. It also identifies existing barriers that prevent or restrict efforts to reform the system and offers specific recommendations for overcoming those barriers.

Volume 3: Analysis of K-12 Spending identifies how court-mandated funding increases were spent by Kansas school districts and compares per pupil spending by district in search of minimum spending levels that, at least under current curriculum standards, produce adequate results. It also offers specific alternatives to “just spend more” that provide reasonable funding to schools without raising taxes or eliminating other necessary government services.

Volume 4: Defining and Funding a Proper Education examines whether Kansas schools are providing a basic education that gives students the opportunity to gain substantial skills for citizenship, further education and adequately prepares them to function in today’s job market. It also offers proposals to improve the current education delivery process, explores alternatives to the current funding methodology and examines existing and alternative methods of measuring student (and school) performance.

The development of the *Primer* has been an extraordinary undertaking by a relatively small group of very dedicated and talented people. The authors, whose names and biographies are contained within each volume, were greatly assisted by intern Chris Brito, who helped with data collection; Government Transparency & Operations Manager Grace Harris assisted with data collection and proofreading; Investigative Reporter Paul Soutar designed the historical picture timeline; VP for Advancement & Marketing Gretchen Colón designed the layout for the *Primer* and managed the distribution process.

We are very passionate about the future of education and hope that this *Primer* can in some way serve to inspire citizens and legislators. The road to excellence is not an easy one to navigate but is well worth the journey. Along the way, we must remember the words of Henry Ford, who said “Obstacles are those frightful things you see when you take your eyes off your goal.”

We welcome constructive thoughts and suggestions as we strive to improve the educational climate in our state and to be responsible stewards of the finances which fund education.

Dave Trabert

President

Kansas Policy Institute

Fast Facts

Volume 1: History of Education Finance

- The focus of education has changed drastically from an era when Kansas had over 9,000 school districts in the last 19th century to 295 serving a less agricultural-dependent population today.
- The state role was important for financing schools as the Constitution explicitly provided for funding of general education in the state.
- A murky provision of the Constitution would be central toward efforts to challenge school financing formulas: "...the legislature shall make suitable provisions for finance of educational interests in the state."
- Accountability in how funds are used in the best measurement to deduce what levels of financing are appropriate for the general education mandated by the Kansas Constitution.

Introduction

The Columbian History of Education in Kansas, published in 1893 and only thirty years after Kansas became a state, documents how state educators approached the issue of general education for children, the financing of education and the training of teachers. The book was remarkable for its documentation of the state's early efforts to provide a general education for its citizens and representative of an era which saw the opportunities and promise of a well-educated citizenry as the basis for progress in Kansas.

"The school has in this century become an established State institution," the authors claim. "Rational freedom in its citizens, which is the high purpose of the State, can be realized only through general education. . . .The prosperity of the State is an outgrowth of the intelligence of its citizens. A limitation of intelligence is a limitation of citizenship. Hence every citizen is benefitted by, and therefore has an interest in, the intelligence of every other citizen."¹

Flash forward a century and compare the above to the mission of the Kansas National Education Association. "The Kansas National Education Association's mission is to advocate for educational professionals and to unite our members, Kansans, and the nation to fulfill the promise of public education to prepare every student to succeed in a diverse and interdependent world." In the past century the world has become much more diverse and the challenges of educating students for a global environment have become more acute. But 'advocacy for educational professionals' is a new element of the mission and raises questions about potential conflicts when the interests of educating children and protecting teachers may be at odds, as evidenced by KNEA efforts to block reforms like vouchers and charter schools.²

The focus of education has changed drastically from an era when Kansas had over 9,000 school districts in the late 19th century serving a rural and primarily agricultural population to the 295 districts serving a less agricultural-dependent population today. As schools have assumed more responsibilities for a wider range of issues, ranging from food service to parenting and counseling, with less emphasis — it seems to many parents — on reading, writing and arithmetic, the nature of funding those schools has shifted as well and provoked controversy concerning the adequacy of funding, as well as how the money is spent.

This policy brief provides a short history of school finance in Kansas focusing on the key shifts in school financing, culminating with the Montoy decision which ordered the Legislature to dramatically increase state funding.

¹ Columbian History of Education in Kansas compiled by Kansas Educators (Topeka: Hamilton Printing Company, 1893), 16.

² KNEA website "About KNEA: Our Mission," <http://www.knea.org/aboutknea/index.html>. (accessed June 16, 2009) emphasis added.

