

The Antecedents to the  
School Financial Crisis in Kentucky

by

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(ABSTRACT)

In a class action suit brought to obtain a judgment declaring that the Kentucky system of financing public elementary and secondary education violated the Kentucky Constitution Judge Ray Corns ruled the system unconstitutional on May 31, 1988. He held that the system violated not only the state constitution but also the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

The purpose of this study was twofold. First, the study traced the historical and legal development of the financial support system for public elementary and secondary education from 1830 to the present date. Second, the study analyzed the facts surrounding the ruling declaring the system unconstitutional.

The study was a historical review of the legislative documents, historical records and legislative acts which set the stage for the unconstitutional judgement. Judge Ray

Corns, the Circuit Court judge rendering the decision, and other key actors in The Council for Better Education v. Wilkinson were interviewed to analyze facts and events related to the ruling that the system was unconstitutional.

## ACKNOWLEDGEMENTS

Grateful appreciation is expressed to several individuals whose interest and support provided great assistance in the completion of this study. I am especially thankful for the assistance provided by Kern Alexander, Arnold Guess,

and David Alexander. They gave me full use of their documents, libraries and resources, as well as valued timely counsel.

Further, the support and understanding of my family members, , , , and reinforced me with the will to complete this study. Their generous love, patience, and faith help sustain my efforts.

## DEDICATION

TO MY  
FATHER

On whose behalf this historical and political study is dedicated as being symbolic of the value he placed upon doing all the right things.

A gentle man of great foresight and wisdom whose faith, quiet love, and understanding, as well as his tireless efforts in his guidance, provides inspiration and a sense of aspiration to my brothers, my sister, and to me.

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## Chapter 1

### Introduction

An accurate historical analysis of the antecedents of the current educational financial crisis in Kentucky provides useful information for the citizens of Kentucky. This is especially true in view of the sweeping and historic decision of the state Supreme Court on June 8, 1989 when the court ruled that Kentucky's entire system of public schools was unconstitutional. The long-awaited ruling in the Council v. Wilkinson school finance case opened the door to an overhaul of all aspects of public education, not just school funding.<sup>1</sup> The antecedents to the school finance crisis in Kentucky paints an analytical picture of the critical problems in education.

The plaintiffs in Kentucky are a non-profit cooperation comprised of 66 Kentucky Common School Districts, seven Independent and County School Districts, together with a number of parents and individual students, representing as a class all similarly situated students in Kentucky's school districts.<sup>2</sup> The districts claimed the state's school funding system was discriminatory and unconstitutional because it cheated children from poorer districts of an adequate education.<sup>3</sup>

The financing of public education has been one of the

most pressing and critical problems facing Kentucky and the nation's educational leaders. Public education advocates, such as Horace Mann of Massachusetts, preached for an educational awakening that was ultimately to form the basis for state systems of public education as we know them today--free regular public schools supported by both local and state general taxation.<sup>4</sup>

The early nineteenth century saw an extraordinary group of dedicated and effective leaders described as "public school men" emerge in several states. They argued against tuition and maintained that the term "free schools" should no longer merely mean a place where the poor were given a free education and all others paid tuition. Class distinctions, they argued, would be reduced if all children could be given a free education financed with revenues from taxes levied on everyone.<sup>5</sup>

This view was reflected in an 1822 report to the Kentucky legislature that advocated free common schools and specifically rejected the pauper approach:

To be separated from the rest of the community as a distinct and inferior caste, and held out to the world as the object of a public charity, is a degradation too humiliating for the pride of freemen.<sup>6</sup>

Among the chief concerns of today's educational leaders is the demonstrated relationship between a school district's property wealth and a district's fiscal ability to provide an

adequate level of educational funding. Concurrently, fiscal equity and educational excellence have become important issues in the educational reform movement. As a result of challenges to the adequacy and fiscal equity in educational provisions, educational reform has become recurring in school regions and districts across the nation. Greater awareness has been created regarding the presence of vast disparities in educational opportunity among both states and states' school districts.

The resolute interest in the methods of financing public schools is part of a national reform movement stemming from the now-famous lawsuits of Serrano v. Priest<sup>7</sup> and San Antonio Independent School District No. 1 v. Rodriguez.<sup>8</sup> In Serrano v. Priest, the California Supreme Court made clear that the quality of a child's education could not be dependent upon the wealth of a school district. Instead, the court stated, the education burden is the fiscal responsibility of the state. This school finance litigation led Kentucky's educational leaders to seek judicial solution to complex fiscal issues.<sup>9</sup> Nationwide, school systems are being cited for failing to ensure equal educational opportunities for all children, as mandated by the respective states' constitutions. Such is an apt description of the public school finance dilemma faced by Kentucky educators and elected leaders today.

San Antonio School District No. 1 v. Rodriguez held that

the equal protection clause of the federal constitution did not require that challenges to unequal school financing laws be subjected to the strictest constitutional scrutiny. This holding concluded that the right to public education was not explicitly or implicitly guaranteed by the United States Constitution. In contrast, the Kentucky Constitution does make such an explicit guarantee in Section 183.<sup>10</sup>

Since Rodriguez, legislatures, courts, and citizens have demonstrated increased interest in educational offerings and as a result Kentucky's state school system financial programs have been more closely reviewed. Violations were suspected based upon the clause, "an efficient system of common schools throughout the state,"<sup>11</sup> in the state constitution.<sup>12</sup> The case of Robinson v. Cahill<sup>13</sup> "was the first case in which a state supreme court relied on the educational provisions of a state constitution, rather than on equal protection requirements for finding discriminatory findings of schools unconstitutional."<sup>14</sup> Long noted that:

Across the nation, the major state constitutional issue of the decade became whether state courts should strike down inequitable statewide school finance systems under provisions of state constitutions pertaining to education and equal protection.<sup>15</sup>

All fifty states contain within their constitutions provisions for legislative responsibility in providing for public education.<sup>16</sup> However, judicial reviews have often been necessary to interpret the action of state legislatures. The

courts have been called upon to assess whether legislatures have fulfilled their duty to define and support the state guaranteed educational program.

Court cases in numerous states have challenged the constitutionality of state support systems for funding public schools. In Kentucky, the case of The Council for Better Education, et al. v. Martha Layne Collins, et al. (hereafter Wilkinson\*) stirred considerable interest in the state's method of school funding. This case was responsible for stimulating new proposals in Kentucky regarding both fiscal equity and adequacy in educational opportunities. The Council for Better Education filed suit against the governor, the legislature, the board of education and others asking for judgment against the state's school finance system based upon unconstitutionality and discrimination. The suit sought relief for children who had been denied an "efficient system of common schools throughout the state."<sup>17</sup> The Court stated:

The Plaintiffs are seeking a declaratory Judgment that Kentucky's statutory system for financing its public elementary and secondary schools (Common Schools) violates Section 1, 3, and 183 of the Kentucky Constitution and the 14th Amendment of the Constitution of the United States of America and a judicial mandate that funds be appropriated [and allocated in such a manner as] to comply with state and constitutional requirements.<sup>18</sup>

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\*The Council for Better Education, et al. v. Martha Layne Collins, et al. became Wilkinson upon approval of Motion to Substitute, March 28, 1988, and includes the following: Brock for McDonald, Meade CPA, for Mills, Rose for Prather, and Parks for Ratcliff.

The issues presented by the plaintiffs were (1) What does the phrase ". . . an efficient system of common schools . . .," as contained in Section 183 of the Kentucky Constitution, mean? (2) Is education a fundamental right under Kentucky's Constitution? (3) Does Kentucky's current method of financing the Common Schools violate Section 183? (4) Are students in property-poor districts denied equal protection of the laws as guaranteed by Section 1 and 3 of the State Constitution and the equal protection and due process clauses of the 14th Amendment of the U.S. Constitution?<sup>19</sup>

Based on the legal interpretation of an efficient system of common schools, Judge Ray Corns ruled on May 31, 1988, that the state's school finance system was discriminatory and unconstitutional because of inequities between affluent and poor local school districts.<sup>20</sup>

### **Purpose of the Study**

The central purpose of this study was to trace the development of the Kentucky school finance support plan and to provide documentation that can be used by education leaders, legislators, and citizens of Kentucky. The resulting document incorporates specific historical, fiscal, and legal elements of the funding system. The study provides ready access to pertinent information and lends greater understanding of the process that led to the current fiscal

crisis in public school funding. The study traces the development of the commonly held principle that a child's education should not be a function of the wealth of his parents and his parents' neighbors. The plaintiffs alleged that the Kentucky Constitution required the General Assembly of the state to provide equitable and adequate resources for each child in the state public school system.

An operative description of the current school funding formula is presented in order to relate the present financial scheme's inability to solve the continuous fiscal problems identified throughout the history of the Foundation Program for Education in Kentucky. These recurrent problems have been identified with regard to variance in fiscal capacity and formula design, as well as unequalized property appraisal and assessment practices.

The study was historical in nature, concerned with Kentucky's method of providing school fiscal support. The study contains the historical development of the school finance system and incorporates considerations for future funding of Kentucky's school finance program. The study terminates with a description of the Supreme Court case, which upheld Judge Corns Circuit Court decision, setting forth the principles for an efficient system of common schools.

### **Need for the Study**

Ancillary to the central purpose is the intent to create an increased awareness of the changes in the school fiscal support plan, as well as an awareness of the carryover of past doctrines and practices into the present system. In order to determine the evaluation process and to assess the effects of the Kentucky school finance system, it was deemed useful to examine the events and documentary exhibits to realize how Kentucky arrived at its present dilemma.

During the past few years, the quest for educational adequacy and equity has become a central theme in school finance reform. Legislatures, courts, administrative agencies, and citizens are exhibiting increased interest in the substance of educational offerings. Courts view resource equalization among school districts within states as necessary, but not a sufficient condition to improve public education. They seek assurance that educational programs are adequate, as well as equitable.

Judicial mandate in Kentucky has now placed an obligation on the state legislature to provide an "adequate and efficient basic education" or "appropriate programs" to prepare students for future adult roles. Determining what constitutes an efficient system of schools and how it should be funded involves complicated political and technical issues. This study is needed to develop a systematic analysis of legal

mandates pertaining to these issues.<sup>21</sup>

Alexis de Tocqueville observed in 1835 that all significant political issues in America eventually become judicial issues.<sup>22</sup> This observation has been verified in the field of education; most school reform efforts have been linked either directly or indirectly to judicial activity. Thus it seems appropriate to look initially at litigation for principles of law that pertain to the issue of what, legally, constitutes an adequate and efficient system for education in Kentucky. By having a document available that chronicles the development of the school fiscal support plan, the state may better serve the citizens by providing appropriate legislation that provides for an efficient system of common schools throughout the state.

### **Procedures for the Study**

This study is classified as a historical study for research purposes. It was designed to capture the historical, legal, and financial picture of Kentucky in its support of public schools. The focus of the study was upon those events that created changes and shaped the financial structure for the support of public schools. The study discusses significant legislative acts, and economic conditions that were notable for having affected public school fiscal support.

Historical reporting contains the how and why of past

events and the process through which the past has become the present. William W. Brickman stated that, "Historical research in manners concerning education is valuable in that it can push back the frontiers of knowledge and reduce the area of ignorance about a given subject."<sup>23</sup>

The control, in the historical approach, lies in the choice of questions to be asked of the sources. For example, "What legislative acts have related directly or indirectly to the support of public schools? What lasting effects have these acts had?" The value of the historical approach rests with the external verses internal criticism, wherein the authenticity of the evidence is reflected. The sources were classified in two categories: primary and secondary. Primary sources were the interviews. Secondary sources, such as history books, educational journal reports, and documents submitted as testimony and exhibits in the case of The Council for Better Education v. Wilkinson, were documented. Literature on the general history of education in Kentucky was reviewed to achieve greater awareness of the fiscal trends and how these trends affect or influence the elected officials of the General Assembly and education leaders.

The legal research intertwines with the historical reporting. The study's legal components, constitutional provisions, legislative acts for school funding and taxation, and the court decisions, the research combines with the oral

history from individuals who were main contributors and witnesses for the plaintiffs in the case.

Three school law and finance experts, Kern Alexander, David Alexander, and Richard G. Salmon, who were consultants for and primary witnesses for the plaintiffs, were interviewed.

Information gained from them along with other recorded oral transcripts from other important participants, Dr. John Brock, Superintendent of Public Instruction; Frank Hatfield, Superintendent of Bullitt County Schools; Jack Moreland, Superintendent of Dayton Independent Schools; Arnold Guess, Deputy State Superintendent; Bert Combs, former Governor of Kentucky and Judge of the U.S. Court of Appeals for the Sixth Circuit; and Theodore Lavit, Attorney at Law, Leberman, Kentucky, are considered to be primary sources. Other information comes from depositions given and numerous documents and exhibits given by these individuals as records in the case of The Council for Better Education v. Wilkinson.

#### **Limitation of the Study**

This study does not fully cover all of the factors contributing to school funding in Kentucky. For example, the study is exclusive of federal funding in programs such as vocational education, special education, adult education, and others. The study provides an illustration, through a variety

of examples, that the Kentucky public school finance system has caused the failure of some school districts to provide either an adequate or efficient system of public elementary and secondary education. The heart of the study emanates from the historical development of the Kentucky financial support for education leading to the unconstitutionality judgment and the recommendations issued by the Select Committee and leading experts dealing directly with the issue of the development of a constitutionally sound, fiscally adequate and efficient system for financing public schools in Kentucky.

#### **Outline of the Study**

With the scope of the study defined in Chapter One, the following outline of the chapters provides references to the process by which the state aid plan for Kentucky public schools became inefficient and, thus, unconstitutional. Chapter Two describes the historical development of financing public schools in Kentucky. Periods of time in Kentucky's school finance history are designated and the influencing economic and political trends are identified. Incorporated into Chapter Two are the major events that shaped the financial structure for the support of public education in Kentucky. The chapter examines the early attitudes of the framers of education policy as they acted to establish common schools. The time period covered in this chapter is

1837-1959.

Described in Chapter Three are the processes of how the means of funding, the Minimum Foundation Program, property assessment, and the state aid distribution have inhibited the state in providing equal educational opportunities to all students. Various steps of the funding formula, court actions and efforts of a few courageous individuals are highlighted and questionable existing practices are identified. The chapter paints a cursory picture of Kentucky education from 1960-1980.

Included in Chapter Four is a summary of the historical, political and legal events affecting the current funding plan for education in Kentucky. The concluding chapter incorporates considerations for funding Kentucky's school financial program, The Council for Better Education v. Wilkinson findings and conclusions, plus a chronological history of The Council.

### **Summary**

The first chapter has a Statement of Purpose and the related Need for the Study. Following the intent of the study are the antecedents of the school finance crisis. Intertwined within each chapter is an examination of how fiscal equity, efficiency, and adequacy of legislative formulas failed to provide an efficient system of schools in Kentucky.<sup>24</sup>

Conclusions and recommendations regarding the creation and maintenance of a more equitable, adequate and efficient financial system to carry out the constitutional mandate as recommended by the Select Committee appointed by Judge Corns will be presented.

**End Notes**  
**Chapter 1**

1. Mary Ann Roser, "Sweeping school changes predicted," Lexington Herald-Leader, p. 1, Col. 1, June 7, 1989.
2. The Council for Better Education, et al. v. Martha Layne Collins, Governor, et al. (hereafter Wilkinson), Franklin Circuit Court, Division No. 1, November, 1985, Civil Action No. 85-CI-1759. Findings of Fact, p. 1.
3. Roser, p. 1.
4. Kern Alexander and M. David Alexander, American Public School Law (St. Paul, Minn.: West Publishing Co., 1985), p. 23.
5. R. Freeman Butts, "Search for Freedom: The Story of American Education," NEA Journal, March, 1960, pp. 33-48.
6. Alexander, p. 23.
7. Serrano v. Priest, 487 P.2d 1241 (Cal. 1971).
8. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).
9. Interview with Theodore H. Lavit, June 15, 1989.
10. The Council for Better Education, et al. v. Collins (Wilkinson), et al., Brief of AMICI CURIAE, Prichard Committee for Academic Excellence and Kentuckians for the Commonwealth, Franklin Circuit Court, March, 1988, No. 85-CI, 1759, p. 4.
11. Kentucky Constitution. Section 183 (1891).
12. Interview with Bert Combs, March 15, 1989.
13. Robinson v. Cahill, 287 A.2d 187 (N.J. 1972) affirmed as modified, 303 A.2d 273 (N.J. 1973) (Robinson I).
14. David C. Long, "Rodriguez: The State Courts Response," Phi Delta Kappan, March 1983, p. 481.
15. Ibid., 482.

16. Martha M. McCarthy and Paul T. Deignan, What Legally Constitutes An Adequate Public Education (Indiana: Phi Delta Kappan Educational Foundation Publication, ND) p. 8.
17. "School Board Backs Funding Ruling," The Lexington Herald-Leader, July 14, 1988, p. B10, Col. 5.
18. Council v. Wilkinson, p. 2.
19. Interview with Kern Alexander, June 14, 1989.
20. "Court Clears the Way for Funding Committee," Park City Daily News, July 15, 1988, p. A1, Col. 1.
21. McCarthy, p. 1.
22. Alexis de Tocqueville, Democracy in America, Vol. 1 (New York: Alfred A. Knopf, 1945), p. 280.
23. William W. Brickman, Guide to Research in Education History (New York: New York Bookstore, 1949), p. 1.
24. Tom Parrish, "Digest of Plaintiff's Complaint, Plaintiff's Trial Brief, Defendant's Brief, Judge Ray Corns' Finding of Fact and Judgement" in Council for Better Education, et al. v. Martha Layne Collins, Governor, et al., p. 9.

## Chapter 2

### Foundations of the Education System 1830-1850

The Kentucky Act of 1835 provided for schools and local taxation, but so great was the indifference of the people to education and their unwillingness to bear taxation that the law remained practically a dead letter.<sup>1</sup> The beginning for Kentucky public schools illustrates the lack of concern the early political leaders had regarding education and educational funding. Kentucky public schools began as a result of a gift of money from the national government, not as an act of elected officials.

Kentucky presented a claim to the United States for a due proportion of public land revenues that had created a so-called Surplus Treasury Revenue. Surplus Revenues were "for the purpose of education"<sup>2</sup>--to establish a system of common schools. At that time, one half of the children of school age in the state had never been to school and one third of the adult population could not read or write.<sup>3</sup> In 1837, the state received \$1,433,754. Of this amount, \$850,000 was eventually put into a state school fund and invested in state internal improvement bonds.

The "Act to invest in profitable stocks the surplus revenues of the United States," approved February 23, 1837, by the Kentucky General Assembly, dedicated only \$1,000,000

of \$1,433,754 toward founding and sustaining a general system of popular education. Thus, Kentucky began its public schools by reducing a federal subvention and abrogating a promise which duty required to be executed with certain fidelity.<sup>4</sup> The funds were diverted from the public schools by the legislature. The Kentucky Legislature created public schools without thought to fiscal equity, efficiency, adequacy or the reduction of illiteracy, but rather with a bit of larceny indicating a lack of appreciation for the value of education.

Damage to the schools would have been less severe if the partition of the school fund ended there, but the Act of 1837 was an entering wedge for further misappropriation. On February 16, 1838, the fund dedicated to public instruction was reduced from \$1,000,000 to \$850,000. Bonds were issued to the State Board of Education as guarantee of repayment of these funds. Eventually these bonds were recalled by the General Assembly and no compensation was given. They were forcibly retrieved from the State Board of Education by the Governor of the Commonwealth and were ordered to be burned, by the Governor, in the presence of the Auditor and Treasurer. By this act, the Legislature repudiated its debt and reneged on its promise to repay.<sup>5</sup> Implicit in this decision was a patent disregard for education that has been manifested throughout the education history of the state.<sup>6</sup>

During the term of Superintendent George W. Brush (1842-

1843), the state school system made little progress. There were a variety of reasons for this, chief of which was the unfriendly attitude of those having charge of the finances of the schools. Due to lack of funds, the schools were neglected and the system retarded.

On January 3, 1843, the House of Representatives requested information as to why the districts were not receiving their money when due. Superintendent Brush's reply was that the Commissioners of the Sinking Fund had not provided the means (funds) to enable the Superintendent to meet the drafts of the counties. In his reply, Brush stated: "If the system of common schools as adopted by the Legislature is unpopular with the people, let them say so, and let the law be repealed; but let us not starve the system to death privately. Let it have a chance for its life."<sup>7</sup>

The failure of the Sinking Fund Commissioners to pay the interest on the School Fund to the Board of Education amounted to repudiation of the debt. This was done on the theory that the debt of the State to the State Board of Education was a debt of the State to itself, and therefore such debt was not in a class with the State's other obligations. A peculiar theory, when it is remembered that the money due the School Board was due the hundreds of teachers who had faithfully served the State relying upon its sacred promise to pay them. No wonder, then, that the system languished for a time. Superintendent Brush quotes from letters all over the State, showing how the system was hampered.

The report of the State Superintendent bore fruit in the next legislative session. By the provisions of an act introduced and passed, the school fund was to be paid into the treasury "as other revenues were paid, and drawn out by the

Superintendent under the directions of the State Board of Education.<sup>8</sup>

The Act of February 23, 1837 required local districts to meet established mandates prior to participating in revenue sharing of surplus revenues given Kentucky from the federal sale of public lands. No school district was entitled to any part of this fund unless a school had been organized, a school house built, and a school tax levied in the district. The state portion available to a district was determined by first dividing the entire school fund by the number of children of school age in the state, as reported to the Auditor. Then the number of children reported by the school commissioners in a given county was multiplied by the per capita amount; this gave the county's share of the fund. To receive the state funds, the district was required to levy a sufficient tax, that when added to the State fund, would equal the expenses of the school.

In 1842, the law requiring local taxation to help meet the school expenses was changed so that no tax could be levied in a district except by a vote of two-thirds of the voters living in the district. Considering how difficult it was to secure a full vote in a district, and how difficult it was to secure a two-thirds majority for a taxing proposition, it was evident that this change in the law practically amounted to a repeal of the law regarding district or local taxation.

