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No. 13-109335

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In the Supreme Court of the State of Kansas

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**Luke Gannon, *et al.*,**

Plaintiffs-Appellees-Cross-Appellants,

v.

**State of Kansas,**

Defendant-Appellant-Cross-Appellee.

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Appeal From Appointed Panel  
Presiding in the District Court of Shawnee County, Kansas

Honorable Franklin R. Theis  
Honorable Robert J. Fleming  
Honorable Jack L. Burr

District Court Case No. 10C001569

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**REPLY BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

ARGUMENT.....1

Introduction.....1

I. The Districts Lack Standing To Assert A Claim Under Article 6, § 6  
Of The Kansas Constitution.....3

*Ternes v. Galichia, et al.*, No. 101,666, \_\_\_ P.3d \_\_\_, 2013 WL 3835829  
(Kan. July 26, 2013) .....3

*Hollingsworth v. Perry*, 570 U.S. \_\_\_, 133 S. Ct. 2652 (2013) .....3

*Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979) .....3

*Unified School Dist. No. 229 v. State*, 256 Kan. 232, 885 P.2d 1170 (1994).....4

*Knowles v. State*, 219 Kan. 271, 547 P.2d 699 (1976) .....4

*Caldwell v. State*, No. 50616 (Johnson Co. Dist. Ct., Aug. 30, 1972) .....4

*Board of Ed. of Unified School Dist. No. 443 v. Kansas State Bd. of Ed.*,  
266 Kan. 75, 966 P.2d 68 (1998) .....5

*Unified School Dist. No. 380 v. McMillen*, 252 Kan. 451, 845 P.2d 676  
(1993) .....5

Kan. Const. art. 6, § 5 .....5

Kan. Const. art. 6, § 6 .....5

K.S.A. 72-64b01 .....6

*National Educ. Association-Wichita v. Unified School Dist.*, 234 Kan. 512,  
674 P.2d 478 (1983) .....7

*City of Hugo v. Nichols*, 656 F.3d 1251 (10th Cir. 2011) .....7

*Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619 (10th Cir. 1998) .....7

*City of Moore, Okla. v. Atchison, Topeka, & Santa Fe Ry. Co.*, 699 F.2d  
507 (10th Cir. 1983) .....7

II. Whether The Legislature Has Made “Suitable Provision For  
Finance Of The Educational Interests Of The State” Is A  
Nonjusticiable Question Here.....7

<i>Montoy v. State</i> , 278 Kan. 769, 120 P.3d 306 (2005) .....	7
<i>Montoy v. State</i> , 282 Kan. 9, 138 P.3d 755 (2006) .....	7
<i>Leek v. Theis</i> , 217 Kan. 784, 539 P.2d 304 (1975) .....	8
<i>VanSickle v. Shanahan</i> , 212 Kan. 426, 511 P.2d 223 (1973) .....	8
<i>Unified School Dist. No. 229 v. State</i> , 256 Kan. 232, 885 P.2d 1170 (1994).....	8
<i>Montoy v. State</i> , 275 Kan. 145, 62 P.3d 228 (2003) .....	8
K.S.A. 2003 Supp. 46-1225(e) [repealed] .....	9
Kan. Const. art. 6, § 2(a).....	9
Kan. Const. art. 6, § 5 .....	9
K.S.A. 72-1127(c) .....	9
K.S.A. 2012 Supp. 72-1127(c) .....	10
Kan. Const. art. 6, § 6 .....	10
<i>Board of Wyandotte Co. Comm'rs v. Kansas Ave. Prop.</i> , 246 Kan. 161, 786 P.2d 1141 (1990) .....	11
H. Larimer, J. King, W. Freeman, “Kansas Constitutional Convention,” (Kansas State Printing Plant, I. Zumwalt, State Printer 1920) .....	11
Kansas Legislative Council, Implementation of the Education Amendment--Report of the Education Advisory Committee (Publication No. 260, November 1966) .....	12
Kan. Const. art. 6, § 1 .....	12
<i>King v. State</i> , 818 N.W. 2d 1 (2012) .....	13
Kan. Const. art. 6, § 2 .....	13
III. The Panel Erroneously Substituted Its Own Findings For The Legislature’s Presumed Findings Supporting The SDFQPA And Annual Appropriations.....	14
A. The Districts Seek An Improper Standard Of Judicial Review .....	15
<i>Unified School Dist. No. 229 v. State</i> , 256 Kan. 232, 885 P.2d 1170 (1994).....	15
Kan. Const. art. 6, § 6(b) .....	15

<i>Montoy v. State</i> , 278 Kan. 769, 120 P.3d 306 (2005) .....	15
<i>Montoy v. State</i> , 275 Kan. 145, 62 P.3d 228 (2003) .....	15
<i>Montoy v. State</i> , 282 Kan. 9, 138 P.3d 755 (2006) .....	16
Kan. Const. art. 6, § 6 .....	16
<i>Neeley v. W. Orange–Cove Consol. Indep. Sch. Dist.</i> , 176 S.W.3d 746 (Tex. 2005) .....	16
<i>Lobato v. State</i> , 2013 Co. 30, ___ P.3d ___ (May 28, 2013) .....	16
<i>Downtown Bar &amp; Grill, LLC v. State</i> , 294 Kan. 188, 273 P.3d 709 (2012) .....	17
<i>Cardarella v. Overland Park</i> , 228 Kan. 698, 620 P.2d 1122 (1980) .....	17
B. The Districts Continue Their Efforts To Obfuscate And Confuse.....	18
C. The Districts Downplay The Success Of Kansas Schools .....	20
<i>Unified School Dist. No. 229 v. State</i> , 256 Kan. 232, 885 P.2d 1170 (1994).....	21
<i>Unified Sch. Dist. No. 233 Johnson County v. Kan. Ass'n of Am. Educators</i> , 275 Kan. 313, 64 P.3d 372 (2003) .....	21
<i>In re Old Summit Mfg., LLC</i> , 23 F.3d 134 (3d Cir. 2008) .....	21
5 C.J.S. <i>Appeal &amp; Error</i> § 808 (1993) .....	22
5 C.J.S. <i>Appeal &amp; Error</i> § 804 (1993) .....	22
Kan. Const. art. 6, § 6(b).....	22
K.S.A. 2012 Supp. 46-1226(a) .....	22
K.S.A. 46-1225 [repealed].....	22
<i>Montoy v. State</i> , 282 Kan. 9, 138 P.3d 755 (2006) .....	22
Kan. Const. art. 6, § 6(b).....	23
IV. The “Remedies” The Panel Ordered Are Beyond Judicial Authority As A Matter Of Law.....	24
CONCLUSION.....	25
APPENDIX KLC Rep.of the Ed. Advisory Comm.(Pub. No. 260, Nov. 1966)	

## ARGUMENT

### Introduction

Despite the Districts' highbrow rhetoric about the Legislature and Kansas schools, the only relief they seek is *more money*. Response Brief of Appellees/Cross-Appellants ("Dist. Resp."), 16. They disavow, as they must, any challenge to the constitutionality of the current funding formula, or any challenge to current accreditation standards. This case is about *money* and, most importantly, it is about *who decides* how much funding is "suitable" for Kansas schools. The Districts offer this Court one skewed view of the world, a view in which courts and litigants will determine funding for Kansas public schools in perpetuity while the people's elected representatives have neither authority nor control over this quintessentially fiscal matter. The Districts promote a peculiar view of the proper workings of state government, one not found in any civics textbook.

In their efforts to restructure Kansas government, the Districts misinterpret *Montoy*, taking that litigation out of its particular context in an attempt to lead this Court into unprecedented territory. The *Montoy* decisions never held that the Article 6 requirement that the Legislature make "suitable provision for finance of the educational interests of the state" means (contrary to the plain language) that judges make a *de novo* determination of the requisite amount of funding based on a host of variables and factors. The *Montoy* decisions do not assert, much less exercise, the power the Panel claimed here and which the Districts defend: to order the Legislature to pass certain laws and not to pass others.

If affirmed and adopted, the Panel's and the Districts' interpretation of *Montoy* will result in a seismic shift of fiscal policy authority from the legislative and executive

branches to the judiciary. Indeed, Article 6, § 6 of the Kansas Constitution is not limited to K-12 funding, so if the Panel and the Districts are correct, it is foreseeable that the Regents institutions and community colleges also may bring school finance lawsuits to demand that even more of the decision-making authority over public finances be transferred from the people's elected representatives to the judiciary. The magnitude of the Districts' claim of monetary entitlement is staggering. Educational expenditures account for 62.4% of the State's FY2014 General Fund budget, Response Brief of Cross-Appellee ("State's Resp."), 26-27, and the Districts' demand for an *additional* \$1.5 billion in education funding is equal to one quarter of the entire existing education budget. *Id.* Those added funds would necessarily come at the expense of other state priorities the people's elected representatives have established – perhaps from social service programs for the poor, the elderly and disabled; from public safety services that protect children and create safe learning and living environments; or from the pro-growth tax-reduction strategy designed, as President Kennedy characterized it five decades ago, to create a “rising tide” of economic expansion to “lift all boats,” generating future revenue to support public education and other priorities.

The Districts' response brief supports rather than refutes the four fundamental flaws the State's opening brief identified: (1) the Districts' lack of standing to bring this lawsuit; (2) the questions the Districts ask this Court to decide are policy-driven and nonjusticiable; (3) the Panel failed to accord the Legislature's funding decisions a presumption of constitutionality and the deference proper for such discretionary, political decisions; and (4) the courts lack authority to order the relief the Panel purported to award. Each of these flaws requires reversal of the Panel's decision. In combination, they

demonstrate the utter impropriety of accepting the Districts' invitation to have the Courts become superintendent of Kansas school finance.

**I. The Districts Lack Standing To Assert A Claim Under Article 6, § 6 Of The Kansas Constitution**

The initial flaw in the Districts' suit is their very lack of standing to bring an Article 6 claim. As the Court is well aware, standing is an unavoidable jurisdictional requirement. *See* Brief of Appellant State of Kansas ("State's Br."), 28-33. In the final pretrial order, the State expressly "challenge[d] the plaintiffs' standing to bring the claims they have asserted." R.Vol. 7, p. 932. Thus, there is no merit to the Districts' suggestion that the State is "raising a lack of standing defense at this late date." Dist. Resp., 49. Moreover, because standing is a jurisdictional requirement, it can be raised at any time. *Ternes v. Galichia*, No. 101,666, \_\_\_ P.3d \_\_\_, 2013 WL 3835829, \* 3 (Kan. July 26, 2013) ("standing is a jurisdictional issue" that "may be raised at any time"); *cf. Hollingsworth v. Perry*, 570 U.S. \_\_\_, 133 S. Ct. 2652, 2661 (2013) ("Article III demands that an 'actual controversy' persist throughout all stages of the litigation").

Importantly, the only plaintiffs in this case to put on any evidence were the Districts, not the individual student and parent plaintiffs, a fundamental distinction between this case and *Montoy*, where the record showed evidence of harm to individual students. Plaintiffs' litigation strategy in this case is critical with respect to standing because there is no evidence that any of the named individual student plaintiffs were harmed by allegedly insufficient funding. Rather, by considered choice, the plaintiffs provided no information at all about the student plaintiffs. R. Vol. 14, pp. 1938-39. *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 115 n.31 (1979) ("Although standing generally is a matter dealt with at the earliest stages of litigation, usually on the



pleadings, it sometimes remains to be seen whether the factual allegations of the complaint necessary for standing will be supported adequately by the evidence adduced at trial.”)

Knowing they have no such evidence, the Districts make the half-baked (if baked at all) argument that prior cases have permitted claims such as theirs, even though not one of those cases actually addressed and decided the issue of school district standing. For example, they point to *Mock v. State*, where the trial court expressly declined to decide whether school districts had standing because at least some individual plaintiffs in the case had standing. But that is a typical result when one or more plaintiffs in a case have standing; the courts don't spend time trying to determine whether *every* plaintiff in the case does. In this case, by contrast, *no* plaintiff before the Court has proven standing. The constitutional requirement of standing is not satisfied by merely listing an individual's name in a case caption; there must be some showing in the record to support a conclusion that a plaintiff has suffered constitutional harm and, thus, that standing exists. Here there is none. In any event, a prior trial court ruling that did not decide whether school districts have standing hardly settles the question in this case or this Court.

The same reasoning easily explains *Unified School Dist. No. 229 v. State*, 256 Kan. 232, 234, 885 P.2d 1170 (1994) (four consolidated actions brought by 97 plaintiffs, including school districts, taxpayers and students), *Knowles v. State*, 219 Kan. 271, 272, 547 P.2d 699 (1976) (individual students and taxpayers claimed denial of equal protection and violation of Article 6, § 6 on the basis that they were treated differently and injured by the then-school financing formula), and *Caldwell v. State*, No. 50616 (Johnson Co. Dist. Ct., Aug. 30, 1972) (an equal protection challenge to the financing

formula brought as a class action composed of all public school pupils). R.Vol. 35, p. 76. None of those suits depended on a conclusion that a school district had standing to bring a claim. Nor is there any reason to believe that, unlike this case, individual plaintiffs in those earlier suits utterly and completely failed to present evidence of their claimed injury at trial. In fact, in *Montoy*, the trial court expressly found that funding problems “dramatically and adversely impacted the learning of the most vulnerable and/or protected Kansas children,” State’s Br., App. G, at 6, including students who were plaintiffs in that case.

The Districts’ argument that school districts have standing to assert constitutional claims runs directly counter to well-settled federal law, as explained in the State’s response brief in the Districts’ cross-appeal. *See* State Resp., 42-45. Moreover, the Districts’ arguments simply don’t hold water. This Court has never addressed the standing of school districts to bring such claims, but now the State has clearly presented the question and a resolution is required, unless the Court reverses the Panel on other grounds identified in the State’s appeal.

In both *Board of Ed. of Unified School Dist. No. 443 v. Kansas State Bd. of Ed.*, 266 Kan. 75, 83, 966 P.2d 68 (1998) and *Unified School Dist. No. 380 v. McMillen*, 252 Kan. 451, 462, 845 P.2d 676 (1993), the Court found only that districts had standing to assert a denial of their rights as school districts under Article 6, § 5 of the Kansas Constitution, a very different provision than § 6. There is no § 5 claim in this case. The Districts do not and cannot argue that Article 6, § 6 vests them with any right as a school district (indeed, in their cross-appeal they argue just the opposite—that Article 6 gives Kansas *students* a “right to education”) or puts them at risk of potential liability for

violating that provision. Instead, this Court has already rejected the argument that the Legislature's finance decisions can violate school boards' § 5 duties to "maintain, develop, and operate the local public school system." *Unified School Dist. No. 229*, 256 Kan. at 253. Further, K.S.A. 72-64b01 does not somehow implicitly grant standing (even assuming a statute may do so); instead, that statute on its face prohibits school districts from "engaging in or supporting in any manner any litigation by the school district or any person" regarding school finance in Kansas. It would be perverse to read a statute prohibiting districts from "engaging in or supporting" school finance litigation as effectively bestowing standing on school districts to bring such suits.

The Districts' last-ditch effort is to argue associational standing, claiming that school districts are "associations" and apparently the students are their "members." Dist. Resp., 62-66. The argument is nonsense. Associational standing typically is permitted when a private association that has a particular purpose or interest sues the government because one or more of the association's members has standing to complain about a particular governmental action. Common examples would be the Sierra Club suing the federal government because of decisions regarding national forests affecting some of their members who hike and camp in the forests, or the ACLU suing because a law that allegedly restricts speech affects one or more of the ACLU's members individually.

If we follow the Districts' "associational standing" argument to its logical conclusion, then why would not the citizens of Kansas be "members" of the "association" of the State of Kansas, or the residents of Topeka be "members" of the "associations" of the City of Topeka and Shawnee County? If subordinate governmental entities wielding general governmental authority are "associations" for standing purposes, then basically

any such entity could sue on behalf of *any* citizen for alleged violations of that individual's rights. That is not how standing works, either in federal law or under Kansas law. Under the Districts' theory, Kansas would have standing to sue the federal government simply because a federal law allegedly harms a single citizen of Kansas.

A school district exists "only as a creature of the legislature to operate as a political subdivision of the state." *National Educ. Association-Wichita v. Unified School Dist.*, 234 Kan. 512, 517, 674 P.2d 478 (1983). This Court should not open the door the Districts offer, a door that would permit suits by virtually any State agency or political subdivision against the State over budgetary issues. The federal courts have slammed that door (and nailed it shut), and this Court should do the same. *E.g.*, *City of Hugo v. Nichols*, 656 F.3d 1251, 1257 (10th Cir. 2011); *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619, 628 (10th Cir. 1998); *City of Moore, Okla. v. Atchison, Topeka, & Santa Fe Ry. Co.*, 699 F.2d 507, 511-12 (10th Cir. 1983) (all prohibiting such suits).

## **II. Whether The Legislature Has Made "Suitable Provision For Finance Of The Educational Interests Of The State" Is A Nonjusticiable Question Here**

The Districts' response on justiciability boils down to two arguments: (1) *Montoy* held that their Article 6, § 6 claim in this case is justiciable; and (2) the rules and directives of the State Board of Education and local school boards provide the manageable standards for judicial evaluation of an Article 6, § 6 inadequate funding claim. Dist. Resp., 20-22, 69-77. Neither argument, however, withstands scrutiny when the funding formula is not at issue and the sole claim is for *more money*.

This case is not *Montoy*, which principally concerned the school funding formula, as well as achievement and accreditation measures. *Montoy v. State* ("*Montoy II*"), 278 Kan. 769, 775, 120 P.3d 306 (2005). *See also*, *Montoy v. State* ("*Montoy IV*"), 282 Kan.

9, 23, 138 P.3d 755 (2006) (“Our prior orders have made it clear that we were concerned that the then existing financing formula was distorted and provided disparate funding because it was based on former spending levels with little or no consideration of the actual costs and present funding needs of Kansas public education”). Here, the Districts do not challenge the distribution of funding pursuant to the formula, only the amount of money they have received in recent years.

Contrary to the Districts’ suggestion, the State is not asking this Court to shirk its constitutional duties but, rather, to respect the constitutional limits of the Court’s authority. This Court has recognized that its review does not extend to political questions, endorsing the *Baker v. Carr* analysis. *E.g.*, *Leek v. Theis*, 217 Kan. 784, 813, 539 P.2d 304 (1975); *VanSickle v. Shanahan*, 212 Kan. 426, 438, 511 P.2d 223 (1973).

The Districts’ analysis is as unhelpful as their assertion that *Montoy* resolved justiciability in this case. The plain text of the Kansas Constitution unquestionably vests the “legislature” with the authority to make “suitable provision for finance of the educational interests of the state.” The Districts, however, don’t want to talk about “suitable provision for finance.” Instead, they want to make a constitutional cornerstone out of a term never mentioned in the Kansas Constitution: a “suitable education.” They then argue that the Legislature is tasked only with writing checks to provide for such a constitutionally-mandated “suitable education.” Dist. Resp., 18-20, 70-71. Although the Panel did not even address this novel claim, this Court should address and reject it.