Constitutional Changes and Court Involvement

Changes in education in Kansas began in the early 1960s with the effort to consolidate the number of school districts and to equalize funding between the districts. As late as 1940 the number of school districts remained high, with 8,624 separate districts in the state. In 1963 the Kansas legislature passed a law mandating school consolidation. After a court battle the consolidation took effect with the number of districts declining to 349 by 1966.⁵

The growing interest in federal aid to education in the early 1960s led to the passage of the Elementary and Secondary Education Act (1965). Signed into law by President Lyndon Baines Johnson, ESEA was a prime component of the Great Society and especially of the War on Poverty. Johnson, who grew up in poverty himself, endorsed the bill in 1964 as one which would aid those impoverished and provide them with the opportunities necessary to achieve the American dream.⁶



ESEA had a rocky road through Congress but it passed with \$1.3 billion allocated in its first year. By the end of the 1960s, ESEA's budget had nearly tripled, with \$3.62 billion appropriated for education in 1969. In 1977 Congress overrode a Jimmy Carter veto to provide funding for ESEA at \$5.93 billion, \$1.6 billion over the administration's budget request. But Carter also shifted responsibility for the funding provided by ESEA to a new Department of Education, created in 1978, which has expanded the federal funding and support for education.⁷



1910 | **1920** | **1930** | **1940** | **1950** | **1960**

1920s: Ku Klux Klan recommends federal Department of Education to prevent Catholics from teaching in public schools

1940: 8,624 school districts in Kansas

1954: *Brown vs. Topeka* Board of Education

1963: Legislature mandates school consolidation

1958: National Defense Education Act provides federal funds for science and math programs for high schools and universities

⁵ See *Unified School District No. 229 et. al., Appellants vs. The State of Kansas*, Supreme Court of Kansas 256 Kan. 232 (December 2, 1994), p. 8.

⁶ See Gareth Davies, *See Government Grow: Education Politics from Johnson to Reagan* (Lawrence, Ks.: University Press of Kansas, 2007), p. 28-37; for a general discussion of the Great Society and its original stress on providing opportunity—soon replaced by entitlement—see Davies, *From Opportunity to Entitlement: The Transformation and Decline of Great Society Liberalism, 1964-1972* (Lawrence, Ks.: University Press of Kansas, 1998).

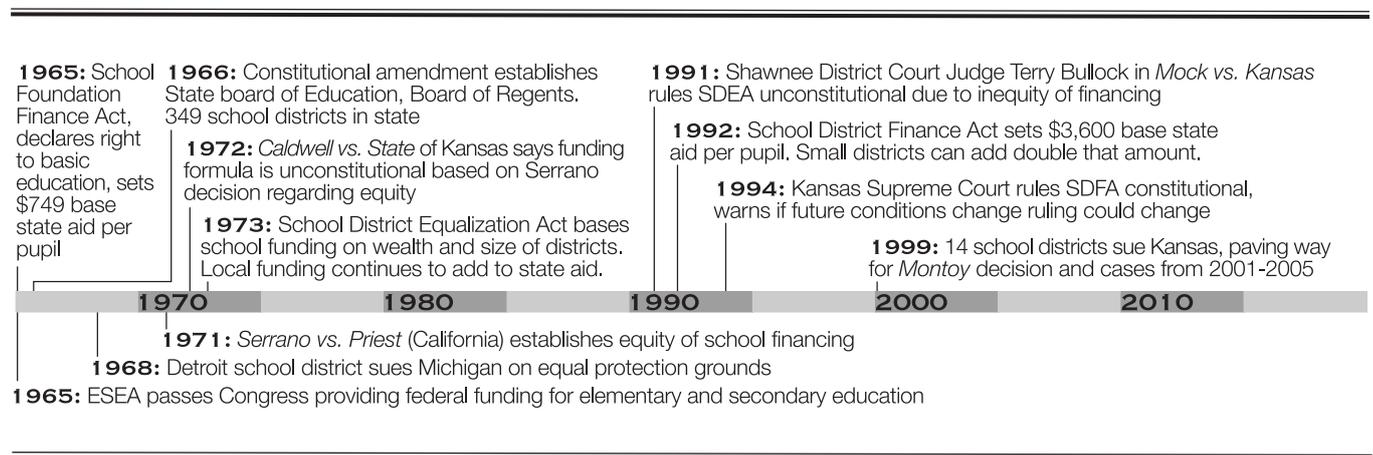
⁷ Budget chart in Davies, *See Government Grow*, 76.