The legislature also defined distribution of educational

funds to the counties.

That equal justice may be done to all the citizens of the Commonwealth, it is hereby declared that the amount due to any county for common schools shall be and the same is hereby reserved in the general fund until such county shall, in whole or part, be distributed and organized according to law, and shall not be applied to any other purpose except to increase the general fund."<sup>9</sup>

On the face of it this appeared to be an eminently fair and equitable law; but if its title had been "A Bill to Retard the Organization of the Common School System," it could not have served that purpose better. Instead of the state paying out the entire accumulated interest on the school fund to counties that would organize and adopt the school system, thus encouraging the counties to act promptly, it put a premium upon a failure to adopt a school system by promising to such counties that their share should be saved for them in the general fund.

Voters began to believe that political candidates could provide good government through such alchemy as "sober government," "common sense," and "cutting out the fat."<sup>9</sup> Ironically, leaders who have bellowed their hatred of taxes most loudly have often been the heaviest taxers. The willingness of candidates to appeal to the voters' historical resentment of taxes, developed during the early days when a system of common schools in Kentucky was beginning, urban culture, and higher education made it difficult and politically risky for those winning office to improve taxes

and effect changes that would let Kentucky keep pace with her sister states.<sup>10</sup>

Another law was drafted by the 1843 legislature to reduce the State Superintendent's salary from \$1,000 a year to \$750 a year. This law exposed the amount of opposition to the new school system. This law also reflected upon the outspoken Brush and was intended to punish him for speaking out against the legislature. When the enemies of the common schools no longer dared to attack the system openly, they often secured the same result by attacking the Superintendent of Public Instruction.

In January of 1848, the people of Kentucky, by majority vote, expressed their willingness to be taxed for the advancement of general education in the Commonwealth. This "act concerning the common school system,"<sup>11</sup> sent an unmistakable message to the legislature.

Meanwhile, the people began the process of calling a constitutional convention to alter the organic law of the commonwealth. After the question had been twice carried in the affirmative by the majority, a convention was called, delegates elected, and that body convened at the Capitol on October 1, 1849. Among the most important reforms effected by that convention, in obedience to the popular will, was its constitutional consecration of the common school fund. On the 6th day of November, 1849, the chairman of the Committee on

Education, Mr. John D. Taylor, the representative from Mason County, "made a report in favor of dedicating and setting apart that fund forever, for the purpose of establishing an efficient system of common schools throughout the Commonwealth."<sup>12</sup> The vote of the people in 1848 resulted in common schools gaining the agenda of the convention delegates and eventually constitutional ratification.<sup>13</sup>

### **Superintendent Robert Breckinridge and the Constitution of 1850**

#### Establishment of the System

Owing to the efforts of Superintendent of Public Instruction Robert Breckinridge, the General Assembly, during the session of 1847-8, passed "An act concerning the common school system." The act directed the Governor to issue a new bond for all the arrears of interest due the school fund, and provided for a vote by the people of the state upon the question of levying a tax of two cents on every hundred dollars of taxable property.<sup>14</sup> Breckinridge stumped the state for the measure and the proposal carried by a majority of 36,882 votes.<sup>15</sup> The people of Kentucky expressed their willingness to be taxed for the advancement of general education in the Commonwealth--an unmistakable misinterpretation by succeeding legislatures. The popular

will was to be obeyed, common schools had established a permanence. Breckinridge and others spoke of an efficient system of common schools.

Reverend Robert J. Breckinridge, a descendent of a Scotch Covenantor who had come to Kentucky from Pennsylvania, became the State Superintendent of the Common Schools in 1847.<sup>16</sup> He was a Presbyterian minister of great eloquence. His experience as a lawyer, legislator, college president, and minister qualified him eminently for his duties as Superintendent of Public Instruction. His first report, presented to the legislature in January, 1848, was a masterly analysis of the system. The lack of funds, the indifference of the people, the difficulties of the system, and the failure of the commissioners to make reports to the state were some of the contributing causes to the failure of the system.<sup>17</sup>

When a constitutional convention was called in 1849, Breckinridge encouraged the delegates to include provisions for education because the constitutions of 1792 and 1800 carried no provisions for education.<sup>18</sup> The question before the constitutional convention of 1849 was whether the management of the school fund should be provided for in the constitution or left to the legislative enactments. Ben Hardin of Bardstown argued against placing education in the Constitution. Mr. Hardin's arguments against including a provision for education in the constitution were: (1) public

schools will increase taxes; (2) education can be provided by private and denominational schools; (3) the teachers of the public schools are poorly prepared; (4) public schools will be unjust to the Catholic population; (5) the question of education should be left open to the legislature; and (6) the constitution will not be approved by the people with this provision in it. Mr. Hardin's sentiments were not supported by evidence in his speech before the convention. Rather, his speech was filled with ridicule and stories unworthy of a political leader.

The arguments offered in support of education were: (1) the people want it; (2) the legislature has shown its lack of interest in education; (3) all free governments are based upon the intelligence and virtue of its people; (4) many citizens are ignorant and need the facilities for an education; (5) through education the people will come to know their political rights; and (6) the legislature should have restrictions imposed upon it by the constitution in the appropriation of school funds. Larkin Proctor of Lewis County, an ardent supporter of the schools, said in part:

In the report, which the committee has presented to the consideration of the convention, they have entered as little into detail as possible; and for my own part, I am unwilling to leave to the legislature the power of carrying into practical operation this system. But, sir, I shall ever be opposed to leaving to the legislature the control and management of the fund itself, without throwing around them those restrictions which will prevent them from appropriating one dollar of this fund for

any other purpose than for that of education.<sup>19</sup>

Superintendent Breckinridge led the proponents against Governor Helm, who vetoed a bill passed by the General Assembly that directed the sinking fund commissioners to repay the principal and interest owed the common school fund.<sup>20</sup> Governor Helm took the position that the school fund was not to be regarded as a "state debt to be paid off,"<sup>21</sup> but that it was a dedicated school fund, to be held sacred, inviolate, and untouched, on which the sinking fund was required to pay interest for the benefit of the common schools. Dr. Breckinridge made a special report in which he discussed fully the history of the school fund, and maintained his position with convincing logic and overwhelming argument.<sup>22</sup>

The legislature promptly passed the bill over the Governor's veto. The legislature, no doubt influenced by the will of the people as expressed in the vote of 1848, which authorized a tax of two cents upon each one hundred dollars of taxable property. The legislature was also influenced by the act of the constitutional convention of 1849, which included the school fund in the new constitution and was later approved by a vote of the people; and finally by the mass of facts presented by Superintendent Breckinridge to show that the bonds of the state held by the board of education were a part of the state debt.

With the passage of the Act of 1850 over Governor Helm's

veto, the struggle to establish a permanent school fund ended. Much praise was to be given Superintendent Robert J. Breckinridge for his efforts in winning this contest to establish a common school system for the people of the state. This battle meant not only the establishment of a permanent school fund, but the acceptance of the principle of education for all children at public expense. Furthermore, it meant the overthrow of the English idea of education through private and parochial efforts. The people were now in a position to settle down to work out the system that had been contemplated by state and national leaders who foresaw the benefits of a free common school system for all children.

#### The Constitution of 1850

The new constitution was adopted "at Frankfort," on the 11th day of June, 1850, and in the 59th year of the establishment of the Commonwealth of Kentucky. From the adoption of the Common School System to the adoption of the Constitution of 1850, the Office of State Superintendent had been an appointed one dependent upon the selection by the Governor. By the new constitution, it was made elective and has so remained ever since.

Breckinridge endorsed the election of the state school chief. He reported:

"The office of superintendent of public instruction was created by law as soon as this State embarked

seriously in the grand effort to diffuse, universally, the blessings of general education; and it is not too much to say that whatever has been practically accomplished by the State in that enterprise is to be traced, first or last, to the existence of that office, and to the labors of those who, during the last fifteen years, have filled it. Still, during almost the entire period which preceded the adoption of the new Constitution, attacks were made upon the existence of the office itself, or upon its dignity and efficiency; and almost every recent session of the Legislature witnessed attempts to degrade the office, or to abolish it on the part of those who selected this as at once the safest and most effectual method of waging war upon the common school system itself. By the second section of the XIth Article of the Constitution of 1850, this office is made constitutional and permanent, and is to be filled by election by the qualified voters of the Commonwealth, every fourth year. Henceforward, he who shall fill it will do so as the representative of the entire people of Kentucky--called by the voice of a great commonwealth to discharge a great constitutional trust, touching the very greatest interests of the people." Again he says, "The Superintendent of Public Instruction is not the clerk of the board of education, but is the head of one of the most difficult and important enterprises ever undertaken by the State."<sup>23</sup>

There are two ways of filling the office of State Superintendent--by appointment and by election--and Kentucky has tried both. The appointive system was tried for about fifteen years and abandoned as not suited to the state's conditions or desires. The elective system has lasted for 139 years. There is no question that Superintendent Breckinridge considered the elective system the better--a great constitutional office better than one dependent upon the will of a politician, even though that politician be the Governor himself.

Under the provisions of the new constitution, the Superintendent of Public Instruction became an elective officer. Robert J. Breckinridge, who had served in this capacity by appointment from 1847 to 1850, was the first Superintendent of the state elected by the people. The duties of the officer were outlined in the law of 1852. This law required him to make reports to the legislature on the condition of the schools, to visit and lecture on the advantages of education in at least twenty-five counties annually, to make a report to the auditor of all districts organized, and to keep his office in Frankfort or some other town within sixty miles of the capital.<sup>24</sup>

#### Article Eleven of the New Constitution

Article Eleven of the new Constitution in which the status of the school fund was fixed in the organic law had other important provisions as well. They were as follows:

Section 1. The capital of the fund was established as the Common School Fund. Interest and principle on outstanding bonds was identified and sums which hereafter raised in the state for taxation for education must go for the purpose of sustaining a system of Common Schools.

Section 2. A Superintendent of Public Instruction shall be elected.

The Constitution of 1850 made the school system a part of the Constitution for the purpose of removing the subject of schools from the whims of the legislature and required that the General Assembly make provisions by law for the payment of the interest of the school fund and further guaranteed that each county would not lose its share of the interest in the

Common School Fund by failing to use it.

### School Legislation Passed by the First Legislature

#### Under the New Constitution

The first session of the Legislature under the new Constitution was held in the winter of 1851-2 following the first general election under that instrument. From the standpoint of school history, this was a most important session because it fixed educational policy for more than fifty years. At the time the legislature met, the school system was being administered under the laws of 1845. Because the new constitution provided for education and educational funding, Chapter 35 on schools and seminaries was enacted into law. This chapter is of great importance for two reasons: first, it changed the school system fundamentally; second, it sets forth the principles upon which the school laws of today are based.

The change that made the others necessary was the one making every common school a free school. Section 10 of Chapter 35 did away with all required tuition fees, yet it made no provision for local taxation. The result inevitably was that free schools had to be supported by the state.

Dr. Breckinridge not only had the intelligence and wit to sway legislation in favor of the common schools, he had the vision to enhance education by calling the First General

Convention of the Friends of Education in Kentucky, which met in Frankfort on November 12, 1851. The objective of this meeting was to consider the entire subject of public education in the state--more especially at that great interest is connected with the state system of common schools. And among the special subjects would be

1. The particular course of studies in the district schools.
2. The particular text books in each branch of study.
3. The increased duration of schools.
4. The best modes of constructing them.
5. The general use of the Scriptures as a class book.
6. The establishment of a Normal School for the training of teachers.
7. The increase and the best mode of distributing the school fund.
8. School architecture.

The Superintendent, believing the great cause of education entrusted to his general care by the people of the state, reached a conclusion that education required greater consideration and attention from the public. Superintendent Breckinridge earnestly desired the counsel of those who had devoted special attention to education, or who had special interest in educational problems. He scheduled the first general meeting of the friends of public education in Kentucky and planned very carefully so that the meeting would be effective in the cause of education.

The first general meeting concluded with a major report at the end of 1851. Breckinridge announced the establishment of the public school system in Kentucky, and congratulated the

legislature consummation of an event. The report would serve as a guide for education until the Civil War.

Public school enrollment experienced tremendous growth under Breckinridge. The number of children attending school grew from 20,775 in 1847 to 73,110 in 1850. The number of counties reporting an organized school system by 1850 was 98 and the state expenditures equaled \$144,006.\*

Breckinridge successfully promoted public education and was able to establish a permanent system, defending the inclusion of education as a constitutional provision. Public school finance became regarded as a branch of public finance dealing with the acquisition and expenditure of public school funds and with school indebtedness.<sup>25</sup>

Breckinridge was succeeded in 1853 by the Reverend John Daniel Mathews, a brilliant preacher of the Presbyterian Church.<sup>26</sup> Prior to the Civil War, the common school system had been established and made substantial strides. However, the progress of the system was greatly affected by the coming of war. In 1860, Robert Richardson, a staunch supporter of the Union, was Superintendent of Public Instruction. Beriah Magoffin was Governor and his sympathies were with the South. Kentucky declared her neutrality between the warring factions, but both Federal and Confederate troops were sent into the

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\*Source: Barksdale Hamlett, History of Education in Kentucky, 1851. Reprint of original document data furnished Hamlett by Superintendent Robert Breckinridge (Fourth Report).

state to protect their interests. These two forces met at Perryville and at other points and the disruption of governmental processes was complete. The encounters brought on a type of guerilla warfare between the two groups and homes were divided on the question of loyalty to the Union. Such disturbances reduced the efficiency of the schools and delayed their development.

The effect of this internal disturbance upon the schools was described by Superintendent Richardson in his annual report for 1861, as follows:

In a few months it reduced the number of children in attendance on our public schools from 165,000 to about 99,000; withholding for a time the means of knowledge from about 75,000 of the youth of this Commonwealth. Our cherished system of common school education has been arrested by it, and thrown backward--the retrograde movement of a few months equalling the progress of just ten years. An annual school fund, from all sources, of about \$340,000 has been reduced by it in a brief period to but little upwards of \$200,000. Funds dedicated and set apart for the mental improvement of our youth have been seized upon, and wickedly misappropriated by those who invaded or connived at the invasion of Kentucky.--Not only isolated districts, but in some instances entire counties have been utterly prevented from keeping up a single school and reporting it to this department.<sup>27</sup>

The effect of the war upon the number of schools in operation, and upon the attendance in these schools, is shown in Table 1.

This table shows a marked decrease in the number of children reported during the four-year period covered by the war. This number drops rapidly from 286,370 in 1860 to

Table 1  
 Number of Children, Average Attendance, and Districts  
 Reporting to the Superintendent, 1859-1866

<u>Year</u>	<u>Number Children Reported to Superintendent</u>	<u>Average Number in Attendance</u>	<u>Number of Districts Reporting</u>
1859	280,466	98,905	4,516
1860	286,370	107,219	
1861	182,976	61,375	2,631
1862	158,989	43,654	2,225
1863	224,318	73,306	
1864	249,920	80,986	3,432
1865	297,772	92,957	3,984
1866	334,566	104,481	4,189

Source: Moses Edward Ligon, History of Education in Kentucky, 1942. Reprinted from original document.

158,989 in 1862. The figures verify the statement of the superintendent that there were many counties not reporting to the Superintendent of Public Instruction. This table shows further that the number of schools in operation decreased very rapidly over the same period. The year of greatest loss was 1862, when the number fell to 2,225 districts reporting. The amount of revenue available for schools was reduced almost \$200,000 during the first year.

The war left in its wake a multitude of problems to be solved. The major problems grew out of the abolition of slavery. The best lands were owned by slave-holders; the large farms were cultivated by slave labor. The owners lost their slaves, and it became necessary for them to cultivate these farms themselves or with paid labor. The adoption of the 13th Amendment to the United States Constitution made the black citizens equal in law with those of white people. The administration of government with impartiality between the races became difficult, and required much patience and forbearance. The education of the blacks was one of the major problems in education during this period. The rehabilitation and growth of the public school system was intimately interwoven with these economic, social, and political problems, and was delayed by them.

The period is characterized by the development of several systems of schools within the state. These systems grew out

of the public school system, and were in fact a part of it, but were managed by boards independent of the county system. A system of schools for the black people was established and developed. A system of independent schools for the towns and cities was further developed and permanently established. Provision was made for graded schools in the small towns and villages. A system of seminary education through private academies or seminaries was encouraged. These several groups of citizens demanded a type of education that was not provided in the general state system. The state, through its legislature, made the organization of these systems possible.

Throughout this period no fundamental changes were made in the public school system. Such changes as were made consisted of remedying minor defects existing in the system, and of adding improvements to it. Whatever fundamental defects in principle the public school system possessed when established remained.

#### Sources of School Funding and Reasons for Low Effort

Superintendent of Public Instruction Zachariah Smith--despite determined opposition from many legislators--succeeded in securing adoption of his educational program. His greatest achievement was the ratification by popular vote, in August, 1869, of a proposal to raise the state tax for school purposes from five to twenty cents.

Superintendent Smith pleaded for aid to fight for popular education because Kentucky's illiteracy rate was still much higher than the national average. Smith warned in 1869 that citizens and future growth were driven from Kentucky by lack of adequate schools, an argument heard frequently during the age of school reform from 1980 to the present.

Some writers blamed the lack of progress in public education on "a prejudice against common schools, with many wealthy and influential people yielding schools no support other than their enforced payment of the state school tax."<sup>28</sup> Courier Journal editor Robert M. Kelly stated that, "wherever there is a feeling that the common schools exist only for poor people it serves as a check against the best efforts of the workers in these schools for educating the masses."<sup>29</sup> He observed that the wealthiest and most influential people of many communities often took the lead against local taxes for school support, which discouraged those less able and helped to maintain a low standard of education in the local community.

Unfavorable economic conditions in Kentucky retarded the growth of public education. Governor Luke Blackburn failed in his effort to have legislation passed pointing toward local taxation for school purposes as a means of creating people's interest in local schools.

The General Assembly failed to reorganize the common

school system after the Civil War and the 1880 General Assembly failed to pass a comprehensive bill to reorganize the state's common school system. It was not until April of 1883 that a public school movement began gaining momentum. More than a quarter of a century had passed without significant developments or growth of public schools in Kentucky.

#### **The Common School Law of 1884**

The general assembly shall, by appropriate legislation, provide for an efficient system of common schools.<sup>30</sup>

Neighboring southern states began rebuilding schools immediately after the Civil War. Tennessee undertook to rebuild its schools in 1865. In Virginia in 1871, the courts held that state funds from taxation were sacred and the duty to educate was permanent.<sup>31</sup>

After the Kentucky General Assembly failed to pass a comprehensive bill to reorganize the common school system in 1880, many prominent friends of education consequently began to agitate the question to arouse public interest. A state central committee of prominent men met in Louisville on April 29, 1883, "to devise a plan for a complete educational organization throughout the state."<sup>32</sup> The committee presented its report to Governor Knott, who in turn referred it to the General Assembly, which enacted a good portion of the

recommendations into the Common School Law of May 10, 1884.<sup>33</sup>

The law provided for a uniform system. It organized the schools on a state, county, and district level, defined the length of the school year and defined the duties of school officials. A method for the collection of taxes was adopted and for the first time, authorization was given for a state teachers association. In general, the law established a reconstructed system. But following its passage, localism remained center stage and the state school fund, as constituted, could not support a reputable state public school system. Local taxation was not producing enough revenue. Inequities surfaced as property taxes were producing varied amounts of school revenues; thus some districts were open five months and others were open up to seven months. Property assessments varied from county to county.

Where the people were willing to tax themselves, good systems developed and the children in those locales became better educated. Such communities, however, were principally in heavily populated areas, of which Kentucky could boast only a few. On the state level, education throughout the remainder of the 1880s and through the 1890s seemed a drab, perfunctory affair indeed.<sup>34</sup>

#### Poor Schoolhouses, and Dishonest Politics, 1887-1895

Poor schoolhouses were the outward expression of the

attitude of the people toward education and taxation. A state school system relying on local taxation had generally failed and the only explanation was rejection due to the lack of interest in public education. Throughout the period from 1860 to 1905, schoolhouses were generally described as being in disgraceful condition. There were three ways by which buildings could be financed: (1) the trustees of a district could levy a tax of twenty-five cents; (2) the citizens of a district could levy a poll tax of two dollars upon each male over twenty years of age; (3) the people of a district could build the houses by giving the labor and materials. All of these plans were used, but the building of the rural schools with volunteer labor was probably most common.

Ed Porter Thompson, superintendent from 1887-1895, a native of Metcalf County, set about to correct evils found in the administration of public schools. He was concerned about the hiring of those "ill fitted to teach,"<sup>35</sup> and the squandering of public funds. Thompson charged that maladministration disregarded the rights of parents and children. Instead of considering the school money as a donation made by the state to her children, to be devoted to the express purpose of educating them, it seemed to be regarded, in many instances, as a kind of bonus to the district, to which some kinsmen or other favorite had more claim than the children. It was meant to furnish the key to

the temple of knowledge, to fit them for usefulness, if not fame.

Instead of securing for the children under their charge the most capable teachers to stand in the place of parents, to enlighten the minds and shape the characters of future citizens, too often do trustees hire those owed a favor. There were charges that trustees place the school in the keeping of those ill fitted to teach, unable to govern, and utterly incapable of inspiring that love of learning and appreciation of high conduct which are of more worth than all the mere technical knowledge found in the class books.

