



UNDERSTANDING THE RECENT GANNON DECISION Q&A

The Kansas Supreme Court ruled on Oct. 2 that the school finance bill passed by the 2017 Legislature was not adequate under the Kansas Constitution and it made the school funding system in Kansas “unequitable.”

Why is the Supreme Court involved in school funding?

The Kansas Constitution, as amended by voters in 1966, requires the Legislature “to make suitable provision for the educational interests of the state.” One of the roles of the Kansas Supreme Court is to determine if the Legislature is following the constitution when challenged in a lawsuit. A group of school districts sued the state because they believe the way the Legislature is financing schools does not comply with the constitution because it is not providing suitable funding. The case has become known as the Gannon lawsuit.

What does “suitable funding” mean?

The Supreme Court has defined suitable funding to have two parts. First, it must be “adequate,” which means the total dollars provided to school districts, and the way those dollars are distributed, are adequate to allow all students to meet or exceed basic education standards.

Second, it must be “equitable,” which means all districts can raise a similar amount of funding per pupil with similar tax effort. This means no child should receive a lesser education because it would require much higher taxes to raise the required amount of money or receive a better education because more money could be raised with lower taxes.

Why did the court find that the Kansas school funding was inadequate in this decision?

In a decision last March (2017), the Supreme Court said funding is inadequate because too many Kansas public school students are not scoring at the minimum level on state reading and math tests - approximately 25 percent. This percentage is considerably higher for certain groups of students, such as students from lower income families. Furthermore, the number of students scoring below this level has been growing over the past five years, after it had been declining for a number of years prior.

In addition, the court found that other measures of student performance, such as national reading and math scores, graduation rates and ACT scores for college readiness had also either been dropping, or showed large differences among student groups, or both. As a result, the Court decided that funding was not adequate to help ALL students meet or exceed basic educational goals and has told the Legislature to fix it.

Why did the court decide that inadequate funding was the problem?

First, the court noted that while total educational funding was increasing during the late 2000’s, educational performance was generally improving. However, within several years after funding was reduced in 2009 and has not been fully restored, educational performance has generally been dropping.

Second, the Kansas Legislature has commissioned and paid for two studies since 2000 that found additional funding would be required to improve educational outcomes for all students. Third, one of those studies, conducted by the Legislature’s own audit agency, found “a nearly one to one relationship between increased educational funding and educational results.”

Fourth, Kansas trial courts have consistently found that funding is a necessary component to educational success, based on evidence presented by both Kansas educators and outside experts in educational finance.

Fifth, since school funding reached a level in 2009 that the Court said was constitutional, per pupil funding has fallen behind inflation and student performance has declined. Over that same period, the number of students with greater needs, such as poverty or disability, has increased. Legislative studies have indicated those students cost more to educate.

What did the 2017 Legislature do to address adequacy?

After the Supreme Court's ruling in March, the Legislature passed Senate Bill 19, which increased state operating aid to public schools by \$300 million over two years, used a formula to distribute that money based on a previous formula upheld by the Court, and made changes to direct more money to assist students who are considered less likely to be successful. The Legislature justified this amount based on an analysis of the funding for certain districts that have better than expected student performance levels on state tests, graduation rates and ACT college readiness scores.

Why did the Supreme Court say what the Legislature did was still not adequate?

The Court said the Legislature had not provided enough evidence the amount it provided actually would allow more students to reach minimum state standards.

For example, the Legislature's analysis only identified districts doing better than expected based on the number of low income students they educate. However, some of those districts still had more than 25 percent of students scoring below the minimum level. In addition, some districts were not included in this analysis. The Court said the analysis was much less complete and credible than previous cost studies requested by the Legislature.

In addition, the Court found that this analysis provided a much lower estimate of costs than other expert studies, as well as the amount requested by the Kansas State Board of Education.

However, the Court did not tell the Legislature how much money it would have to spend.

If the Court did not tell the Legislature how much it needs to spend, how will the Legislature know how much will be required to comply?

The court told the Legislature it needed to use a more appropriate method to determine what was required, noting it has done so on previous occasions. If the Legislature fails to use a credible new process to determine necessary funds, the Court can only rely on previous, credible evidence.

Why did the court say the Legislature had made the school finance system less equitable?

Although the Court had ruled in the summer of 2016 that the Legislature had adopted a law that was equitable, the justices found certain changes in SB 19 made the system less equitable by requiring lower wealth districts to have higher tax rates to raise the same amount of money.

What is meant by the "wealth" of school districts?

Most of the money school districts can raise on their own comes from taxes on the value of property in the district. Therefore, a district with a lot of taxable property will be able to raise more money for each student with a certain tax rate than a district with less property. As a result, the Kansas Courts have said

that if districts are allowed to raise money with local taxes, the state must assist districts with less property wealth per pupil by giving them state financial aid.

Why does the court care about differences in how much money districts can raise and spend locally?

The court said the state's constitutional duty is to provide education that is owed to each child equally. Therefore, the educational opportunities must be equitable to all students in the state, and cannot be substantially different because of differences in local wealth.

This does not mean there cannot be differences in spending among school districts, but if local districts can raise additional money for education, the state must ensure all districts can raise similar additional amendments with similar tax effort.

What did the Supreme Court find inequitable in the new law?

First, SB 19 allowed school districts to pay for property insurance and utility costs out of their "capital outlay fund," which is a separate tax districts can use to pay for building costs. The Legislature said this change was appropriate because these new costs are related to buildings. However, the Court said this would make it easier for high wealth districts to pay for these costs because they can raise more money from this capital outlay tax. (The state does pay state equity aid for this purpose, but at a lower rate than it pays for operating costs.)

Second, SB 19 allows districts to raise money for operating costs through the Local Option Budget (LOB). Local boards may adopt an LOB of up to 30 percent of their general fund, which is set by the state. A district may adopt an additional 3 percent of LOB (for a total of 33 percent), but this is subject to "protests petition," which means local voters can force a public vote. The LOB is funded by property tax, but most districts received state aid depending on their local wealth. The Court said because some districts have been allowed to increase the LOB to 33 percent of their general fund without public vote due to changes in the state law over time, a protest petition should not be required for other districts.

Third, SB 19 delays the payment for additional state aid for the LOB for one year. The purpose was to give the Legislature more time to budget for changes in cost of LOB state aid. The Court said that means lower wealth districts would be required to raise more local taxes for the first year after the increase, which put more burden on low wealth districts.

Fourth, the Kansas school finance law for many years has given districts additional funding, called "at-risk" aid, to help students who are falling behind academic expectations. This funding is based on the number of students in each district eligible for free meals, which is determined by their family's income. The reason is that low income students on average have lower test scores, graduation rates and other challenges in school. (However, the funding received may be spent to serve any student having difficulties, regardless of whether or not they are low income, and low income students who are performing well academically do not receive services.)

SB 19 allowed districts with fewer than 10 percent of students qualifying for free meals to be funded as though they had 10 percent. The Legislature justified this because such districts had to serve students who were "at-risk" even though they are not low-income. The court has previously allowed the Legislature to use factors other than free meal eligibility for at-risk funding, but said simply using a 10 percent floor only helped districts with a very low number of low income students, and not other districts with at-risk students who were not low income.