The State’s opening brief explains that the Kansas Constitution does not require a “suitable education.” State’s Br., 40-41. Use of that phrase first appeared in the *Montoy* litigation, but even then not in the Court’s *Montoy I* decision. Neither *Unified School*

*District No. 229*, nor *Montoy v. State* (“*Montoy I*”), 275 Kan. 145, 62 P.3d 228 (2003), uses the phrase. The genesis of the phrase may have been K.S.A. 2003 Supp. 46-1225(e), since repealed, which tasked the Legislative Education Planning Committee to oversee the A&M Study to determine the cost of a “suitable education” for Kansas children. Thus, *Montoy II* stated, “[i]n authorizing the [A&M] study, the legislature defined ‘suitable education.’ K.S.A. 2003 Supp. 46-1225(e) [since repealed].” 278 Kan. at 773-74.

*Montoy III* arguably imported “suitable education” into Article 6. Although the State could not ask the Panel, a trial court, to do so, the State can and does ask this Court to disavow any language in the *Montoy* decisions which implies that the Kansas Constitution requires a “suitable education.” Those words never appear in the Kansas Constitution, nor does history or precedent support the judicial creation of such a clause.

In an attempt to conjure up standards for judicial review, the Districts turn to Article 6, § 2(a), which states, in part, that “[t]he legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents.” The Districts argue that § 2(a) means the State Board of Education creates judicially manageable standards, as well as local school boards under Article 6, § 5, and (though not entirely consistent with the first two arguments), the Legislature has defined “suitable” by enacting K.S.A. 72-1127(c). The fundamental flaws in the Districts’ argument, however, are that (1) no language in the Kansas Constitution grants the State Board of Education or local school districts the

power to determine standards for a constitutionally required education, and (2) those entities have no power to mandate state funding.

K.S.A. 2012 Supp. 72-1127(c) states only goals upon which administrative regulations for accreditation requirements are to be measured. These goals were not intended to and cannot provide constitutional benchmarks for a court to decide that a particular funding level is suitable for Kansas schools. Moreover, even if the Court were to use these goals in some fashion, the uncontroverted evidence at trial established that every school in Kansas meets the goals at current funding levels. *See State's Br.*, 10-12.

Again, the Districts fall back on language taken out of context from the *Montoy* decisions. *Montoy II* provided direction for the Legislature to remedy the violation of Article 6, § 6 that *Montoy I* found as follows: “[t]he equity with which the funds are distributed and the actual costs of education, including appropriate levels of administrative costs, are critical factors for the legislature to consider in achieving a suitable formula for financing education.” 278 Kan. at 775. The equity and actual costs discussions in the *Montoy* case, however, do not create manageable constitutional standards for review in a case that does not challenge the funding formula but simply demands more money under Article 6, § 6.

Here, equity in the distribution of funds is not at issue, *see State's Br.*, 44-46, and “actual costs” is an inherently ambiguous and manipulable concept. *See id.*, 47-53. The Districts are engaging in bootstrap reasoning, asking this Court to find that Article 6, which goes back to the creation of Kansas (and was amended in 1966), imposes constitutional requirements unknown to anyone until they were first articulated in the

remedy phase of *Montoy*. In other words, the Districts read *Montoy* as a judicial rewrite of the Kansas Constitution, a conclusion that is neither proper nor necessary.

It makes no sense to suggest that a “judicially discoverable” standard is any standard a court can invent. *Board of Wyandotte Co. Comm’rs v. Kansas Ave. Prop.*, 246 Kan. 161, Syl. ¶ 2, 786 P.2d 1141 (1990) (“In ascertaining the meaning of a constitutional provision, the primary duty of the courts is to look to the intention of the makers and adopters of that provision”). Instead, any judicially discoverable standard must be based on constitutional text, history, and precedent.

For Kansas, the debate over Article 6 at the time of statehood was vibrant, but limited to whether public education should extend to African-American students. One contingent sought to limit free public education to “white” pupils, but others objected, including Bourbon County delegate, William R. Griffith:

*I desire the Legislature to be left to pass such laws upon this subject as they shall deem necessary. I hope gentlemen will not say that our Constitution shall discriminate upon the difference between persons. If we incorporate provisions that shall exclude any class, the time may not be far distant when we may wish we had not done so. If we leave it to public - sentiment, as expressed through the Legislature of the State, the people all can govern in this matter.... Let us leave this matter to the people then.*

H. Larimer, J. King, W. Freeman, “Kansas Constitutional Convention,” at 175 (Kansas State Printing Plant, I. Zumwalt, State Printer 1920), <<http://archive.org/details/kansasconstituti00kans>> [“Constitutional Convention”] (emphasis added). Douglas County delegate, Solon O. Thacher, argued:

*I utterly protest against any such feature being made part and parcel of this Constitution. Over the school fund and its distribution, the Legislature have complete and sovereign control.*

*Id.* at 180 (emphasis added).



Nothing about the history of the 1966 amendment to Article 6 supports reading the District's proposed "suitable education" mandate into the Kansas Constitution. Likewise, the amendment's history does not dispute the original framers' intent that the Legislature have "complete and sovereign" control. An appointed advisory committee made recommendations relative to public school systems and, among other suggestions, proposed revamping the original state superintendent of instruction system and replacing it with the State Board of Education. That recommendation was included in the 1966 amendments to Article 6. Kansas Legislative Council, Implementation of the Education Amendment--Report of the Education Advisory Committee, vi (Publication No. 260, November 1966) ("KLC Rpt."). However, "the [1966] amendment reaffirmed the inherent powers of the legislature--and through its members, the people--to shape the general course of public education and provide for its financing." *Unified School Dist. No. 229, 259 Kan.* at 240. Furthermore, the advisory committee stated that Article 6, § 1 is aspirational only, and "essentially the same statement of public policy" expressed in the 1859 Kansas Constitution. KLC Rpt. 9. Finally, with respect to financing, the committee recommended that the Legislature make educational appropriations of more than two years duration. The Legislative Council, however, rejected that recommendation, which did not become part of the 1966 amendments, because such a change might have given education a "first claim" on state revenue and "[h]istorically legislatures have guarded closely their control over state finances." *Id.*, at 33.

The Districts' argument that the State should be sanctioned here for democratically-enacted school funding decisions, Dist. Resp., 81-87, only proves the State's point. *See State's Br.*, 37-38. First, how does one even sanction "the State"?

Second, how can courts possibly show respect for the other branches of government if the courts second-guess the policy and resource allocation judgments of elected officials? Finally, courts are to then “sanction” the Legislature whenever it fails to meet the courts’ *ad hoc*, after-the-fact judicial standards?

Decisions from several sister states, discussed in the State’s opening brief (State’s Br., 48-53), point to a better path. Of particular interest is the Districts’ misleading discussion of *King v. State*, 818 N.W. 2d 1 (2012). The Districts assert that *King* interpreted an Iowa Constitution which is very different from the Kansas Constitution, Dist. Resp., 75-76, but that is just not true. The first part of Article 6, § 2 of Kansas Constitution, as initially adopted, was derived from the first clause of section 3 of the article on school funds and school lands in the Iowa Constitution. Constitutional Convention, App. D, 694. In fact, the “improvement” language in present Article 6, § 1 was modeled on the Iowa Constitution, *id.*, and yet *King* readily concluded that the school finance issue was not justiciable.

The Districts’ assertions about the Iowa and Kansas Constitutions are utter fantasy. For instance, the Districts argue that the Iowa Constitution “does not require that the public education system ‘be adequate,’ ‘efficient,’ ‘quality,’ ‘thorough,’ or ‘uniform.’” Dist. Resp., 75. Of course, the Kansas Constitution also nowhere imposes any of those constitutional requirements. The Districts continue the fantasy without citation: “The Kansas Constitution, on the other hand, does require that the system be ‘suitable,’ which our courts have compared to ‘adequate.’” *Id.* Where in the Kansas Constitution is a “suitable” education or public school system required? The Kansas Constitution never says that, speaking only to “suitable provision for finance” of educational interests.

The Districts' efforts to misrepresent the Iowa Constitution and the *King* decision underscores the importance of what the Iowa Supreme Court recognized: "improvement" as used in the Constitution is aspirational and provides no judicial standard for review. Thus, requiring "suitable provision for finance," the Kansas Constitution's operative language, "does not alter the basic contrast between an amorphous goal ('intellectual, scientific, moral, and agricultural *improvement*')" and the Districts' erroneous claim of entitlement to a measurable "suitable education" that the Kansas Constitution does not mandate. *King*, 818 N.W. 2d at 20 (emphasis added).

### **III. The Panel Erroneously Substituted Its Own Findings For The Legislature's Presumed Findings Supporting The SDFQPA And Annual Appropriations**

As demonstrated in the State's opening brief, State's Br., 2-21, school spending in Kansas is at record levels. In fact, overall spending on Kansas schools has increased even as the BSAPP has decreased. Moreover, actual spending on and by Kansas schools exceeds the Panel's target for increased BSAPP funding by about \$500 million dollars. All primary and secondary public schools in Kansas are accredited, and the Districts made no showing at trial that current accreditation standards are inadequate. Nor did they present evidence that any local district is unable, because of lack of funding, to satisfy the rigorous accreditation requirements implemented after *Montoy*.

The Districts' demands for massive increases in the BSAPP, and the Panel's finding that an approximately \$500 million increase was constitutionally required, suffer from two primary flaws: (1) the presumption of constitutionality and deference to legislative funding decisions prohibit substitution of judicial policy judgments for the actual or presumed findings of the Legislature; and (2) *total actual spending* is the best

measure of funds available for K-12 schools in Kansas – indeed, it is the only proper measure.

**A. The Districts Seek An Improper Standard Of Judicial Review**

The Districts assume that the Panel could properly reach a judgment from a *de novo* analysis of whatever evidence the parties produce in a trial, relying on *Unified School Dist. No. 229* and *Montoy*. The Districts, however, mischaracterize these decisions as not applying deferential review, Dist. Resp., 37-38 (*Montoy* determined “what Article 6, § 6 requires”), and ignore the particular circumstances and context of each of those cases. Instead, *Unified School Dist. No. 229* emphasized the courts’ “limited role” in reviewing legislative school finance decisions, 256 Kan. at 236-38, agreeing that “[i]t is well settled that courts should not substitute judicial judgment for educational decisions and standards,” *id.* at 257, and holding that the SDFQPA then in place did not violate § 6(b) of Article 6.

The Court in *Montoy II* authored a “brief opinion” to allow legislative action in the 2005 session, intending to issue a “formal opinion” “at a later date.” 278 Kan. at 771. The Court articulated its standard of review as whether the district court made findings of fact supported by substantial competent evidence and sufficient to support its conclusions of law. *Id.*, at 772. What the *Montoy I* decision did not articulate or discuss is the deference that the trial court was required to give to legislative policy decisions that produced the challenged version of the SDFQPA or the ultimate level of funding.

The only way to reconcile *Montoy II* with ubiquitous law presuming the constitutionality of legislative actions and deferring to legislative presumed and actual findings is to read *Montoy I* as an example of a finding that the challenged legislative

action was arbitrary. *See* State’s Br., 56-61. Later, in *Montoy III*, the Court discussed the presumption of constitutionality and the separation of powers, but there found that the presumption did not apply in the remedial phase of the litigation because the SDFQPA already had been declared unconstitutional. 279 Kan. at 825-26. The Court’s distinction between finding a substantive violation and evaluating remedies, however, was superfluous and meaningless if no presumption of constitutionality or deference to legislative findings applies to the initial question whether Article 6, § 6 is violated at all.

The Districts reject the State’s “newly created Article 6 rational basis test,” Dist. Resp., 37, arguing that *Neeley v. W. Orange–Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005), supports their position. Dist. Resp., 39. *Neeley*, however, found that the appropriate test is whether “the challenged aspect of the system was not arbitrary.” 176 S.W.3d at 784; *see also id.* (“legislative determination of the methods, restrictions, and regulations is final, except when so arbitrary as to be violative of the constitutional rights of the citizen”)(internal citation omitted). Although the Texas court questioned whether a “rational basis” test “fit” its inquiry whether “suitable provision” had been made for “the support and maintenance of an efficient system of public free schools,” *id.*, the court still adopted a very deferential level of judicial review—a standard of arbitrariness.

Furthermore, the Districts do not even mention the recent Colorado Supreme Court decision, *Lobato v. State*, 2013 Co. 30, \_\_\_ P.3d \_\_\_ (May 28, 2013). As explained previously, *Lobato* upheld Colorado’s school finance system, finding the Colorado constitutional requirement to provide “thorough and uniform” schools satisfied despite state budget cuts. The *Lobato* court held that even if the “system might not provide an optimal amount of money to the public schools, the statutory public school financing

system itself is constitutional,” applying a rational basis test, *id.* at ¶ 33 (“The Plaintiffs did not establish beyond a reasonable doubt that the system fails to pass constitutional muster under the *Lobato I* rational basis test”), and reasoning as follows:

[C]ourts must avoid making decisions that are intrinsically legislative. It is not up to the court to make policy or to weigh policy. While the trial court’s detailed findings of fact demonstrate that the current public school financing system might not be ideal policy, this Court’s task is not to determine whether a better financing system could be devised, but rather to determine whether the system passes constitutional muster.

*Id.*, at ¶ 45 (internal citations and quotation marks omitted).

The Districts attempt but fail to distinguish *Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 273 P.3d 709 (2012), and *Cardarella v. Overland Park*, 228 Kan. 698, 620 P.2d 1122 (1980), decisions demonstrating and emphasizing that legislative discretion generally is not subject to courtroom second-guessing. The Districts point out these decisions did not involve an Article 6 claim, Dist. Resp., 41-42, but fail to explain why the general principle of deference to the Legislature is somehow affected by that distinction. Instead, the Districts continue to invite this Court to take control of over 62% of the State’s annual General Budget, acting as superintendent of education finance, and then use that control to reallocate the state’s overall spending priorities so that educational finance rises to an even higher percentage of the State General Fund.

By necessity, the Districts also hope to convince this Court to overlook all sources of revenue available to and spent by K-12 schools except for general state financial aid, primarily as measured by the BSAPP. It was perfectly logical, however, for the Legislature to conclude that total funding available to schools from *all* sources is the proper measure of the “suitable provision for finance” of schools. Indeed, if K-12

districts had about \$3.5 billion available to spend, but only \$2 billion came in the form of BSAPP funding, it is irrational to say that the schools are underfunded by \$1.5 billion.

**B. The Districts Continue Their Efforts To Obfuscate And Confuse**

In this Court, the Districts continue their attempts to obfuscate, citing materials that are not part of the record or proper subjects for judicial notice, referring to “findings” that the Panel in fact rejected, comparing “apples” and “oranges,” and inviting this Court to second-guess legislative fiscal policy decisions. **First**, the Districts discuss a “memorandum,” purportedly authored by Dale Dennis, Deputy Commissioner of Education. Dist. Resp., 4, 8, App. A. The memorandum attempts to calculate the increased funds needed above FY2013 appropriations for FY2014 State Financial Aid, Supplemental State Aid, capital outlay state aid and other items in order to meet the levels set out in statutes, assuming enough money is available and appropriated, and that capital outlay state aid is reinstated. The memorandum, however, is unsworn, untested, and not in the record. The Districts’ belated attempt to inject it into this proceeding reveals the fundamental flaw in their overall approach: They want this Court to act as a Super Legislature, even to the point of considering information that might be appropriate for debate in a Legislative committee hearing but is not the sort of “evidence” properly considered in the search for truth in a Court of law. Indeed, the Districts’ attempt to submit the memorandum simply drives home the ever-changing, open-ended, and policy-driven nature of school finance considerations. The Districts are proving why judicial determination of the amount of K-12 funding appropriations is inappropriate and unworkable.

**Second**, and in a similar vein, as a rule of thumb, if the Districts' citation to the record does not include Volume 14, they are citing factual conclusions, testimony or exhibits offered to support proposed findings that the Panel rejected. The State's Response to the cross-appeal contains an extensive discussion of the findings the Districts proposed but which the Panel rejected. State's Resp., 3-22. Also, the Court may not assume the Districts' description of "evidence" in their offered-but-rejected findings is accurately summarized or even existed, not least because there are a number of examples where that is not the case. The Districts treat all "evidence" they perceive as favorable to them as established "facts," even though the Panel rejected much of that evidence.

**Third**, the Districts compare oranges and apples. For example, when the State demonstrates from 2013 data that total spending on Kansas K-12 schools is at record levels, State's Br., 2-3, the Districts respond by discussing 2011 data. Dist. Resp., 6-7. The Districts suggest that "per pupil" expenditures should be considered, but then refer only to BSAPP, ignoring other sources of funding that contribute to total per pupil expenditures. Dist. Resp., 4-6. Perhaps the Districts' most egregious apples to oranges maneuver is their discussion of the Panel's adoption of Plaintiffs' Exhibit 420 which showed that operational expenditures approximate estimated required foundation funding. State's Br., 8-10. The Districts admit the LPA Study "was only designed to estimate costs of 2006 and 2007." Dist. Resp., 10. Yet, their demonstrative exhibit, entitled "How close are we to the LPA study," compares an update to the LPA Study (*not the LPA Study itself*), and various sources of state funding.

A curious fact about Plaintiffs' Exhibit 420 is that it actually supports the proposition that present funding levels are adequate when all sources of revenue are



considered. The FY2012 data provides the proof. That year, Supplemental State Aid was estimated at \$339,212,000. The adopted LOB was \$967,531,099, meaning that approximately \$627,000,000 of the LOB was funded by local taxes (LOB minus Supplemental State Aid), and general State Financial Aid was \$2,990,784,561. R.Vol. 37, p. 317, R.Vol. 38, p. 370. In fact, if one subtracts FY2012 Supplemental State Aid from the amount in Exhibit 420's left side bar, the general state aid plus LOB for FY2012 *exceeds* the LPA Study update's estimates of necessary total funding by approximately \$130,000,000, and that is without even considering federal and other sources of revenue which the schools in fact received in FY2012!

**Finally**, the Districts ask this Court, as they asked the Panel (which accepted their invitation) to second-guess legislative policy judgments. That said, even the Panel did not accept the update of the LPA Study as accurate or believable. *See* State's Resp, 13-15. Furthermore, the Districts' claims that there were reasons to maintain cash balances, Dist. Resp., 11-12, that untargeted increased funding will improve student achievement, *id.*, 33-35, and that economic conditions cannot justify the Legislature's policy decisions, *id.*, 46-49, are all policy judgments, *i.e.*, discretionary matters about which reasonable minds can (and do) differ. The Legislature made choices well within its constitutional authority with respect to all of these matters on behalf of the Kansas citizens to whom legislators are accountable. Such policy decisions are entitled to judicial deference.