National reforms spurred state reforms in Kansas. In 1965 the legislature passed the School Foundation Finance Act, which was to assure that all students received a “basic” education. The legislature established a basic allotment of \$760 per pupil, adjustable based on teacher education and experience levels and using multipliers to ensure more state funding to rural districts.⁸ In coordination with school consolidation, the Finance Act raised spending on education dramatically, with state funding going from \$29.5 million in 1960 to almost \$215 million a decade later.⁹

In 1966 Kansans voted to change the state’s Constitution. The main change occurred with provisions for education, including the establishment of a state board of education and a board of regents to govern the university system in the state. A murky provision of the Constitution which would be central towards efforts to challenge school financing formulas was in Article Six: “the legislature shall make suitable provision for the finance of educational interests in the state.”¹⁰ The suitability of such financing would remain a key legal debate in years to come.



In the early 1970s school financing came to the courts over the issue of equalization of financing. As Gareth Davies argues, “the principal locus of school finance reform politics was on the point of shifting from the unyielding, majoritarian world of legislative politics to the potentially more propitious terrain of Warren-era judicial politics. The first visible portent came in February 1968 when the Detroit school board sued the state of Michigan for more money, on equal protection grounds.”¹¹ Much of the basis for such lawsuits came from the academic work of University of Chicago graduate student Arthur Wise, author of *Rich Schools, Poor Schools*, a book arguing that school finance systems throughout the country discriminated on the basis of both race and geography (casting poorer students in districts with inadequate local funding and inadequate tax bases).



8 Bruce D. Baker, ed., “Perspectives on School Finance in Kansas,” *Kansas Policy Review* 27: 2 (Fall 2005): 2.

9 Sherrill Martinez and Lee Ann Snider, “History of Kansas Education,” Department of Planning and Research, Kansas Department of Education (September 2001), p. 25. The Kansas National Education Association published a chart showing the total federal, state, local spending on K-12 education. According to their figures, total spending on education in Kansas was \$124.7 million in 1965, \$181.8 million in 1975 (far less than the amount claimed in the Kansas Department of Education Report cited herein). See KNEA “Rhetoric vs. Reality III—Funding Great Schools for Every Child,” Issue 5, volume 22 (December 2004), 3, available at www.knea.org (accessed June 17, 2009).

10 Constitution of the State of Kansas, Article 6—Education, available at <http://www.kslib.info/constitution/art6.html> (accessed June 29, 2009).

11 Davies, See *Government Grow*, 197.

The case in Michigan went nowhere but a case in California, *Serrano vs. Priest* (1971), established a doctrine of 'fiscal neutrality,' "an idea," Davies wrote, "that resources must not vary according to district wealth." While it did not end local control over education financing, it did mandate, at least initially in California, that the state centralize its funding and provide for an adequate education for the students in California schools.¹² Localities could still fund schools but any surplus from wealthy districts could be taken to fund poorer districts by the centralized school authority.¹³ The background for this lay in the passage of California's Proposition One, which stated unequivocally, "the quality of public education may not be a function of wealth, other than the wealth of the state as a whole."¹⁴ The California Court ruled by a 6-1 vote that the state's school finance law violated the equal protection clause of the state's Constitution, thereby upholding Proposition One, a victory for the plaintiff, Jose Serrano, whose son had to attend a middle class school in the suburbs of Los Angeles to receive an equal education; however, a few years later the US Supreme Court, in *San Antonio vs. Rodriguez* (1973) argued, in a 5-4 decision, that Texas' school finance law did not violate the equal protection clause of the US Constitution.

Kansas was not immune from the lawsuit trend. Following Serrano, a number of state lawsuits were filed to change the finance formula based on the arguments in California. *Caldwell vs. State of Kansas* (1972) provided the impetus for change in the Sunflower State. Based on the equal protection clause ruling in the Serrano decision, the Kansas Supreme Court ruled that the funding formula was unconstitutional. The legislature followed that decision with a major reform of the school financing formula in the School District Equalization Act (1973), which was intended to equalize spending between rich and poor districts.

The proposal in the School District Equalization Act was to have rich districts subsidize poor districts by a formula which measured wealth in a district based on property taxes. Low wealth districts would receive more state aid and high wealth districts would receive less. Districts on the low range of enrollments would receive \$926 per pupil while districts on the high end of enrollments, with more than 1,300 students, would receive \$728 per pupil. Districts with fewer students were allowed to spend more in their annual budget (up to fifteen percent increases per year were allowed) while districts with greater than the median range of students would be limited to five percent increases. In other words, rural districts with fewer students (presumably with less of a tax base) spent more per pupil than urban districts with larger school enrollments.¹⁵ It did not end local funding of schools, which meant that even though state aid increased for poorer districts, local revenue in wealthier districts also increased. The law did little to provide equity in financing and for twenty years stood as the main financing law in the state.

Kansas was not immune from the lawsuit trend. Following Serrano, a number of state lawsuits were filed to change the finance formula based on the arguments in California.

¹² Ibid., 194-217.

