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Education and Local Government Interim Committee
62nd Montana Legislature

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EDUCATION AND LOCAL GOV'T
September 15, 2011
Rm 102, Capitol Bldg, Helena
EXHIBIT 18

TO: Education and Local Government Interim Committee
FROM: Dan Whyte
RE: A History of Legal Challenges to Public School Funding -- Part 1
DATE: September 15, 2011

The development of funding of K-12 schools in Montana is primarily a product of the Legislature's response to Montana district court and Supreme Court cases. This is an outline of the first of three cases to be presented that have shaped school funding. It is the first of several discussions of constitutional challenges to Montana public school funding and the current legal status that the Legislature must consider for the 63rd Legislative Session and for the 2015 decennial study.

Constitutional Requirements

Article X, section 1, of the Montana Constitution mandates educational goals and duties:

- (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
- (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.
- (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Boiled Down

Article X, section 1(1) -- System of education which will develop the full educational potential of each person.

Article X, section 1(3) -- The legislature shall provide a basic system of free quality

public elementary and secondary schools.

Article X, section 8, -- the supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

The framers of the 1972 Montana Constitution knowingly adopted uncompromising language. Providing insight to the intent of the language, Delegate Gene Harbaugh discussed the conviction of the Education and Public Lands Committee that drafted the language:

We in Montana are standing on the threshold of a great opportunity in the area of education. . . . We in Montana are in a position of being on the cutting edge of a new frontier, not only in terms of philosophy of education, but in terms of the method of financing education. . . . In subsection 1 we have a broad statement of the goal of education in our state. And that goal, as it is stated, is to establish a system of education which will develop the full education potential of each person. Now this is something new, but the committee intends that this be taken in much the same respect as some of the provisions which we included and adopted in our Bill of Rights section yesterday -- that really, just as we were in the area of political theory there, here we are also in the area of educational theory. And so we're setting forth a goal. Now the committee recognizes that economic resources of the state limit this goal, and yet it's our belief that it's very important to set forth a goal for education and that the development of our human resources to the fullest possible extent ought to be a primary goal of the state's educational enterprise. . . . The committee recognizes that there is a corollary between the doctrine of equal protection under the law and the fundamental right to equality of educational opportunity. Now, does this statement set forth a mandate that opens the door to a welter of demands for making education absolutely equal for every person at every level? Obviously, it does not. . . . One of the concrete limitations on the guarantee would be the ability of the state to finance a system of education which guarantees equality; and where the state can show a compelling cause -- compelling state interest, such as the preservation of the economic welfare of the state, this would be a limiting factor imposed upon this guarantee. But the committee does wish to take the position that equality of educational opportunity is a fundamental right of all.

In 1949, the Montana Legislature enacted the Montana School Foundation Program. Under that program, the legislature would set the "Maximum General Fund Budget Without a Vote" (MGFPWV) schedules for elementary and secondary school districts in the state. Eighty percent of the MGFBWV was funded by county and state equalization revenues. The equalization revenues were derived from 45 mills on all taxable property in each county and state aid from such sources was earmarked revenues, surplus county Foundation Program revenue, and direct legislative appropriations. The remaining 20% of the funding of MGFBWV was provided by

permissive levies of up to 6 mills for elementary districts and 4 mills for high school districts made without a vote.

In 1985, the Foundation Program was challenged in *Helena Elementary School District No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (1989). The plaintiffs argued that the funding system violated Article X, §§ 1 and 8 of the Montana Constitution.

Evidence provided at the trial showed that in 1985-86, most school districts adopted budgets in excess of the MGFBWV. In addition to the MGFBWV, schools districts were consistently turning to permissive levies and a third type of funding through property tax levies, vehicle taxes, interest income, tuition income, and federal funds. By 1985-86, 35% of all general fund budgets were obtained through this third means of funding.

The focus of the lawsuit was equity spending for schools. The plaintiffs relied on evidence that established significant differences in the wealth of various school districts and disparities of per pupil spending ratios of up to 8 to 1 to argue that the school funding system was inequitable. The school districts also argued that the wealthier districts were able to provide hands-on learning experiences and more diversity of courses in physical education, music, and art, resulting in unequal education opportunities for students.

As an illustrative example, the Court considered evidence of funding by Drummond School District and Geraldine School District. The two school districts were very close in size, at both the elementary and high school levels. Geraldine's taxable valuation, however, was more than twice that of Drummond's. The tax efforts for the elementary schools were comparable, but Geraldine levied more general fund mills than Drummond at the high school level. Consequently, Geraldine spent approximately \$ 1,000 more per ANB than Drummond at the elementary level, and over \$ 2,000 more per ANB at the high school level. Approximately 40% of Geraldine's general fund revenues were derived from the voted levy, while at Drummond, the voted levy supplied approximately 15% of general fund revenue. This illustrated the fact that wealthier districts were able to rely to a greater extent on the voted levy to generate revenues for the general fund.