### **C. The Districts Downplay The Success Of Kansas Schools**

1. *Achievement.* The Districts repeatedly denigrate the educational achievements of Kansas schools and Kansas students. Measured objectively against other States, Kansas schools and Kansas students are doing exceptionally well. State's Br., 16-21.

Should we be satisfied? No. The rigorous accreditation requirements and terms of the Kansas Waiver make clear that the State and its leaders are not satisfied with the status quo. But who decides the required rate of improved academics, if improvement is possible? Who decides more money is the answer and in what precise amount?

Unlike *Montoy*, this case does not involve any alleged disparate treatment of identifiable, under-achieving groups of students through school formulas. The courts cannot hope to resolve the policy questions surrounding school performance and student achievement in Kansas. Even if “more money” would aid efforts to enhance overall academic achievement, close gaps between various student groups, and graduate more students, Article 6 does not and cannot require a “perfect” school system, a result likely not achievable at any cost. *Unified School Dist. No. 229*, 256 Kan. at 254.

2. *Actual Costs*. The Districts invite the Court to treat the Panel’s legal discussion of the concept of “actual costs” as findings of fact that are given “extreme deference on appeal.” Dist. Resp., 41. There are multiple problems with the Districts’ invitation. **First**, when a trial court makes findings of fact to support its legal conclusions, an appellate court’s function is to determine whether such findings are supported by substantial competent evidence and *are sufficient to support the conclusions of law*. *Unified Sch. Dist. No. 233 Johnson County v. Kan. Ass’n of Am. Educators*, 275 Kan. 313, 318, 64 P.3d 372 (2003). Here, the Panel specifically rejected many of the proposed findings of fact the Districts offered and on which they continue to rely in this Court. **Second**, “[a]n appellate court may draw its own inferences and arrive at its own conclusions when a finding of fact is simply a deduction from other facts and the ultimate fact in question is purely a result of reasoning.” *In re Old Summit Mfg., LLC*, 23 F.3d 134, 137-38 (3d Cir.

2008) (citation omitted). *See also*, 5 C.J.S. *Appeal & Error* § 808, n. 51 and associated text (1993). **Finally**, findings premised on application of an erroneous legal standard receive *no* deference. State’s Br., p. 55. *Accord*, 5 C.J.S. *Appeal & Error* § 804 (1993). Here, the Panel committed legal error by substituting its own *de novo* judgments for actual and presumed legislative determinations and by failing to consider all sources of funds spent by K-12 schools.

The Districts play fast and loose with the Panel’s opinion. For example, the Districts offer the following quote from the opinion: “In truth, and in fact, it appears that the Kansas Legislature ... wholly disregarded the considerations required to demonstrate a compliance with Article 6, § 6(b).” Dist. Resp., 40. What the Panel actually said was:

In truth, and in fact, it appears that the Kansas Legislature, *followed its own declaration embodied in K.S.A. 46-1226(a), as noted*, and wholly disregarded the considerations required to demonstrate a compliance with Article 6, § 6(b).

*See* R.Vol. 14, p. 1838 (emphasis added).

The “wholly disregarded” quote, misleadingly edited in the Districts’ brief, must be read in context with the Panel’s other findings and conclusions. The “consideration” on which the Panel focused was the “actual cost” part of the Panel’s “template” which in turn was based upon the Panel’s misunderstanding of *Montoy*. Instead, the Panel expressly referenced K.S.A. 2012 Supp. 46-1226(a) in the portion of the quote the Districts deliberately omitted, and that statute makes clear that cost studies are *not* binding on the Legislature, in apparent response to this Court’s reliance in *Montoy* on K.S.A. 46-1225 [repealed in 2005] in attempting to define a “suitable education.”

In spite of recognizing the existence of K.S.A. 2012 Supp. 46-1226(a), and in apparent ignorance of this Court’s admonishment in *Montoy IV*, 282 Kan. at 24, that the

Legislature “is not bound to adopt” cost study determinations, the Panel nonetheless concluded that costs studies *are constitutionally required and must be followed*. The Panel also improperly focused exclusively on State Financial Aid because of its erroneous legal conclusion that reliance on local taxes is *per se* unconstitutional. The Panel also made or adopted calculations and deduced other facts that were erroneously premised on counting only general state aid as a constitutionally valid source of revenue. Thus, any “finding” that the Legislature “wholly disregarded the considerations required to demonstrate a compliance with Article 6, § 6(b)” is entitled to no deference; indeed, such a finding is erroneous as a matter of law.

3. *Equity*. The Panel’s conclusions concerning “equity” also are not entitled to deference. *See* Dist. Resp., 13-14. The Panel concluded that reliance on LOB funding injected an unconstitutional wealth-based disparity into school funding; it reached the same conclusion with respect to the elimination or reduction of equalization payments in the form of capital outlay and other state aid. R. Vol. 14, 1859-66, 1906-16. These legal conclusions are wrong, and in any event not entitled to deference:

Equity does not require the legislature to provide equal funding for each student or school district. In *Montoy II*, we rejected the plaintiffs’ claim that the school finance act violated the *Equal Protection Clause* of the United States and Kansas Constitutions. What is required is an equitable and fair distribution of the funding *to provide an opportunity for every student to obtain a suitable education*.

*Montoy IV*, 282 Kan. at 22 (emphasis supplied); *See also*, State’s Br., 78-84 (locally-generated funding can be counted). There is no evidence that Kansas schools are failing to provide required opportunities for education, and presumed legislative findings support equalization reductions. State’s Br., 22-25. The Districts cannot point to any “facts” that

contravene these conclusions, not even the supposed “evidence” in the Districts’ proposed findings that the Panel rejected. *See* Dist. Resp., 13-16.

#### **IV. The “Remedies” The Panel Ordered Are Beyond Judicial Authority As A Matter Of Law**

The Districts’ brief only feebly attempts to avoid the facts that (1) the Districts named only the State of Kansas as a defendant here, and (2) courts lack the constitutional authority to order legislatures or governors to enact or not enact particular laws. Dist. Resp., 79-81. **First**, the Districts argue that individual officials can be enjoined, Dist. Resp., 79-80, which of course is true of *executive branch* officials performing *executive functions*, but not true of *any official exercising legislative functions* and, in any event, the Districts *chose not to name any individual officials* in this suit!

**Second**, the Districts throw out the red herring that legislative immunity is a “newly raised issue that was not argued at trial,” Dist. Resp., 80, an argument that is hoisted on its own petard. In their pretrial contentions, the Districts requested a permanent injunction requiring the Legislature to appropriate the funds the Districts deemed Article 6 to require, R.Vol. 7, p. 949, and the State responded that the “Plaintiffs are not entitled to the remedies they have demanded.” R.Vol. 7, p. 932. More importantly, no one could have known that legislative immunity would be at issue in this case unless and until the Panel ultimately ordered the extraordinary and unconstitutional relief it purported to impose. Parties cannot be faulted for not guessing in advance that a trial court will adopt an unconstitutional remedy.

**Finally**, the Districts have no plausible arguments on the merits of legislative immunity. They suggest that the Legislature can be enjoined any time a statute intrudes on the powers of another branch or entity of state government, Dist. Resp., 80, but that is


not true. What can be done is that a court can declare such a law unconstitutional, decline to enforce it, and enjoin any executive branch official who might be tasked with enforcing the law. One will look in vain for any case actually directing a legislator or the legislature to vote for a particular law or enjoining the same from voting for or against a particular law. If the Districts' view of legislative immunity were correct, the typical remedy after a court finds a statute unconstitutional would be to order the legislature to either: (1) repeal the statute and/or (2) enact a new version that is constitutional. But those are not "typical" remedies, and no Kansas court has ever ordered such a radical (and unconstitutional) remedy, at least not until the Panel's decision in this case.

### CONCLUSION

The State respectfully requests that the Panel's decision be reversed, and the case either be dismissed for lack of jurisdiction or the Court render judgment on the merits in the State's favor.

Respectfully submitted,

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**APPENDIX**

**Kansas Legislative Council  
Implementation of the Education Amendment --  
Report of the Education Advisory Committee  
(Publication No. 260, November 1966)**

(Appendices Omitted)



IMPLEMENTATION OF THE EDUCATION AMENDMENT

Proposed Legislation to Put into Effect  
the Provisions of Article 6 of the Kansas  
Constitution and to Revise Existing  
Statutes Therewith.

A REPORT OF THE EDUCATION ADVISORY COMMITTEE

to

THE COMMITTEE ON EDUCATION

On Proposal No. 45

RESEARCH DEPARTMENT  
KANSAS LEGISLATIVE COUNCIL

Publication No. 260

November, 1966

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## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
INTRODUCTION	v
The Kansas School System	vi
CHAPTER I - CONCLUSIONS AND MAJOR POLICY RECOMMENDATIONS	1
Election of Members of the State Board of Education	1
Time of Board Election	2
Time of First Election	2
Terms of Members	2
Qualifications and Vacancies	2
Enactment of Implementing Legislation	3
Functions and Powers of the State Board of Education	3
Commissioner of Education	3
Powers During Transitional Period	4
County Superintendent of Public Instruction	4
Jurisdiction of the Two State Boards	4
School Financing - Area Vocational-Technical Schools	5
Vocational Rehabilitation	6
Correlation of Federal, State and Local Education Programs	6
Schools for Blind and Deaf	6
State Board of Regents	7
Agencies and Activities Related to Higher Education	7
CHAPTER II - STATE ORGANIZATION FOR THE ADMINISTRATION OF EDUCATION	8
Importance of Board Membership	8
Non-Partisan Versus Partisan Office	9
Nomination of Candidates in a Non-Partisan Election	10

TABLE OF CONTENTS (Cont'd.)

	<u>Page</u>
Primary Elections	12
Election Procedure	12
Time of the Election of Board Members	12
Time of the First Election of Board Members	12
Qualifications of Members	13
Terms of Office	13
Filling Vacancies	14
Factors in Establishing Member Districts	14
Powers and Jurisdiction of the State Board of Education	15
The Commissioner of Education	17
Allocation of Powers During Transitional Period	19
County Superintendent of Public Instruction	20
Intermediate Units	21
Area Vocational-Technical Schools	21
Schilling Technical Institute	21
The Community Junior Colleges	22
State Schools for the Blind and the Deaf	23
Powers and Membership of State Board of Regents	24
Educationally Related Agencies and Activities	27
Coordination - State Board of Regents and State Board of Education	28
CHAPTER III - VOCATIONAL EDUCATION	29
Development of Vocational Education in Kansas	29
Problems of Vocational Education	30
Functions of the State Vocational Education Department	32
Recommendations	35
Vocational Rehabilitation	39
CHAPTER IV - CORRELATION OF FEDERAL, STATE AND LOCAL PROGRAMS	42
Programs Supervised by the State Department of Public Instruction	43
National Defense Education Act of 1958	44
The Elementary-Secondary School Aid Act of 1965	45
National School Lunch Act of 1946	46
Civil Defense Act of 1950	46
Special Education Fellowships	46
Economic Opportunity Act of 1964	47

TABLE OF CONTENTS (Cont'd.)

	<u>Page</u>
Programs Partially Supervised by the State Department of Public Instruction	47
The Elementary-Secondary School Aid Act of 1965	47
Federal Acts Providing Aid to Federally Affected Areas	48
Federal Programs Outside the Supervision of the State Department of Public Instruction	50
Elementary-Secondary Education Act of 1965	50
Economic Opportunity Act of 1964	50
Library Services and Construction Act of 1963	51
Educational Television	52
Programs Wholly or Partially Under the State Board for Vocational Education	52
Vocational and Technical Education	52
The Manpower Program	52
Summary and Conclusions	53
APPENDIX A - Constitutional Amendment Article 6 - Education	56
APPENDIX B - The Office of County Superintendent And The Intermediate Unit	58
The Intermediate School Unit	61
APPENDIX C - Development of Vocational and Technical Education	65
Role of Higher Education	73
Recent Developments in Kansas	75
APPENDIX D - Administration, Supervision and Funding of Federal Education Programs In Kansas, 1965-1966	79

List of Tables and Charts

	<u>Page</u>
Table	
I - Major Occupational Groups as a Percentage of Total Labor Force, Representative Years	69
II - Technical Employment in Kansas	71
III - Allocation of Total State, Federal and Local Funds to Vocational and Technical Curricula Which Qualify for State and/or Federal Aid in Four Classes of Schools.	76
IV - Area Vocational-Technical School Enrollments For Fall Semester, 1965-66	76
Chart	
I - Kansas Civilian Workforce	70
II - Present Organization of State Department of Public Instruction	87
III - Present Organization of the State Board of Regents	88
IV - Present Relationship of State Educational Agencies	89
V - Recommended Organization of Education Agencies	90

## INTRODUCTION

Major policy decisions for the administration of education in Kansas will be before the 1967 Legislature as the result of adoption by the voters of new Article 6 of the State Constitution.

The new article provides a general framework for basic structural changes in the control of public education administration. To implement provisions of the amendment, certain statutes must be repealed as obsolete or inconsistent with goals of the new article; other statutes must be amended; and some new legislation will be necessary.

These policy questions and recommendations affecting them are the subject of this report by the Education Advisory Committee. This committee recommended the new article in 1965 and was asked to continue its 1966 study by the Legislative Council Committee on Education. The study embraced three major areas:

1. Procedures for nomination and election of members of a new State Board of Education; selection and duties of a commissioner of education; the phasing out of an elected State Superintendent of Public Instruction and county superintendents; timing of the transition from the present to a new system of public education administration encompassing the elementary, secondary, and area vocational-technical schools, Schilling Institute, and the community junior colleges; procedures for a new system of appointment and terms of office for the State Board of Regents; and the general jurisdiction of the State Board of Education and State Board of Regents.
2. A comprehensive review of the state's vocational and technical education programs; their long-range goals; procedures for consolidating administration of vocational and technical programs with academic programs; and the special role of vocational rehabilitation.
3. An analysis of federal financing of educational programs and how they function within the structure of public education in Kansas; whether the programs are supervised by the state or local

districts; whether any changes are necessary to develop better educational services without duplication of public funds.

### The Kansas School System

The Advisory Committee spent 18 months studying educational problems and procedures in the process of drafting the amendment and statutory policy recommendations to implement it. Various authorities in the field and many interested parties were interviewed. The Research Department of the Legislative Council provided invaluable service in compiling pertinent statistical information and other data. Committee members made on-the-spot investigations, especially in the vocational-technical areas.

Committee members were impressed by the remarkable growth and changes in Kansas education during the past 25 years. Today, there are only 349 school districts -- all but 42 unified -- compared to 8,624 operating and non-operating districts in 1940-41. Total operating budgets for more than a half million pupils benefiting from public education at all levels now exceed \$300,000,000 annually. Kansans can be proud of the forward-looking legislators who have provided a wide-range of educational opportunities for today's youth.

It was in this spirit that the Advisory Committee viewed the framework of the constitutional education article adopted in 1861. Patchwork statutory changes have been made to this framework -- some of them of doubtful legality. They have resulted in a complicated and multiheaded administrative structure, inadequate to cope with modern needs. A new constitutional framework was necessary to meet present day requirements and the Committee also regarded it as imperative for the future.

Vast changes are ahead in the "knowledge industry" to cope with the revolutionary advances in science, technology, mobility of population, mechanization of industry and agriculture, new methods of communication -- global satellite systems, for example -- and far reaching changes in educational techniques resulting from increasing federal aid programs.

While examining past procedures and current problems, the Advisory Committee looked ahead. What will Kansas need to maintain its educational progress into the next century? Committee members recognized that the legislature had conferred on them a unique responsibility. It was to prepare recommendations that would influence the trend and future growth of the broad field of public education in a way to benefit the welfare and prosperity of Kansas, thus reaping bountiful dividends from the vast expenditures for education.

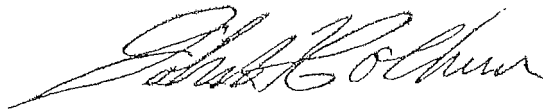


The new article gives constitutional status, for the first time, to an elected State Board of Education of 10 members, an appointed State Board of Regents of nine members, and to local Boards of education. At the same time, the amendment reaffirms the inherent powers of the legislature -- and through its members, the people -- to shape the general course of public education and provide for its financing.

All statutory changes to implement the amendment must be made by July 1, 1969. This will allow ample time for deliberate study of the transitional changes that can be effected, as priorities dictate, at the 1967, 1968 and 1969 Legislative Sessions.

Major conclusions and recommendations of the Advisory Committee for legislative consideration follow this introduction in Chapter I. Supporting data and supplemental recommendations are covered in Chapters II, III and IV. Appendix supplements include a copy of new Article 6, additional material on vocational technical education, proposals regarding establishment of intermediate units to replace county superintendents, and a current catalog of federally financed education programs.

Respectfully Submitted,



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## CHAPTER I

### CONCLUSIONS AND MAJOR POLICY RECOMMENDATIONS

#### Election of Members of the State Board of Education

Elect members of the State Board of Education on a non-partisan ballot. This is the same procedure for electing members of local boards of education. The purpose of a non-partisan election for school board members is to make sure that public education policy is not determined by partisan political considerations.

In order to take advantage of the democratic processes so that the people can express their will, provide two different methods by which candidates are designated:

1. Any citizen who so desires may become a candidate by filing a declaration or petition with the secretary of state.
2. A district commission in each of the ten-member districts would nominate a candidate. The commission would be composed of ten citizens appointed by the governor. Two members would be designated from each of the four senatorial districts and two at large. The governor would solicit nominations for commission appointments from county commissioners and local school boards in each district.

The petition method and the commission nominating method should provide reasonable assurance that a person with adequate qualifications and background for the position of state board of education member becomes a candidate. Outstanding citizens, having the respect and confidence of the people of the district, should be nominated because of their capabilities, knowledge, and interest in education and without regard to political, racial, or religious affiliations. The voters will make the final selection.

Set January 1 prior to the election of a Board member as a deadline for commission nominations. This will provide time for citizens to consider the nomination and decide whether another candidate should be offered by petition. If more than two persons qualify as candidates in any district thirty-five days before the election, authorize a primary election three weeks prior to the Board election to select two candidates. This would assure that a candidate finally elected represents the majority of the people.

### Time of Board Election

Set the date of the election of members of the State Board of Education for the first Tuesday in April of each odd-numbered year, the same time that members of boards of education of unified districts are elected in a non-partisan election. This would give candidates the undivided attention of the voters of the district since they would constitute the only "state" issue in the election.

### Time of First Election

For the first election of members of the State Board of Education, hold a special election on the first Tuesday of April, 1968. The second election would be in April, 1969. Election of the first board in 1968 would give members time to become familiar with their duties, facilitate a smooth transition to the new system, and allow time to employ a commissioner of education. An April, 1968, election would allow one full year for the legislature to make any further clarifying statutory changes needed before the new constitutional provisions become operative July 1, 1969.