#### **The Constitution of 1891**

"Kentucky's fourth constitution is not so much a fundamental rule of government as a piece of omnibus legislation."<sup>36</sup> Implied powers were eliminated wherever possible; nothing was left to interpretation or to changing conditions of the future. John Ed Pierce describes Kentucky's Constitution as a narrow, rambling document designed to curb government rather than guide it, a collection of restrictive statutes rather than an outline of principles. Kentucky's Constitution is seven times longer than the Constitution of the United States, and is marked by neither its wisdom nor its grace. It contains such trivia as a requirement that all public officials take an oath that they have not fought a

duel. It forbade women the vote. It even imposed a limit on the number of doorkeepers the General Assembly may hire--two. Guarding the doors was thought necessary to prevent irate citizens from invading the chamber to join debates. The legislature moved to the new capitol building where there are three doors, thus, every time the General Assembly meets, the Constitution is automatically violated.<sup>37</sup>

Section 183 of the Constitution called for an efficient system of common schools to be provided through appropriate legislation. The Constitution was ratified by the voters in September, 1891. The litigation of today has grown out of efforts to provide for fiscal equity, adequacy and efficiency for Kentucky Public Schools under the Constitution of 1891.

Fiscal Equity, Adequacy and  
Efficient Schools, 1892-1939

During the term of Superintendent W. J. Davidson (1895-1899), from Pulaski County, three paramount needs were summarized: (1) A minimum term of seven months, to be provided for by a system of county taxation; (2) An adequate number of Teachers' Normal Training Schools to accommodate young men and women who desire to prepare themselves for teaching; and (3) "A system of employing teachers in which merit, qualification and general fitness for the work, rather than kinship or favoritism, will determine who shall teach our

schools."<sup>38</sup> This early nepotism bill was introduced in 1896 as Superintendent Davidson elected to improve education by employment of the best candidates to teach.

State Superintendent H. V. McChesney reported in 1903 a serious need for an increase in the length of the term of the rural schools. There was a provision of the law whereby the individual districts had the right to vote a tax to lengthen the term. But little good resulted from this law for several reasons. A great many districts were so poor that with an ordinary rate of taxation only a very small amount could be realized. Another reason was that the people had been inclined to doubt the authority of a local treasurer to collect the taxes and so, where such a tax had been voted, a great deal of litigation had grown out of the efforts to collect it. McChesney enumerated inequities when describing inefficient state and county tax laws when stumping for a longer school term. He said,

About 80 percent of the total state revenue for school purposes is derived from the tax of twenty-two cents on the one hundred dollars worth of taxable property. This being true, an additional county tax of twenty-two cents, in a county of an average wealth in the state, would increase from five months' term to nine months, and a county tax as low as ten cents would increase the term to about seven months. In the poorer counties it might require a twenty-five cent tax to extend the term to seven months.<sup>39</sup>

McChesney was critical of the common school trustee system. Unsatisfactory is the way he described the system.

However derelict a trustee may have been, it was a rare case that any patron could be found willing to attempt to enforce the law and punish him. Change was needed, but superintendent McChesney had little success in instituting change leading to fiscal equity, adequacy and efficiency.

The General Assembly of 1908 abolished the local district as the unit of school administration and set up the county as the unit of administration. This act was a significant watershed in Kentucky school history. Known as the county administration law, it was one of the most outstanding and far-reaching pieces of school legislation in the history of the state. One of the chief provisions of the act was that each county was required to levy a tax for school purposes not to exceed 20 cents on each \$100 of taxable property.

This act brought about three outstanding fundamental changes in the administration of the rural schools. The county was made the unit for administration of schools. Local taxation for the support of schools was made compulsory. Each county board of education was required to establish one or more county high schools for the benefit of the children of the rural districts. Thus, after a struggle of 70 years since the establishment of the public school system, the state acknowledged its obligation to the rural children in the field of secondary education.

Superintendent John Grant Crabbe appointed an educational

commission in 1910 to make a thorough investigation of the school system. The commission was to make a report to the General Assembly embracing such suggestions, recommendations, revisions, corrections, and amendments as they deemed necessary.<sup>40</sup>

The educational commission began a thorough search and study of the laws pertaining to schools. The school laws in force were rewritten, rearranged, and codified. These simplified laws became the new School Code. The commission made a study of the laws of Kentucky and of other states. After consultation and deliberation with educational leaders, a code was outlined that covered the whole common school system of the state. This code was submitted to the General Assembly of 1910 as the report of the commission.<sup>41</sup>

The principal innovations of this report were: (1) the ex-officio, three-member state board of education should be supplanted by a seven-member state board of education, consisting of the state superintendent of public instruction and six experienced educators; (2) the powers and duties of the state board of education and of the superintendent of public instruction should be extended; (3) the examination of applicants for certificates and the grading of the papers should be under the direction of the state board of education; (4) provision should be made for the certification of high school teachers on the basis of training and for the issuance

of certificates in special fields; (5) the powers and duties of the county superintendent should be increased; and (6) institute instructors should be licensed.

Superintendent Crabbe campaigned statewide to persuade the 1910 General Assembly to pass the new school code. Crabbe said:

The old, cumbersome, iniquitous trustee system is as bad as any school system in the world. No system could be worse. The witnesses bear testimony entirely abundant. The new school law under the county board offers us a sane, progressive system, which is as good as any modern school system known to any State in the Union.<sup>42</sup>

The law was not perfect, but the campaigns had the desired effect of popularizing the new law. However, the Assembly of 1910 made no use of the report in the formulation of school legislation. Some of the innovations formulated in this report were enacted into law by succeeding legislatures but others, notably the change in the state board of education, were still unsolved problems in 1932.

In 1920, the law was revised and amended.<sup>43</sup> This act provided for a county board of education of five members elected from the county at large, with authority to appoint a county superintendent for a term of not more than four years. Some opposition developed to the election of the five trustees from the county at large. To meet this opposition, the legislature of 1922 made provision for breaking up the county into five divisions, with one board member from each

division.<sup>44</sup> In 1924, the legislature assigned the time of the election of these officials to the regular November election.<sup>45</sup>

### The Compulsory Attendance Law of 1912

Barksdale Hamlett's, State Superintendent of Public Instruction from 1912 to 1916, most notable achievement was the compulsory attendance law adopted by the legislature of 1912. The attendance law was a revision of an older law passed in 1908, which had not proved effective. Under the new law, the attendance over the past year showed an increase of at least 25 percent over any previous year.

Until this time, rural children had failed to attend school with any degree of consistency. Superintendent of Public Instruction Crabbe and the Educational Commission referred suggestions regarding a compulsory attendance law to the legislature in 1908. Two great difficulties were noted--first, the districts said, we have but scant school accommodations, houses, equipment, etc.; second, we must have truant officers. All this takes money and this money must come from an aroused public sentiment.

In 1911, the United States Census Bureau issued a report on illiteracy in this country. According to that report there were 5,516,163 men and women in the United States who could neither read nor write. Of this number, 208,084 lived in

Kentucky. Almost one-tenth of the population of the state was illiterate.<sup>46</sup> Table 2 shows the increase in the number of high schools, number of teachers, enrollment and high school graduates as a result of the Compulsory Attendance Law of 1912.

In 1924, the revenue laws were revised and the school fund was excluded from the tax on certain classes of property. Under provisions of the 1924 revenue act, the school fund was to receive twenty and seven-tenths of the tax on realty. Assessments of money in hand, notes, bonds, accounts, and other credits, and franchise and shares of stock, were excluded from the school fund.

#### School Fund Inequalities

The uniform distribution of school funds within the counties made other inequalities more apparent. This method of distribution ignored the ability of the counties to support their schools. The Kentucky Education Commission discovered that one of the wealthy counties (Woodford) had \$7,615 of taxable property back of each child of school age, while one of the poorer counties (Wolfe) had only \$545. On this point the survey of the Kentucky Education Commission quoted above said:

Table 2  
Growth of High Schools in Kentucky, 1908-1931

Date	Number of High Schools	Number of Teachers	Enrollment	Graduates Previous Year
1909-10	106	*	*	*
1910-11	120	136	6,942	*
1911-12	171	230	8,656	612
1912-13	229	514	11,856	877
1913-14	381	593	14,237	1,276
1914-15	316	647	15,547	1,547
1915-16	340	762	18,850	1,547
1916-17	376	815	20,800	1,870
1917-18	376	815	22,929	2,208
1918-19	390	1,165	21,255	2,517
1919-20	400	1,148	20,983	2,280
1920-21	394	1,210	25,939	3,071
1921-22	396	1,541	*	3,706
1922-23	529	1,543	35,806	4,355
1923-24	492	1,508	38,575	4,348
1924-25	496	1,632	37,264	4,955
1925-26	551	1,910	42,416	6,705
1926-27	552	2,092	46,097	5,458
1927-28	607	3,234	50,368	7,279
1928-29	614	3,453	54,903	7,434
1929-30	723	2,848	57,044	8,549
1930-31	733	3,269	60,315	9,422

Source: Moses Edward Ligon, History of Public Education in Kentucky (Lexington: The University of Kentucky Press, 1942), p. 221.

A method of distributing State school funds that thus ignores differences in financial resources, ignores differences in the grade and in the quality of the schools although there is equal willingness on the part of the people to make sacrifices for them, and ignores the State's responsibility to provide equal educational opportunities of a satisfactory standard for all the children of the commonwealth, ought not to be longer tolerated. Sound policy requires that these differences be taken into account in the distributing of State school funds.<sup>47</sup>

Seven continuous years of public and Kentucky education membership pressure resulted in an equalization fund being enacted into law. The Teacher Equalization Act was passed by the legislature on March 15, 1930.<sup>48</sup> The fund was known and designated as a fund for the equalization of educational opportunities. This act enabled the State Board of Education to help the boards of education in the poorer counties to raise the salaries of all teachers to the legal minimum of \$75 per month. The operation of the law gave poor counties better trained teachers and longer school terms.

The constitutionality of the act was attacked by the state auditor in 1932 on the grounds that the constitution limited the method of distribution of state school funds to the per capita basis. The Kentucky Court of Appeals overturned the Teacher Equalization Act in July of that year.<sup>49</sup> The constitutional limitation left the State Board of Education without any legal means of assisting those portions of the state that needed help. The geographical location of the children in these poorer sections of the state

limited them to poorer educational advantages than the children in the wealthy sections. The Constitution of 1891 by its specificity has frozen into the educational financial system inequities that became major obstacles to equal educational opportunity.<sup>50</sup>

#### Educational Development from 1940 to 1952

Over the years, Kentucky developed a state school finance program that failed to adequately allot financial resources in an equitable manner.<sup>51</sup> The distribution of state funds for public education, by constitutional mandate, was based on the number of school children ages 5 to 17 in residency in the school district. This distribution did not take into consideration whether or not the child attended school. In 1932 the General Assembly passed a law designed to create a more equitable state fund distribution method. The statute was immediately challenged in court and declared unconstitutional.<sup>52</sup>

By the enactment of the new school code in 1934, the governing body for the public school system became the State Board of Education and the Superintendent of Public Instruction was given much authority and responsibility for providing educational leadership throughout the state.

State Superintendent Peters, in his biennial report for the school year ending June 30, 1939, pointed out that there

was an ever-increasing demand from the people that the schools serve better the needs of the children.<sup>53</sup> Kentucky was facing problems that were preventing the schools from serving the children as they should. Fiscal equity, adequacy and illiteracy problems surfaced in every superintendents' report. Peters presented problems with recommendations for solution in 1938, as follows:

#### Increased State Aid

"There must be an increase in the general state aid for public elementary and secondary schools."

"To particularly meet the situation, the Legislature should increase state aid for general school purposes to fifteen dollars per census child, and should remove the obstacles to an increase in income from the local district."<sup>54</sup>

#### Equalization Fund

"Many districts in Kentucky are forced to deny their children an acceptable minimum school program, due to low income."

"The Legislature should provide for an equalization fund in accordance with the program of the Kentucky Education Association."<sup>55</sup>

John W. Booker succeeded in convincing the 1940 legislature to place an Amendment to Section 186 of the Kentucky Constitution on the ballot. This act authorized submission to the voters whether or not 10 percent of the state fund allocated to the districts could be distributed on a basis other than the census method. The amendment passed

and the 1942 Assembly enacted a law governing the distribution of the fund. This was the first Equalization Fund and was the entering wedge for enactment of the present Minimum Foundation Program. The Equalization Fund permitted a sufficient amount to be sent to each district to enable the board of education to have available \$30 per year per child who was in average daily attendance.<sup>56</sup>

Three important recommendations were enacted during the term of Superintendent John Fred Williams. In his 1947 address, Superintendent Williams asked that every child in Kentucky should be guaranteed the opportunity to attend school for a period of at least nine months each year. The Equalization Fund Distribution was established by Amending Revised Statutes and setting up a formula to distribute the funds on a net ability basis. This was an improvement of the law, which was in force before the amendment, in that it distributed money on a net ability basis rather than on a basis of other than ability of the district. Equity began to increase school funds and educational opportunity. The availability of funds limited what could be done at the local level. According to the statistics, a great variance existed in the ability to maintain schools by local taxation.<sup>57</sup> For example, the average family income in Knott County was \$554 in 1944, whereas the figure in Fayette County was \$4,828. The cost of education in Kentucky for elementary and

secondary schools was \$9.11 per capita of the population. The nation's figure was \$17.77. In 1945, the publication Education, America's Magic reported, "it is apparent that Kentucky would be unable, without federal help, to provide for its children education comparable with that which is available to most other children in the nation."<sup>58</sup>

Effective after a vote of the people in 1949, Kentucky approved the Constitutional Amendment to Section 186 to change the provision of distribution of 10 percent of state funds on other than a per capita to 25 percent. An act was passed that required all districts to levy the maximum tax in order to participate in the Equalization Fund. Despite major efforts in the decade of the 40s, Kentucky education ranked 38th. For more than a third of a century, inequality of assessments had been a source of great injustice to Kentucky taxpayers.

A local board of education had no control over assessments, although it had control over the tax rate up to the statutory maximum of \$1.50. Prior to the 1946-47 school year, county school districts could levy a tax of only 75 cents. The General Assembly, in 1946, gave county districts the right to levy a school tax up to the \$1.50 maximum already permitted independent school districts. The first year after this law became effective, 65 county districts increased their levies above the old maximum and six

districts went to the new maximum rate of \$1.50.

Kentucky was suffering from a number of serious liabilities because of its failure to provide an adequate educational program for all its school districts. The failure is traced directly to Section 186 of the Constitution, which made it almost impossible to provide a defensible program.<sup>59</sup>

The record for illiteracy was alarming. In 1950, there were 37,060 adults in Kentucky who had not completed even one year of school.<sup>60</sup>

The situation in Kentucky education is well stated in Hughes and Lancelot's book, Education, America's Magic:

The annual income of Kentucky is \$1,105 for each child. Its rank in ability to support schools is 43, which places it in the lower eighth of the states. It places a relatively low value upon education, devoting but 3.54 percent of its income to the support of its school system and ranking thirty-seventh with respect to effort. This is counterbalanced by well above average efficiency in the use of school funds, its rank as to this criterion being 17. Thus the state presents the familiar picture of effort and efficiency working against each other.<sup>61</sup>

#### Establishment of the Minimum Foundation Program:

##### Kentucky Education, 1952-60

In 1952, an amendment to Section 186 of the Constitution was approved by the voters of Kentucky.<sup>62</sup> The amendment completely removed the old per capita requirements and vested the General Assembly with complete responsibility for school

funding. The people vested the General Assembly with the power and responsibility for creating "an efficient system of common schools."<sup>63</sup> The purpose of the new law, said the legislature in 1954, was "to assure substantially equal public school educational opportunities."<sup>64</sup> Superintendent of Public Instruction Robert J. Breckinridge had proposed a similar amendment for consideration in 1850. The result, in 1954, was the creation of The Minimum Foundation Program, which based funding on the number of students in school. To take part in this program, a district had to make an effort of its own by levying a minimum property tax of \$1.10 per \$100 of valuation.

The new tax effort seemed to cause no problems, because assessments were extremely low, sometimes as little as 12 1/2 percent of actual market value. The Minimum Foundation law began with wealthy districts bearing a proportionally larger share of the Foundation Program than did the poorer school districts. The Foundation Program was designed:

- To seek to guarantee equality of educational opportunity regardless of the place of residence.
- To distribute the funds so as to require local effort on the basis of taxpaying ability.
- To insure wise expenditure of funds without hindering local effort.
- To provide funds for instructional services, capital outlay, pupil transportation, and current expenses other than transportation and teachers salaries.<sup>65</sup>

School districts in Kentucky varied widely in their ability to support education in 1952; the poorer districts

have the most children to educate. It was not uncommon to find inequities that caused inefficient schools to exist. One county district had an assessed valuation of \$680 back of each census child while real property was assessed to 50.4 percent of fair cash value. This district had 818 children in the school census per 1,000 adults over 25 years of age. Another county had an assessed valuation of \$11,098 per census child, with real property assessed at approximately 38 percent of fair cash value. This county had only 255 children in the school census per 1,000 adults over 25 years of age.<sup>66</sup>

The framers of the Constitution of 1891 wrote into it a strong mandate for an efficient state-wide system of public education. In Section 183 they had directed that, "The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state."<sup>67</sup> By 1952, it was evident that an efficient system had not been provided. The General Assembly had failed to carry out the Constitutional mandate. The primary cause in 1952 was Section 186, which made impossible the economical attainment of the goal of Section 183.

Once the citizens of Kentucky made the commitment to educate the children of the state in public schools, neither the Kentucky General Assembly nor those individuals responsible for discharging constitutional duties could abrogate those duties merely because the costs were too large

or onerous. The state had a "constitutional duty to provide public education in Kentucky and to fund the public school system."<sup>68</sup> The right to a public education was enshrined in fundamental law. The Foundation Program was necessary to eliminate years of inequities.

Kentucky took a major step toward improving and modernizing its public school program when the Minimum Foundation Program was enacted in 1954. During the years that data was collected to support the Minimum Foundation Program law, many changes occurred in Kentucky. In 1954, the state was heavily burdened with one-room schools, unqualified teachers, high dropout rates, and low educational aspirations. There was an enormous agrarian resistance in Kentucky to higher property taxes. While in the forefront of American thoughts about education were two ideas: That the survival of the nation hinges on the kind and quality of education we provide all segments of the population, and that investment in human capital in the form of education was one of the best investments a government or an individual can make. While Kentucky resisted raising new revenues, many states were investing in human capital. The National Education Association described the human capital idea this way:

More and more, economists are looking at education not only as a user of tax funds which might otherwise be spent or saved but as an investment necessary to stimulate economic growth.

The Foundation Program provided considerable improvements

in Kentucky's schools. Most improvements can be traced to the fact that school districts were guaranteed relatively equal minimum educational programs. The enactment of the foundation law in 1954 and its full financing in 1956 were landmarks for public education in Kentucky.

Significant Changes Since Inception  
of the Foundation Program

Many of the improvements that have taken place since 1956 in the schools of Kentucky can be credited in large part to the effects of the Foundation Program. These changes have touched almost every area and facet of education--preparation of instructional staff, school facilities, local administrative districts, number of public schools, current expenditure per pupil, salaries of professional personnel, pupil transportation, pupil-teacher ratio, and high-school dropouts.<sup>69</sup>

A Kentucky Education Association Commission in 1965 found the most dramatic improvement resulting from the Foundation Program was the increase in the level of professional preparation of teachers and administrators. Beyond the Minimum shows an increase of \$68,056,143 for instructional salaries during the eleven year period.

When the Foundation Program went into operation in 1954-55 only 59.2 percent of the teachers and administrators held

bachelor's degrees or higher. This figure stood at 94.3 percent for the 1965-66 school year, one of the highest showings in the nation.

The number of emergency teachers and administrators fell from 2,838 in 1956-57 to 855 in 1965-66. The year the Foundation Program was implemented, Kentucky school systems needed a total of 7,000 new classrooms to accommodate excess enrollment and to replace unsatisfactory facilities.

Many buildings and classrooms were constructed during the life of the Foundation Program, but a 1966 study by the State Department of Education showed the need was greater than it was when the Foundation Program was implemented. Classrooms were not built fast enough to keep pace with school population growth and erase the backlog of need. According to that study, based on reports from local superintendents and school surveys of the Department of Education, 7,103 classrooms were needed. The price tag on these needs is \$213,101,570.<sup>70</sup>

Table 3 shows that schools with one, two, and three teachers were steadily eliminated while the number of schools with four or more teachers increased.

#### Salaries of the Instructional Staff, 1956-1966

The average salary for instructional staff (teachers, administrators, and other professionals in education) in

Table 3  
 Number of Public Schools in Kentucky  
 1954-55 Through 1965-66

Year	One Teacher	Two Teachers	Three Teachers	Four or More Teachers	Total
1954-55	2,238	645	178	1,180	4,241
1955-56	2,093	597	167	1,211	4,068
1956-57	1,801	509	177	1,227	3,714
1957-58	1,523	471	171	1,270	3,435
1958-59	1,332	434	149	1,293	3,258
1959-60	1,244	395	142	1,303	3,089
1960-61	1,065	372	148	1,529	3,114
1961-62	970	318	131	1,534	2,953
1962-63	843	287	120	1,529	2,779
1963-64	695	233	99	1,499	2,526
1964-65	546	176	78	1,472	2,272
1965-66	422	126	58	1,451	2,057

Source: Division of Statistical Services, Kentucky Department of Education.

Kentucky increased more than \$2,000 in current dollars during 1956-1966. Even though this represented a substantial increase, Kentucky had advanced no higher than 46th in the nation in 1965-66.

The average salaries of professional personnel for the 10 years between 1956-57 and 1965-66 are shown in Table 4.