Plaintiffs also showed that better funded schools offered a more expanded and richer curriculum, were better equipped in the areas of textbooks, instructional equipment, audio-visual instructional materials, and could provide better maintenance of facilities.

The state argued that "[e]quality of educational opportunity is guaranteed to each person", was "an aspirational goal only". The Supreme Court disagreed, holding that the plain meaning of Article X, section 1, **guarantees** equality of educational opportunity: "As we review our Constitution, we do not find any other instance in which the Constitution 'guarantees' a particular right." *Helena Elementary*, 236 Mont. at 53, 769 P.2d at 689.

Upon the strength of that constitutional language, the Court held that spending disparities

among the school districts translated into a denial of equality of educational opportunity.

The Court agreed that the per pupil spending ratios and the dearth of programs available at poorer schools when compared to wealthier schools were unequal, but also indicated that although the wealthier schools had more programs, those schools were not funding frills or unnecessary educational expenses. The Court was persuaded that because most schools adopted budgets in excess of the maximum general fund and relied heavily on permissive and voted levies, the state's funding system was inadequate.

The Court held that the guarantee of equal educational opportunity was binding on all three branches of government, the legislature as well as the executive and judiciary, whether at the state, local, or school district level.

The state argued that the state's fiscal capacity to fund schools must be considered and that statewide fiscal difficulties in the last few years should excuse the disparities in the spending per pupil in school districts. Despite Constitutional Convention Delegate Harbaugh's statement that "the committee recognizes that economic resources of the state limit this goal", the Supreme Court rejected this argument. The Court instead held: "We agree with the District Court that such fiscal difficulties in no way justify perpetuating inequities." *Helena Elementary*, 236 Mont. at 54, 769 P.2d at 690.

Some of the parties requested that if the Supreme Court concluded that the school funding system was unconstitutional, the Court should establish the percentages required to be paid by the state and by the districts. The Court declined, however, indicating that the Legislature has the power to increase or reduce various elements of the school funding system.

The *Helena Elementary* Court also reviewed arguments with respect to Article X, section 8, of the Montana Constitution. That section provides that: "The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law." The state argued that spending inequities among districts should be allowed to exist in support of local control.

The Court held that this section did not require that spending disparities between the school districts of the state be allowed to exist because the disparities could not be described as the result of local control. In fact, the system of funding denied the poorer school districts a significant level of local control because they had fewer options due to fewer resources.

The Supreme Court was also asked to review the role of the Board of Public Education's accreditation standards. The Court clarified the role of accreditation standards as follows:

The testimony of superintendents, teachers, and trustees clearly establishes that from the professional educator's perspective, the minimum accreditation standards do not fully define a quality education.

In sum, the Montana School Accreditation Standards are minimum standards upon which quality education must be built.

Thus, the Montana School Accreditation Standards do not fully define either the constitutional rights of students or the constitutional responsibilities of the State of Montana for funding elementary and secondary schools.

The final substantive argument that the Court considered was whether the state could consider federal funding in its equalization formula. Public Law 81-874 was enacted by Congress in 1950. It provided federal payments to school districts which serve children who reside on or whose parents are employed on federal property, including Indian lands, or who have a parent on active duty in the military.

Plaintiffs argued that in some districts, "874" funding was used as tax relief resulting from the federal presence and was closely tied to the special need on and near Indian reservations for additional school funding because of extraordinary educational difficulties such as language barriers, poverty, unemployment, and cultural differences.

Considering the constitutional recognition of the distinct and unique cultural heritage of the American Indians pursuant to Article X, § 1(2), the Court held that 874 funds could not be factored into the state's school finance equalization system unless the system met the federal definition of an equalized program. The Court found that the system did not currently meet that definition, and therefore could not consider 874 funds in the equalization system.

Following this decision, the Legislature attempted to address the Court's decision during the 1989 Session, but was unable to enact a law with regard to school funding. However, the Legislature passed HB 28 during a special session in the summer of 1989. Despite several changes made to school funding through HB 28, the funding system was challenged in district court again in August 1991, by nearly the same plaintiff coalition as the initial *Helena Elementary* case. Thirty-five elementary districts and 30 secondary school districts, representing 40% of Montana's student population sued arguing that substantial disparities still existed. Additionally, the Montana Rural Education Association filed its own suit.

During the 1993 Legislative Session, in reaction to the lawsuits, HB 667 was passed. In order to equalize school funding, HB 667 limited expenditure disparities to 25% from lowest to highest spending districts. The bill also recognized school district size and education costs as educationally-relevant reasons for the expenditure disparities. As a result of the passage of HB 667, the pending lawsuits were dismissed.

Part 2 of this discussion will consider HB 667 funding and the case of *Columbia Falls Elementary School District No. 6 v. State*, 2005 MT 69, 326 Mont. 304, 109 P.3d 257.