### Terms of Members

Establish a six-year term for members to begin on July 1 of the year in which they are elected. Members would be eligible for election to a second six-year term, but not eligible to succeed themselves thereafter, and thus would be limited to a period of service of no more than 12 consecutive years. Overlapping terms of six years would guarantee at all times that a majority of the members would have had some experience serving on the the Board. Six years is the median length of a term nationally for State Board of Education members.

To initiate a system of overlapping terms, establish different lengths of terms for members at the first election. Thereafter all members would be elected for full terms.

Schedule the elections of members of the State Board of Education so that elections will occur in a checkerboard pattern in different sections of the state at the first election, and in other districts throughout the state two and four years later.

### Qualifications and Vacancies

Any lay person could serve on the Board with qualifications left to the judgment of the voters. Local board of education members, employees of any school district, private school, or any educational institution would be ineligible for election to the State Board of Education in order to assure representation of the general public.

Vacancies occurring by reason of resignations, death, or other cause would be filled by elections in the district for the unexpired term to retain the regular rotation of member district elections. However, interim appointments until the next election should be made by the Governor to assure representation of all sections of the state in Board deliberations.

#### Enactment of Implementing Legislation

Enact at the 1967 Session legislation creating commissions to nominate members of the State Board of Education and providing a special election of members in 1968. Postponement of this legislation would work an undue hardship in completing implementation of the amendment by July 1, 1969.

The Constitution requires that the district from which members are elected must consist of "four contiguous senatorial districts". The four senatorial districts comprising each of the ten districts should be both contiguous and compact to maintain the unity of metropolitan and rural areas.

#### Functions and Powers of the State Board of Education

Transfer statutory powers and duties from the State Superintendent of Public Instruction to the State Board of Education. Direct the commissioner of education to execute the Board's policy decisions and supervise administrative functions and procedures.

Eliminate the present Department of Vocational Education and place it as a division under the new State Board so that it will be an integral part of the state's total education program. The State Board should be given all school financial authority now exercised by the State Superintendent and the State Board for Vocational Education.

Authorize the State Board of Education to review and approve operating procedures of state agencies whose functions and activities are related to public schools, and to establish a liaison system to coordinate programs with other educational agencies.

#### Commissioner of Education

The commissioner of education, appointed by the State Board of Education, would serve at its pleasure as executive officer and administrative head of the agency. No qualifications should be specified in the statutes other than that the commissioner should have a broad educational background and administrative experience. It is recommended strongly

that no residence requirements be set either by the legislature or the Board, as such provisions might unduly restrict the choice of a commissioner and even bar a qualified native Kansan from consideration. In line with salary precedents pertaining to presidents and the chancellor of the state institutions of higher education and the state directors of social welfare and institutional management, authorize the Board to set the commissioner's salary.

#### Powers During Transitional Period

Authorize organization of a new State Board of Education on July 1, 1968. At that time, divest the State Superintendent by statute of his present constitutional and statutory powers. Until a permanent commissioner is selected, the Board could appoint for an interim period an acting commissioner--perhaps the State Superintendent--in order to expedite orientation of new Board members in their duties and facilitate a smooth transition of administrative operations.

#### County Superintendent of Public Instruction

The office of county superintendent could be retained until July 1, 1969, but the legislature may phase it out in certain areas, as necessary, or make it a part-time position. Before dispensing with the office it will be necessary for the legislature to reassign certain existing duties and responsibilities, provide for the disposition of valuable official records, and determine how much of county school administration should be centralized and what services could be performed through other school district, county, or state offices.

#### Jurisdiction of the Two State Boards

The State Board of Education and State Board of Regents are concerned with several areas of common interest which require co-operative development and administrative co-ordination. The administrative staffs should effect a workable liaison and the two boards should hold joint meetings periodically to consider policies of mutual concern.

Place vocational-technical schools and the Schilling Institute under the State Board of Education. Schilling should seek appropriate accreditation as an engineering technical institute. Its courses should be at a level to qualify for this accreditation and not be weakened in order to obtain Federal vocational-technical education funds.

Abolish the State Educational Authority, (present governing body of Schilling.) For the present, Schilling's role can be developed best under the State Board of Education

which can co-ordinate all vocational and technical programs and funds, including those of the community junior colleges.

Give supervision of community junior colleges to the State Board of Education since they depend primarily on local financing, and their programs at present are more multi-community in nature than strictly college-oriented.

Both the Schilling Institute and the community junior colleges are in an organizational and transitional stage. Schilling, as a technical institute, and the junior colleges, because of their development of college level programs, eventually may become more closely related to higher education. If and when such a situation develops, the amendment empowers the legislature to transfer to the State Board of Regents supervision of either Schilling and the community junior colleges--or both.

#### School Financing - Area Vocational - Technical Schools

To the extent that area vocational-technical schools rely on local financing, the entire area served should share the cost equitably. Where approved by a local vote, districts should be permitted to exceed present levy limits for vocational-technical schools. However, the Committee recommends that the state assume the major responsibility of financing these schools at a considerably higher level than in the past.

Put tuition charges for area vocational-technical schools and junior colleges on an equitable state-wide basis. Out-district tuition should be charged to the unified district in which the pupil resides instead of to the county commissioners. Since the vocational aid distributed is substantially less than operating costs of vocational courses, the school foundation law should be amended to eliminate the deduction of 50 percent of vocational education aid money from the guarantee.

Establish by statute for each area vocational-technical school and each community junior college an advisory committee of lay people representing the labor, business, manufacturing, and agricultural interests of the area. Require such committees to make annual reports on current and projected occupational needs of the area and recommendations as to courses of study to fill such needs.

An advisory committee on vocational-technical education at the state level would strengthen the program. To co-ordinate the programs of the state, we recommend that a state coordinating committee of eleven members be created by statute representing all educational institutions offering vocational and technical programs, as well as labor, business, and industrial interests of the state. Members of the advisory committee should receive actual expenses for attending meetings.

### Vocational Rehabilitation

The function of vocational rehabilitation, which is financed largely with federal funds, should be organized as a separate division under the State Board of Education.

### Correlation of Federal, State and Local Education Programs

In view of the generally satisfactory method of handling Impacted Area funds, and continuing changes in all federal education programs, we do not recommend any change in present state statutes which would require all federal funds for education to be channelled through the State Department of Public Instruction.

If a federal program to expand the normal scope of educational services is approved by the State Board of Education and the board of education of a local school district, the local district should not be penalized in its allotment of state foundation funds.

Continue the present policy of placing all federal education programs under the administration of the appropriate division of the State Department of Public Instruction.

Because of the number and complexity of the new federal education programs, the technical language and length of the statutes, the confusion created by their effect on old programs, and their far reaching impact in areas only indirectly related to public education as it has existed in the past, we recommend creation of a new position in the State Department of Education to keep Board members and the commissioner--

1. abreast of all new proposals and pending changes in federal education programs and their evaluation on the basis of their need and/or desirability for Kansas;
2. and to provide concise information about all federal education programs to members of the Kansas Legislature, Legislative Council, Research Department, School Administrators, local boards of education, the press and other news media, as well as any other interested citizen or organization.

### Schools for Blind and Deaf

Transfer supervision of the state schools for the blind and the deaf to the State Board of Education. Both of these residential schools are conducted at the elementary-secondary level, and are not considered a part of higher education. Their course of study is closely related to special



education courses in the public schools, and the two state schools should become a part of a Division of Special Educational Services. Teachers of the two state schools, because of their special qualification, should be continued in the unclassified service, with their salaries fixed by the State Board of Education.

#### State Board of Regents

Enact legislation before July 1, 1969, to create a new State Board of Regents appointed by the Governor for six-year terms, subject to confirmation by the Senate. The statute must provide that at least one member be appointed from each congressional district and that no two members may be appointed from the same county. Terms must be staggered so that three members will be appointed each two years. The number of terms should be limited to two consecutive full terms.

As many as possible of the experienced members of the Board should be retained in order to preserve continuity in the program. Legislation could provide, for example, that present members whose terms do not expire during 1967 or 1968 should be continued until their regular expiration date, subject to the provision on county residency. The responsibility of supervising a modern university and college complex is highly technical, and experience gained over a period of years is so valuable that longer terms than the present four years are justified. Terms should be fixed to expire in December shortly before a legislative session begins, and names of new appointees should be submitted to the Senate not later than two-thirds through the session.

Vacancies should be filled by appointments by the governor to fill the unexpired term, subject to senate ratification.

We recommend that five members of the Board be members of the majority political party and four be members of the second largest political party as determined by the number of votes cast for Secretary of State in the election of 1966.

Persons currently serving as officers, faculty members, or employees of any public or private two or four-year college or university should not be eligible for membership on the Board.

#### Agencies and Activities Related to Higher Education

Co-ordination of the activities of the Higher Education Facilities Commission and the Research Foundation of Kansas with the functions of the State Board Regents is important, but there are no problems at this time which would warrant any statutory changes in present procedures or organization. Should the activities of these agencies, or other corporate entities in the field of higher education, require more formal supervision, it could be exercised by the Board of Regents.

CHAPTER II  
STATE ORGANIZATION FOR  
THE ADMINISTRATION OF EDUCATION

Education in Kansas, a state responsibility since 1861, is given stronger constitutional support by the new education Article 6. It creates two representative policy-making boards and a system of local boards. An appointed State Board of Regents will control public higher education and an elected State Board of Education will supervise all other public education.

The new State Board of Education will assume by July 1, 1969, all powers of the State Superintendent of Instruction, the present advisory and appointed State Board of Education, and the policy-making State Board for Vocational Education.

Importance of Board Membership

The functions conferred upon the State Board of Education are of such magnitude and importance that people of outstanding ability and experience will be needed as members. Education is the key to industrial, business, agri-business, technical and professional development on which the economic progress of the state depends. Finally, an educated public is essential to the maintenance of a representative form of government. All of these are important factors entirely apart from considerations of personal achievement, cultural attainment, job opportunities, and social advancement of individual citizens.

The combination of these factors will add prestige to membership on the new State Board of Education. Members should be selected carefully from among the more competent and responsible residents of the districts.

Among the qualities which would make good members are an inquiring mind, a cooperative spirit, experience in the democratic processes of arriving at decisions after study and discussion of various points of view, and an ability to assume a share of the responsibility necessary to achieve desirable results. These attributes are particularly desirable since the board will exercise some quasi-legislative and quasi-judicial powers in adopting rules and regulations and reviewing disagreements or conflicts between local educational agencies or interests.

Members of the board should be unpaid, but they should be compensated adequately for the expenses incurred in performing their duties.

### Non-Partisan Versus Partisan Office

One of the key decisions to be made by the legislature is whether members of the State Board of Education should be elected on a partisan or non-partisan basis. Under the present law, members of the State Board are appointed on a partisan basis, in that (a) they are selected from the two political parties casting the highest number of votes, and (b) no more than four of the seven members may be members of the same political party. Although selected in part as members of a party, it was testified during the Committee's study that the present Board's decisions are made in a non-partisan manner.

It has long been the practice in Kansas to elect members of local school boards on a non-partisan ballot. This principle is also followed in five of the ten states in which the voters elect the members of the state board: Nebraska, Nevada, Ohio, Texas, and Utah.<sup>1</sup>

In a number of other states, candidates are selected on a non-partisan basis. In Washington, members of local school district boards meeting in seven congressional districts elect on a non-partisan basis the members of the State Board of Education. In Iowa, delegates chosen by local boards of education meeting in special districts choose two persons from each of eight districts, one of whom from each district is appointed to the board by the governor. The governor also directly appoints a ninth member who is subject to senate confirmation. In North Dakota, appointments are made from lists submitted by committees of three persons in each judicial district. The committees are composed of presidents of associations of school boards, school administrators, and state attorneys. In Idaho, the law provides that appointments shall be made without reference to political affiliations.

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<sup>1</sup> Members of State Boards of Education are elected by the voters in ten states, by local school board members in Washington, and by legislators in New York and South Carolina. Board members are appointed in 31 states by the governor, by the Governor and by the Advisory Council in New Hampshire, and by the State Superintendent with the approval of the governor in Wyoming. Appointments by the governor are made subject to the consent of the Senate in 16 states, the consent of the General Assembly in two states, the Advisory Council in two states, and the Executive Council in one state (Maine). The laws of seven states having appointive boards provide for bi-partisan boards of education, and some provide for appointment without regard to party affiliation.

In four states with elective boards (Colorado, Hawaii, Louisiana, and New Mexico), board members are nominated in primary elections, and their party affiliation is shown on the ballot at the general election. In Michigan, board members are nominated at political party conventions and elected at large rather than by districts.

Arguments for Partisan Election. An important consideration advanced in favor of partisan elections is that membership on a state board of education is an important office which should be filled in the same way as other offices. Political parties are the vehicles through which officials for most public positions are nominated and elected. Parties constitute an accepted method of organizing support for candidates and providing a forum for the discussion of public issues. Party organizations, moreover, are composed of people interested in the public well-being and, therefore, can be relied upon to do a creditable job in choosing and helping to elect candidates. Partisan elections will attract greater voter participation.

Arguments Against Partisan Elections. In contrast, some fear that partisan selection could result in candidates for the State Board of Education being shunted to the background. Candidates would receive relatively little consideration, and final selection consequently would be made on a routine basis at the last moment without adequate consideration of the candidate's qualifications and interests in educational issues.

Furthermore, it is claimed that non-partisan elections minimize party affiliation and loyalties and make it easier to view candidates as "individuals" and examine specific educational issues. In short, school matters can be isolated and not be overshadowed during a major campaign by the effect of swings in public opinion growing out of national and state issues and dealt with on their own intrinsic merits.

After considering the advantages and disadvantages of the two approaches, the Committee recommends a non-partisan election as most desirable for Kansas.

#### Nomination of Candidates in a Non-Partisan Election

Various procedures have been adopted by states to put well-informed and qualified board of education candidates on the ballot. For example, in Utah, regional conventions are called by the Secretary of State every two years in the three member districts in which a member's term will expire. A temporary chairman of each convention is appointed. Each regional convention nominates two candidates for each board position;

consideration is to be given only to the merits and fitness of the person; and the law directs the nominations to be made irrespective of occupation, party affiliation, religion, or sex. Conventions are called in three other districts two years later, and in three more districts four years later.

In addition, any qualified Utah elector residing in the district may file a nominating petition signed by at least 100 qualified and registered electors in the district. At the primary election, nominees are chosen equal to two times the number of members whose term expires. The two candidates receiving the highest number of votes are then declared to be the nominees in the November general election.<sup>1</sup>

Other states have devised their own individual systems. In Kansas, there are precedents for nominating (a) from the "floor", (annual meetings of school districts), (b) at caucuses and conventions (certain city elections), and (c) by petition or payment of a filing fee.

The Education Advisory Committee recommends that nominations be made by district commissions.

These commissions should consist of ten members appointed by the governor, two from each of the four senatorial districts comprising the member district and two members at large. Each commission of ten citizens should nominate one person to be a candidate for election to the State Board of Education from that member district.

The committee recommends that before appointing commission members the governor invite nominations from the county commissioners and unified school district board members,

Commission nominations should be made by the first of January preceding the election of a Board member. This would allow time for a primary in case two or more candidates are nominated by petition.

The legislature should provide for an alternative method by which one or more other persons could become candidates for positions on the State Board by filing a petition or paying a filing fee. This would assure voters that democratic processes were being utilized to the fullest. If both methods were used and there were only two nominations, the two names would appear on the ballot without any party designation. This system should guarantee that at least one of the candidates appearing on the ballot would have been selected for his or her qualifications and experience and interest in education. The final choice would be made by the voters.

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<sup>1</sup> Utah Code Annotated 1953, Vol. 5, Pocket Part, 1965, Sec. 53-2-3

## Primary Elections

If more than two persons qualify as candidates for a board member position in any district 35 days before the regular election date, the Committee recommends that a primary election be held at least three weeks prior to the date set for the school board election.

The two candidates receiving the highest number of votes at the primary would have their names placed on the ballot. This procedure would assure a majority vote for the successful candidate and avoid the undesirable situation where the elected person might have received only 25 or 30 percent of all votes cast.

## Election Procedure

In all elections of board members, the regular election machinery for local elections could be used with little or no additional expense. The only exception would be the first election in April of 1968. Some special legislation might be necessary to provide for a primary election and for payment of the expense in holding it.

## Time of the Election of Board Members

The Committee recommends that the members be elected at the local April elections (odd numbered years). Two major reasons support this position: (1) All school and city officers elected at this time are elected on a non-partisan basis. (2) Candidates for the board would have the undivided attention of the electors in their district since they would represent the only "state" issue in the election.

The Committee recognizes that voter participation at local elections is smaller than at the November general election. It does not believe, though, that this is a serious disadvantage, and it is quite possible that interest in electing a state school board member would increase interest in voting for other local offices.

## Time of the First Election of Board Members

The date for the first election of the State Board of Education depends on a number of related decisions concerning the term of office and when it would be best to transfer powers to the new board.

The Committee favors a special election in April, 1968, to enable members to assume their offices in July of that year and start the important procedure of selecting a commissioner of education. Since it may require several months to find a highly qualified person, and it may be necessary to wait an additional several months until he has completed other commitments before assuming the commissioner's position, the earliest date for the commissioner to assume office is probably early 1969.

Another argument in favor of a special 1968 election is that the members would have more time to become familiar with their duties, and this in turn would make for a smoother transition from the present to the new system by July 1, 1969.

#### Qualifications of Members

It is generally considered inadvisable to prescribe detailed statutory qualifications for elective officials. The Committee sees no reason to depart from this general principle and recommends (1) that the only qualifications be residency in the district represented and (2), that current board of education members, employees or officers of any public or private school system or state educational institution be ineligible to be elected. In all other matters on qualifications, judgment should be left to the voters.

#### Terms of Office

The length of the term of office is a matter for legislative determination since no restrictions are stated in the new Article 6. Although Article 15, Section 2 of the Constitution limits the term of offices created by the legislature to not more than four years, competent legal authorities at this time believe that the limitation does not apply to the new State Board of Education, or the State Board of Regents, since they are created by the Constitution itself.

Regular Terms. The Committee recommends a term of six years. Terms of Board members in other states range from three to fourteen years, with the median term being six years; sixteen states have six-year overlapping terms; nine states have four-year overlapping terms; and fourteen states have terms longer than six years. Of the states adjacent to Kansas, Colorado, Iowa, Nebraska, and Oklahoma have six-year terms, while Missouri provides for an eight-year term.

Experienced observers generally believe that the term of office of members of the State Board of Education should be long enough to permit several years of informed public service. Members of the present State Board of Education and the State Board of Regents, for example, testified in favor of a longer term of office than has been the practice in Kansas, on the ground that a member does not become well-enough informed, or gain sufficient experience, to feel sure of his decisions until near the end of his first three years in office. This would suggest a minimum term of at least four years and, based on the experience of other states, a maximum term of seven or eight years. The Committee recognizes that a long term may discourage many able persons from seeking or accepting the office and may result in the entrenchment of special interests, but conversely too short a term results in a constant turnover in membership, and lack of stability and continuity of policy. The Committee's recommended six-year term should avoid the dangers of both these extremes.

