

State Representative

Don Hineman

Don's Legislative Update

May 31, 2016

Constitutional Game of Chicken

Last Friday the Kansas Supreme Court issued a ruling in the ongoing lawsuit regarding funding for Kansas public schools. The justices unanimously declared that the current funding law passed by the legislature only months ago and signed into law by Governor Brownback is unconstitutional. They logically concluded that an unconstitutional law cannot be enforced, and therefore ceases to exist. As a result there currently is no legal mechanism by which the state can fund K-12 education.

The court gave the Legislature "yet another opportunity to treat Kansas students fairly" and to "craft a constitutionally suitable solution and minimize the threat of disruptions in funding for education." The court has made it quite plain that they are serious about this, and if the governor and legislature do not respond quickly, then the schools will be closed effective July 1. The court would accomplish this by enjoining anyone within the administration from making any payments for funding of K-12 education. Though they may not like it, I strongly suspect that those individuals will not wish to defy a direct order of the court and face the consequences of that action.

So the question is whether the Supreme Court has the authority to take such a drastic step. Those who oppose the ruling point out that the legislature has sole constitutional responsibility to appropriate funds, so they conclude that the court has no role in second-guessing the legislature's actions. But the ruling reached the conclusion that the legislature's plan was unconstitutional because it did not distribute funds equitably to all school districts. It also ruled that a clause which attempted to hold harmless certain school districts actually amplified the inequity by allowing them to raise more money via property taxes. Doing so increases inequity because other school districts lack the resources to do the same.

Although the legislature has a constitutional duty to appropriate funds, the court has a constitutional duty to determine whether any law enacted by the legislature is constitutional. If the court lacked this authority and responsibility, then resource-poor schools would be short-changed and many Kansas school children would be denied equal educational opportunity. This circumstance is a reminder that one of the primary reasons for the existence of the judiciary is to protect the rights of the minority from the tyranny of the majority. Those who do not value that constitutional protection are making the very foolhardy assumption that their own rights will always be among the majority. And by treating the rights of the minority with such little regard, they are tearing at the very fabric of the social contract under which we have all consented to live.



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800-432-3535**

**Child/Adult Abuse Hotline
800-922-5330**

**Child & Family Services
888-369-4777**

So the next move is up to the legislature. The ceremonial final day of the regular legislative session will take place on Wednesday, June 1, and many legislators will travel to Topeka to deal with a possible override of Governor Brownback's veto of a bill which deals with multiple issues relating to property taxes. It would be possible for legislative leaders to merely extend the session to deal with this constitutional crisis but they have indicated they prefer not to do that, stating that they need time to digest the ruling and plan their response. But no one should have been surprised by the court's ruling. Many impartial observers certainly expected this outcome.

It appears that legislators will make a one-day trip to Topeka on Wednesday and then return home, only to be called back later for an emergency legislative session to deal with this constitutional game of chicken. In the meantime, everyone associated with K-12 education will be in total limbo. School administrators don't know if they will have schools to manage July 1. Educators are wondering whether they will have jobs and whether they will receive a paycheck after July 1. The same is true for custodians, school cooks, and bus drivers. And working parents will be faced with the difficult prospect of lining up childcare for their family if the schools remain closed.

It is estimated that it would take \$38 million to \$43 million to correct the constitutional defect identified by the court. That isn't an insignificant sum, and yet not insurmountable compared to the roughly \$4 billion spent annually on Kansas schools by the state. So one is left to wonder why there is so much resistance by the legislature and the governor to fixing the problem. Is it really about the \$38 to \$43 million or possibly about clarification of constitutional responsibilities? Although that is possibly the objective for some, I strongly suspect something else is at play here.

Consider statements made by Governor Brownback and legislative leaders following release of the ruling. Governor Brownback: "The court is engaging in political brinksmanship with this ruling". House Speaker Ray Merrick: "The court has yet again demonstrated it is the most political body in the state of Kansas... Frankly, I find their actions disgraceful and hope Kansas voters will remember this in November when deciding whether these justices should be retained." Senate President Susan Wagle: "Certainly this unconstitutional overreach, and making students the collateral damage of judicial activism, should weigh heavily on the minds of all Kansas voters when many of these justices are up for retention in November."

These statements appear to confirm what I have long suspected. The constitutional crisis has been purposely crafted by Governor Brownback and legislative leadership in an attempt to discredit the judiciary. They hope to turn the Kansas voting public against the judiciary prior to the November election when five of the justices must stand for retention vote. The future of Kansas school children and everyone associated with K-12 education has been placed at risk as a result of the crass political scheming of these individuals and not through actions of the court. Certainly it took a great amount of courage for the justices to ignore the reality that their decision might lead to their removal from office and instead to perform what they perceived as their constitutional duty.

It is high time that we in the legislature set aside all the political rhetoric and get about our constitutional responsibility to equitably provide funding for all Kansas public schools. Reasonable solutions exist and it shouldn't be difficult to reach resolution of the matter. I stand ready to work with my colleagues toward that end, and the sooner the better.

Consumer Protection
800-423-2310

Crime Tip Hotline
800-252-8477

Crime Victim Assistance
800-828-9745

Gov- Brownback
800-748-4408

Highway Road Conditions
511 (in Kansas)

Housing Hotline
800-752-4422

KanCare Assistance
866-305-5147

Kansas Lottery
800-544-9467

Legislative Hotline
800-432-3924

Mental Health Services
888-582-3759

School Safety Hotline
877-626-8203

Social Security
800-772-1213

Taxpayer Assistance
785-368-8222

Tax Refund Status
800-894-0318

Unclaimed Property
800-432-0386

Unemployment Insurance
800-292-6333

Vital Statistics
785-296-1400

Voter Registration
800-262-8683

Welfare Fraud Hotline
800-432-3913

Worker's Comp
800-332-0353

The Future of Public Education in Kansas

I have written and distributed to the press an op-ed piece regarding public education in Kansas. It now [available on my blog](#).

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This newsletter is primarily intended for the residents of the 118th District (all of Wichita, Scott, Lane, Logan, Gove, Trego, and Sheridan Counties and portions of Thomas and Graham Counties). However it is available to anyone who finds it of interest. Please forward to your friends, or if you are not now receiving a FREE subscription to my newsletter, [click here to sign up](#).

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Cowboy Logic

Don't cling to a mistake just because you spent a lot of time making it.

Quote of the day

"The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn." - **Alvin Toffler, *Future Shock*, 1970**

Sermon in a sentence

The only true wisdom is in knowing you know nothing.

Representative Don Hineman

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