### Pupil Transportation

The number of pupils transported to school increased dramatically since the enactment of the Foundation Program. No figures were available for the early years. However, in 1960-61 when a major revision was made in the transportation formula, there were 286,409 pupils transported. By 1964-65, this figure stood at 329,476. In 1964-65 there were 4,814 pupil-transportation vehicles. This represented only a slight increase over the 4,334 vehicles that transported children in 1960-61.<sup>71</sup>

In the foreword of History of Education in Kentucky, Wendell P. Butler, Superintendent, said,

The "gates open slowly" for educational progress. Many "roadblocks" have been encountered in the development of the public school system in Kentucky over the years. The "roadblock" that impeded educational advancement most was Section 186 of the Kentucky Constitution, which prevented travel in the right direction. The removal of restrictions imposed by Section 186 occurred on November 3, 1953. Future generations will look upon this event as a "Red Letter Day" for public education.<sup>72</sup>

Table 4  
Average Instructional Salaries for Kentucky  
1956-57 Through 1965-66

Year	Average Salaries	Average Salaries in 1957-59 Dollars
1956-57	\$2,943	\$3,108
1957-58	3,225	3,291
1958-59	3,340	3,317
1959-60	3,412	3,362
1960-61	4,175	4,094
1961-62	4,432	4,253
1962-63	4,525	4,293
1963-64*	4,620	4,330
1964-65**	4,936	4,566
1965-66	5,189	4,722

Source: Beyond the Minimum: A report by the KEA Committee for the Study of the Foundation Program, Louisville, January, 1967, p. 27.

\*Estimates of School Statistics, 1963-64, Association, Washington, D.C., p. 27.

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Harry Caudill published observations concerning the failure of the school finance plan of 1954. Caudill addresses the political elements of failure found in Kentucky schools.

The plateau schools had been minimal from the beginning, with few counties developing any schools at all until five full decades after the first settlements began. Not until 1960 did the state begin a serious program of financing and were the classrooms manned by teachers who had graduated from the state's own small regional colleges. The principal qualifications for a teaching job were to have been born in the county, to have passed through its schools, and earned a degree--or some credits toward a degree--at one of those insipid institutions and, above all, to have large numbers of blood relatives to help out with votes at election time. It thus followed that the schools could provide their students only with such skills and insights as the local culture and its weak colleges could instill. The broader world of great music, fine arts, classic and first-rate contemporary literature, and lively thought and dissertation were precluded because the urbane and the cosmopolitan could bring no political leverage. There had always been small numbers of such varied and fascinating people willing to give all or part of their lifetimes to Appalachian youth, but they could find effective places for themselves only by founding their own schools--the "settlement schools" of the early years of the twentieth century. In the 1960s the highlands were discovered anew by a crop of potentially magnificent teachers, but by then the settlement schools were gone or going, and boards and superintendents were dubious of voterless teaching applicants with nothing to their credit except degrees from fine universities and a desire to teach mathematics, music, art, literature and the sciences for minimal salaries.<sup>73</sup>

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## Chapter 3

### An Era of Education Improvement 1960-1980

Bert Combs was inaugurated as Governor in December, 1960. At the evening press conference, Combs said, "legislative action on the sales tax and veterans' bonus would depend on whether the courts upheld the referendum approving the bonus and the sales taxes." Combs represented a new breed of governor for Kentucky, unafraid to speak of taxes needed to finance education and government. A. B. "Happy" Chandler had campaigned for governor in 1935 on a platform of repealing a 3 percent sales tax. Chandler won handily and promptly repealed the tax.

"From that time on, the sales tax was kind of a bogeyman in political circles," Combs said. "It was almost a maxim . . . that sales taxes were the kiss of death."<sup>1</sup>

Governor Combs was determined to do something about Kentucky's Constitution--that crippling document written in 1891 when framers distrusted townspeople and banks and businesses, businessmen distrusted the farmer, Democrats and Republicans distrusted each other. It is not surprising that a constitution written at such a time was a collection of laws designed to curb the power of Frankfort rather than a blueprint for the efficient functioning of representative government.<sup>2</sup> Combs expressed disappointment in this narrow

vision of education and the lack of state commitment to support an improved system of public schools.<sup>3</sup>

A sickly treasury and an outdated constitution were only two of the handicaps facing Governor Combs. The state was not in good shape; it was regarded as backward by other southern and midwestern state standards. As rapidly as Kentucky educated teachers, they left for other states for higher pay. Fast-growing, prosperous Florida sent recruiters to Kentucky each spring and hired graduates by the hundreds. When Combs entered office, Kentucky was second only to Arkansas in the number of one-room schools. Fewer than half of its high school graduates went to college, and Kentucky had the highest rate of dropouts in the nation.<sup>4</sup>

The Kentucky Education Association, meanwhile, asked for a \$50 million increase in the school budget, though Governor Combs reminded them that schools were already getting 63 cents of every general-fund dollar. What the school people did not know was that they were about to get more money than they had ever expected, and that Combs would make more improvement in schools than had any administration in history.

During Governor Combs' message to the General Assembly at the 1960 regular session, he proposed an immediate and substantial increase in teachers' salaries. Raises of \$900 in 1960 and an additional \$200 in 1961 for teachers with college degrees and an increase of \$5,600,000 during the

biennium to put the teachers' retirement system fund on sound financial footing and to give teachers with 30 years of service a minimum of \$1,200 a year.

Governor Combs further proposed a central school building authority to help finance classroom building programs. As a second part of the program to correct the classroom shortage, the 1960 budget contained funds to increase capital outlay from \$400 to \$600 per classroom unit.<sup>5</sup>

The Combs' address to the Assembly was an historic one. It did not, however, inspire much affirmative response from the legislature. The members sat quietly throughout his speech, applauding only at the beginning and end. But afterward, their comments, and those of reporters, showed a realization of the importance of the address. Combs had announced that the legislature had a moral obligation to pay veterans a bonus, since the voters had approved one, and to levy a sales tax to finance it. He proposed an authority to oversee building for schools, a new truck tax and more adequate provision for higher education.

Critics denounced Combs and a former governor announced that the "bonus could be paid without the tax. The people approved only enough tax to pay for the bonus, and that wouldn't be 1 percent."<sup>6</sup>

Combs stuck to his proposal. He knew that, as critics were charging, a 3 percent sales tax would yield far more than

was needed to pay the proposed bonus, but he wanted the excess for the programs he was proposing in his legislative budget message.

On March 10, 1960, while the Senate was considering a bill to create a continuing commission on education, an education investigating committee released a report that was scathing in its criticism of practically every aspect of state education and the education hierarchy. The committee report declared that much of the education budget would be wasted if reforms were not made in a system riddled with politics, waste and incompetency. It went on to charge school officials with "greed and inefficiency, nepotism, political selection of teachers who were hired, fired and transferred according to their support for the local superintendent, misuse of school buildings and vehicles, and the granting of contracts to political favorites."<sup>7</sup>

The report questioned the fitness of teachers and administrative educators to educate the children of Kentucky. The indignant voice of Harry Caudill was heard denouncing "self-servicing paragons of mediocrity who can twist to their ungodly advantage the best laws ever written" and including in its condemnation "professional educators in the Department of Education, the 212 school superintendents, the ruling clique of the Kentucky Education Association and the Presidents and deans of the state's colleges."<sup>8</sup>

Governor Combs had an illustrative experience with the school lobby toward the end of the 1960 session. As the final weeks of the session approached, he found himself a hero with the school people. He had given them more money than they had ever dreamed of getting. Teachers' salaries had been markedly increased, new classrooms built, new buses ordered. A community college system had been launched, new classroom and dormitory buildings raised on every college campus. Everyone was ecstatic.

But then Combs, at the behest of some of the legislators who had issued the school report, backed a bill that would have prohibited athletic contests on nights before classes or examinations, so that students could be alert to study. Combs said that you would have thought he had advocated "free sex and compulsory Communism." Comb observed that: coaches, principals, superintendents, parents, and students all rose up to denounce him. The idea of putting studies before basketball games was un-American, un-Kentuckian, probably un-Christian. Combs backed down. Within two years, the same people were moaning for more money for the poor children of Kentucky.<sup>9</sup>

After the sales tax passed, Combs was hailed by the press as a master politician, a man in full control of his office. The Louisville Times called him "a Kentucky Truman, surprisingly tough when necessary, courageous, humorous,

willing to take responsibility, and with a firm grasp of the historical and political realities of the governorship."<sup>10</sup>

In 1961, Combs decried the exodus of Kentucky teachers to better-paying positions in other states. Kentucky has remained a hunting ground for human talent whether it was well-trained teachers, doctors, engineers, or business executives. If the state could have kept within its borders and employed productively a good portion of the bright young men and women whom it has educated at great cost, there would be every reason to suppose that the Commonwealth would now be greatly assisted in revising upward the current educational tables.

It would be difficult to find a more eloquent statement of Kentucky's loss of bright talent than that made by Governor Combs to a Louisville audience on January 12, 1961, when he declared:

Let's look for a moment at education--the major point of emphasis in the program now underway. One year ago we found Kentucky occupying the lowest position among the states in the payment of teachers' salaries. With your tax dollars, our teachers' colleges were turning out highly qualified teachers who were leaving the state in droves to accept better-paying positions in our sister states. One of the superintendents of public instruction told me that he never attended a convention but that several state commissioners of education sought him out to thank him for the fine Kentucky-trained teachers we had furnished them. No wonder Kentucky children were being taught by hundreds of teachers on emergency certificates.<sup>11</sup>

Thomas D. Clark, author of many books on Kentucky

history, summarized the situation in this manner:

There are no "ifs" and "buts" about it: Kentucky has never adequately dignified its teachers with salaries or public esteem as its most basic of all public servants. It has never paid them--especially the good ones--salaries commensurate with many of the ranks of common laborers. There should be raised in the rotunda of the Kentucky capitol a golden monument to the truly dedicated teachers who have labored so diligently and effectively--sometimes in the face of insufferable frustration and against rugged odds of political interference, public indifference,<sup>12</sup> and disgraceful pay--to carry out their missions.

Governor Combs fought to remedy the frustration and public indifference faced by Kentucky educators by making education a priority. In November, 1963, he reported considerable gains in his report to the people.

Since 1960 public education has made the greatest gains in the history of Kentucky. More new classrooms have been built than ever before in a four-year period; the loss of teachers to other states is slowing to a trickle; standards for teacher qualifications have been raised; a comprehensive network of vocational schools is being established; 10 community colleges will make higher education available to local areas; and the spadework is completed on what will be the most comprehensive educational television network in the United States.

In 1959 educational opportunities in Kentucky were far below acceptable standards. Many schools were old, out-moded, and overcrowded; the one-room school was still commonplace; teachers' salaries were low; many teachers were not adequately prepared for their job, and over half the new teachers graduating from Kentucky colleges were going to other states to teach; vocational education was not generally available; and institutions of higher education needed more facilities to handle increasing enrollments.

In the four-year program of this

Administration, education received top priority because the needs in this area were greatest. State financial support for the over-all expansion and support of Kentucky's education system has increased 84 percent over the previous four years. All new elementary teachers qualifying for full certification now must hold a college degree, and teachers' salaries have been increased an average of \$1,185 annually.

The result is a dramatic improvement in school facilities; an expanded curriculum to help meet the demands of today's technological age; and a rapid increase in the quality of classroom instruction.<sup>13</sup>

It has been said that Bert Combs was one of few governors to stand forth as a symbol of "courageous honesty,"<sup>14</sup> and it has been further noted that the governors of Kentucky have not been an exceptional lot.<sup>15</sup> Combs impressed observers with a pattern of efficient, thoughtful and trustworthy administration. The statutory merit system improved morale among state workers and attracted able newcomers to public service. Combs reduced waste, mismanagement and school district misconduct.

In 1971, Combs tried to return to the governors' mansion, but was not successful. Combs left the legacy of making more improvements in schools than had any other administration in history. Never again a candidate for political office, Combs continued to provide advice and counsel for the public schools of Kentucky when asked.<sup>16</sup>

#### Russman v. Lockett and House Bill 1

Property assessment problems have always plagued school

finance.

"It was the legislature's aim to see to it that no more money for education was yielded by the new property assessments than had been produced by the old ones."<sup>17</sup>

Despite the fact that the Combs' administration pumped large sums of money into education in Kentucky from 1960 to 1963, most districts were not producing maximum local revenues due to a low level of property assessment for general school purposes. The state's continued efforts to provide an adequate school fiscal support plan had not, at the close of 1964, become a satisfactory realization. Despite the mathematical formula provided by the foundation program, the state's aid, even with its several amendments and modifications, never wholly proved to be satisfactory.

During the ensuing years, neighboring states were developing a more positive climate for education and economic status. These neighbors were increasing the maximum rate of the levy for school purposes and improving taxing practice, which caused greater potential for increased school support.

In 1965, the Kentucky Court of Appeals rendered a far-reaching decision. The Court of Appeals mandated that all property be assessed at its fair cash value consistent with Section 172 of the Constitution of 1891, which defines fair cash value as the price that property would bring at "fair voluntary sale."<sup>18</sup> The Court stated:

However, we repeat that the constitution and

statutory law demand assessment of property at its fair cash value, and the people of this Commonwealth and this Court will no longer tolerate any substantial retreat from this standard.<sup>19</sup>

The decision was long overdue. For years, the assessment ratio had been allowed to fall lower and lower in school districts throughout Kentucky. Between the 1956-57 school year--when the Foundation Program was first fully financed--and the 1964-65 school year, the property assessment ratio had slipped in 191 of the state's 204 districts then in existence. The percent of decline ranged from 1.9 to 39.32.<sup>20</sup>

Assessment of property is at the heart of the Foundation Program calculation. A school district was required to levy a rate sufficient to raise the required local effort in order to participate in the Foundation Program.

Section 172 of the Kentucky Constitution, in its entirety, provides:

All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law.

KRS 132.440 requires the county tax commissioner to administer an oath to every person listing property in which the taxpayer certified that "a fair cash value has been placed on all such property required to be valued."

KRS 132.450(1) provides in part: "Each county tax commissioner shall assess at its fair cash value

all property which it is his duty to assess."<sup>21</sup>

As a result of Russman v. Lockett and the Court of Appeals decision on fair-cash-value assessment, an Extraordinary Session of the Legislature was called to evaluate and revise the tax structure of the Commonwealth. The Legislature amended several statutes, including KRS 160.470, which read:

Notwithstanding any statutory provisions to the contrary, no district board of education shall submit a budget which would require more revenue from local ad valorem taxes than would be produced by application of the preceding year's rate to the preceding year's assessment, exclusive of voted levies and net assessment growth as defined in Section 7 of this Act, except as provided in KRS 157.380(4) and as provided in subsection (4) of this section.<sup>22</sup>

The 1966 assessment of property subject to school tax was \$15,546,820. The 1965 tax rate was \$1.50. The 1966 full-value assessment of the same property assessed in 1965 was \$54,413,870. The new rate was calculated as follows: The 1965 assessment of \$15,546,820 was multiplied by \$1.50, which gave a figure of \$233,202. Then \$233,202 was divided by \$54,413,870, which produced a rate of 42.85 cents, or a rounded figure of 42.9 cents.

House Bill 1 provided that no school district could levy a rate that would produce more revenue than had been produced the previous year, except for revenue from new property.

The effect of this was to freeze the inequities previously found in assessments into the tax rates levied by

the school districts and create 180 different maximum permissible tax rates for school districts. Information is provided in Tables 5 and 6, and Charts 1 and 2 that show the variance in assessed valuation and local revenue per pupil in ADA among selected school districts.

School districts were permitted to take a one-time 10% increase in revenue during both 1967 and 1968. Because of the tax panic created by the Court of Appeals' decision and the small amount of revenue to be realized in the property-poor districts, many districts felt it politically unwise to take such an increase.

The 1966 General Assembly recognized the straightjacket they had placed on school districts and gave them authority to levy one of three permissive taxes: the occupational tax on wages and net profits; the utility gross receipts tax; or an excise tax on income. These permissive taxes were subject to recall by the voters and were disequalizing. One of the permissive taxes, the utility tax, for example, might produce four times as much revenue per pupil in one school district than would be produced in another district.<sup>23</sup>

Russman v. Lockett cited "that real estate and tangible personal property in Kentucky are assessed for tax purposes at varying percentages substantially less than 100% of fair cash value. It is apparent the situation is bad from almost any standpoint, is becoming worse, is unfair, is

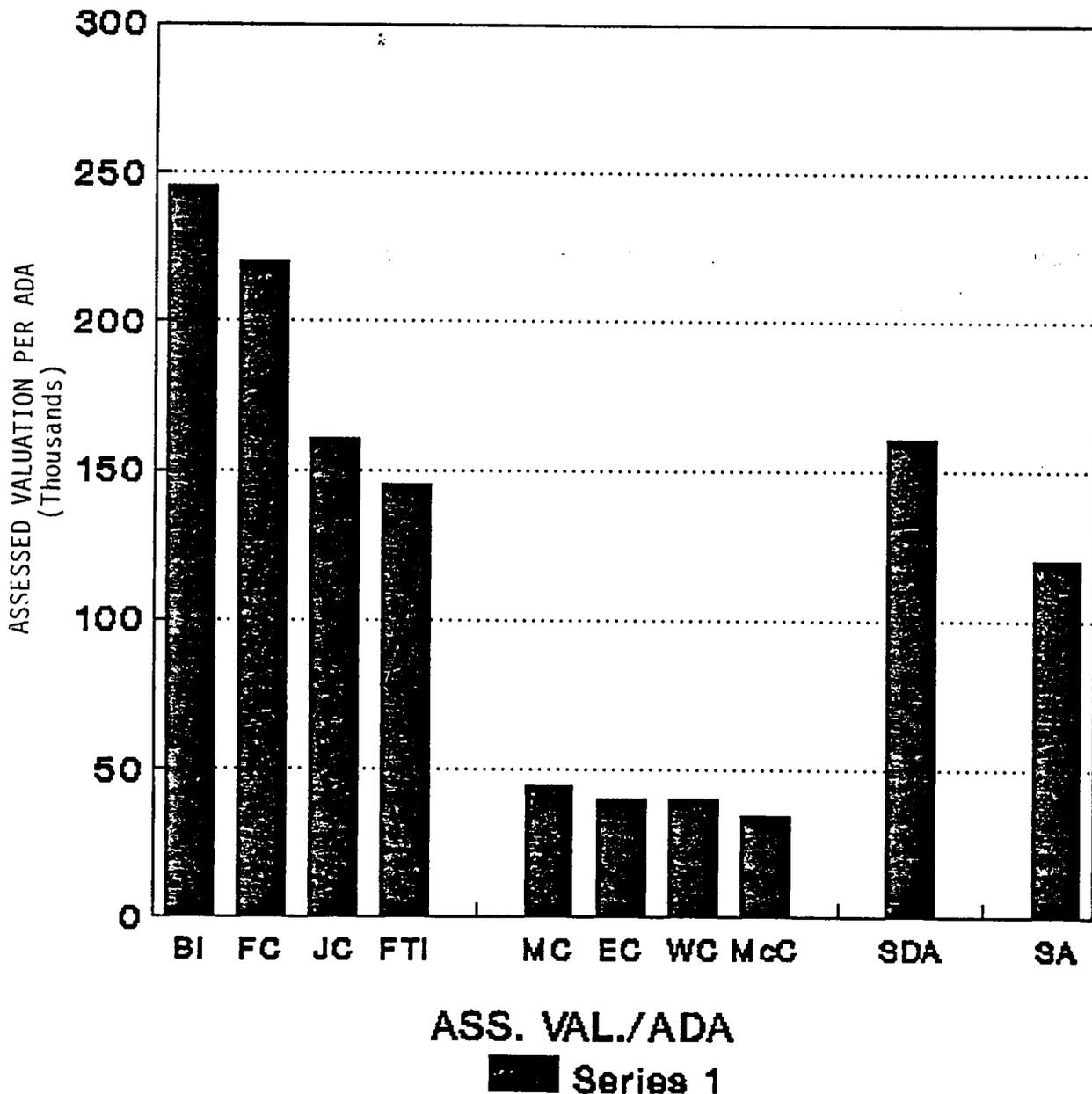
Table 5  
Assessed Value Per ADA

<u>School District</u>	<u>Assessed Value per ADA</u>
Beechwood Ind.	244,305.32
Fayette Co.	216,906.17
Jefferson Co.	180,690.07
Ft. Thomas Ind.	152,045.32
Morgan Co.	52,587.16
Elliott Co.	40,088.30
Wolfe Co.	39,873.09
McCreary Co.	29,806.67
Selected District Average	179,083.16
State Average	112,273.79

Source: From "Council for Better Education, et al. v. Martha Layne Collins, et al." (Draft) by Richard G. Salmon, 1986, Draft Data Evidence Tables, p. 8. Adapted by permission.

Chart 1

# ASSESSED VALUATION PER ADA



Note. From "Council for Better Education, et al v. Martha Layne Collins, et al" (Draft) by Richard G. Salmon, 1986, Draft Data Evidence Tables, p.6. Adapted by Permission.