Eligibility for Re-election. No constitutional restrictions have been placed on the number of terms for which members may be elected. The legislature may adopt whatever policy appears to be desirable and to change it as circumstances demand. As guidance to the legislature, the Committee recommends that no person be permitted to serve more than two full successive terms.

Members of both the present State Board of Education and Board of Regents indicated that 12 years is a relatively long time to serve. Service beyond this point may result indirectly in the stagnation and entrenchment of special interests that the Committee believes should be avoided.

Terms of Members First Elected. For the first Board, unequal terms will be necessary in order to set up a schedule of overlapping terms as required by the Constitution. In some districts, therefore, members will be elected initially for only a one-year term while in others the term will be three, or five years. As the first terms of less than six years expire, members will then be elected for a full term.

As a general guide, the legislature should provide for as many members as possible to serve the longer initial terms so that more members with experience will remain on the Board. For example, if the first election is held in 1968, the first terms of three members would probably have to run for only one year, a second group of three would be elected for three years (until 1971), and a third group of four would be elected for five years (1973).

Moreover, the legislature should provide for the members being elected in any one year to be from districts in different sectors of the state (e.g., one district in eastern Kansas, one in central Kansas, and one in western Kansas would hold elections at one time). In this way the composition of the board would be influenced more by a general cross-section of public opinion.

#### Filling Vacancies

Vacancies in board membership, as a result of resignations or death or other reasons, should be filled in two ways: For short periods until the next April election, the governor should make an interim appointment. At the time of the next April election, a successor should then be elected to complete the interim term so that the regular rotation of district elections can be maintained.

#### Factors In Establishing Member Districts

Constitutionally, the territory from which each member of the State Board of Education will be elected must consist of "four contiguous senatorial districts." The legislature must designate the four senatorial districts which will comprise each of the 10 board member districts.



The principal problem for legislative decision is arranging combinations which will result in districts with homogeneous populations, and similar economic, social, cultural, and educational interests. Although there is no constitutional requirement for compact districts, compactness is preferred and strongly recommended by the Committee. Adjacent city senatorial districts, for example, should be kept together as a voting unit insofar as possible. This will minimize the domination of rural and small town areas by populous urban and metropolitan regions, or vice versa, and will provide representation on the Board to certain distinctly rural and urban areas.

### Powers and Jurisdiction of the State Board of Education

The functions of the State Board of Education are described in Section 2(a) of the Constitutional amendment as follows: "The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all of the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law."

Scope of Authority and Activities. Within this broad authority, the legislature must prescribe the specific powers and duties of the Board.

As a guide, the Committee recommends that all powers should be conferred on the Board with the Commissioner of Education directed to execute the Board's policy decisions and supervise the administrative processes.

In general, the powers now exercised by the State Superintendent of Public Instruction and the present State Board of Education should be assigned to the new State Board. They would include:

1. The State Board should be given broad authority to organize and prescribe the duties of its officers and employees.
2. The Board should have the authority to adopt rules and regulations relating to schools, standards for courses of study, curriculum, school libraries, textbooks and educational materials, the certification of teachers and administrators, and the accreditation of schools and educational institutions directly under its supervision and certification of institutions of higher education which offer curricula or degrees for school teacher education. It should also be given authority to create advisory groups.
3. Other duties that the Board would perform include publication of the school laws, preparation and furnishing of forms and blanks for uniform operation of the school system, preparation of an annual report, auditing and inspecting local schools, cooperation with the federal government in making surveys of school facilities, and receipt and distribution of federal

funds. Also it should administer all state programs for financial aid to local school districts, junior colleges, and municipal universities (e.g., the local school foundation program, special education funds, the driver training fund, the state annual school fund, and the state scholarship fund).

The school unification laws prescribe various duties to be performed by the State Superintendent of Public Instruction which now would become a responsibility of the new State Board of Education. These include the review and approval of plans for unification, issuance of orders organizing unified districts and disorganizing component districts, and transferring territory from one unified district to another.

Integration of Vocational Education. The present State Board of Education also serves as the Board of Vocational Education and is the governing body of the separate Department of Vocational Education. This Department should be placed directly under the new State Board as a separate division. Such a move will enhance the standing of vocational programs by constituting them as an important and essential part of the general educational program of Kansas, and would conform to the accepted practice in 47 of the states.

Specific recommendations on vocational educational programs are outlined in Chapter III.

Educationally Related Activities. There are several educationally related activities and functions which are performed or administered by other state agencies or by private groups for which Article 6 of the Constitution envisions the State Board of Education would have some responsibility or direct interest. Examples are the State School Retirement Board which administers the school employees retirement system, the State Library which is developing library systems and administering federal funds for community libraries, the school bus inspection and safety programs of the State Highway Commission and the State Highway Patrol, and the school health, sanitation, and fire safety programs of other state agencies.

The Committee recommends that no change be made in the administration of any of these activities at this time. The new State Board and commissioner, however, should develop liaison with these agencies and coordinate programs. At a later date administrative changes may be desirable.

Special mention must be made of extra-curricular student activities sponsored and supervised by the Kansas State High School Activities Association. Its purpose is to establish and enforce reasonable rules governing the various forms of extra-curricular and interscholastic competition which have become an accepted part of a comprehensive educational program.

Included are not only the standard sports but such other activities as debate, music and drama festivals, and service clubs.

Inasmuch as these activities place demands on students, they have a direct effect on programs offered during the regular class hours. Consequently, these activities should come within the supervisory jurisdiction of the State Board of Education. The Committee does not believe, however, that any change is necessary in the present statutory authority of the Association, but its general operations and policies should be reviewed and approved by the State Board of Education on the same basis as with other agencies.

Financing Education. The administration of general school finance at the state level, which heretofore has been a responsibility of the State Superintendent of Public Instruction, will now become the responsibility of the State Board of Education. These financial programs are prescribed in the statutes in considerable detail, and administration has been largely of a ministerial nature. The one major exception concerns state and federal vocational education funds, which have been apportioned at the discretion of the State Board for Vocational Education acting through the state Director of Vocational Education. With the department of vocational education under it, as recommended above, the State Board of Education should assume all the financial authority exercised previously by the Board for Vocational Education.

While not a matter of major import for this report, numerous changes in the statutes will be necessary to harmonize the provisions of the present laws relating to state school financial aid and assistance with the spirit and terms of the new constitutional provisions.

#### The Commissioner of Education

Nature and Character of the Office. Successful school administration at the state level will depend in some areas as much upon the commissioner of education as upon the State Board of Education. As executive officer of the Board, administrative head of the state department of education, and chief professional person in the agency, the commissioner should be a person who can exercise leadership on a state-wide basis and share this important responsibility and privilege with the members of the State Board of Education. He should exercise executive and ministerial functions subject to the rules, regulations, and policy determinations of the Board; and, in particular, he should have the responsibility for day-to-day management of employees and programs. The Board should not become involved in administration. If the commissioner's performance is not satisfactory to the Board, he should be removed and another commissioner appointed.

Statutory Qualifications for Appointment. In providing for the selection of a person to fill the position just described, it seems unnecessary, and perhaps not feasible, to specify elaborate qualifications in the statutes since persons with several types of background might be successful commissioners. It is, nevertheless, appropriate for the legislature to provide that the commissioner should have a broad educational background and administrative experience. Other qualifications should be left to the good judgment of the Board.

The Committee recommends strongly that no residence requirement be set by either the legislature or the Board. There is tremendous competition for professional talent by federal agencies, private industry, and other states as well. Consequently, any restriction on the choice of a commissioner based on residence could actually be a disservice to the state, and might even bar a qualified native Kansan who happened to live elsewhere.

Equally important, the Committee recommends that the salary be set high enough so that the Board will truly have an opportunity to recruit from a wide variety of candidates. The present salary of the State Superintendent of Public Instruction is \$13,500 and ranks 40th among the states; it is less than the salary paid to a number of superintendents of unified districts.

In 1960, the Comprehensive Education Survey stated:<sup>1</sup>

"...The low salary of the state superintendent... serves to restrict the salaries of professional personnel in both the State Department of Public Instruction and the Department of Vocational Education...These conditions made it practically impossible to employ the kind of experienced and qualified educators who are needed to provide leadership on a state level. Most supervisory personnel in city school systems receive salaries larger than that of professional staff members at the state level..." "These limitations create severe staffing problems. Some states have found it advantageous to remove professional positions from civil service jurisdiction, permitting the state superintendent to select the professional personnel and to set their salaries with the approval of the State Board of Education within the appropriations available to the department. Kansas...follows essentially the same practice for the professional administrators and faculty members of the state universities and colleges under control of the State Board of Regents."

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<sup>1</sup> The Education Amendment to the Kansas Constitution, Pub. No. 256, p. 28, Kansas Legislative Council, December 1965, quoting from the Comprehensive Educational Survey of Kansas, 1960, Volume II, p. 168.

Since 1960, the salary competition for qualified people has intensified.

As legislative guidance, therefore, the Committee recommends that (1) the Board be authorized to set the salary of the commissioner in line with the precedents of setting the salary of the director of the division of institutional management, state director of social welfare, and the presidents and chancellor of the state schools, and (2) that the salaries for these positions be the guidelines used by the new Board. There is no evidence that this broad authority has been abused in the illustrations noted above, and in any event, the legislature has adequate control over any improper decision through the annual budget appropriations.

Term of Office. The Committee recommends that the commissioner serve at the pleasure of the Board. Practices vary among the states on the term of office of a commissioner, and persons disagree on theoretical grounds on the ideal requirement. For example, 27 states set specific terms ranging from one to six years, and the chief argument in support of this approach is that it provides some security and a minimum time to develop a program and slows down any hasty action in dismissing. In contrast, 17 states provide that the chief state school officer shall serve at the pleasure of the board. In this instance, the emphasis is on (a) direct responsiveness to an elected board and (b) belief that (whatever the cause) a board and commissioner that disagree should not be forced to continue to work together. The Committee believes that the latter approach is sounder and conforms more to recent trends in professional administration.

#### Allocation of Powers During Transitional Period

The constitutional amendment abolishes the office of State Superintendent of Public Instruction. However, in order to provide a smooth transition to the new organization so that essential functions and services will not be interrupted prior to the enactment of legislation and organization of new agencies, the existing office may be continued until July 1, 1969. This interim period should allow adequate time for the new agencies to be come operative.

Commencement of Duties by New Board. If most of the necessary legislation, as recommended by the Committee, can be enacted by the legislature in 1967, the process of nominating, electing members, and organizing the State Board of Education could be completed within a period of 12 to 15 months. The earliest date, therefore, and the one recommended by the Committee, for a formal organization of the Board is July 1, 1968. At this time, the State Superintendent would be divested of his present constitutional and statutory powers.<sup>1</sup>

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1 His salary would continue unchanged until his term of office ended in January, 1969.

Appointment of Acting Commissioner. To take advantage of the experience and availability of the State Superintendent, and to provide for the necessary continuity of administration, the new Board could appoint him as an acting commissioner of education until selection of a permanent commissioner. Such a move might also expedite the orientation of new Board members to their duties.

If such action were taken, the acting commissioner would have to resign as State Superintendent, and he would serve at the pleasure of the Board until such time as he was terminated or a permanent appointment was made.

It is assumed that the director for vocational education will be retained if he so desires to help in the reorganization of the transition period. However, since his role in the new system can take several different forms, the Committee believes that it is a matter for the new Board and commissioner to decide.

It is also assumed that all subordinate personnel will be retained and will be assured adequate job protection in the transition period.

#### County Superintendent of Public Instruction

The office of county superintendent of public instruction has long been a major coordinating-supervisory agency for local public schools in rural America. In terms of Kansas experience specifically, the office was particularly useful in assisting teachers of the small schools, and in advising rural school boards and their officers regarding school programs and school laws and their legal responsibilities. However, with the reduction in the number of operating school districts in the last 40 years, shifts in population, the construction of better highway, and increased educational requirements for teaching, there has been a corresponding change in the type of services provided by these county offices. The culmination of this change was the recent school unification which virtually eliminated the remaining educational services of the county superintendent.

For these reasons, the local county superintendent's position was not continued in the new Article 6. It will, therefore, cease to exist constitutionally on July 1, 1969, and its duties and powers could be curtailed or removed earlier by the legislative action.

However, for several reasons noted below, the Committee recommends that the office of county superintendent be phased out as local conditions permit prior to July 1, 1969.

First, it is possible that additional statutory provisions for consolidation of unified districts may be enacted in the 1967 session. The services of some county superintendents would be useful in processing these consolidations and in making further adjustments in the boundaries of present districts.

Second, before dispensing with the office it will be necessary to reallocate certain existing duties and responsibilities and provide for the disposition of some major official records for which the office is the official depository.<sup>1</sup> Third, it would be necessary to decide how much of the present educational administration could or should be centralized. It is quite possible that a regional or "intermediate" school office may be necessary. If a vacancy should occur in the superintendent's office in any county, the county commissioners should be authorized to appoint a qualified person to perform remaining duties and to transfer records as the legislature may prescribe. The same qualifications and salary for the office should be retained.

### Intermediate Units

Some regional or area offices may be desirable to provide information and assist local patrons and school officers. The Committee believes that the process of school unification will continue during the next few years, and districts with more adequate resources will be organized. Some of the suggested regional service functions may not be imperative at this time, and some of the services of county superintendents can be assigned to other officers and agencies. Further study is needed of the functions and services which might be performed by regional or area offices. For this reason, it is recommended that no action be taken on the establishment of intermediate units until the new State Board and commissioner so recommend on the basis of administrative experience.

### Area Vocational-Technical Schools

The twelve area vocational-technical schools are now under the supervision of the State Board for Vocational Education. Since (1) a majority of the students enrolled in them are high school students who spend only part of their time in the area schools and the remainder in the high schools, and (2) their program does not envision progress toward an associate or baccalaureate degree, the Committee recommends that the area vocational schools be placed under the State Board of Education.

### Schilling Technical Institute

The Committee recommends that the Schilling Technical Institute be placed under the State Board of Education and its present independent board abolished.

There are several factors involved in determining where the Institute should be located in the educational structure of the state: It offers courses which are similar in some

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<sup>1</sup> For example, legal definitions of certain district boundaries and teacher and pupil records.

respects to those at the junior colleges, but at the same time part of its responsibility is to offer instruction in specialized technical subjects which cannot be provided at every junior college because of the high cost of equipment and limited enrollments. This specialized instruction is an essential supplement to the state's total vocational education program. Moreover, because most industries now require that technical training be supplemented with general instruction, some of the Institute's courses will be closely related to the standard introductory subjects offered at both junior and four-year colleges.

The Committee also recognizes that the Institute is unique in that it is a state-wide facility and is financed from state and federal funds. Area vocational schools and junior colleges, in contrast, must rely in part on local revenue from the ad valorem tax. The location of the Institute has also been of some concern since (1) some of the physical facilities donated by the federal government appear to need early replacement, and (2) contrary to the recommendations in Kansas Plans for the Next Generation (Eurich Report, 1962), it is not located at one of the state's two major industrial areas, Kansas City or Wichita.

As a result of conferences with representatives of both the junior colleges and the Institute, the Committee believes that the role of the Institute can be clarified and developed best if it is supervised by the State Board of Education for at least the next few years. (For further explanation see Chapter III).

### The Community Junior Colleges

The Committee devoted a considerable amount of time and study to the role, functions, and supervision of junior colleges. Historically, they developed as extensions of the high schools to provide two years of college parallel work for students who otherwise were unable to attend four-year institutions.

In recent years, there has been a major national movement to transform junior colleges into comprehensive community colleges offering two years of general courses, vocational and technical courses, training for adults and school "drop-outs," and retraining of workers for re-employment in industry. Kansas junior colleges have been a part of this trend; and with the organization of community junior colleges on a county-wide basis under the community junior college act of 1965, it is believed that their financial resources will improve so that they can broaden their curriculum even further. However, the exact form of junior college development cannot be predicted at this time. Among other things, their responsibilities will depend in part on how vocational education is developed at the high school level, whether a state-wide system of area vocational schools is developed, and what facilities will be available at public and private institutions of higher learning.



Since the junior colleges are in this transitional period and their program is closely related to other programs under the State Board of Education, the Committee recommends that the Board continue to supervise the development of the state-wide junior college system. The Junior College Advisory Committee to the Legislative Council (1963-1964) recommended this administrative arrangement, and the legislature incorporated it into the community junior college act of 1965. Equally important, since the State Board of Education will administer federal vocational education money, it should supervise the vocational activities of the junior colleges if they want to continue to receive funds from this source. The Advisory Council of Community Junior Colleges should be retained.

Future developments may change the character of both the junior colleges and Schilling Institute, and, therefore, make it more desirable to place them as an integral part of the state's program of higher education. It is possible, for example, that community colleges may be financed more from state sources, their course offerings integrated more with the four-year institutions, and their role as a multi-purpose community organization narrowed. If these changes occur, the new Article 6 is worded in such a way that the legislature can place them by statute under the State Board of Regents.

#### State Schools for the Blind and the Deaf.

The School for the Deaf and the School for the Blind should be placed under the supervision of the State Board of Education. The educational program of these two state residential schools is conducted at the elementary-secondary school level, and is not considered a part of higher education. Also, it is recognized generally by professional personnel and the Board of Regents that the course of study at both institutions is closely related to the special education courses in the public schools. In general, the policy of the state has been to encourage development of special instruction for handicapped persons in the local school districts so the children can maintain, among other things, as many family and community ties as possible. Such ties as well as contact with other children have proved to be very useful in a handicapped child's educational development and general cultural adjustment.

In many cases, however, a specialized type of boarding school is required for all or a part of a child's education. This inter-relationship of institutional and local school services was recognized specifically by the 1965 Legislature when it provided for a special diagnostic team to evaluate all children with visual and hearing handicaps. As explained in the December 1964 Legislative Council report, this diagnosis and evaluation will help both parents and local schools to arrange the best educational program for a child and will facilitate the movement back and forth of children from a local to an

institutional setting as the circumstances dictate.<sup>1</sup> For these reasons, the Committee believes strongly that coordination of the educational programs of the two state schools with those of the public schools can be achieved most easily under supervision of a single state agency. The Board of Regents informed the Committee that it is willing to continue to administer the schools, but will not object to their transfer to the State Board of Education.