¹³ This proceeded from the work of University of California law professor John E. Coons who, along with graduate students William H. Clune and Stephen Sugarman, published *Private Wealth and Public Education* (Cambridge, Ma.: Harvard University Press, 1970). The book grew out of research begun in 1965 and supported by the Russell Sage Foundation. Davies, *See Government Grow*, 204.

¹⁴ Davies, *Ibid.*, 198.

¹⁵ Baker, *Kansas Policy Review*, 3.

The Road To Montoy

In the late 1980s, after a change in property tax assessments in Kansas altered one of the key bases for school financing, a collective of forty-two school districts challenged SDEA in court. Gathered together in one case (*Mock vs. Kansas*) by Shawnee County District Court Judge Terry Bullock, who would be the principal judge in 2003's Montoy decision, issued a pre-ruling in the case saying that if the case went to trial he "would likely declare SDEA in violation of both equal protection and Article 6, Section 6 of the Kansas State Constitution which mandates that the legislature make suitable provision for the finance of the educational interests in the state."¹⁶

Bullock argued that the clause made it incumbent on the legislature to provide equal educational opportunities for each child based on what it provided to every other child. If the student did not speak English, the state had to provide English as a second language instruction; if the student was disabled, more money had to be appropriated for special education services.

Governor Joan Finney took action but the legislature was slow to respond until the April veto session, after Judge Bullock threatened that he would order schools closed in the fall if nothing was done on his ruling. The Legislature passed the School District Finance Act (SDF) that established a uniform statewide property tax to fund schools (3.2%, later raised to 3.5%) which also set the state aid per pupil at \$3,600.

But there were qualifications in the state funding. Low enrollment districts were weighted differently. It was determined by the Legislature that a district with around 100 students would need double the state aid per pupil (or \$7,704 per pupil); a district of 300 students 1.5 times the amount (\$5,688 per pupil). The largest districts received the base aid of \$3,600. There were also transportation adjustments (more money added for every student counted as living 2.5 miles from the school) and for impoverished students (the data coming from those who qualified for a free lunch under the National School Lunch program).

The state also allowed for local option budgets, allowing school districts to raise additional revenue from local mill levies up to 25% higher than the state formula (this would be one of the bases for the Montoy decision).¹⁷

The SDF was challenged after District Court Judge Marla Luckert, to whom Bullock remanded the remaining cases in 1993, ruled that the SDF did not violate Article 6 of the Kansas State Constitution. However, Judge Luckert did rule that that the low enrollment weighting provision of the act "violated the state equal protection provision."¹⁸ In 1994 the Kansas Supreme Court, in *Unified School District 229 vs. State of Kansas*, upheld Luckert's decision and rejected her finding that the low enrollment weighting violated the equal protection clause. The act "did not violate the suitable provision for finance clause," but added that in the future the act could be held to be unconstitutional based on the lack of provision of money and changes in school financing. It is odd that a Court would allow such a large opening for future plaintiffs, but that is what the High Court in Kansas allowed in this decision.¹⁹

Conclusion

The opening for challenging the state school finance formula based on equal protection grounds and on the vague and indefinable "suitability" standard in the Kansas Constitution had been lain long before the Mock

¹⁶ Ibid., 4.

¹⁷ Discussion in preceding three paragraphs from Baker, 3-5; also see Montoy vs. State of Kansas Shawnee District Court , 2003.

¹⁸ Baker, p. 5.

¹⁹ Baker, p.5.

decision in 1991. The involvement of the federal government in education policy and financing, as well as court decisions in states like California, added impetus to efforts to increase state funding of K-12 schools.

There is a long path to the Montoy decision (really five separate cases between 1999-2005) which stipulated that the state legislature spend an additional \$853 million on education (the state constitution gives the judicial branch no grounds to recommend how much money is to be spent on education but the legislature did not challenge the ruling). Like most matters of government expansion, education fits the model of progress being defined in terms of how much money is spent, rather than on efficiency and accountability in results. The path of Kansas school finance shows this clearly from the 1960s until the present day.

How states like Kansas finance public education is a crucial issue not only in difficult funding climates like we are experiencing today, but also in prosperous periods which existed at the time of the Montoy decision. Accountability in how funds are used is the best measurement to deduce what levels of financing are appropriate for the general education mandated by the Kansas Constitution. Levels of adequate educational financing, as the Courts have determined over the years, may themselves be brought under scrutiny by understanding the history of education financing and measuring what levels are most appropriate given the resources states have at their disposal. The controversy over what role Courts should have in this regard versus legislatures and public education bureaucracies is best shown in the analysis of the Montoy decision itself as well as through an analysis of spending on K-12 education in Kansas more generally.

About the Author

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