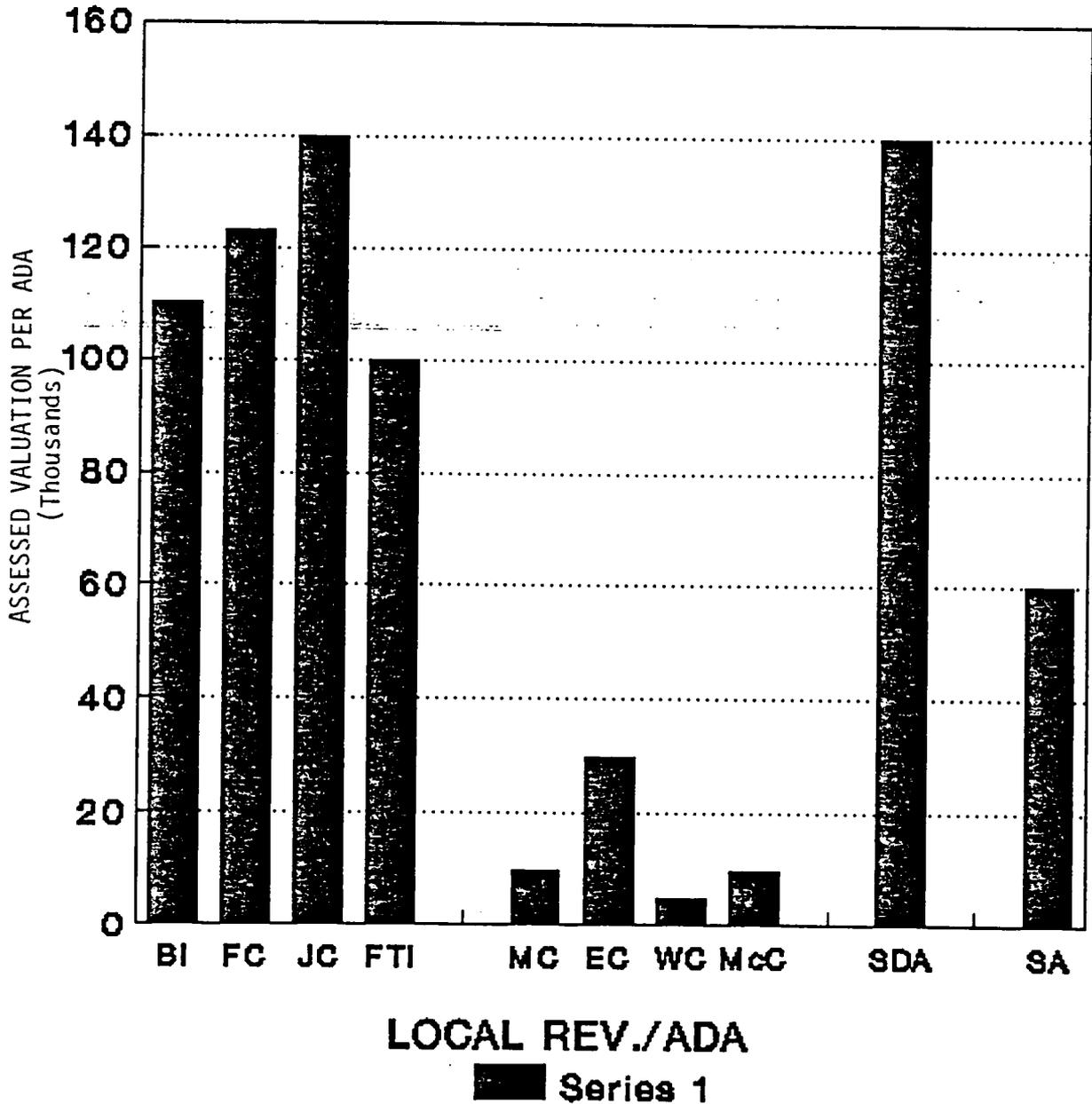
Table 6  
Local Revenue per ADA - 1984-85

<u>School District</u>	<u>Local Revenue per ADA</u>
Beechwood Ind.	1,172.01
Fayette Co.	1,212.84
Jefferson Co.	1,411.91
Ft. Thomas Ind.	1,009.10
Morgan Co.	85.04
Elliott Co.	188.40
Wolfe Co.	50.91
McCreary Co.	78.20
 Selected District Average	 1,269.96
 State Average	 564.75

Source: From "Council for Better Education, et al. v. Martha Layne Collins, et al." (Draft) by Richard G. Salmon, 1986, Draft Data Evidence Tables, p. 8. Adapted by permission.

Chart 2

# LOCAL REVENUE PER ADA -1984 - 1985



Note. From "Council for Better Education, et al v. Martha Layne Collins, et al" (Draft) by Richard G. Salmon, 1986, Draft Data Evidence Tables, p.8. Adapted by Permission.

administratively inefficient, and gives tax Commissioners an unwarranted and arbitrary control of the tax base. More significantly than all of these considerations, however, is the fact that the current method of assessment is in direct violation of clearly written mandatory laws."<sup>24</sup>

It is evident that the Kentucky General Assembly, concerned about the inefficiency in assessments for tax purposes, met in panic to pass House Bill 1. Their intent was to correct inefficiency in assessments for tax purposes, even though it left the school districts in a greater state of inefficiency, inadequacy and inequity. There was little chance that any degree of equitable financing for the public school program could be achieved without extraordinary action being taken. Over the years 1956 to 1965, study after study recommended that a more-equitable state school-finance program be designed and funded.

In 1966, a study entitled "Beyond the Minimum" was conducted. Principal consultants for this study were Edgar Morphet of California, R. L. Johns of Florida, and Kern Alexander of Washington, D.C., all school finance experts. Their 1966 study points out the differing resources available to local school districts.

Kentucky, as a result of Russman v. Lockett, began to regress from progress made during the Combs' administration. Despite repeated recommendations to provide an equitable

system of school finance, there are still vastly different resources available for each child's education. There are examples of two school districts that produce a difference of \$40,230 per classroom when measuring resources available to educate a child. To a varying degree, this was true throughout the state. Other studies reveal that the state had not interceded in a way that provided substantial equal resources for each child of the Commonwealth. House Bill 1 established a new roadblock to producing new revenue for education by freezing inequities in tax assessment rates.<sup>25</sup>

There is a simple proposition that can be stated:

No child's education should be a function of his parents' wealth or the wealth of his parents' neighbors.<sup>26</sup>

The Constitution of the Commonwealth, in Section 183, states, "The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state."

#### House Bill 44

House Bill 44 provided another roadblock in Kentucky as a new wave of equitable school finance litigation swept the nation. Commencing in the late 1960s and continuing into the present decade, a new form of school finance litigation occurred in the federal and state courts of the United States. Prior school finance litigation usually was filed by aggrieved

taxpayers, commonly from affluent school districts, who were unhappy with the manner in which taxes were collected and redistributed.<sup>27</sup> Throughout the history of education in the United States, one finds most significant political issues eventually have become judicial ones.<sup>28</sup>

Beginning with McInnis v. Shapiro, the highly publicized Serrano v. Priest, and the United States Supreme Court's decision in San Antonio Independent School District No. 1 v. Rodriguez,<sup>29</sup> this new wave of school finance litigation has challenged individual state school finance distribution systems in the United States. Prior to 1977, two cases were important in the fiscal equalization arena.

The first of the state fiscal equalization cases to gain national attention was the Serrano v. Priest decision, in which the California Supreme Court ruled that the method of funding public elementary and secondary education was unconstitutional. In this extremely controversial case, the court held that both the 14th Amendment of the U.S. Constitution and the state equal protection clause were violated because the state school finance system made the quality of education a function of the local school district's taxable wealth.<sup>30</sup>

In 1971, the United States District Court for the Western District of Texas, in San Antonio Independent School District No. 1 v. Rodriguez, accepted the plaintiff's position that the

state must exercise "fiscal neutrality" if financing public schools. Briefly stated, the concept of fiscal neutrality requires that the quality of public education be a function of the state as a whole and not a function of the wealth of the local school district. The district court also accepted the plaintiff's contention that education was of fundamental interest to the state and should be examined by the courts on the basis of "strict scrutiny."<sup>31</sup>

In a 1979 decision, Pauley v. Kelly,<sup>32</sup> the West Virginia Supreme Court reversed a lower court's dismissal of the plaintiff's contention that the state school finance system did not provide a thorough and efficient system of public education as mandated by the West Virginia Constitution. The court did not note specific areas of financial and educational disparities among the school districts, but based its ruling on the "sorry conditions in Lincoln County Schools."<sup>33</sup> The court said: The mandatory requirements of a "thorough and efficient" system of free schools . . . made education a fundamental, constitutional right in (West Virginia).<sup>34</sup>

Contrasting occurrences in the nation and Kentucky in the late 1970s found that while much of the nation was building bridges to fiscal equity, efficiency and adequacy, Kentucky was building roadblocks. In Governor Julian Carroll's absence, Lt. Gov. Thelma Stovall, as Acting Governor, called for a special session of the legislature to

cut taxes. Governor Carroll warned of the potential damage of such irresponsible behavior, but legislators, perhaps reacting against the tight reins with which the governor held them in check, did not listen to him.<sup>35</sup>

In 1979, the Kentucky General Assembly passed legislation with a wallop like that packed by House Bill No. 1 in 1965. While the nation and neighboring states were moving toward fiscal equity, efficiency, and adequacy as summarized by Table 7,<sup>36</sup> a special session of the General Assembly enacted House Bill No. 44, which countered the inflation of property values by requiring districts to reduce their tax rates every year so that current receipts would not be more than 4% higher than those of the previous year. Thus the bill put a cap on school revenue and retained the cap on the tax rate. Any increase that would bring in more than 4% had to be submitted to the voters for results.<sup>37</sup> There is little chance that any degree of equitable financing for the public school program may be achieved as long as House Bill 1 and House Bill 44 present an enormous roadblock and prevent adequacy.<sup>38</sup>

When House Bill 44 was enacted, the tax rate stood at 31.5 cents; within two years it had declined to 22.9 cents, and in the succeeding years this act, together with the rollback law (House Bill 1),<sup>13</sup> has continued to cast a long shadow over school financing.<sup>39</sup>

The tax rate has declined because the value of real property has continually increased while the base revenue rate of assessment against it has remained static under the terms of

House Bill 44.<sup>40</sup>

Although Kentucky's constitution and statutes require an efficient and uniform public school system, the issue brought by educators, after HB 44, is that Kentucky's public school system not only lacks uniformity, but is also dramatically underfinanced. The system fails through lack of uniformity, equity and also through lack of adequacy.<sup>41</sup>

Kentucky's Constitution thus, apparently, does not permit the Legislature to ignore off its duty to comply with Section 183 by leaving it to the local districts to provide for themselves. The legislature's aim in creating the Foundation Program was to achieve greater equality among Kentucky's school districts.

House Bill 44 aggravated the school districts' financial problems by requiring the districts to reduce their tax rates on real property each year so that current revenues could not exceed the previous year's revenue by more than 4% without being subject to recall by the voters.

While the local districts obviously have a duty to operate their schools and to levy taxes for them, the constitution preempts local control over education. House Bill 44, while not unconstitutional per se, is a contributing factor to an unconstitutional result--inadequate schools.<sup>42</sup>

In City of Louisville v. Commonwealth, the court stated:

In this state the subject of public education has always been regarded and treated as a matter of

state concern. "The General assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state." All public schools have the one main essential--that they are free schools, open to all the children of proper school age residing in the locality, and affording, so long as the term last, equal opportunity for all to acquire the learning taught in the various common schools. Nor does the state take its hands off the control of the school system by allowing, or by requiring, the different localities to take steps toward supplementing the general appropriation by local taxation. The school is none the less state institution for that matter.<sup>43</sup>

Reduction of local tax rates on real property was an interference by the legislature upon the intent of Section 183 of the Kentucky Constitution. The courts have connected the constitutional requirement of an efficient system with a qualitative assessment--good schools.

The legislature has thwarted the development of an efficient system of common schools by locking fiscal inequities into the school financial system by passing House Bills 1 and 44. Such a system cannot be the result the people intended in creating Section 183.<sup>44</sup>

The results of such fiscal inequities are all too clear: high dropout rates, low teachers' salaries, low test scores, poor buildings, limited course offerings, and inadequate expenditures for instruction in the poorer districts.<sup>45</sup>

**End Notes**  
**Chapter 3**

1. Interview with Bert Combs, March 15, 1989.
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3. Interview with Bert Combs, March 15, 1989.
4. Pearce, pp. 105-106.
5. Wendell P. Butler, History of Education in Kentucky, 1939-1964 (Frankfort: State Department of Education, 1964), p. 191.
6. Pearce, p. 126.
7. Ibid., p. 126.
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9. Ibid., p. 128.
10. Thomas D. Clark, "Kentucky Education--Political and Social Change," Register of the Kentucky Historical Society, (83#1, 1987), p. 198.
11. Ibid., p. 198.
12. Ibid., p. 199.
13. Butler, p. 193.
14. Lowell H. Harrison, Kentucky's Governors 1792-1985 (Lexington: The University Press of Kentucky, 1985), p. 168.
15. Pearce, Introduction page of Divide and Dissent.
16. Harrison, p. 169.
17. Tom Parish, "Digest of Plaintiff's Complaint, Plaintiff's Trial Brief, Judge Ray Corn's Findings of Facts and Judgement in Council for Better Education v. Wilkinson," p. 9.
18. Kentucky Constitution, Section 172.
19. Russman v. Lockett, Ky., 391 S.W.2d, 1965, p. 694.

20. Kentucky Schools in a Financial Strait Jacket, Research Division, Kentucky Education Association, (Louisville, December, 1964), p. 11.
21. Kentucky Constitution, Section 172.
22. Kentucky Revised Statute, Ch. 160, Section 2.
23. Personal interview with Arnold Guess.
24. Russman v. Lockett, p. 694.
25. *Ibid.*, p. 694.
26. Gene Binion, "A Paper Presented for Testimony to the Select Committee Appointed by Judge Ray Corns in Council for Better Education v. Wilkinson," p. 3.
27. M. David Alexander, Mary Jane Connelly, and Richard G. Salmon, "An Update in Public School Finance Litigation," Journal of Education Finance (Fall, 1984), p. 135.
28. Alexis de Tocqueville, Democracy in America, Vol. 1 (New York: Alfred A. Knopf, 1945), p. 280.
29. Alexander, p. 135.
30. *Ibid.*, p. 137.
31. *Ibid.*, p. 137.
32. *Ibid.*, p. 138.
33. *Ibid.*, p. 138.
34. *Ibid.*, p. 138.
35. Lowell H. Harrison, Kentucky's Governors 1792-1985 (Lexington: The University Press of Kentucky, 1985), p. 186.
36. Alexander, p. 148.
37. Tom Parrish, "Digest of Plaintiff's Complaint, Plaintiff's Trial Brief, Defendant's Brief, Judge Ray Corns' Finding of Fact and Judgement" in Council for Better Education, et al. v. Martha Layne Collins, Governor, et al., p. 12.

38. Personal interview with Arnold Guess, Associate Superintendent for Finance and Father of Council v. Wilkinson, Frankfort, KY, March 14, 1989.
39. Parrish, p. 12.
40. The Council for Better Education v. Wilkinson, Draft, Civil Action No. 85-CI-1759, January, 1988, p. 14.
41. Personal interview with former Governor Bert Combs, Attorney for the Plaintiffs, Council v. Wilkinson, Lexington, KY, March 15, 1989.
42. Larry Forgy, "Not Robin Hood," Lexington Herald-Leader, Lexington, Kentucky, Dec. 10, 1988, p. A17.
43. The Council for Better Education v. Wilkinson, (Draft), p. 26.
44. Council v. Wilkinson, p. 27.
45. Council v. Wilkinson, p. 31.
46. Robert H. Powell, Kentucky Governors (Frankfort: Kentucky Images, 1976), p. 112.
47. Charles Paul Conn, Julian Carroll of Kentucky: The Inside Story of a Christian in Public Life (1977); "Biographical Sketch of Julian M. Carroll, Governor of Kentucky," Register 73 (October 1975), p. 336.
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49. Lowell H. Harrison, Kentucky's Governors, 1792-1985 (Lexington: The University Press of Kentucky, 1985), pp. 184-185.
50. Parrish, p. 12.
51. Acts of the General Assembly, 1976, (H.B. 4, March 29, 1976), pp. 99-212.
52. A Chronological History of Kentucky Education 1930-Present, a document presented in The Council for Better Education v. Wilkinson, p. 3.

53. Harrison, p. 186.

54. Interview with Kern Alexander, June 15, 1989.

## Chapter 4

### Part I

#### The Council for Better Education v. Wilkinson 1985-Present

In this study, legislative acts and school laws of Kentucky have been examined to analyze the historical and legal development of the state's school fiscal support plan. The historical facts found in the secondary research, which includes court cases, historical studies, and legislative acts, have revealed that the initial legal base from which the current school support plan stems has been instrumental in inhibiting equal educational opportunities throughout the state.<sup>1</sup> The various studies and cases indicate that year after year, the level of school support was inadequate as there was underfunding of school support formulas. State aid was available to the poorer districts, while the wealthier districts were able to operate at a higher level because of higher tax rates and permissive taxes that brought more revenue into the industrial urban areas than in sparsely populated rural areas. Uniformity and adequacy have always been a problem in Kentucky.<sup>2</sup> The distribution of the funds to the districts was based upon the number of youth between the ages of 5 and 17. This distribution did not take into account whether or not the child attended school. Sources for school

funding varied over the years, as the increasing demand for state assistance required new and additional taxes to be channeled for the support of schools, as well as for other public services.

The recurring problems of (1) inadequate taxing procedures; (2) insufficient revenue to support education; (3) inequitable distribution design; and (4) inadequate and inconsistent educational leadership have been in existence from the State's earliest history, stemming from the 1830s. The following discussion is a recapitulation of past events in Kentucky education history and the evolution process by which the school finance structure arrived at its present state.

#### Review of Significant Educational Historical Events As They Affected The Current Funding System

A series of milestones in the evolution of the Kentucky public school finance system has occurred since the motion to establish a system of common schools in the State of Kentucky was made by representative Bullock of Jefferson County on February 23, 1837.<sup>3</sup> Each of these milestones has been identified in the previous chapters and are summarized below.

1837 A system of common schools was established by legislative action on February 23, 1837. The state received \$1,433,757 from the United States Treasury for the purpose of providing instruction for children. This act set aside one million dollars for the support of a system of education in the state.<sup>4</sup>

- 1850 The Constitution of 1850 brought the first constitutional recognition of a system of public schools. The Constitution established the state school funds.<sup>5</sup>
- 1891 The Constitution of 1891, in Section 183, provided for "an efficient system of common schools throughout the state." But Section 186 of this same Constitution mandated that school funds be distributed on a per capita basis. This made an equalization program impossible.
- 1920 A study commission appointed by the 1920 Legislature pointed out the problem caused by Section 186.
- 1930 Teacher Equalization Act passed by legislature.<sup>6</sup>
- 1932 Teacher Equalization Act was overturned by the Kentucky Court of Appeals, July 24, 1932.
- 1941 Section 186 of the Kentucky Constitution was amended by the 1940 General Assembly and adopted by the voters in November, 1941. The 1942 legislature passed KRS 157.050-157.055, allowing 10% of the School Fund for equalization purposes. An interview with Arnold Guess on March 14, 1989, revealed that Kentucky had more fiscal equity after the passage of this amendment than at any other time in the common school history of the Commonwealth.
- 1949 Section 186 of the Kentucky Constitution as amended adopted by the voters in November, 1949.
- 1952 Section 186 of the Constitution amended to allow for equalization. The amendment was adopted by the voters on November 3, 1953.
- 1954 The Minimum Foundation Program (MFP) was passed by the General Assembly. It was funded at only about 70% of the amount needed for the biennium.

MFP provided for:

- Teacher salaries
- Capital outlay
- Other current expenses
- Pupil transportation

Partial funding of the program made it impossible to deliver all services required by law, so some services were not implemented/developed and the available funds were allocated to those districts most in need of new

funds. Therefore, during the first biennium, 1954-56:

- 78 of 224 districts did not qualify for participation.
- 129 districts received more funds under the program during its first two (2) years than they had previously.
- Funding was provided to districts on the basis of Average Daily Attendance (ADA) rather than census, this resulted in a 5.9% increase in ADA for the biennium.

1956 The Minimum Foundation Program was fully funded. Provision was made for ASIS units in art, music, physical education and library services. All districts received funding in 1956.

1960 The General Assembly passed a 3 cent sales tax to help finance public education.

1965 Russman v. Lockett declared that property must be assessed at full value. The Kentucky Court of Appeals rendered the decision June 8, 1965.

1965 In Extraordinary Session the General Assembly passed House Bill 1, which brought state laws into "conformity" with the implications of Russman v. Lockett. It allowed two permissive tax increases of 10%, these could be taken in 1966 and 1967.

1976 H.B. 4 enacted Power Equalization.

1981 Power Equalization appropriations were reduced from \$36,700,000 to \$34,100,000 by Executive Order of Gov. John Y. Brown, Jr., due to state revenue shortfall.

1982 Power Equalization appropriations were reduced from \$40,000,000 to \$31,000,000 by Executive Order of Gov. John Y. Brown, Jr.

1985 The Council for Better Education v. Wilkinson suit was filed, shortly after the release of the U.S. Department of Education's study, A Nation at Risk.<sup>8</sup> The plaintiff's are a Kentucky non-profit corporation comprised of 66 Kentucky Common School Districts, seven named Independent and County School Districts, together with a number of parents and individual students representing as a class all similarly situated students in Kentucky's Districts.

### The Case

The defendants in Council v. Wilkinson are Wallace Wilkinson, Governor, Commonwealth of Kentucky; the State Board of Education; and other elected state officials, including representatives of the Kentucky General Assembly. Alice McDonald, immediate past State Superintendent of Public Instruction, was succeeded in office by John Brock, who advised the Court, by counsel, that he would not oppose the relief sought by the plaintiffs. Several of the other defendants have been substituted as successors in office to prior named parties.<sup>9</sup>

The plaintiffs examination of the history sustained the allegation that inequities and inadequacies existed, stemming from state and local taxation practices. The initial structure set a precedent wherein the organization allowed, as well as expected, each school district to finance and to administer its schools according to the district's ability to pay and/or its willingness to pay. Because of the vast variation in taxable property wealth among the county or independent districts, many school districts, over the years, maintained only a minimum of educational standards. Other school districts were able to provide for schools in a more satisfactory manner.

The plaintiffs showed that inequalities in the state and local funding processes and the inadequacies and variations

in levels of opportunity for education started to appear early and continued through the years. The cited deficiencies that caused an inequitable education system and contributed to the State's current educational dilemma were the elements of variance in fiscal capacity, inequalities in formula design, and unequalized appraisal and assessment practices. These matters continued to be areas of concern for the educational leaders, the Legislators, and the citizens of Kentucky.

Plaintiffs acknowledged that by constitutional amendments and statutory changes over the years, the Kentucky legislature mitigated much of the unequal effects of local taxation by reducing the revenue disparity among school districts, yet, the reform was glacial, and students in the fiscally-disadvantaged school districts remained at a grave educational disadvantage because of underfinanced educational programs and services.