Salaries. When the transfer is made, the teachers should be continued in the unclassified service, with their salary being set by the State Board of Education. This action would continue present policy in that they are in the unclassified, service and the Board of Regents set their salaries.<sup>2</sup> If the teachers were placed in the classified service along with other employees of the Department of Public Instruction, and no changes were made in the present civil service salaries, a number of them would receive a lower salary. This would be true particularly for those teachers who do not have a special education certificate. For example, according to information presented to the Committee, teachers may be certified to teach the blind but not have the standard "exceptional children" certificate. Since there is a shortage of specially-trained teachers for both the sight and hearing handicapped, it is important that no momentum be lost in the present program at both institutions as a result of the reorganization recommended by the Committee.

#### Powers and Membership of State Board of Regents

The statutory functions and duties of the present State Board of Regents should remain essentially the same under the new Article 6 as in the past. The major advantage of the constitutional amendment was to strengthen the legal position of the Board and assure it greater permanency. It would continue to control and supervise all institutions of higher education and only minor statutory changes will be necessary for complete

1. Report and Recommendations of the Kansas Legislative Council, 16th Biennial Report, December 1964, p. 16-20.
2. There are 21 authorized full time teaching positions at the School for the Blind and 39 at the School for the Deaf for fiscal year 1966-1967. Current salaries of these teachers range from \$4,400 to \$7,883 annually. The regular civil service (classified) teaching positions carry a salary of \$4,740 to \$6,684 for elementary and secondary teachers and \$5,496 to \$7,764 for those with a special education certificate. Elementary and secondary teachers at the various state institutions are in the classified service. Teachers in the laboratory schools at Pittsburg State College and Emporia State Teachers College are in the unclassified service.

implementation. For example, the statute should enumerate the Board powers in more detail than now. "Institutions" should be defined as those public institutions granting a baccalaureate or post-baccalaureate degree, and for clarity the present state schools will probably have to be named individually. The new amendment in no way changes the responsibility and obligation of the legislature to provide necessary financing for higher education. The amendment does permit the legislature to authorize the Board of Regents to establish tuition, fees and charges at institutions under its jurisdiction.

New Board of Regents. Sometime before July 1, 1969, the legislature must create a new board of regents. In so doing, the Committee recommends that the following provisions be included:

1. The statute should restate the constitutional provision that no more than one member may be appointed from the same county and that a member must be appointed from each of the congressional districts.
2. Experienced members of the Board should be retained whenever possible in order to preserve continuity in the higher education program. Legislation, for example, could provide that members previously appointed and whose terms do not expire during 1967 or 1968 would continue to serve until the regular expiration date, same subject to the provision or county residency. (Some adjustment might be necessary to assure a proper rotation as noted below.) At the present time, the terms of three members expire in 1966, one in 1967, two in 1968, and three each in 1969 and 1970.
3. The term of office should be six years for the reasons stated in the Committee's recommendation for similar terms for members of the State Board of Education. While the Board of Regents does not have as varied tasks as the State Board of Education, its duties are highly technical in supervising a modern university and college complex. The longer term of six years, compared to the present four years, therefore, is essential to efficient administrative continuity.
4. The terms should be staggered so that three members are appointed each time (e.g. three members every two years). In this way, a governor would not be able to appoint a majority of the board in his first term. Under the present rotation system the terms of six members expire during two-year periods.

5. The number of terms should be limited for reasons similar to those in the recommendation on the State Board of Education to two consecutive full terms.
6. The terms should expire on some date shortly before a legislative session begins, and the new appointments should be forwarded to the Senate not later than about two-thirds through the legislative session. In this way, interim appointments without senate confirmation will be kept to a minimum.

Confirmation of Appointments. Both the present statute and the constitutional amendment provided for confirmation of appointments to the State Board of Regents, a procedure that in the past has been more or less perfunctory. The Committee agrees with proposals of senate leaders that the confirmation process include a thorough examination of the qualifications, capabilities, and interests of the appointees. An open hearing should be one of the steps in the examination. Part of this recommendation has already been implemented in the adoption of an amended Senate Rule 57 (Nominations or Appointments by the Governor) in the 1966 Budget Session. As revised, the rule provides that unless otherwise ordered by the Senate, nominations or appointments by the governor requiring senate confirmation shall be referred to appropriate committees by the President Pro Tem. Reports thereon must be submitted to the senate within ten days, unless further time is granted by a majority vote of senators present.

Qualifications for Appointment. The high qualifications for appointment of members of the State Board of Regents are so well understood by public officials that it would not be necessary or desirable to write into the law a long list of qualifications. Persons selected for appointment have been outstanding citizens of the state who have been interested in the state's universities and colleges, and who have been willing to devote their time and efforts in this form of public service.

Therefore, only two qualifications are recommended for statutory enactment. One is continuation of the present provision that five members of the board should be members of the political party for which the highest number of votes were cast for secretary of state in 1966, and four shall be members of the party for whom the second highest number of votes were cast.

Members of the Board from both parties have stated that the Board has operated in a nonpartisan manner, and that any differences which have occurred have not been on a partisan political basis. With a background of this experience there should be little objection to these requirements, and there are grounds for the provision in that a membership of highly respected persons representing both parties creates public confidence in the work of the Board.

The second recommendation is that persons currently employed by a public or private two or four-year college or university should be ineligible for appointment. There would be little objection to the appointment of ex-college administrators. However, it is believed there would be an adverse reaction to the appointment of active staff or faculty members of any other institution of higher education. For this reason, it would be advisable to prohibit such appointments by law.

#### Educationally Related Agencies and Activities

There are several "educationally related agencies" which under the new Article 6 are under the supervision of the Board of Regents. The Committee believes that coordination of these activities is important, but that there are no problems at this time which warrant a change in present administrative procedures or organization. In nearly every instance, a member of the Board of Regents or administrative officials of the state schools serve on the governing board of the agencies or corporations.

The first report of the Education Advisory Committee (1965), and the subsequent report of the Legislative Council, described these activities, but for the convenience of the reader they are identified in summary form in the following paragraphs. One of the agencies is the Higher Education Facilities Commission which is an independent agency operating primarily but not exclusively in the field of higher education. Its function is to provide for the distribution of federal funds for building purposes to public and private institutions of higher learning in the state. Its operations therefore in part fall within the sphere of jurisdiction of the State Board of Regents. Formal means of assuring coordination of activities between the two agencies may not be necessary in view of informal connections currently employed to provide a free interchange of information and planning programs.

Another state agency whose functions are related to higher education is the Research Foundation of Kansas. It was organized primarily to foster university research at the graduate school level because research at this level is developing rapidly and is very complex. The federal government as well as the various private foundations play a major role in furthering scientific research. Academic faculties are in demand to carry on such services for both industry and government. The activities of the Research Foundation thus fall within the general jurisdiction of the State Board of Regents.

Associated with the larger universities are a number of associations, private corporate entities, and research organizations which perform various types of activities related to the operation of these institutions. Some of these perform essentially public functions, although technically they are not subject to public control. Under the present constitutional provision, certain of their activities would fall within the

jurisdiction of the State Board of Regents, which is vested with control over educational interests involving higher education. The legislature is empowered to regulate the operations and activities of such associations and corporate entities whenever sufficient need develops. Should further study of this field of operations indicate that such activities should be conducted on a more regular and formal basis, the agencies could be made subject to the jurisdiction of the Board of Regents, or their organization and activities could be prescribed by statute.

Coordination-State Board of Regents and  
State Board of Education

Constitutionally, the jurisdiction of the State Board of Education and the State Board of Regents is defined clearly. State institutions of higher education are to be under the control of the State Board of Regents. The public school system from the kindergarten through the high school, and all institutions, educational interests and functions except those delegated by law to the State Board of Regents are under the jurisdiction of the State Board of Education. Both boards, also, shall perform such other duties as provided by law.

The two boards, however, have several areas of common interest which will require cooperative development and administrative coordination. These include the education of teachers for the public schools; courses of study in the high schools, junior colleges, and technical institutes; requirements for admission to colleges and universities of high school and junior college graduates; and state financing of all levels of education.

The two boards can do much to foster coordination by encouraging their administrative staffs to work together. The Committee recommends in addition that the two boards periodically hold joint meetings to consider policies of direct concern to both. Should efforts at voluntary coordination not be fruitful, legislation should be adopted to provide a more formal organization with primary responsibility for periodic meetings to coordinate programs and policies.

## CHAPTER III

### VOCATIONAL EDUCATION

Legislative frustration over problems of vocational education was one of the key factors in the decision to consider the revision of the Kansas Constitution, and an opportunity is now afforded to solve such problems by legislative action. While vocational courses have been taught for many years in Kansas, the program as a whole has not achieved the place in our educational system that it warrants.

The purpose of vocational education is to prepare students 14 years old or older for useful employment. Another objective is to train adult workers to improve their skills, and to increase the technical knowledge of workers in occupations of less than a professional level.

State and federal grants-in-aid are provided to reimburse public schools for part of the cost of conducting training courses. High schools, area vocational-technical schools, community junior colleges, technical institutes, and colleges and universities may qualify for such funds on the basis of federal and state laws and the policies of the State Board for Vocational Education. The present State Board serves as the governing body of an administrative agency independent of the State Superintendent of Public Instruction.

One of the primary responsibilities of the State Board for Vocational Education is to apportion the federal and state funds among the various types of schools offering vocational courses. With the exception of Schilling Institute, the Board has general discretionary authority in the allocation of these funds and as a result can exercise considerable control over the types of programs and which schools offer them. Because of the limited amount of state and federal funds available, the various types of schools must often compete against each other in order to develop their course offerings.

#### Development of Vocational Education in Kansas

Kansas has participated in the cooperative federal-state vocational education program for approximately 50 years. It was one of the first states to accept the provisions of the Smith-Hughes Act passed by Congress in 1917, and qualify for federal funds under the conditions prescribed by the Act. Many Kansas high schools have maintained courses in vocational agriculture, vocational homemaking, and trade and industry since that time.

Prior to World War II, very few communities had developed a comprehensive vocational education program to prepare young people to qualify for jobs in the local community. During the war, training of personnel for defense industries was conducted at Coffeyville, Hutchinson, Kansas City, and Wichita. Training of veterans on an area basis was undertaken in the late 1940's in Coffeyville, Topeka, and at Kansas State College of Pittsburg. As a result of the Governor's Economic Development Committee's recommendations in 1962, the Kansas legislature passed the Area Vocational-Technical School Act of 1963.<sup>1</sup> This Act authorized establishment of vocational-technical schools (15 to 20) to serve specific geographic areas. Primary responsibility for the organization and financing of such schools was left to local districts, in conformity with traditional state policy.

Because of limited state and local financial resources for vocational education, and other factors, the area vocational-technical schools have not been able to develop the comprehensive vocational programs that had been anticipated. As a result, craftsmen and technicians for Kansas industry have not been trained in large quantities. A lack of trained manpower undoubtedly has been a limiting factor in the economic advancement of the state. Better vocational education programs are a key factor in the future welfare and prosperity of Kansas.

### Problems of Vocational Education

Vocational education in Kansas has made progress under handicaps. The public has tended to consider vocational education as having considerably less status than academic education. Educational emphasis in recent years has centered on college and university training, and relatively little attention has been given to training for employment at the "below-college level."

Another handicap of vocational education has been state administration of the program by an agency separate from the State Department of Public Instruction. This separation occurred in the early 1920's partly because of the federal act requirements that vocational education be supervised by a board, partly due to fear of the unsympathetic attitude of people in academic education toward vocational education, and partly as a result of personality and policy conflicts at that time between the State Superintendent and the Director of Vocational Education and members of the State Board of Education. This dual educational structure has been perpetuated until the present time, although all but two other states now include vocational education as a unit in their general state education agency.

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<sup>1</sup> Laws of 1963, Ch. 377, K.S.A.



The separation of vocational and academic public school administration at the state level has created difficulties in coordination and has handicapped vocational education in achieving greater public acceptance. Now this defect in organization will be eliminated by integration of vocational and academic education under the new State Board of Education.

Upon enactment by Congress of the Vocational Education Act of 1963,<sup>1</sup> the director of vocational education for Kansas prepared a new state plan in order to meet with the standards necessary to obtain the federal grants. One of the important conditions was that it would be necessary to have an advisory committee to the State Board, the members of which should be familiar with the vocational needs of management, labor, and the junior colleges and technical institutes.

An advisory committee was appointed by the Board in September 1965. This committee apparently has existed largely on paper, and little use has been made of its potential services. In part, this lack of use may be due to the fact that there have been five different directors or acting-directors of vocational education in less than two years. Another problem is that there is no statutory authority for the establishment of such an advisory committee, and the members therefore cannot be reimbursed from public funds for expenses incurred in attending meetings.

Although the supervision of vocational education was conferred by law on a single state agency, the State Board for Vocational Education, educational programs have been conducted by a variety of educational units which are under the general supervision of different state agencies: (1) The vocational education programs in high schools and junior colleges are under the State Superintendent of Public Instruction. (2) The vocational-technical training department of Kansas State College of Pittsburg is under the State Board of Regents. (3) Schilling Institute is under the State Educational Authority. (4) The area vocational-technical schools are under the State Board for Vocational Education. Diversity of operating authority tends to complicate the development of an overall systematic plan for the state as a whole.

Kansas now has 12 area vocational-technical schools organized on a basis of cooperative school district action, a technical institute, 16 community junior colleges (14 of which are organized on a county basis, and most of which apparently desire to offer courses in the vocational-technical field) and a large number of high schools offering one or more vocational courses. However, certain areas of the state have neither area schools nor junior colleges. No permanent boundaries for junior college areas have been fixed in the state junior college plan, although that seemed to be anticipated by the 1965 Community Junior College Act. Some of the high schools are maintaining a variety

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<sup>1</sup> Public Law 88-210

of courses to train students to qualify for certain jobs, but they do not have a broad vocational curriculum and do not provide services for post-high school students. These various units need to be integrated into a well-rounded program.

While attempts have been made in various localities to bring all vocational programs within an area under a single board and a single local director, such efforts apparently cannot be completely successful under purely permissive laws. Thus, the development of a state-wide system of vocational education probably cannot be achieved until the program is better organized on an area basis, until tax support is on a more stable foundation, and until a larger proportion of state funds is provided for the program.

### Functions of the State Vocational Education Department

The State Board for Vocational Education administers federal and state funds for (1) vocational education and vocational rehabilitation, (2) Manpower Development and Training Program, (3) Work-Study Program, (4) Disability Determination for Old Age and Survivors Insurance, and (5) the Armed Forces Rejectee Project. Administratively, these programs can be classified into three broad groups: (1) vocational education in the public secondary schools, together with teacher training in the institutions of higher education; (2) area vocational-technical schools and junior colleges; and, (3) vocational rehabilitation.

Regular Vocational Programs. Vocational instruction conducted in the high schools that is approved by the Board for Vocational Education qualifies for state and federal funds. Federal funds are provided on a matching basis with state and local funds. Last year, for example, the maximum amount which the State Board could reimburse local high schools for the salary of a full-time teacher of vocation agriculture was \$1,400 (25 percent of the base salary). A few of the larger high schools offering technical courses were reimbursed at a higher rate. In general most of the support for these high school programs comes from local school funds. In contrast, for area vocational-technical schools, the Board contributes about 13 percent of their general operation from state funds and 37 percent from federal funds, and 20 percent of the expenditures for equipment from state funds and 50 percent from federal funds. The remaining amount must be financed from local funds.

The principal courses offered in high schools are vocational agriculture, home economics, trade and industrial education, distributive education (retail and wholesale business), office education, pre-employment training in distributive and office education, machine shop, and auto mechanics. The state colleges and universities participate in federal funds for training teachers of vocational courses.

One of the important policy questions is to what extent and in what localities vocational and pre-employment training should be expanded in the "comprehensive high schools." Their philosophy is that the maximum good for most students is derived from a comprehensive curriculum which includes a strong practical arts course and a vocational curriculum. Should these high schools drop their programs in view of the development of area vocational-technical schools, or should they be encouraged to maintain and expand their vocational curriculum? Many of these courses are expensive to maintain. Some high schools are located at such a distance from area schools that participation in the area program does not seem feasible. If the maintenance of courses in the high schools is necessary in order to provide comprehensive state-wide coverage of vocational training for young people who need and can benefit from such type of training, it may be desirable to reconsider the formula for state and federal assistance.

Area Vocational-Technical Program. The area vocational-technical schools were organized because many of the comprehensive high schools were making only a token effort to provide vocational training. Also, the area schools provide a means by which students in small high schools which have no vocational education program can obtain such training by enrolling for part of the day in one to three-hour courses in the area schools. The twelve schools now in operation are designed for junior and senior high school students, high school dropouts, and post-secondary students and adults who need specialized training or retraining to obtain employment or to advance in their job.

The area schools may be organized in one of two ways: (1) by one school district (Plan I) or (2) or jointly by several districts (Plan II). The participating districts agree to send pupils and pay tuition, or they agree to levy taxes to be paid to the district operating the school.

Under Plan I, the area board of control consists of the board of education of the district in which the area school is located. Under Plan II, the board of control consists of one or more representatives from each of the boards of the cooperating districts. Four schools have been organized under Plan II, and the other eight follow Plan I. Plan I has the advantage of concentrating control in the board of the sponsoring district, which usually has the most pupils and greatest financial resources. It avoids all the problems of divided administrative control which are inherent in the other plan. Under Plan II, on the other hand, the director of the area school must seek approval for his program from the board of control of the area school and also from the school boards and superintendents of three or more cooperating districts. This type of organization results in a cumbersome and difficult system of administration, but it does provide for wider representation of cooperating districts and perhaps guarantees greater interest in the needs of pupils of outlying areas.

One weakness of the area school system is that it is composed of temporary groupings of independent school districts that agree to cooperate for this one purpose. The organization is largely voluntary in form and based on contractual agreements between the participating and the sponsoring districts. The terms of the contracts vary considerably: In 1965, tax rates of participating districts varied from one-fourth mill to 2 mills. Some districts did not make a separate levy, but included in their budgets under outgoing transfer accounts (1400 Accounting Series) a line item for the area school. In a few instances, the participating districts paid the entire tax levy to the treasury of the area school, irrespective of the number of pupils who attended. In most cases, however, the participating districts paid the sponsoring district on a tuition basis. Tuition rates varied from \$78 per semester for a one-hour course to \$450, \$500, \$680 per year for a full-time student. Fees also are charged to cover tools and supplies.

If a person residing in a non-participating district desires to attend an area vocational-technical school, he must obtain the approval of his county superintendent of schools. Approval may be denied if the applicant is over 18 and has lived in the county less than one full year, or for any reason which would disqualify such person from attendance in a public school. When approved, the area schools admit the non-residents and bill the county for their tuition.

The 1963 law requires the county commissioners to pay the non-resident tuition from the county general fund. In 1963, there was considerable territory not in any district maintaining a high school, and the situation was not expected to change until unification had been completed. A county support, therefore, offered a broader tax base and made it possible to provide services to persons who lived in an area which was not within the boundaries of the sponsoring district or districts. This kind of service was necessary if a state-wide system of vocational education were to be achieved.

There were objections on the part of several counties to paying this "out-district tuition" both for area vocational-technical schools and community junior colleges. Some objections arose out of a lack of understanding of the purposes involved or disagreements over the organization of the program. Others were based on the fact that the taxes to pay the tuition were for school rather than county purposes. Some county commissioners stated that all school costs should be provided for in a school levy. Also, there is apparently a practical problem in that the amount of tuition cannot be estimated accurately by the commissioners at the time the county general fund levy must be made. The results have been that some counties lacked the funds to pay tuition when demanded, others had to issue no-fund warrants, and some refused to pay.<sup>1</sup>

<sup>1</sup> The constitutionality of the county out-district tuition charge for junior colleges was upheld by the Supreme Court in July 1966.

The 1965 Community Junior College Act indicated that junior colleges may offer courses appropriate to the needs of the community, but not of a higher academic level than those of the sophomore class in four-year colleges. In the field of vocational education, the general role of the junior colleges is to offer the more sophisticated, technical, and semi-professional occupational programs. Agreements on course offerings in the junior colleges, area vocational-technical schools, and comprehensive high schools must be worked out cooperatively within the framework of the State Board of Education to avoid unnecessary duplication, and yet provide a wide range of course opportunities for the young people of the area. A beginning has been made along this line.

Junior colleges operate in conjunction with area vocational-technical schools to provide a comprehensive curriculum for students in Coffeyville, Dodge City, Hutchinson, and Kansas City, for example. This type of combined program and school facilities seems to promise an ideal kind of educational program for some communities. In Atchison, Emporia, Salina, Topeka, and Manhattan there are area vocational-technical schools and four-year educational institutions. Possibly, mutually beneficial cooperative arrangements can be developed in such communities.

Although 10 junior colleges now offer some technical courses, in general, limited financial resources at this time have prevented offering many of the more expensive shop, laboratory, or technical courses. The transition of junior colleges from a school district to a county tax base may enable them to provide additional offerings for employment training. With the State Board of Education (under the new Article 6) now having supervision over both the academic and the vocational and technical curriculum of junior colleges and area vocational-technical schools, greater opportunity exists for proper articulation of courses among the various schools in any geographic area.

#### Recommendations

Against this general backdrop of the development and problems of vocational education, the Committee offers the following recommendations:

1. The state's basic vocational and technical education program should be administered through a division headed by an assistant commissioner who would report directly to the Commissioner of Education. This form of organization is essential to assure the proper review and support of the vocational education program, and to prevent vocational education from being divided into small units and assigned to other operating divisions and sections.

2. The vocational program for the state should recognize the importance of acquainting vocationally-minded children early in their school career with the opportunities that are open to them. One way to do this is through offering industrial arts courses as early as possible in the school's curriculum. By the time such pupils reach the 11th grade, they should be prepared to start taking specialized vocational courses.

3. Vocational and technical guidance and counselling in junior and senior high schools should be strengthened, and school personnel should emphasize as much as possible the importance of vocations in modern society. In many schools at the present time, vocational education is treated as an inferior or subsidiary part of general education, with the result that students who might otherwise enter a vocation are discouraged from doing so and are delayed in beginning a serious study of what really interests them.

The first important step necessary to change this situation is the recognition by educators that occupational education is legitimate and a necessary education for our time. When vocational and technical education is accorded the recognition and status it deserves, industry can be expected to assume responsibility for specific job training, and the schools will accept vocational and technical education as an integral part of the total educational program.

4. State appropriations for vocational-technical education in general must be increased substantially if the demand for technicians is to be met in the immediate future. For the current year, \$897,065 of state funds and \$2,970,000 of federal funds (if the full authorization is appropriated) will be available for local school districts and area vocational-technical schools. Better student counselling and general acceptance by educators, as noted above, will have the effect of increasing vocational education funds because of the more efficient and effective use of total education moneys.

5. The state should assume a major responsibility for financing area vocational-technical schools at a considerably higher level than at present. All school districts that cooperate in maintaining an area vocational-technical school should share equitably in its support. School districts should be allowed to exceed the present 2-mill tax levy limit for area vocational-technical school purposes upon a vote of the people.

6. Junior colleges in Kansas should assume a major role in offering technical and semi-professional occupational programs which require substantial amounts of college level mathematics, science, and other related subjects. This responsibility covers the total spectrum of needed technicians, such as medical, dental, laboratory, and technicians in electronics and data processing, and should not be confined to just the engineering technologies. These courses

should be integrated as much as possible into the regular college curricula because the intent is to provide the technician not only the specialized skills of his technology, but also the theoretical foundation on which it has been built and, equally important, the technician's responsibilities in modern society.

The cost of offering technical and semi-professional occupational programs will often be less than at other types of institutions. This recommendation does not mean that all community junior colleges must offer technical programs. Unique characteristics of the area being served, as well as availability of these programs at other nearby institutions, might dictate a different orientation for any one junior college.

7. Technical and semi-professional programs must be recognized as the legitimate concern of post-secondary education. Students enrolling in occupationally oriented courses must be assured they will have the opportunity to continue their education toward a baccalaureate degree and receive credit for work that is of college level. New procedures for transferring credit and establishing qualifications by examination should be devised.

8. Job surveys of occupational opportunities should be made on a regular basis at both the state and local levels. The data from such surveys are essential in determining what new training programs are necessary, the effectiveness of present ones, and which course offerings are obsolete. To carry out this recommendation, the Committee suggests that (1) detailed job placement records be kept by all schools offering vocational-technical courses, and (2) special audit teams--operating under guidelines developed by the State Board of Education--conduct the surveys and file periodic reports. In making a survey, it is important that all persons or groups directly or indirectly connected with a particular program be involved in the evaluation.

9. The Schilling Institute should offer courses that are (1) essentially college level, and (2) meet the standards for accreditation by the Engineering Council for Professional Development. A technical training program with this particular orientation is an important supplement to the state's total technical education program. As discussed in Chapter I, the Institute should be placed under the supervision of the State Board of Education (and the present State Authority abolished) until its role is more clearly defined and the effectiveness of its program evaluated.

10. The State Board of Education should be active in developing a coordinated program of vocational-technical education for the state as a whole. One suggestion which has considerable merit is that the State Board of Education should designate the geographical area to be served by an area vocational-technical school. The plan to be developed by the Board for geographical areas and the role of the area vocational-technical schools should be prepared for submission to the 1969 legislature for implementation.

11. All vocational-technical courses in comprehensive high schools and area schools of less than college level should be coordinated through the area vocational-technical school under guidelines and subject to the approval of the State Board of Education. The purpose of this recommendation is not to set up centralized control of vocational programs, but rather to assure coordination. Vocational programs are financed from a variety of funds, some of which may go directly to a school district, and proper coordination of all efforts is essential if the best use is to be made of present resources.

12. The State Board of Education should be given authority to standarize tuition for courses at vocational-technical schools and junior colleges within guidelines prescribed by the legislature. At the present time, a student may pay markedly different amounts for the same course, depending on whether it is taken at an area vocational-technical school or a community junior college.

Out-district tuition for pupils attending area vocational-technical schools should be charged to the unified school district of residence of the pupil instead of being charged to the county commissioners to be paid from the county general fund. Such tuition is essentially a school cost rather than an expense that can be properly charged to county government. School authorities are in much better position to determine the qualifications of the students and the probability of their benefiting from the training.

13. Since the deduction of 50 percent of the federal and state vocational education aid is the only "incentive-type" aid payment required to be deducted from a school district's basic guarantee under the school foundation finance plan, and the total aid is substantially less than the higher cost of providing vocational courses, this deduction from the guarantee should be eliminated from the foundation formula. The deduction is the equivalent to approximately 25 percent of an instructor's salary up to \$5,600.

14. Each area vocational-technical school and junior college should appoint an advisory committee representing local labor, business, manufacturing, and agricultural interests. This advisory committee should act as a liaison between the groups using vocational graduates and the schools, advise the schools on the quality and general effectiveness of its program, and help to evaluate when new programs are necessary and when obsolete ones can be dropped.

15. To coordinate the vocational and technical education programs of the state, an advisory and coordinating committee should be created by statute. Representatives should include an administrator from a comprehensive high school, an area vocational-technical school, and a junior college; two persons



from state schools of higher education; and six persons representing labor, agricultural, business, and general industrial interests. One of the latter six should be chairman. This committee should meet at least twice a year and submit public reports on present and projected vocational-technical programs. The committee should receive actual expenses for attending meeting.

### Vocational Rehabilitation

Vocational rehabilitation is a joint federal-state program to provide for the physical restoration, vocational counselling, education, and training of physically and mentally handicapped persons of an employable age with the objective of preparing them for remunerative employment. It often involves retraining a person who has suffered a physical handicap in an industrial accident so that he can qualify for another trade or job.

Kansas accepted the provisions of the Federal Vocational Rehabilitation Act of 1954, and agreed to cooperate with the federal program. Responsibility for this function was assigned by the legislature to the State Board for Vocational Education to be performed through a division established by law, with a director of the division appointed by the state board.<sup>1</sup> The 1966 appropriation bill directed the governor to appoint an eleven-member planning and policy board to study rehabilitation needs of disabled Kansans.<sup>2</sup> This board is considering the matter of the appropriate organization of vocational rehabilitation within the state's governmental structure.

In specifics, vocational rehabilitation involves academic education, medical diagnosis, vocational evaluation, physical therapy, medical, surgical or hospital services, prosthetic devices, such as artificial limbs, braces or hearing aids, vocational counselling and guidance, training for a job in various types of schools or institutes, workshops, or on-the-job, correspondence courses, or special tutor, provision of occupational tools or equipment required for a selected job, assistance in obtaining a job for which the client has aptitude, and follow-up to assure the job is suitable and the worker and employer are both satisfied. A handicapped person may need several of these services during the process of being rehabilitated. Those who are financially able are expected to provide their own medical services, prosthetic devices and tools. The vocational rehabilitation division does not supply medical or educational services directly, but arranges to purchase such services for its clients from whatever appropriate sources are available.

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<sup>1</sup> K.S.A. Sec. 72-4308, 72-4314

<sup>2</sup> Laws of 1966, Ch. 7, Sec. 21

The work of the Kansas vocational rehabilitation division is carried on primarily through nine district offices staffed by counselors, and by two state operated units. One of these is located at the Kansas Neurological Institute in Topeka to provide occupational training for mentally retarded youth. This unit is administered by the division in cooperation with the state institutions for the mentally retarded.

The second unit known as the Kansas Vocational Rehabilitation Center was opened in 1966 in the base hospital building at the former Schilling Air Force Base. Sufficient federal funds became available to establish the center because of a change in the federal matching formula from 63 to 75 percent. The Salina Center is primarily an evaluation center rather than a medical or educational center. Persons referred to it from outside the Salina area reside there temporarily while undergoing evaluation. Educational and job training will be provided through Kansas Wesleyan and Marymount College, the Salina Area Vocational-Technical School, and Schilling Institute, or other suitable facilities.

A vocational rehabilitation project also has been instituted at the State Penitentiary where a small group of prisoners are being trained as service and repairmen for electronics equipment. In addition, disability determinations of applicants for social security benefits are performed by the vocational rehabilitation division under a contract with the U. S. Department of Health, Education, and Welfare. The division also is responsible for a health referral service, connected with the U. S. Public Health Office: This service involves contacting all individuals rejected for military service to inform them of the reason for their rejection and of the resources available for correction of medical problems. The last two functions are wholly federally financed.

Private rehabilitation centers are authorized to receive federal matching funds to begin or improve their services and facilities under the 1965 amendments to the federal law.

The services of the state division of vocational rehabilitation appear to be more nearly like welfare than educational functions. They are concerned mainly with adult male persons many of whom have dependents and who are unable to support themselves because of some accident or disability. Educational services needed by clients are purchased from special or private schools or higher education institutions, including those under the Board of Regents. The Salina Center provides services which are of a similar type to services provided in the Rehabilitation Center for the Blind, which are sufficiently different that they are not considered of a direct educational nature.

Vocational rehabilitation services differ from special education in that vocational rehabilitation is centrally controlled and operated through the state division, whereas special education works with public school pupils in a locally operated and

controlled program which is supervised through reimbursement procedures of the state office. Vocational rehabilitation deals with Kansas residents through state employees using individual counselling techniques rather than group educational methods.

From a functional standpoint, therefore, the services of this division are sufficiently different that several states have a separate state agency for vocational rehabilitation. Such an arrangement is authorized by the federal law, and the federal program itself is administered by a separate office within the Health, Education and Welfare Department.

Public Law 89-333 does not authorize vocational rehabilitation to be combined in the same unit with other functions, but gives the states a choice of three different types of organizations: a separate state agency, a division within the state board of education (or vocational education), or a bureau or division in the department of labor or welfare if there are at least two other major bureaus or divisions. This seems to prevent the assignment of vocational rehabilitation and special education functions to one and the same division, unless special approval could be obtained therefor from the federal commissioner of vocational rehabilitation.

The regulations provide that the administrator should report directly to the chief officer of the state agency. Direct access to the decision-making body is considered a key factor in the effectiveness of the services rendered. A multi-purpose agency might tend to limit access to the legislature, the governor, and the department of administration, and, consequently, diminish the opportunity for full and direct consideration and evaluation of the program, free from other program interests.

The Education Advisory Committee, therefore, believes that for the present vocational rehabilitation should be administered as a separate division within the State Board of Education with status comparable to the Division of Instruction and the Division of Special Education. While the organization under the Board might be streamlined by placing special education, vocational rehabilitation, and the state schools for the blind and deaf in a single division, this does not appear to comply with the provisions of Public Law 89-333.

## CHAPTER IV

### CORRELATION OF FEDERAL, STATE AND LOCAL PROGRAMS

A subject of mounting concern to state and local legislative bodies is the growing extension of federal education programs in the public school system.

Federal aid to education dates back to 1785, but the greatly accelerated rate and magnitude of new federal programs is graphically illustrated in this profile:

1785-1958	Ten federal education programs.
1958-1965	Twelve Congressional acts for education encompassing a wide range of programs, some administered by agencies other than the U.S. Office of Education.
1965-1966	Total cost of public and private schools, colleges and universities, \$42 billion, of which Federal government paid \$5.7 billion (14%). The U.S. Office of Education funded 67 programs.

The history of congressional action in the field of education shows that under the general welfare clause, Article I, Section 8 of the Constitution, specific programs have been undertaken to achieve goals in the national interest. However, proposals to finance general aid to education have been consistently defeated since 1870. Federal financing has been achieved by supporting specific programs, which sometimes are described as categorical programs.

That there has been a new departure in the way Congress defines the "general welfare" in education has become obvious. Until the 1940's, agricultural and vocational training encompassed all of the national educational goals of Congress. The next two decades produced radical, new, and far-reaching definitions of the general welfare in education--as in every other area of American life.

The new Age of Technology in the fifties, highlighted by Russia's Sputnik in 1957, resulted in congressional enactment of the National Defense Education Act of 1958.

Along with other more controversial results, the civil rights movement of the early sixties focused nation-wide attention upon the plight of poverty's children. Poverty, added to juvenile delinquency, the crime rate, the rising number of "drop outs" and untrained youth pouring into the unemployment ranks every year took on national significance. If American democracy could not tolerate millions of its children deprived of equality in education, neither could the American economy afford this waste of manpower.

In 1958, Congress determined there was a relationship between education and national defense. By 1965, the relationship between education and unemployment, between education and urban blight, between education and health, between education and delinquency, between education and a highly mobile population had been set forth in a series of federal laws. They earned the 89th Congress the title of "Education Congress" for having put more programs and more dollars into education than any of its predecessors.

Having established these new programs by law and appropriated funds to support them, Congress left the responsibility for implementing them to the states and local districts.

The major programs authorized in Kansas are described in the following pages under four headings:

1. Those directly under the administration of the State Department of Public Instruction (SDPI);
2. Those partially under the administration of the SDPI;
3. Those outside the administration of SDPI; and
4. Those under the State Board for Vocational Education.

The Appendix carries a complete listing of all federally-sponsored education programs according to (A) who originates the program request, (B) who approves the request, (C) who supervises the program, (D) where the funds come from, (E) how much Kansas received in 1965-66, (F) how federal funds are allotted, and (G) who receives the funds.

#### Programs Supervised by the State Department of Public Instruction

Under policies of the state superintendent, the various federal programs have been assigned to appropriate division and section chiefs of the State Department of Public Instruction, to be coordinated with local and state programs.

National Defense Education Act of  
1958 (NDEA) (PL 85-864)

This Act provides financial incentives to improve educational programs of the schools. Application for grants and the funds awarded are channeled through the State Department of Public Instruction.

Title III - Strengthening of Instruction in Public Schools. Federal grants are provided for the purchase of materials and equipment to strengthen and improve school instruction on a 100 percent matching basis. Funds are made available to upgrade programs in science, mathematics, modern foreign language, English, civics, history, economics, geography, reading, and libraries.

Project applications originate with the local school districts, and must be approved by the state department. The program is administered at the state level by the Curriculum Section of the Division of Instructional Services. Cost of administration is included in the amount of the federal grant to the state.

Allotments of matching funds are based on school age population and average income per child of school age. Payments are made to the State Department to reimburse one-half of the expenditures incurred by local districts under an approved state plan. Federal funds can be used to acquire laboratory equipment, audio-visual materials and equipment, test-grading equipment, and certain published materials, but not consumable supplies or textbooks. Kansas received \$1,141,038 for Title III NDEA programs in 1965-66.

Title V-A, Guidance, Counseling, and Testing. Title V-A provides financial aid for the support of guidance and counseling programs, the initiation of new programs, and state-wide pupil testing. Matching grants up to 50 percent are provided for guidance programs for students in high schools. Funds also are provided for testing students in the elementary and secondary schools to identify their aptitudes and abilities. The results are used to advise students as to the type of activities in which they are best qualified, and to encourage students to continue their education along such lines.

Applications originate with local school districts or with the State Department of Public Instruction, and are administered by the Guidance and Pupil Personnel Section of the Division of Instructional Services of the State Department of Public Instruction. Federal funds from the U.S. Office of Education are paid to the State Department which distributes the money to the local school districts. Salaries of four counselors in the state office also are paid from federal funds. A total of \$280,000 was allocated to Kansas in the 1965-66 school year. Total expenditures, including balances from the preceding year, amounted to \$307,544.

Guidance training institutes and courses for advanced guidance study for school counselors also are financed from federal grants. Persons enrolling in such institutes receive weekly stipends and allowances for dependents, and the program has greatly augmented the number of qualified guidance counselors.

Title X, State Statistical Services. Title X of the National Defense Education Act provides funds to help improve statistical services in state departments of education.

Applications for funds to improve statistical and reporting services of the state departments of education are developed by the Statistical Services Section of the State Division of Administration and are submitted to the U.S. Office of Education for approval. Such projects frequently involve a revision of the accounting, budgeting, and reporting systems of local schools and boards of education on a uniform basis, as well as statistical data processed in the state office. Federal funds are allocated on a 50-50 matching basis up to \$50,000. Kansas received \$45,612 of federal funds for the development of statistical services.