Plaintiffs concluded that per-pupil disparities among Kentucky school districts have been created due to the following: (1) significant reliance upon local taxation, (2) use of a variable flat grant that ignores both fiscal capacity and tax effort of the school districts, and (3) limited use of the fiscal equalization component of the total school finance system. Evidence indicated that the system prevents many students from low fiscal capacity districts from receiving services comparable to those provided to students

in more fiscally-able districts. In essence, it was contended by plaintiffs that the quality of public education provided Kentucky children is dependent largely upon the fiscal capacities of their respective school districts. The range of curriculum offerings, counseling services, and extracurricular activities primarily are a function of the location of school districts and their accompanying economic circumstances. Correspondingly, the student achievement test scores, similarly, are partially dependent upon the fiscal capacities of their respective school districts.

It was contended and ultimately the court agreed that the Kentucky system of financing public elementary and secondary education invidiously discriminates against children of poor school districts and distributes fiscal resources absent a rational relationship to legitimate educational objectives.<sup>10</sup>

#### Challenged Features of the School Funding Plan

Within the current Kentucky school finance support plan, the state absorbs the largest portion of the cost for education through the Minimum Foundation Program, supplementing the revenue that is raised on the local level. To obtain local funds, each school district is required to levy a property tax at a minimum level of effort, so specified by the legislature.<sup>11</sup> Additionally, the Kentucky plan allows for local permissive taxes, whereby a school district may lay

an excess levy. Desequalization in school districts' expenditure capabilities is compounded when local leeway is permitted. This results in the state allocation having less effect in equalizing the expenditures among the property-poor versus the wealthier districts.

The availability of school funds, as well as per-pupil expenditure, vary greatly among the 177 school districts and expenditures have remained less than equal and less than adequate in at least 66 Kentucky Common School Districts. This has largely been due to the variation in fiscal capacity of some school districts, as well as the allowance of a permissive tax.

It was the contention of the plaintiffs that the school funding plan did not provide for "efficiency." Testifying in the trial of the case, two expert witnesses defined an efficient school system. Such a system, said Dr. Richard Salmon of Virginia Tech, must meet three standards: it must have comparable tax efforts among its districts, must provide the necessary resources throughout the state for all districts, and must not waste its "fiscal or human capital."<sup>12</sup>

Kern Alexander, also of Virginia Tech, presented four criteria for an "efficient system: it must be unitary, uniform, adequate, and utilized in such a way as to avoid the waste of human resources."<sup>13</sup>

In a legal context, the word "efficient" is regarded as

a term of art, one having special force beyond its meaning in ordinary speech. This is suggested by the extended definitions of an efficient system offered by Salmon and Alexander and confirmed by decisions of courts in other states, as in Arkansas, where a court declared that for some districts to supply the barest necessities and others to have programs generously endowed does not meet the requirements of the constitution--which requires the state to provide a general, suitable and efficient system of public education.

Accordingly, declared the plaintiffs, Kentucky's public school system falls far short of reaching the constitutionally demanded goal of efficiency. The legislature's current method of financing the schools is unconstitutional.

In his preliminary ruling, issued on May 31, 1988, Franklin Circuit Judge Ray Corns found unequivocally for the plaintiffs, Council for Better Education.

"The General Assembly," declared the judge, "has failed to provide an efficient system of Common Schools throughout the State . . ." Although the term "efficiency" includes the idea of "efficiency in the traditional economic sense, it is more far reaching when applied to education . . ." It means that the system "must be adequate, uniform, and unitary." It requires "substantial uniformity, substantial equality of financial resources, and substantial educational opportunity for all students." The school finance system, he said, is "unconstitutional and discriminatory."<sup>14</sup>

## Guiding Principles and Potential Solutions for Funding Kentucky's School Finance Program

The education provision in the Constitution of Kentucky sets forth definitive requirements to be followed by the General Assembly for the establishment of schools. Each of the words has historical meaning that is as significant and applicable today as when it was first written. The language was designed to give the legislature broad discretion in creating a school system, enabling it to expand the scope of the state's educational enterprise as necessary.

At the time of the Constitution's enactment, the literacy level and general knowledge of the people of Kentucky had languished. The framers of the Constitution were not content to allow a governmental function so vital as education to be entirely subject to the vicissitudes of uneven political fortune. The framers created standards to which the legislature must adhere, including minimum standards limiting the deviation that would be permitted.

The importance of education to the state and to the people, as individuals, is manifested in the language of Section 183 of the Constitution, which requires that the General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state. There can be little doubt that education is so essential to the welfare of the state and the people that it

is a fundamental right. In spite of the fact that the legislature made important strides in 1985 with the Education Improvement Act and other initiatives, the system of funding the schools falls far short of the constitutional mandate. The inadequacies of the present system of financing schools is not the fault of any particular legislature, but are the result of earlier decades of collective inattentiveness to the will of the people as enunciated by the Constitution.

In order to provide assistance to the Circuit Court in defining an "efficient system," Judge Corns appointed a select committee of citizens to consider the accepted meaning of the Constitutional mandate. This committee set forth nine principles which were cited by the Circuit Court. These principles are set forth below:

1. The schools shall be established and maintained by provision of state law in a manner appropriate to guarantee the child's fundamental right to an education.

The constitutional requirement that the General Assembly provide for education is unequivocal and this obligation cannot be averted or delegated away to a subordinate agency of government. While the time-honored concept of local control is desirable and should be assured and safeguarded, the ultimate discretion over the schools rests with the legislature. Early attempts to assign funding responsibility to localities resulted in the people, through the Constitution, directly and unambiguously charging the legislature with the responsibility to establish and fund the schools.

2. The schools shall be established as a system, an organic whole, arranged with interdependent parts.

The Constitution does not prescribe any particular organizational pattern and the number, size, and location

of school districts is a matter entirely within the legislative prerogative. The word system, though, requires a measure of orderliness and uniformity regardless of the number of the school districts. The state system must form a cohesive whole and cannot be merely a conglomeration of local independent initiatives.

3. The schools shall be public, of the body politic, and shall be governed and controlled by the people.

Early experimentation showed that quasi-private or semi-public schools would not suffice to educate the masses. Control by private interests, regardless of their nature, always placed limitations that reduced public participation and prevented full access of the people. To assure openness to all the people, the system must be controlled by the people.

4. The schools shall be free and common to all with no charges to limit access.

Reluctance on the part of the people to finance schools from the public treasury was the primary hindrance to the establishment of a viable common school system. Early attempts to create an educational system failed partially because of user charges, usually in the nature of tuition and fees, which limited attendance to those who could afford to pay the requisite costs of operating the schools. To have full participation by all the people the schools must be financed by all the people.

5. The schools shall be financed by tax resources that are distributed in such a manner as to ensure that the quality of a child's education will not be dependent on the fiscal ability of the local school district.

The quality of a child's education in Kentucky is largely determined by the financial ability of the community in which the child attends school. A system of schools cannot be efficient if thousands of children are denied educational programs and services because their local communities do not happen to have the property wealth or commerce to sustain school revenues through larger and more lucrative local tax bases.

6. The schools shall be funded at a level adequate to provide quality educational programs and services in all school districts.

Substantial evidence exists to show that the educational level of Kentucky school districts is less than adequate. The indicators of quality, from the nature and extent of programs, services, and personnel, to production measures such as achievement test scores of students, all verify this conclusion. While the financial resources are not the sole determinant of an adequate educational system, few would deny that sufficiency of funding must be regarded as a primary element. The method of financing presently used in Kentucky has failed to provide the necessary resources.

7. The Schools shall be financed in a manner that will prevent the quality of a child's education from being dependent on the vagaries of local tax effort.

Whether a local school district has high or low tax effort to support the schools may be determined by conditions quite unrelated to education. The social, political, and economic structure of each community is different and each, for various reasons, may respond differently to entreaties to support the schools. This may be true even if the people, from community to community, have the same desire and aspiration for the education of their children. Because the schools of Kentucky exist as a unified system, the caprice of local political conditions cannot be permitted to harm the educational opportunity of a child. No community has a right to impose an inferior education on its children.

8. The schools shall provide equitable educational treatment to all children in the accommodation of their educational needs.

All educational programs and services cannot be precisely uniform. School districts in different areas of the state have children with varying educational needs. For example, every school district will not have exactly the same percentage of handicapped or culturally deprived children. Children, having such special needs, may require particular educational programs that cost more than regular programs. Equity requires that additional funds be expended if the state's moral and legal obligation of an efficient system is to be implemented.

9. The schools shall be properly managed to assure the most effective and productive use of tax funds.

The Constitution contemplates the utilitarian use of public school funds and in so doing the schools are accountable to the people. In creating a state school system, the framers of the Constitution sought to capture the advantages and utility of educating the masses in the most efficient manner possible. If aspects of the school system's management hinder efficiency of operation they must be revised and more acceptable alternatives must be incorporated and enforced.<sup>15</sup>

The Select Committee also offered a definition for common schools. Within this definition is the philosophical framework for the public schools.

The use of the word common invokes special meaning in both the historical and constitutional context. Common schools were created as institutions where all children, regardless of economic or social condition, could obtain public instruction free of charge. The costs were to be shouldered by the public through taxation. The instruction was to benefit all in common and the costs were to be incurred by all in common. Use of the term common as an adjective to define the schools implies that the schools are free. The great educational debate of the 19th century was whether schools should be free for all to attend without charges to the students. The use of the word common alone indicates that the costs are to be born by revenues gained from taxation of all the people.<sup>16</sup>

#### The Findings of the Circuit Court

The Circuit Court held that the General Assembly has failed to provide an efficient system of Common Schools throughout the State as mandated by Section 183 of the Constitution, which provides:

The general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.

The wide disparities in the financial resources available

PAGE

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MISSING

is a state function and responsibility.

Circuit Judge Corns summarized his opinion with the following findings and conclusions:

(1) Kentucky's Common School finance system is unconstitutional and discriminatory.

(2) It has not produced an efficient system of Common Schools throughout the state as required by Section 183 of the Constitution.

(3) It violates the Plaintiffs' right to equal protection of the laws and their fundamental right to an education under the Constitution.

(4) By virtue of the Court's inherent authority and following precedent established in similar litigation in a sister state, West Virginia, the Court shall not later than June 15, 1988, appoint a small select committee to review all relevant data, provide additional analysis, consult with school finance experts, propose remedies in accordance with our FINDINGS, CONCLUSIONS, and JUDGMENT to correct the deficiencies in the present Common School financing system, and file a written report with the Court by a specified date. This master plan, when adopted by the Court, with no intention to intrude on the prerogatives of the executive and legislative branches of government, but rather as an aid, will serve as a guide in establishing the parameters of the Constitutional requirements of Sections 1, 3, and 183.

(5) This judgment is prospective and shall not invalidate any prior act or acts involving the Common Schools. Pending further Order, the current Common School financing plan shall continue to operate as though under emergency conditions until a valid financing plan is established within a reasonable time in accordance with the Constitution.

(6) The Court shall retain jurisdiction herein for such further orders or proceedings as may be appropriate.

(7) The Plaintiffs shall recover from the Defendants the costs of this action.<sup>19</sup>

## Part II

### The Kentucky Supreme Court Ruling in Rose and Blandford v. The Council for Better Education

The Kentucky Supreme Court, in a move of unprecedented scope, on June 8, 1989, ordered the legislature to "recreate and reestablish"<sup>20</sup> a new system of common schools in the Commonwealth. The premise of this opinion is that education is a basic, fundamental constitutional right that is available to all children within this Commonwealth. The Court charged that the General Assembly should begin with the same premise as it goes about its duty to correct the deficiencies. The Court said that the system must be efficient, and the criteria set out are binding on the General Assembly as it develops Kentucky's new system of common schools.<sup>21</sup>

In upholding most of the Corns lower court decision, and even going beyond it, the Kentucky Supreme Court rendered one of the most significant landmarks in the state's two centuries of educational history. The Court said that education has seldom, if ever, been a major priority in Kentucky. The Court noted that the author of Section 183 in the 1891 Constitution clearly recognized this fact when he included the two magic words "shall" and "efficient."<sup>22</sup>

It was reported after the case that prominent school-law experts said recently that no state or federal court had

ever before issued so sweeping an order in a suit challenging inequities in state spending for schools. The court struck down not only Kentucky's school-finance laws, but also "the whole gamut of the common-school system,"<sup>23</sup> including laws creating school districts, school boards, and the state department of education, and other laws and regulations governing such matters as teacher certification and school construction.

The court did not invalidate the laws individually, but rather "the statutory system as a whole."<sup>24</sup> It suggested that the General Assembly could reenact certain laws in their original form "if they combine with other component statutes to form an efficient and thereby constitutional system."<sup>25</sup> Using an analogy to make his point, Justice Stephens wrote that "just as bricks and mortar used in construction of a schoolhouse, while contributing to the building's facade, do not ensure the overall structural adequacy of the schoolhouse, particular statutes drafted by the legislature in crafting and designing the current school system are not unconstitutional in and of themselves."<sup>26</sup>

Chief Justice Stephens of the Kentucky Supreme Court wrote that, "because of the enormity of the task before the General Assembly to recreate a new statutory system of common schools in the Commonwealth, and because the court realizes that the educational process must continue, the court will

hold jurisdiction over this case until the adjournment of the General Assembly in 1990.<sup>27</sup>

The Court clearly enunciated the Legislature's duty and responsibility for education. The Court's action was summarized in Education Week as follows:

The Supreme Court held that under the constitution, it is the sole responsibility of the General Assembly to provide for an efficient system of common schools. The court also ruled that the legislature must provide adequate funding for the system, but left the decision of how to do that to lawmakers.

The justices did note, however, that if the General Assembly plans to rely on property taxes to finance schools, all property must be assessed at 100 percent of its fair market value and tax rates must be uniform statewide.

The court also set criteria that the General Assembly must adhere to as it develops a new system.

To meet constitutional muster, it said, the new education system must:

- \* Be free, substantially uniform, and available to all Kentucky children;
- \* Provide "equal educational opportunity" to all children, regardless of where they reside;
- \* Be monitored by the General Assembly to avoid waste, duplication, and mismanagement; and
- \* Be funded sufficiently to provide each child with an adequate education.

The justices defined an adequate education as one that has as its goal the development of oral and written communication skills; knowledge of economic, social, and political systems; knowledge of governmental processes; knowledge of mental and physical wellness; grounding in the arts; training for academic or vocational pursuits; and sufficient skills to enable students to compete in the job market.<sup>28</sup>

## Part III

### A Chronological History

#### The Council for Better Education v. Wilkinson

Kentucky educators began considering a lawsuit against the Kentucky General Assembly as early as 1971. Attorney Theodore Lavit had participated in Downs v. Marlin, a federal case based upon discrimination in federal funding formulas toward poor school children of Kentucky. When Rodriguez failed by a 5-4 vote, the Downs v. Marlin case became moot. Downs v. Marlin was a Marion County, Kentucky, case filed in federal court by Lavit, giving him some early experience in school equity litigation.<sup>29</sup>

Kern Alexander, Sam Alexander, Arnold Guess, Ted Lavit, and James Melton were involved in investigating the Kentucky school equity issue at the same time Serrano v. Priest was being tried in California (1971). The group discussed filing a Kentucky Serrano Case.<sup>30</sup> Because of timing and the politics of the age, a suit was not filed. But, putting the suit on hold for a number of years did not diminish the desire of the group to correct the school finance equity situation.

We were still concerned about the state of affairs in Kentucky. We knew the system was unconstitutional. We knew that every school district in operation was operating within its own framework and not the framework of constitutionality. Arnold Guess revived the organizational spirit in 1983. With Arnold providing the leadership and gathering the

interested districts, we regrouped and decided to move forward with the suit. By 1983, we knew the courts would entertain a fiscal equity suit and we could use public funds to support the suit.<sup>31</sup>

In December of 1983, Arnold Guess was dismissed by the incoming new State Superintendent Alice McDonald. Guess obtained a new job working with district superintendents. By February, 1984, Guess had recruited 20 superintendents from property-poor districts interested in an equity suit.<sup>32</sup>

Kentucky educators had waited many years for the General Assembly to move toward school reform and fiscal equity. By 1984, it was apparent that neither the governor nor legislature was going to provide the leadership for school reform. The time was conducive to recruit poor school districts into an organization designed to push for fiscal equity and school reform.

Alice McDonald told me (Arnold Guess) in February of 1984, that her duty was to administer the law as passed by the General Assembly, and if a group of superintendents effect a change in the law by bringing suit, she would administer the law.<sup>33</sup>

Senator Mike Maloney met with Frank Hatfield and me in March. He was opposed to the suit. He asked us to give the legislature a chance to correct the situation. As a result of no action by Maloney, I called interested superintendents to Frankfort.<sup>34</sup>

In May of 1984, Superintendent of Public Instruction, Alice McDonald, called the superintendents to Frankfort. During a general meeting, Mrs. McDonald became abusive and threatening toward the group of "rebel superintendents taking matters into their own hands." She threatened to have any

superintendent using public funds to finance the suit audited and possibly prosecuted.

Former Governor Bert Combs agreed to assist the property-poor districts in October of 1984. With the help of attorneys Combs, Deborah Dawahare, and Ted Lavit, the Guess group began mobilizing and organizing to file a fiscal equity suit. In March of 1985, Kern Alexander and Ted Lavit had prepared the first draft of the complaint for the suit. Ted Lavit said:

We had to consider who we were going to sue. We were going to sue the governor, the speaker of the house, head of the senate and other people who were in position to correct this unconstitutional situation in Kentucky. Kern and I did several drafts. When we got a good draft, we sent it to Bert Combs. He modified and improved the suit and sent it back to us. We filed suit in November of 1985. We began preparing to prove the allegations of the complaint.<sup>35</sup>

In April, 1985, the 66 plaintiff districts became The Council for Better Education and in November of 1985, voted to file suit seeking a declaratory judgment that Kentucky's statutory system for financing its public schools violates Sections 1, 3, and 183 of the Kentucky Constitution and the 14th Amendment of the Constitution of the United States.<sup>36</sup> The Council was seeking a judicial mandate that funds be appropriated and allocated in a constitutional manner, both state and federal.

We were challenged on two fronts. Senator Edward O'Daniel proposed a bill to make it unlawful to expend public funds for suits of this kind. That bill died in committee. We were on solid ground for the expenditure of public school funds for

public school children in the realm of education. Kentucky case law clearly shows we can do this, so that challenges went by the wayside. Wooley v. Spalding clearly showed that no children could be discriminated on the bases of wealth. If you can't discriminate in funding in Marion County, Kentucky, then you can't discriminate in Kentucky. Wooley also committed the justices to retain control of the case. So, when the Supreme Court upheld the Corns' decision, they were somewhat obligated to retain jurisdiction or control. The second challenge, the joint appeal of the House and Senate, is now disposed of due to the Supreme Court ruling.<sup>37</sup>

On November 3, 1953, Wendell Butler declared that future generations would look upon "removal of the roadblocks" as a "Red Letter Day" for public education.<sup>38</sup> On May 31, 1988, the "Red Letter Day" legislation that future generations were to pin their hopes was declared unconstitutional by Judge Corns of the Franklin Circuit Court. On June 8, 1989, the Kentucky Supreme Court upheld Corns' lower court decision and went far beyond Judge Ray Corns' ruling that declared the state's method of funding its public schools unconstitutional.<sup>39</sup>

A series of events led to the evolution of The Council for Better Education v. Wilkinson. The events are listed below:

#### A Chronological History

James Melton, former Associate State Superintendent, made the following statement while testifying on behalf of The Council for Better Education:

Every study of education finance that has been conducted for Kentucky since 1952 has called for

greater equalization of educational opportunity.<sup>40</sup>

June 25, 1973

In Financing the Public Schools of Kentucky, a study made by The National Educational Finance project for the Kentucky Department of Education, Kern Alexander wrote, "It is, however, with regard to local power (discretion in the levy and use of additional taxes) that significant questions have been raised about equalization of educational opportunity."<sup>41</sup>

1976

School districts with poor assessments were charged with producing more local money than was actually produced and as a result their total program receipts were reduced. It was this problem that caused the state in 1976 to go to a full state financial Foundation Program and levy at the state level the property tax rate formerly used for requiring local tax effort. This change mandated a new method for equalizing educational opportunities and the power equalization formula was adopted by the 1976 General Assembly.

July, 1981

Governor John Young Brown placed money in

the budget of the Secretary of the Cabinet for Education and Arts for the purpose of studying the school finance program. This study, "A Study of Public School Finance and Management," July 1981, was done by the nationally known firm Creasap, McCormick & Paget and recommended greater operational efficiency.

July, 1983

Superintendent of Public Instruction Raymond Barber created a task force to study school finance and the resulting report written by Kern Alexander, entitled "Equitable Financing of Public Schools," issued in July of 1983, recommended that an equitable finance program be created.

March, 1984

The Kentuckians for Excellence in Education Task Force created by the State Chamber of Commerce produced An Opportunity for Excellence. Richard G. Salmon and Kern Alexander were consultants for the task force. This report pointed to a "need for dramatic changes in public school funding."<sup>42</sup> The report focused upon inadequate financial support.

The report stated:

There is no question that Kentucky is one of the least fiscally able states in the United States (Rank 43, per capita income for 1982). Kentucky also makes one of the lowest total tax efforts of the fifty states (Rank 45, per capita total tax collections of state and local governments, 1980-81) and a comparable low tax effort for public education (Rank 43, state and local revenue receipts for public schools in 1981-82, as percent of personal income in 1981). Particularly noticeable is the low utilization of the property tax revenue of state and local governments 1980-81. The unfortunate combination of low fiscal capacity and low tax effort has resulted in low per pupil revenues for public elementary and secondary education (Rank 42, \$2,482 per pupil in average daily attendance in 1982-83). The average salary paid classroom teachers ranks Kentucky thirty-second among the fifty states. However, in order to raise the salaries of its teachers, Kentucky, relative to other states, has maintained a high teacher ratio. Only eight states had a greater pupil-teacher ratio than Kentucky in 1981-82.