The Elementary-Secondary School Aid Act of 1965 (PL 89-10).

Title I, Programs for Disadvantaged Children. Title I of Public Law 89-10 provides 100 percent grants for education of disadvantaged children in areas having a high concentration of low-income families. Applications for projects originate with local school districts, and must be approved by the State Department. Federal funds are channeled through the State Department of Public Instruction, and are administered by a section in the Division of Instructional Services.

In localities having Community Action Programs (CAP), the project must have the approval of CAP as well as of the State Department of Public Instruction. A variety of projects to assist the educationally deprived have been conducted in Kansas. The allotment of federal funds amounted to \$10,482,963 last year, and \$9,900,882 was expended for the program. Allowances for administration are provided from federal funds.

Title II, Library Resources. Title II, of Public Law 89-10, provides library and audio-visual resources and materials for local schools. Federal grants are awarded for 100 percent of the cost of the project, and allowances for state administration are included in the grants. Applications for projects originate with local school districts. The program is administered through and subject to approval of the Title II Section of the Division of Instructional Services of the State Department of Public Instruction, and funds are channelled through the State Department and state treasury. Funds received from the Federal government under Title II amounted to \$1,129,373.

Title V, Strengthening State Education Agencies. The purpose of Title V, of Public Law 89-10, is to upgrade the efficiency and services of the state departments of education. Kansas was allotted \$210,000. Eight projects for internal improvements in the Kansas State Department of Public Instruction have been undertaken, and \$123,631 of federal funds were expended. Projects originate with the State Department and are subject to the approval of the U.S. Office of Education. The project funds are administered by the appropriate division or section of the State Department.

One cooperative project among a number of midwestern states to improve and systematize the compilation and reporting of educational information was started by the State Education Department of Iowa, and is known as the Iowa Project. Kansas is participating in this project and has representatives on seven committees. A full time coordinator for Kansas is paid from project funds. A total of \$22,616 was allocated to Kansas for this project from moneys allotted by the U.S. Office of Education. Actual expenditures amounted to \$2,983.

National School Lunch Act of 1946 (PL 396)

The cost of providing school lunches and milk is reimbursed in part by funds from the U.S. Department of Agriculture, as provided by the 1946 law. The local schools enter into agreements with the State Department of Public Instruction to provide meals for pupils, and reimbursement is based on the number of pupils and per capita income, not to exceed nine cents per meal. Federal funds are channelled through the State Department, and the program is administered by the School Lunch Section of the Division of Administrative Services. There were 1,129 local school lunch programs involving 230,000 pupils in school year 1965-66. Federal payments amounted to \$2,899,729.

Civil Defense Act of 1950 (PL 920)

Civil defense adult education aims at teaching principles of individual, family, and community protection. Classes are taught in radiological monitoring and personal and family survival. Projects originate with the State Department based on a state plan which must be approved by the U.S. Office of Education. Federal grants to cover 100 percent of the cost are provided by the U.S. Department of Defense by means of contracts with the U.S. Office of Education. During 1965-66, classes for 6,773 persons were conducted, for which \$62,090 of federal money was paid. The program is administered by the Civil Defense Adult Section of the State Division of Administrative Services.

Special Education Fellowships (PL 85-926)

Grants for graduate fellowships, traineeships, and training institutes for professional personnel in connection



with special education and programs for handicapped children are authorized by Public Law 85-926, as amended by Section 301, of Title III, of PL 88-164. Projects are initiated and supervised by the Special Education Section of the State Department of Public Instruction. Projects are approved and funded by the U.S. Office of Education. Grants for professional personnel and pilot projects for instruction of exceptional children amounted to \$76,812 in school year 1965-66.

Economic Opportunity Act of 1964 (PL 88-452)

Title II-B, Adult Basic Education. The Adult Basic Education Program of the Economic Opportunity Act of 1964, provides assistance to the states for special literacy instruction for persons over 18 with less than a sixth grade education. It is administered nationally by the U.S. Office of Education under a contract with the Office of Economic Opportunity. In Kansas, the program is administered by the Adult Education Section of the Division of Accreditation of the State Department of Public Instruction. A state plan was prepared and approved by the U.S. Office of Education in November 1965. The program is financed by 90 percent federal grants and 10 percent state or local funds provided in cash. The federal aid money is obtained through letters of credit on the federal reserve bank, and the funds are deposited in the state treasury, and disbursed on state vouchers to the school districts operating adult courses. Federal funds are provided for state administrative costs. Twelve programs were in operation last year in Kansas involving 1,230 persons, and \$136,066 of federal funds were received.

Programs Partially Supervised by the State  
Department of Public Instruction

The Elementary-Secondary School Aid Act of 1965 (PL 89-10)

Title III, Supplementary Centers and Services. Title III of Public Law 89-10 provides for the establishment of Supplementary Educational Centers and Services (called PACE). Applications for projects, prepared by local school boards individually or by several boards which may cooperate in preparing joint applications, are submitted to the U.S. Office of Education, and copies are filed simultaneously with the State Department of Public Instruction. The State Department submits its recommendations to the U.S. Office of Education which has final approval authority. The federal policy has been not to approve applications unless the project had been recommended by the State Department.

Federal grants for 100 percent of the cost are made directly to the applicants, and do not pass through the state offices. The expenses of reviewing and evaluating projects by the state superintendent and the state coordinator of federal

programs in the State Department are paid from PL 89-10, Title V funds allotted Kansas. Total Title III allotments to Kansas amounted to \$943,200 in 1965-66.

Federal Acts Providing Aid to Federally Affected Areas (PL 874 etc.)

The federal government began in 1950 to provide funds to school districts which essentially are payments in lieu of school taxes on federal military and defense installations. There are four different programs which are generally known as Aid to Federally Affected Areas, or Aid to Impacted Areas (SAFA).

Application forms are made available to local school districts through the School Facilities Section of the Division of Administration of the State Department of Public Instruction. Local applications are reviewed and must be approved by the State Superintendent or an assistant. One copy of such applications is filed in the State Superintendent's Office and other copies are forwarded to the Regional Office and the U.S. Office of Education. School districts are assisted in preparing applications by the School Facilities Section of the State Department. Regional meetings are held to explain the laws and give instruction on filling out the forms, and special help is provided whenever needed.

Payments of federal funds are made directly to the local school districts and are not channeled through the state treasury or state accounting offices. Consequently, these payments are not included in the State Annual Financial Reports made by the Accounts and Reports Division of the State Department of Administration and do not appear in Statement "E" of such reports on the distribution of federal and state school aid to local units of government. However, a statement of the amounts distributed by congressional districts is included in a report prepared by the School Facilities Section of the State Department of Public Instruction.

P.L. 874 - Aid for School Operation in Affected Areas. Grants for current operating expenditures of schools in districts in which federal installations seriously affect school enrollments are made under the provisions of Public Law 874 enacted in 1950. Entitlement for aid is based on the average daily attendance of pupils who reside on federal property and/or, whose parents are employed on federal property. Either one or both of these conditions must apply.

The amount of aid under P.L. 874 is based on a local contribution rate from local revenues by comparable districts. Figures for the second preceding year are used in computing the average per pupil cost rate for the state (excluding state aid payments) which is now \$339.59. One half of this rate is paid for those pupils who do not reside on federal property but whose parents work on federal property. Total payments to Kansas under PL 874 were reported to be \$6,871,641.

P.L. 815. Aid for School Construction. Public Law 815 provides assistance for school construction in federally affected areas. The purpose of the act is to enable districts to provide needed buildings for children for whom schools would otherwise be unavailable unless additional facilities are constructed.

Eligibility is based on an increase in federally affected pupils within a two-year period. The formula for determining the amount of the construction grant is based on the per pupil cost of construction and the degree of impact caused by federally-affected pupils. A survey of construction costs is made each year which includes allowances for initial equipment, furniture and teaching aids, but not land or single-purpose athletic facilities. For students who reside on federal property and whose parents are employed on federal property, a grant of 95 percent of the per pupil cost is provided, and 50 percent of the per pupil cost is paid for pupils who qualify under only one of these requirements. Local school districts are expected to provide facilities for the normal annual increase in average daily membership. Federal funds allocated to Kansas under PL 815 amounted to \$293,357.

P.L. 388 - Aid for Certain Defense Installations. Public Law 388, amends the Federal Property and Administrative Services Act of 1949 to make temporary provision for payments in lieu of taxes with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other government departments. In Kansas, the Act applies only in the case of the Boeing Plant No. 2 in Wichita.

The government department which has custody and control of such real property pays to the appropriate state and local taxing authorities an amount equal to the amount of the real property tax which would be payable to the state or local taxing authority, on such date, if legal title to such real property had been held by a private citizen at that time. The funds are paid directly to the local school districts. All of the districts receiving funds under P.L. 388 were in Sedgwick County. The total amounted to \$543,365.

P.L. 313 School Disaster Funds. Public Law 313, enacted in November 1965, provides federal funds for schools in the event of natural disasters such as floods, tornadoes, etc. If a school building is destroyed or severely damaged in a disaster, federal funds are provided in the amount of the excess damage over the amount of insurance recovered on the building. In the case of damage to non-public schools, the public schools may be reimbursed for cost of taking care of non-public school children. In both instances, funds may be provided for use during the second year for both operation and building purposes.

Federal Programs Outside the Supervision of the  
State Department of Public Instruction

Elementary-Secondary Education Act of  
1965 (PL 89-10)

Title IV - Regional Research Centers. Title IV of the 1965 aid to education act authorizes the establishment of regional centers for research and training. Projects are approved and funds are administered by federal agencies. The Kansas coordinator of Federal programs in the State Department of Public Instruction represents Kansas in the organization of incorporated regional research centers, but no direct supervision is exercised by Kansas state or local agencies. Kansas is included in three regional areas with laboratories at Kansas City, Missouri; Little Rock, Arkansas; and Denver and Salt Lake.

Economic Opportunity Act of 1964 (PL 88-452)<sup>1</sup>

Title II-A, Project Headstart. This title of the Economic Opportunity Act (War on Poverty) provides federal support for preschool programs organized to create a better environment for disadvantaged children. Programs are designed to improve the nutrition, health and physical abilities of poor children, develop self-confidence and ability to relate to other people, increase verbal and conceptual skills, and better prepare them for school. Appropriate social services for the family also are provided.

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<sup>1</sup> Various types of projects were authorized by the Act for the "War on Poverty," some of which are administered by the U.S. Office of Economic Opportunity. Others are administered by the Department of Labor; the Department of Health, Education and Welfare; and other federal agencies. At the state level, the State Technical Assistance Office functions as a representative agency in partnership with the Economic Opportunity Regional Office in Kansas City to assist Kansas communities in organizing projects. There also is a Governor's Coordinating Council for Economic Opportunity of nine members. Four members represent state agencies and five are prominent laymen from each of the congressional districts.

Headstart projects may be initiated by local school boards or other broadly based community organizations, and applications are submitted to the State Technical Assistance Office for the governor's approval. Applications then go to the Regional Office of Economic Opportunity and then to the national office. Disapproval by the governor may be reversed by the National Director. The state Department of Education has no responsibilities for Headstart Projects, and the federal funds (90%) are administered independently of state financial procedures. For the period of June 1, 1965, to June 10, 1966, a total of \$1,171,049 was expended in Kansas for Headstart Projects.

Title I-B, Neighborhood Youth Corps. The Youth Corps provides either full or part-time work experience and training for youths 16 through 21 to enable them to remain in school, return to school, or to increase their employability. The program is administered by the Department of Labor. Applications for projects may be prepared by local school boards or other local groups and are submitted to the Neighborhood Youth Corps Regional Office in Kansas City, under the U.S. Department of Labor. If approved at the Regional Office, it is submitted to the Governor for approval. If the Governor disapproves, the project is subject to review by the Regional and National Youth Corps offices. The projects are not supervised by the State Department of Public Instruction, and none of the funds (90 percent federal) are channeled through the state offices. The State Technical Assistance Office reported that \$2,406,575 were expended in Kansas for the Youth Corps from June 1, 1965, to June 10, 1966.

Title II-A, Community Action Programs. The purpose of the provision is to stimulate and encourage community efforts to eliminate the causes of poverty. Funds are provided to conduct local anti-poverty campaigns in both urban and rural areas, among migrant workers, and on Indian Reservations and may include remedial reading, literacy instruction, job training and counseling, homemaker services, vocational rehabilitation, and health services. Projects are not administered through the state education agencies but by the Regional and National Offices of Economic Opportunity.

Library Services and Construction Act  
of 1963 (PL 88-269)

Title I provides federal grants for extension and improvement of public library services, and Title II provides funds for public library construction. The act is administered at the national level by the U.S. Office of Education and by the State Librarian in Kansas. Applications and funds are handled by the state Librarian. Grants are now being obtained in Kansas for public libraries under this act.

Educational Television (PL 87-447)

Matching grants for construction, acquisition, or modification of educational television facilities are available under Public Law 87-447, a provision of the Federal Communications Act. The program is administered through the U.S. Office of Education. Applications for funds may be submitted either by state educational television authorities, state departments of education, local school boards, special non-profit corporations, or institutions of higher education. Educational television funds have been granted to Washburn University which operates Channel 11.

Programs Wholly or Partially Under the  
State Board for Vocational Education

Vocational and Technical Education (PL 88-210, Part A)

Federal funds for vocational education, teacher training, and technical training under the Smith-Hughes Act, the George Barden Act, and the Vocational Education Act of 1963 are administered entirely by the State Board for Vocational Education. High schools, area vocational-technical schools, and community junior colleges may establish courses and apply for reimbursement. The Board distributes state appropriated funds for vocational education, plus federal funds allocated to the state by the U.S. Office of Education on the basis of 50 percent reimbursement for approved courses in the schools. Federal funds received for vocational education totaled \$2,781,867, and \$125,000 was received for work-study programs.

Local schools also may apply for federal funds for residential vocational schools, subject to the approval of the State Board for Vocational Education. Work-Study Programs providing part-time employment to help young people begin or continue vocational training may be instituted through plans initiated by the Board.

The Manpower Program (PL 87-415)

Job dislocations caused by technological changes in industry led to the enactment of the Area Redevelopment Act by Congress in 1961. It provided for 16 weeks of training of unemployed and under-employed people in certain designated "redevelopment areas."

The Manpower Act of 1962 (amended in 1965) provides training programs on a nation-wide basis for unemployed and under-employed persons who are working below their occupational potential. Subsistence and transportation allowances are provided for trainees. The Departments of Labor, and Health, Education and

Welfare are jointly responsible for administration of the program. State Boards for Vocational Education administer the funds on the state level, and the Employment Security offices of the State Labor Departments select the courses, provide the pupils, and pay the trainees. Project applications may originate with boards of education, area vocational-technical schools, or junior colleges following a survey of need by local employment security offices. The survey of needs must be approved by the state employment security office, and the training project by the Manpower Training supervisor in the State Board for Vocational Education, with final approval by the Regional Office of the U.S. Office of Education. Training funds administered by the Board for Vocational Education amounted to \$1,111,002, and \$2,180,100 was paid to the State Labor Department for Manpower projects.

### Summary and Conclusions

These are diversified programs, many experimental in nature. They operate under a variety of administrative arrangements. Statutory requirements for allocation of funds vary greatly. Some programs allocate the majority of funds on a flat grant basis to each state; others allot all or a portion on the program need; some go directly to individuals, or to school districts.

There is a wide variety of experimental programs authorized for Kansas. Nationally, they encompass an even broader field, including a project in Alameda County, California, to teach blind children to travel alone by means of a kind of dead reckoning navigation system; an information storage and transmission system in College Station, Texas, that will serve classrooms in 23 counties; a summer program that brings teacher aides from France, Spain, and Germany to give concentrated foreign language instruction to pupils in Springfield, Massachusetts.

This range of programs raises the question of how state and local "control" can be exercised over federal programs. Federal aid to education, as Congress defines the national interest in terms of specific needs and goals, must be dealt with as it already exists. This means that the state, through its policy-making body, the State Board of Education, must provide strong leadership and select from the federal programs those that best serve the welfare of Kansas.

All federal programs are neither equally appropriate nor necessary in every state. Programs authorized simply because "the money is there" may well end up as "white elephants" when federal funds are cut or eliminated. Moreover, to allocate state funds on a matching basis to all programs without any prior determination of whether they are equally necessary or desirable in Kansas, may accomplish a little something, but nothing important.

Spreading scarce state resources too thin is no more prudent in education than in any other area of state services. Even with 100 percent federal funds for a program, there are "hidden" costs to the state or local school districts in the use of school personnel which might be utilized better elsewhere.

Once programs are authorized, they must be reviewed periodically. Depending on this evaluation, changing local needs, the availability of funds, changes in federal laws, and other pertinent factors, choices then can be made as to which programs should be eliminated, cut back, or expanded. (Because a federal program has once been authorized does not mean it must be automatically continued ad infinitum.)

In analyzing federal aid programs, the committee found that individual administrators were well informed as to their own program. However, no one had general knowledge of all the programs, nor was there a complete list, containing the barest essential information, of all the federal education programs authorized for Kansas.

General information on all federal aid programs is essential in the intelligent administration of state education policies. Some significant policy and legislative questions that point up the lack of general information include:

Why were funds for Schilling Institute requested under the Vocational Education Act, thus placing Schilling in direct competition with comprehensive high schools, Area Technical-Vocational schools, and Community Junior Colleges, instead of under Title I of the Higher Education Facilities Act? Why is federal aid under certain programs approved at both the state and local level deducted, or in effect excluded, in computing state aid to school districts under the state school foundation finance program? To what extent, if any, is the federal adult education program duplicating existing adult education programs? How is the need for a federal program determined? (Could a uniform system of reporting be adopted so that separate reports on federal programs by different offices would use the same statistics?) Are civil defense education courses as necessary as other federal programs in Kansas? Should they be authorized as elective social studies in high schools with a portion of the teacher's salary paid from federal funds?

These are fundamental policy questions. More will continue to arise in the future. They can be handled intelligently only by the establishment in the State Department of Education of a



special office to analyze federal aid to education programs, make recommendations as to their need in Kansas, and coordinate their implementation.

Federal financing in the field of education can be expected to grow. The ramifications are many. The so-called poverty education programs illustrate what is being done in certain areas outside of the established public school system.

The federal philosophy, as outlined in testimony before the Committee, is to stimulate more creative action by state and local boards in the far-ranging field of education. If such action is not taken to the satisfaction of the administrators of federal programs, they may well move in to fill what they regard as a "vacuum" in the educational processes.

In higher education, the federal government now is a dominant force because of its financial grants for research and other special projects. If "local" control of public school education is to be maintained, strong, policy-making leadership at the state and local level is essential for the future.