#### Recommendation 3

The Kentucky General Assembly should strive to provide a higher level of fiscal equalization among the 180 local school districts.

- \* The District Power Equalization Grant should be increased by \$10 million for 1984-85 and an additional \$10 million for 1985-86 for a total increase in 1985-86 of \$20 million. The additional funding for the District Power Equalization Grant should be distributed to local school districts with less than average fiscal capacity.
- \* No school district should be eligible for state aid which does not levy an effective ad valorem tax of \$.25 per \$100 of assessed valuation of property.<sup>43</sup>

April 12, 1984            Arnold Guess invites selected school superintendents to meet regarding the State School Finance Program.<sup>44</sup>

May 4, 1984             Meeting of local school superintendents called by Guess at Capital Plaza Hotel

with Richard G. Salmon and David Alexander as consultants.<sup>45</sup>

October 3, 1984 Initial meeting between Judge Bert Combs, Arnold Guess, et al. regarding issues and possible lawsuit; research grounds of contemplated suit and review of Kentucky Constitutional debates on educational provisions.<sup>46</sup>

November 15, 1984 Judge Combs meets with school superintendents.<sup>47</sup>

December 3, 1984 Judge Combs meets with school superintendents at the Kentucky Association of School Superintendents in Louisville.<sup>48</sup>

December 12, 1984 Theodore H. Lavit, attorney-at-law, Lebanon, Kentucky, recommends to Arnold Guess that the association of interested school districts adopt a statement of principles, bylaws or constitution setting forth its purpose and goals. Lavit also recommended incorporating and becoming a party-plaintiff to the litigation.<sup>49</sup>

February 26, 1985 Judge Combs and Arnold Guess meet with Attorney General Armstrong.<sup>50</sup>

March 1,3,4, 1985 Kern Alexander and Theodore Lavit prepare

draft of complaint for the Kentucky case.<sup>51</sup>

May 5,6,7, 1985 Kern Alexander and Ted Lavit complete the complaint.

May 8, 1985 The Council meets in Frankfort at the Kentucky School Boards Association Building to hear a progress report by Bert Combs, Kern Alexander and Theodore Lavit on the major points of the complaint to be filed. At this meeting Council corporate bylaws were adopted and a Board of Directors was elected. Frank Hatfield, Superintendent of Bullitt County, was elected chairman.<sup>52</sup>

May 28, 1985 Kern Alexander travels to Elliott, Morgan, Wolfe, Harlan, Knox, Laurel, McCreary counties and Hazard and Hardin to meet with potential plaintiffs.<sup>53</sup>

July 17, 1985 Attorney General's opinion supports public school fund expenditure for suit to improve education.<sup>54</sup>

August 6, 1985 Legal research by Lavit concludes that equalization of resources in funding Kentucky schools is constitutionally required.<sup>55</sup>

August 8, 1985	The Council raises \$54,519.22 to support and fund a suit. <sup>56</sup>
February 19, 1986	Pre-Trial Memorandum
June 2, 1986	Pre-Trial Conference
August 4, 1987	Trial Proceedings Begin
September 22, 1987	Kern Alexander testifies before Franklin Circuit Court.
March, 1988	John Ed Pearce, columnist for the <u>Courier Journal</u> , endorses raising taxes and the repeal of House Bill 44. House Bill 44 limits the amount of increase in property tax income the school districts can effect. Kentucky's property taxes are among the lowest in the nation. House Bill 44 has become a sacred cow. Legislators won't tackle it. <sup>57</sup>
April, 1988	Oral Trial Argument
May 31, 1988	Judge Ray Corns, Franklin Circuit Court, renders judgment in favor of plaintiffs.
June 2, 1988	Jack Moreland, Superintendent of Dayton Independent School District and Chairman of Council for Better Education, Inc. (succeeding Frank Hatfield), announces "We Won!"
June, 1988	Appeal

July 5,6,11,  
12 and 13, 1988           Members of the Circuit Court Select  
Committee schedule and conduct statewide  
hearings in Covington, Frankfort, London,  
Madisonville and Louisville.

September 20, 1988   Report of Select Committee submitted to  
Judge Ray Corns.<sup>58</sup>   Judge Corns issues  
final order.

June 8, 1989           Supreme Court of Kentucky affirms and  
expands Judge Corns' decision. (Rose et  
al. v. The Council for Better Education,  
Inc.)

## Conclusion

Before attempting to restructure what happened, the researcher first reviewed the legal documents that served as a catalyst to develop a procedure for the study. Then actions in other states similar to The Council for Better Education were reviewed. Throughout the country, several similar cases have been litigated, including the highly publicized Serrano and Rodriguez decisions. Many of the basic issues in The Council for Better Education could be found in Pauley v. Kelley, Robinson v. Cahill, Horton v. Meskill and others.

The next step was to determine the participants involved in The Council for Better Education and the roles they played. Only by interviewing these people could the researcher find out what truly transpired from the participants' perceptions. The participants were selected on the basis of the significance of the roles they played in the action. The series of five questions developed for all major participants and those developed for individual participants served to inform as well as to verify pertinent information.

The five basic questions could be answered by all participants since the questions were based upon issues common to all. Specifically, the participants were asked how they perceived The Council for Better Education v. Wilkinson action as it related to the financing of the public schools of Kentucky in 1985. Participants saw this action as a means to

help individual schools with small problems as well as a means to establish a new era for financing Kentucky Schools.

The questions relating to specific roles played by the participants in the initial stages of The Council for Better Education v. Wilkinson, as well as changing roles between 1985 and now, resulted in unusual responses by Dr. John Brock, as he was for a time both a plaintiff and a defendant. Dr. Brock explained the circumstances and clarified his position in the interview. Dr. Kern Alexander also changed roles. He moved from being an independent expert witness to President of Western Kentucky University, thus creating a pressure-cooker situation as he testified against the Legislature, which provided a large portion of the University's capital outlay and operating funds. Associate Superintendent Arnold Guess was in the process of being fired, but eventually was returned to his old job with promotion. He remains active in pursuing fiscal equity funding for Kentucky schools at this time.

The question related to the impact of House Bill 44 in 1979 stimulating suit interest proved to be negligible. Dr. Brock described House Bill 44 as "much to do about nothing" as four percent of nothing is nothing.

A critical question focused on what must be done to achieve and maintain fiscal equity, efficiency and adequacy in Kentucky's public schools. The participants agreed that politics and resources were at the crux of the initial

problem. The politics referred to were not that of a bipartisan nature, but those dealing with a control of resources. It is this type of politics, lack of resources, and poor leadership statewide that initially generated the action that resulted in The Council v. Wilkinson. Optimistically, all the participants indicated that the vehicle to provide a solution to the original complaint was already in place. The District Power Equalization was pointed to as the key to absolute fiscal equalization, if fully funded.

In retrospect, the five questions served the purpose intended by the researcher. The interview with each participant proved crucial to this study. This was the first interview of this nature granted by former Governor Combs and by Mr. Guess. Guess remarked that he was delighted that someone was collecting the information without emotion and politics and a publication should be made available to the public. Judge Combs requested a copy of the data collected.

**End Notes**  
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**Part I**

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2. Personal Interview with Arnold Guess, Frankfort, KY, March 14, 1989.
3. Acts of the General Assembly of the Commonwealth of Kentucky, 1837, p. 274.
4. Ibid., p. 274.
5. Edward Ligon Moses, A History of Public Education in Kentucky. (Lexington: University Press of Kentucky, 1942), p. 96.
6. Arnold Guess, A Chronological History of Kentucky Education 1930-Present, Arnold Guess, Evidence for Case, 1986, p. 1.
7. Ibid., p. 3.
8. Linus Wright and Deborah Inman, "The Impact of Education Reform on Local School Districts," Journal of Education Finance (Summer, 1988), p. 7.
9. The Council for Better Education v. Wilkinson, Findings of Fact, Conclusion of Law and Judgment, Franklin Circuit Court, Civil Action No. 85-CI-1759, p. 2.
10. Report of the Select Committee to The Honorable Ray Corns, Franklin Circuit Court, Regarding Council for Better Education v. Wilkinson, et al., September 15, 1988, pp. 33-34.
11. Council v. Wilkinson, p. 4.
12. Trial deposition of Richard Salmon, Franklin Circuit Court, June, 1987. Quoted by Justice Stephens in Rose v. The Council for Better Education, The Kentucky Supreme Court, 88-SC-804-TC, June 8, 1989, p. 56.
13. Trial deposition of Kern Alexander, Franklin Circuit Court, June 1987. Quoted by Justice Stephens in Rose v. The Council for Better Education, The Kentucky Supreme Court, 88-SC-804-TC, June 8, 1989, p. 56.

14. Tom Parrish, "Digest of Plaintiff's Complaint, Plaintiff's Trial Brief, Defendant's Brief, Judge Ray Corns' Findings of Facts and Judgement" in Council for Better Education et al. v. Wilkinson, et al., pp. 16-17.
15. Report of the Select Committee, pp. 1-10.
16. Ibid., p. 10
17. The Council for Better Education v. Wilkinson, Civil Action No. 85-CI-1759, Franklin Circuit Court, KY, p. 13.
18. Council v. Wilkinson, p. 13.
19. Council v. Wilkinson, p. 18.

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20. John A. Rose, President Pro Tempore of the Senate: Donald J. Blandford, Speaker of the House of Representatives v. The Council for Better Education, Inc., et al. (Appeal from Franklin Circuit Court, Honorable Ray Corns, Judge 85-CI-1759) Supreme Court of Kentucky, 88-SC-804-TG, p. 67.
21. Ibid., p. 67.
22. Thomas D. Clark, "It's time to pay the piper for state's educational history," Lexington Herald-Leader, Section E, p. 1, Col. 4, June 11, 1989.
23. Reagan Walker, "Entire Kentucky school system is ruled invalid," Education Week, p. 1, Col. 4, June 14, 1989.
24. Rose v. The Council, p. 49.
25. Ibid., p. 66.
26. Ibid., p. 66.
27. Ibid., p. 68.
28. Walker, Education Week, p. 14, Col. 5, June 14, 1989.

## Part III

29. Interview with Theodore Lavit, June 15, 1989.

30. Ibid., June 15, 1989.
31. Ibid., June 15, 1989.
32. Interview with Arnold Guess, March 15, 1989.
33. Ibid., March 15, 1989.
34. Ibid., March 15, 1989.
35. Interview with Ted Lavit.
36. The Council for Better Education v. Wilkinson, Civil Action No. 85-CI-1759, Franklin Circuit Court, KY, p. 2.
37. Ted Lavit, June 15, 1989.
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39. Mary Ann Roser, "Sweeping school changes predicted," Lexington Herald-Leader, p. 1, Col. 1, June 7, 1989.
40. Trial deposition of Kern Alexander, Franklin Circuit Court, June 23, 1987, pp. 48-49.
41. Interview with Dr. Kern Alexander, March 28, 1989.
42. Interview with Dr. Kern Alexander, March 28, 1989.
43. "An Opportunity for Excellence," A Report to the Kentuckians for Excellence in Education Task Force, March, 1984.
44. Memorandum from Arnold Guess to selected School Superintendents.
45. Interview with Arnold Guess.
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December 14, 1984.

50. Combs Memorandum dated September 25, 1985.
51. Personal Notes of Dr. Kern Alexander, June, 1985.
52. The Council for Better Education minutes by Jack Moreland, Secretary/Treasurer, dated April 25, 1985.
53. Personal Notes of Dr. Kern Alexander.
54. Letter to Council Members from Jack Moreland dated July 17, 1985.
55. Ted Lavit letter to Arnold Guess, dated August 6, 1985.
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10. Rose v. The Council for Better Education, 88-SC-804-TG (KY 1989).
11. Wolley v. Spalding, 293 S.W.2d 563 (1956).

## APPENDIX

- Appendix A. Documentation Related to The Council for Better Education
- Appendix B. Joint Statement, Kentucky Senate and House

Appendix A

Documentation Related to The Council for Better Education

## Appendix A

1. Lavit letter to Arnold Guess referring to Equity Funding case for Kentucky School Children.
2. Lavit letter to Arnold Guess suggesting incorporation.
3. Alexander letter regarding the need for student plaintiffs.
4. The Council for Better Education organizational letter with outline of details for the adoption of bylaws and the election of officers.
5. Jack Moreland letter seeking funds to promote the equity law suit through a \$.50 per child in ADA pledges.
6. Jack Moreland memorandum announcing that the favorable Attorney Generals Opinion had been received. The opinion allowed the expenditure of school funds for school improvements including legal costs.
7. Council for Better Education Minutes August 12, 1985.
8. Lavit letter regarding the expenditure of public funds for legal services the Wooley v. Spalding cite: At page 565: "the fundamental mandate of the Constitution and statutes of Kentucky is that there shall be equality and that all public schools shall be non-partisan and non-sectarian." Sections 3,59,25, 186,187, and 189 of the Kentucky Constitution.
9. Council for Better Education Financial Report.
10. Lavit letter to Frank Hatfield in RE: Joe Clark's welcome of the suit.
11. Council for Better Education minutes, November 12, 1985.

OFFICES OF  
THEODORE H. LAVIT  
ATTORNEY AT LAW  
ONE COURT SQUARE  
LEBANON, KENTUCKY 40033

December 12, 1984

TELEPHONE (602) 692-4471

Mr. Arnold Guess  
714 Leawood Drive  
Frankfort, KY 40601

Re: Equity Funding case  
for Kentucky schoolchildren

Dear Arnold:

One of the threshold questions in our case is whether a Kentucky school board may appropriate public funds to provide legal services with respect to the above matter. In a case from my home county, Hogan v. Glasscock, 324 S.W.2d 815 (1959), an action was instituted by taxpayers to recover school funds expended for attorney fees and court costs in an action against the school board members.

"The case holds that the members have implied authority to employ an attorney and expend school funds to defend such action." Trimble Cty. etc., v. Trimble Cty. Bd. of H., 587 S.W.2d 276 (Ky. App. 1979).

The Trimble case just a few years ago upheld Hogan v. Glasscock, supra.

Hogan v. Glasscock, supra, dispels the argument that since the school board members are state officers, only the governor could employ a private attorney, pursuant to KRS 12.210. The appellants in Hogan, supra, also contended that it was necessary for the attorney general to represent the school board inasmuch as the school board members were state officers.

KRS 160.160 provides in its concluding clause that a local school board may "do all things necessary to accomplish the purpose for which it is created." Hogan v. Glasscock supra, held that this included the right to make an expenditure

for attorney fees "to promote public education in such ways as it deems necessary and proper," pursuant to KRS 160.290. This includes the right of the county board of education to employ an accountant to make a complete audit of the school records. In Lewis v. Morgan, 252 S.W.2d 691.

A close reading of Hogan v. Glasscock, supra, points out the express and implied authority of the county board of education to make an appropriate expenditure of school funds for the purpose of promoting public education.

In the case which you brought to my attention, Schuerman v. State Board of Education, 145 S.W.2d 42 (1940), the court upheld the right of the members of the county board of education to pay out of public school funds, annual membership dues under the authority of Kentucky Statutes Sections 4399-20, which has been codified today as KRS 160.290(1), cited hereinabove, and in Hogan v. Glasscock, supra.

In reversing the circuit court, the Court of Appeals, in Burchell v. Grubbs, 230 S.W.2d 83 (1950), stated at page 83 thereof:

"Unquestionably, the Board of Education of Spencer County and the children in its district will benefit by the construction of a flood wall. As a matter of fact, it would be hard to think of any public project or enterprise from which there would not be some educational benefits. . . . The test is, what constitutes an educational purpose within the meaning of Section 184 of the Constitution, rather than whether an activity might be beneficial to education."

Burchell v. Grubbs, supra, cites the Schuerman case, but adds the beneficial activity test as the basis for its decision in determining what constitutes an educational purpose within the meaning of Section 184 of the Kentucky Constitution.

Hogan v. Glasscock, supra, relied upon the two statutes cited above, but also Section 186 of the Kentucky Constitution which provides:

"All funds accruing to the school fund shall be used for the maintenance of the public schools of the commonwealth and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school districts and its use for public school purposes."

Thereafter, the legislature spoke through KRS 160.160 and 160.290. And the courts have spoken through the cases cited above.

Finally, one other case should be brought to your attention. In Dodds v. Jefferson County Board of Education, 181 S.W.2d 406 (1944), the Court held that "the power and authority granted by a statute is not always limited to that which is specifically conferred, but includes that which is necessarily implied as incident to the accomplishment of those things which are expressly authorized." It was held therein that the term education included recreational projects. For our purposes, the essence of the Dodds case would seem to be found in the rule of statutory construction quoted above.

The annotation under KRS 160.160 indicates that local school boards may secure the services of an attorney to represent them in official capacities. 1958 OAG 41,216. Further, the board of education is empowered to employ counsel to represent it and take steps necessary to a proper functioning of the said board. 1956 OAG 38,219.

If we go back to the Schuerman case, it would be wise indeed to study the penalt paragraph of the opinion therein, wherein the court held that the Constitution of the Kentucky School Boards Association was controlling when comparing the purposes expressed therein to what is now KRS 160.290(1). In this regard, I would propose that the organization develop a constitution or set of principles in keeping with KRS 160.160, 160.290 and Section 186 of the Kentucky Constitution.

Enclosed is a copy of the opinion in Hogan v. Glasscock, supra.

You may want to pass this memorandum on to those superintendents who have indicated a positive response to this litigation.

-4-

Sincerely,

Theodore H. Lavit

THL/kfy

Enclosure

cc: Hon. Bert Combs, Dr. S. Kern Alexander, Prof. Tom Lewis

OFFICES OF  
THEODORE H. LAVIT  
ATTORNEY AT LAW  
ONE COURT SQUARE  
LEBANON, KENTUCKY 40033

December 14, 1984

TELEPHONE (606) 898-4471

Mr. Arnold Guess  
714 Leawood Drive  
Frankfort, Kentucky 40601

RE: Equity Funding case  
for Kentucky school children

Dear Arnold:

By now you have received my memorandum concerning the legality of using school district funds with respect to the funding of counsel fees for the subject litigation. In support of that memorandum I would recommend that the association of interested school districts adopt a statement of principles, bylaws or constitution setting forth its purposes and goals. This would have several advantages.

First, the court would look to those principles as the basis for its decision concerning the propriety or lawfulness of such an expenditure. This is precisely what was done by the court in one of the two leading cases mentioned in my memorandum. This would conform with Schuerman v. State Board of Education, 145 S.W.2d 42 (1940).

Secondly, such a set of principles would encourage other school districts to come on board for the sole benefit of children and their education.

In this regard, the association may want to consider incorporating and becoming a party-plaintiff to the litigation as was done in several other cases in sister jurisdictions. The standing of such an association or corporation may be the subject of attack. Regardless, other plaintiffs, to be sure,

Mr. Arnold Guess  
Page 2  
December 14, 1984

would not be the subject of a successful assault,  
i.e., school children, their parents, and school  
districts.

I recommend that we consider the strategy at  
the outset. Please let me have your thoughts after  
conferring with Judge Combs and Dean Lewis. Dr.  
Alexander is in accord.

With best wishes to you this holiday season,  
I remain,

Sincerely,

Theodore H. Lavit

THL/aep  
cc: Hon. Bert Combs  
Dr. S. Kern Alexander  
Prof. Tom Lewis

UF COLLEGE OF EDUCATION

University of Florida  
Gainesville, Fla. 32611

March 5, 1985

Mr. Arnold Guess  
Frankfort, Kentucky

Dear Arnold:

Enclosed is a very rough draft of a Complaint. I am dispatching this with some urgency because of the many unanswered issues and necessity for quick resolution.

First. Notice that I have listed Plaintiffs as merely school children; school districts are not included. We may want to make the districts parties in order to assure the use of public funds to finance the suit.

Second. We need plaintiff students. Ideally, we should identify 5th, 6th, or 7th graders in 4 or 5 poor, moderate effort districts. This needs to be done as quickly as possible.

Third. We need to tie down our list of defendants. We need a list of the names and addresses of all State Board of Education members, etc. (see blanks on Complaint).

Ted and I will continue to work on the Complaint.

Sincerely yours,

✓ Kern Alexander  
Professor of Education

KA: ec

Enclosure

# COUNCIL FOR BETTER EDUCATION

P.O. BOX 992 . FRANKFORT, KENTUCKY 40602

April 25, 1985

TO: Members, Council for Better Education  
FROM: Steering Committee, Council for Better Education  
SUBJECT: Meeting of the Council

There are now sixty-six (66) school districts that have by school board resolution joined The Council for Better Education.

The Council will meet May 8, 1985 in the conference room of the Kentucky School Boards Association Building at 10:00 a.m. Frankfort time.

The purpose of this meeting will be to:

1. Hear a progress report by Governor Combs, Dr. Lewis, Dr. Alexander and Mr. Lavit to include the major points of the complaint to be filed.
2. Adopt bylaws of the Council which shall provide for an eleven (11) member Board of Directors.
3. Election of a Board of Directors.
4. Any other business the members of the Council deem appropriate.

Currently our attorneys and consultants are developing the complaint which we anticipate will be filed in State and Federal Court in the very near future. The several allegations of unconstitutionality of our state school finance program with respect to both the state and federal constitutions will be reviewed by the Council attorneys and consultants.

The Council will be provided bylaws for adoption which will provide for the governance of the Council, through a Board of Directors. Within the Board of Directors there shall be an executive committee of three (3) members of the Board of Directors which may be called into session from time to time to act upon matters of immediate concern.

The Steering Committee will act as a nominating committee in proposing to the Council individual members of the Council to serve on the Board of Directors. Consideration in-so-far as possible will be given to geographic distribution, district size, and other factors. Nominations for the Board of Directors may come from the floor.

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## ORGANIZATIONAL STEERING COMMITTEE

---

FRANK HATFIELD  
Bullitt County  
(502) 543-2271

TONY COLLINS  
Wolfe County  
(606) 668-3153

JACK MORELAND  
Davton Ind.  
(606) 491-6365

CLARENCE RATES  
Wayne County  
(606) 344-8426

ALEX EVERSOLE  
Jenkins Ind.  
(606) 832-2183

COUNCIL FOR BETTER EDUCATION, INC.

May 28, 1985

Dear

The time is drawing near for the proposed equity law suit to be filed. A considerable amount of research has been invested in the document to date, and we are nearing a time when some bills must be paid. Each school district was asked to pledge \$.50 per child in ADA for the first year's commitment. We used the most recent growth factors reports for the calculations. According to our figures, your current ADA is \_\_\_\_\_.

Please remit a check of \_\_\_\_\_ to the:

Council for Better Education, Inc.  
c/o Jack Moreland  
999 Vine Street  
Dayton, Kentucky 41074

Sincerely yours, 1

Jack Moreland,  
Secretary/Treasurer

JM:jag

DATE: July 17, 1985  
TO: Members of the Council For Better Education, Inc.  
FROM: Jack Moreland  
RE: Attorney Generals Opinion 85-100

Dear Member:

By now you should have received the Attorney Generals Opinion 85-100 dated July 2, 1985. The council realizes that a positive opinion was a pre-requisite to the participation of many into our endeavor.

If you have not received the opinion or if you have other concerns relative to the proposed law suit, please contact me at 1/606/491-6565.

I can report to you that we have received \$46,163.80 from 44 school districts and if you have not already done so, we encourage you to remit your commitment as soon as possible.

Sincerely yours,

Jack Moreland,  
Secretary/Treasurer

JM:jag

Council For Better  
Education, Inc.

MINUTES  
August 12, 1985

The Council for Better Education, Inc. Executive Board meet in the offices of Wyatt Tarrant & Combs in Lexington, Ky. at 10:00 a.m. Members present were President Frank Hatfield, Vice-President Steve Towler, Secretary/Treasurer Jack Moreland. Other guests were Jim Young, Bert Combs, Debra Dawhare, Tom Lewis, Kern Alexander and Ted Lavit.

Jack Moreland (statement enclosed) passed out a financial statement showing the financial position of the organization and pointed out those districts who have not paid. Members agreed to continue trying to collect.

Kern Alexander reacted to the laws enacted in the special session. Bert Combs reported the law suit is in the 4th draft and could be filed as soon as authorized by the council.

Ted Lavit passed out a letter to Arnold Guess and spoke to its relationship to our case. (letter enclosed)

The executive board decided to collect more specific information concerning the impact of the special session on equalization, disseminate the figures to the membership and poll the organization as to the direction and timing of the next step.

Meeting adjourned (no quarm present) at approximately 11:45 a.m.

Respectfully submitted,

(Jack Moreland,  
Secretary/Treasurer

JM:jag

OFFICES OF  
THEODORE H. LAVIT  
ATTORNEY AT LAW  
ONE COURT SQUARE  
LEBANON, KENTUCKY 40033

August 6, 1985

TELEPHONE (606) 662-4471

Mr. Arnold Guess  
714 Leawood Drive  
Frankfort, Kentucky 40601

Dear Arnold:

In researching Section 183 of the Kentucky Constitution the case of Wooley v. Spalding, 293 S.W.2d 563 (1956) was studied because of the critical language used by the court in writing the decision as same pertains to our case soon to be filed.

In my last memorandum to you on the issue of expenditure of public funds for legal services a Marion County case was cited and I noticed that the Attorney General's research also picked this case up. Again, by coincidence, the above case of Wooley v. Spalding, is out of Marion County. We have had a plethora of litigation in this county involving school issues during the past thirty-five years and I am pleased to be able to have some of this personal background at my disposal.

In the case of Wooley v. Spalding, the citizens and tax payers of Marion County, Kentucky sought an injunction to prohibit the local school superintendent and board from expending public funds in alleged illegal ways and to prohibit sectarian instruction from being given in the public schools. The plaintiffs requested a mandatory injunction directing the high school at Bradfordsville, Kentucky be reopened and adequately operated and maintained. The court held that the evidence justified the injunction and there was a clear victory for the citizens and tax payers.

Mr. Arnold Guess  
Page 2  
August 6, 1985

In this four page opinion is found the following language:

At page 565: "the fundamental mandate of the Constitution and statutes of Kentucky is that there shall be equality and that all public schools shall be non-partisan and non-sectarian." Sections 3, 59, 25, 186, 187 and 189 of the Kentucky Constitution.

At page 565: "uniformity does not require equal classification but it does demand that there shall be a substantially uniform system and equal school facilities without discrimination as between different sections of a district or county."

At page 565: "The testimony and exhibits appearing in this case convince us that the action of the Marion County Board of Education in closing the high school at Bradfordsville, without providing equal and uniform educational opportunities . . . is clearly arbitrary, discriminatory and in violation of KRS 158.010."

The court in Wooley v. Spalding, specifically held that the Board and superintendent could not deprive one school of the opportunity to exist by choking off support to it by transferring needed funds to other schools in the district and then thereafter closing the school at Bradfordsville, Kentucky as a result of the effect of the initial board's action in reducing expenditures at Bradfordsville. The court held that this would be an abuse of reasonable discretion evidencing arbitrary or capricious conduct as a result of improper influence. The court stated again at page 565:

"when a board of education disregards or threatens to disregard the mandates and the requirements and provisions of the constitution or the statutes, the courts will compel performance of a plain duty." Citing numerous cases.

Here, the analogy can be drawn on a much larger

Mr. Arnold Guess  
Page 3  
August 6, 1985

scale that the legislature has violated Section 183 of the Constitution by establishing statutory scheme of financing education in Kentucky which fosters an inequitable and therefore illegal system of education.

The court further held at page 565 that the building up of educational values of several schools at the expense of another school located in a different section of Marion County was illegal and constitutes a violation of both spirit and intent of Section 183 of the Kentucky Constitution.

On page 566 of the opinion the court stated that:

"the board cannot arbitrarily cause a school to become substandard, and then defend its action in this respect on the ground that its course of conduct was necessary."

The opinion continues on page 566 as follows:

"this is not the type of uniform system of schools contemplated by KRS 158.010. Nor is it a character of operation that provides for an efficient system of public schools," Kentucky Constitution, Section 183.

Wooley v. Spalding concludes its opinion as follows:

"Wherefore, the judgment is reversed and the case is remanded to the Franklin Circuit Court with directions to enter a judgment granting a mandatory injunction requiring the Board of Education of Marion County and the county superintendent of schools of Marion County to re-establish, as soon as practicable, a high school system that will afford all children of Marion County equal educational opportunities; and to also grant an injunction prohibiting the defendants from violating our laws as hereinabove specifically pointed out." (Section 183 of the Kentucky Constitution and KRS 158.010 - Uniform Systems of Schools.)

Mr. Arnold Guess  
Page 4  
August 6, 1985

It is my opinion that the case of Wooley v. Spalding is powerful medicine and authority for the very concept that we are striking out against in our suit for equality in school finance across Kentucky. What happened in Marion County as related in Wooley v. Spalding occurred in miniature proportions compared to what is occurring now on a statewide level in Kentucky. But the principle is the same and the argument was accepted by Kentucky's highest court and, I think, it provides us with solid fuel for our position.

Also, one further thought on the matter: Section 186 of the Constitution deals with distribution and use of school funds. I do not think this provision of the Constitution can be read outside of the equality clauses of both federal and state Constitutions and the arbitrary provisions of § 2 of the Kentucky Constitution.

Sincerely,

Theodore H. Lavit

THL/aep

cc: S. Kern Alexander  
Bert Combs, Esquire  
Frank R. Hatfield  
Dean Tom Lewis, Esquire

P.S. I like the language in Phelps v. Witts, 201 S.W.2d page 4, (1947) on the issue of fundamentality of education in Kentucky - due process and equal protection argument:

"It is undoubted and self-evident truth to say that the very foundation of every state is the education of its youth and that a state's schoolhouses are the republican line of its fortifications. The public schoolhouse of a people should always symbolize a summum bonum for those people through its broad possibilities of rendering the greatest good to the greatest number."

Mr. Arnold Guess  
Page 5  
August 6, 1985

KRS 158.010 specifically requires each school district to equalize the allocation of funds and to "equalize the educational process of these schools within each district." Subsection 1 of this statute provides that a uniform system of common schools shall be maintained in Kentucky.

THL

COUNCIL FOR BETTER  
EDUCATION, INC.

Financial Report

Balance in account	\$54,519.22
Receipts from (49) schools	\$54,365.80
Expenditures	0.00
6/27/85 purchased (1) \$25,000 CD maturity date 7/30/85	<u>\$25,000.00</u> \$29,365.80
7/30/85 Cashed \$25,000 CD Interest on CD was \$153.42	\$ 153.42
	<u>\$54,519.22</u>
7/30/85 purchased (1) \$40,000 CD maturity date is 8/31/85	\$40,000.00
	<u>                    </u>
Actual Cash Balance on Hand	\$14,519.22

~~Respectfully~~ submitted,

~~Jack~~ Moreland,  
Secretary/Treasurer

JM:jag

OFFICES OF  
THEODORE H. LAVIT  
ATTORNEY AT LAW  
ONE COURT SQUARE  
LEBANON, KENTUCKY 40033

TELEPHONE (502) 692-4471

August 28, 1985

Mr. Frank Hatfield  
P.O. Box 99  
Shepherdsville, KY 40165

Dear Frank:

I hope that we have not lost our fervor in pursuing the equity in education case for Kentucky school children. I hope this whether I am involved or not. This morning, Joe Clarke, Chairman of the Appropriations Committee of the House, spoke with me. He, for one, welcomes the suit and he knows of others who would also. Sixty million dollars, which is still unappropriated, over a period of three years, is but a pittance of what is needed to equalize the school districts.

We have not been able to make any substantial gains as a result of this fine organization that we have established. The problem of equity funding was recognized by the governor before the Council for Better Education came into existence, or for that matter, before it was even thought of. The sixty million dollars, if it is ever appropriated, was gained as a result of the overall program of the governor and those who have inspired her. We can do much better, and in fact, if we have the courage to begin the suit, we will win because we have the law squarely in our corner. Joe Clarke agrees with this and so does Kern Alexander.

Frank, you know that all school districts began on different levels and with different needs. However, all 180 districts have long been well connected to the outside world and to each other, and the time has long since past, I say, long since past, where the needs of the Kentucky school children are appreciably different. At one time, the issue in McGoffin County was whether a child would receive

Mr. Frank Hatfield  
Page 2  
August 28, 1985

an education that would help him to sustain himself as a citizen in his community as distinguished from the greater need for higher education for a citizen of Jefferson County to sustain himself in his community. Times have drastically changed. Each of these children must now compete with citizens across the country for the good life. Travel and communications have narrowed our borders and the same standard of education must be offered to all in order to avoid seriously short changing the lifestyle of school children who just happen to be born in a poor school district.

I am sure you know all of this, but to fold up now is an admission that we are satisfied or should be satisfied. In fact, we have received but a promise of so small proportions that I would not hesitate to recommend ignoring same in light of the prospects of the suit.

Sincerely,

Theodore H. Lavit

THL/kmt

cc. Mr. Arnold Guess  
Mr. Jack Moreland  
Dr. S. Kern Alexander

MINUTES

A special meeting of the Council for Better Education, Inc. was held on Friday, November 8, 1985 at the Kentucky School Boards Association Building in Frankfort, Kentucky. Members present were: Frank Hatfield, Ray Hammers, Steve Towler, Clarence Bates, Dennis Lacy (Proxy), Arnold Guess, Alex Eversole, Charlie Brown and Jack Moreland.

Motion by Steve Towler and seconded by Clarence Bates to approve the financial report subject to audit. The recently paid bills were discussed. Motion carried.

Motion by Steve Towler and seconded by Clarence Bates to write those districts who have not paid their committed amounts. Motion carried.

A motion made by Steve Towler and seconded by Ray Hammers to accept the request to withdraw from the Council for Better Education, Inc. by Warren County Board of Education and to accept the resignation of Superintendent Gover from the Board of Directors. After a short discussion, motion carried.

Motion made by Ray Hammers and seconded by Steve Towler to file the lawsuit with all due speed to answer constitutional questions contained therein. After a short discussion, motion carried.

A short discussion on procedure to notify membership concerning the lawsuit. Members agreed to have a joint press conference with Judge Combs and President Hatfield.

Motion made by Steve Towler and seconded by Ray Hammers to elect Ike Slusher of Bell County to the Board of Directors with Gene Binion as an alternate. Motion carried.

Respectfully submitted,

Jack Moreland,  
Secretary/Treasurer

**Appendix B**

**Joint Statement, Kentucky Senate and  
House of Representatives**

JOINT STATEMENT

SENATOR ECK ROSE, PRESIDENT PRO TEM, KENTUCKY SENATE

REPRESENTATIVE DON BLANDFORD, SPEAKER OF THE HOUSE

JUNE 24, 1988

The action styled The Council for Better Education, et al., vs. Wallace Wilkinson, Governor, et al., is the cause of great concern. As a consequence of that concern we have called this special meeting today to explain to the Legislative Research Commission the exact status of our situation. We have directed our attorney to proceed with whatever steps are necessary to secure a reversal of this decision, which we consider to present very critical and troubling constitutional problems relating to separation of powers.

The court's decision leaves all Kentuckians in limbo as to precisely what is and is not constitutional. By simply ruling that Kentucky's system of financing public schools is unconstitutional, the court has failed to provide specifics. Therefore, we have no alternative but to proceed along the lines of what is implied in the court's decision with reference to House Bill 44 and the property tax roll back law of 1965. The clear implication in our minds is that the court has declared both statutes unconstitutional, the consequences of which could be an unlimited rise in property taxation. In

addition, we are struck by the court's use of the word "unitary" in defining what it deems to be an efficient school system for Kentucky. There can be no other conclusion drawn but that the court is contemplating one school system for all of Kentucky. Both these determinations, if they remain intact at the close of this litigation, will meet with considerable public concern, but the General Assembly must be prepared to deal with them in the most expeditious manner possible, and, therefore, in a few minutes we will ask the Commission to provide specific directions for the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Education.

The most troubling aspect of this suit, however, is what we deem to be the court's effort to go beyond the bounds of its constitutional authority and enter into the realm reserved for the legislature. The court has appointed "a small select committee to review all relevant data, provide additional analysis, and consult with school finance experts..." which in the court's original judgment was to file a master plan to be adopted by the court to serve as a guide in establishing the parameters of certain constitutional requirements. However, in its supplemental order the court has implied that the recommendations to be made by this small select committee may well be incorporated into the court's judgment which would be, we conclude, a judgment ordering the executive branch to

implement the court's "legislative" program; and an attempt to force the legislative branch to enact specific laws in the area of public school financing. While we recognize that there are many areas of our public school system which have received and require continuing attention, we do not believe that a court acting in a legislative fashion to impose its solution is something which will be acceptable to Kentuckians or to the members of the General Assembly. In fact, we believe that such an action is constitutionally impermissible under our separation of powers clauses which are among the most stringent of the various state constitutions. Our Supreme Court has repeatedly upheld those separation of powers clauses and adhered to the strict doctrine espoused therein.

Throughout nearly two hundred years of statehood, the three branches of government have operated under these provisions and have respected their differing roles and responsibilities. Our highest court has time and time again reaffirmed that it is not the function of the courts to enact legislation. It has said that the courts have only two functions in considering laws enacted by the General Assembly; these are "to determine the constitutional validity and to declare the meaning of what the legislative department has done." If the safeguards established through separation of powers are to be effective in protecting the rights and liberties of our citizens, one branch cannot be permitted to

invade the territory of another.

The course which is being taken by the Franklin Circuit Court flies in the face of both the constitutional separation of powers doctrine and the precedent established by the Kentucky Supreme Court. In this case we realize that there are those who believe that the ends may justify the means. However, the Constitution as it stands is the supreme law of this Commonwealth and must be preserved regardless of the price until altered by the people.

Among our many concerns with the court appointing its own "small select committee" is the realization that our courts draw their jurists from the select portion of our society which is trained in the law. That is appropriate. The select committee, being a creature of the court, is not subject to the public will or public concern. It is subject to no electoral process whatsoever.

In the instant case we have an important issue, elementary and secondary education, but we cannot forget that the General Assembly must weigh higher and vocational education, welfare, public safety, road construction, and the thousands of other legitimate needs of agencies and programs that comprise the state budget and statutorily enacted programs. Nor can we forget that the General Assembly is charged by the Constitution with raising the revenue necessary to pay for them. Kentucky cannot have a deficit budget.

The court's approach in this case completely circumvents, and has a most damaging effect upon our representative form of government and presents an intolerable constitutional situation. We realize that some citizens might well believe us to be nitpicking, especially since we are acting in an anticipatory sense. However, since the interim judgment of the court has denied us immediate access to the appellate process, we can find no other means by which to express our very real concerns for protecting our Constitution and our representative form of government than to speak out on what we deem to be a very serious attempt at intrusion into the prerogatives of the executive and the legislative branches of government by a circuit court.

Accordingly, we shall not accept any invitation to appear before the court-appointed select committee and, while we have no authority to stop any member of the General Assembly who wishes to so appear, we would strongly encourage each member not to do so. It is our belief that in so appearing we would place upon this committee, and upon the infringements of the Constitution which it represents, our stamp of approval and add credibility to what we believe to be a constitutionally flawed process. We have, however, instructed Director Hellard to have all meetings of the select committee monitored and to furnish such information as we presently have within our files to the select committee upon its request.

The fact that the subject of this suit is educational finance adds to our dilemma. On the one hand, none of us want to be painted with the taint of being anti-education. The record of the Kentucky General Assembly shows this is not the case. Yet, on the other hand, we are faced with a potentially grave constitutional problem which we must challenge in every manner possible lest Kentuckians awake to find the erosion of their Constitution an accomplished fact.

The two are separate issues: one being a question of a statute's or statutes' constitutionality, the other of judicial intrusion into the legislative process.

The Kentucky General Assembly has in recent years, with the cooperation of the various governors, made some very real strides in improving Kentucky's educational opportunities. Chief among those accomplishments have been:

- 1976 - Provided free textbooks and established the power equalization fund.
- 1978 - Approved state payment of all student fees, provided statewide kindergarten, and created the Kentucky School Building Authority.
- 1984 - Gave Department of Education authority to take over academically deficient districts, established internship program for new teachers, established a maximum class size, and allowed school districts to levy all of the permissive taxes.

- 1985 - Passed HB 6 which included grants targeted to specific academic problems (such as reducing high dropout rates), an intensive writing program, and innovative instructional and management programs.
- 1986 - Provided funds to local public libraries, established the PACE (Parent and Child Education) program for unemployed parents with preschool children, expanded the GED program and the program for gifted and talented students.
- 1988 - Continued mandatory kindergarten for all children, established a parenting and family life skills program, and allowed teachers to retire with 27 years service.

And there are more--many more. A listing of the more significant measures is attached for your review.

The real issue before Kentuckians, as it has always been, is how most effectively and beneficially to spend our tax money for the education of each and every child in Kentucky. Historically, Kentucky has elected to follow the route of local controls and local funding, for the most part, of our school districts. In the main, people in Kentucky have as great an emotional tie to their local school districts and their local schools as they do to their county governments. It has long been recognized that Kentuckians' chief problem in dealing with educational improvement is attitudinal.

Parents must perceive that it is to the benefit of their children to receive the very best education possible. Everyone must be convinced that an investment in education is to the ultimate well-being of all society, for indeed we all benefit in accordance and in a direct ratio with the excellence of our school system. No one can look at the last six sessions of the Kentucky General Assembly and not believe that education has been in the forefront of issues receiving attention and funding in Kentucky.

At a meeting last week with the co-chairs of the Interim Joint Committee on Education, we asked the committee to undertake hearings beginning in July on our educational problems. That education should be the centerpiece of the coming interim effort has been in our minds long before the court issued its initial judgment. However, the court's initial judgment has required that we add some items for immediate consideration.

Today we will recommend to the Legislative Research Commission that the Interim Joint Committee on Education be directed to:

(1) Review the requirements and alternative structures which would be required to establish a unitary school system in Kentucky, should the court's decision stand;

(2) Review all constitutional provisions and statutes as they relate to local school administration in Kentucky;

(3) Review, jointly with the Interim Joint Committee on Appropriations and Revenue, the present system for financing education in Kentucky and all possible options for alternative methods. In addition, the committees should examine potential budgetary approaches for education funding.

We will recommend that the Commission direct the Interim Joint Committee on Appropriations and Revenue:

(1) To study the implications involved in the event the Court does hold that House Bill 44 and the property tax roll back law of 1965 are unconstitutional as declared in the court's conclusions of law.

The voiding of these two statutes has the potential of adding a tremendous real estate tax burden on property owners throughout Kentucky.

(2) In conjunction with the Education Committee, to study the implications and alternative methods of financing public education in Kentucky to include fiscal implications of establishing a unitary school system for Kentucky. In addition, the committees should examine potential budgetary approaches for education funding.

We ask that these additional actions be taken by these two committees not because we concur with the ruling of the Franklin Circuit Court to date but rather so that we shall at least be prepared should the final outcome of this litigation provide the necessity that the legislature act in these

specific areas. We are only 18 months away from the next regular session of the General Assembly and, as we all know, that is very little time.

Finally, the Franklin Circuit Court in its judgment of May 31 cited "mismanagement and waste" in administration of schools in some districts. It, of course, is not in the best interest of this Commonwealth nor its citizens to tolerate mismanagement or waste wherever it may exist. Recognizing the limitations imposed upon the General Assembly in conducting inquiries into such matters, we recommend in accordance with state law that the Commission request the Auditor of Public Accounts to undertake a review of his files and to conduct such spot audits as he deems appropriate to determine the accuracy of the court's finding with reference to mismanagement and waste, and to make such specific legislative recommendations as he deems appropriate for consideration by the General Assembly. Also, we would request the Auditor to initiate such action as may be within his power to remedy situations where he uncovers waste or mismanagement.

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