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## **Kansas Supreme Court Decision *Montoy et. al. v. State of Kansas et. al.***

The Kansas Supreme Court on July 28, 2006, dismissed school finance litigation which had been filed in 1999, ruling that the Kansas Legislature is in “substantial compliance with our prior orders.” The Court’s ruling says that the Legislature has addressed concerns raised by the Court in its earlier opinions and that SB 549 enacted in 2006 is new legislation which “is not before this Court.” Although the Court says that the constitutionality of SB 549 is not before it, the Court counts funding for education contained in the bill toward helping to meet the requirement to adequately fund elementary and secondary education and calls attention to the fact that, by the 2008-09 school year, the Legislature will have added \$755.6 million in additional funding.

Major components of the Court’s opinion are the following:

- The law has changed so much since the original case was filed in 1999 that SB 549, enacted by the 2006 Legislature, is new law. If its constitutionality is to be challenged, the case must be brought in district court, not before an appellate court. Legislation enacted by the 2005 Legislature in regular and special session, plus appropriations approved by the 2006 Legislature in SB 549, have addressed the Court’s concerns.
- The Court finds “there is no question” that the Legislature has responded to its earlier decisions that the prior funding formula failed to provide adequate funding for students in middle-sized and large districts with high proportions of minority, at-risk, and special education students and that the prior formula was not based on actual cost data.
- The Court finds that the Legislature has responded to its concerns about the equitable distribution of funding, noting that “equity does not require the Legislature to provide equal funding for each student or school district.”
- The Court notes that the 2005 Legislature addressed its concerns about wealth-based disparities relating to the Local Option Budget (LOB) by increasing state aid equalization from the 75<sup>th</sup> percentile to the 81.2 percentile.
- The Court allows to become effective two provisions enacted in 2005. One creates a cost-of-living weighting applicable to school districts which have residences that are higher than the statewide average value. The other requires that school districts experiencing specified enrollment declines appear before the Joint Committee on State Building Construction prior to issuing new bonds for capital improvements. (These provisions previously had been stayed by the Court.)

The Court also notes other actions taken by the Legislature to respond to its concerns, including the creation of the 2010 Commission and the creation of a school finance audit team within the Legislative Division of Post Audit to conduct performance audits and monitor school district funding under the direction of the 2010 Commission. In addressing the issue of whether the Legislature responded to its directive to base the school finance formula on actual cost data, the Court finds that the Post Audit cost study was “considered by the Legislature in making the decisions that underlie the formula changes in SB 549 and, thus, the Legislature was responsive to our prior orders to consider actual costs.” Addressing the plaintiffs’ contention that the Legislature did not fully fund the amount of money called for by the study, the Court says that the study has not been shown to be “credible evidence of the actual costs of education” because the study was not presented as evidence at the district court level and therefore was not subject to a judicial fact-finding process. This process at the district court level would give all parties the opportunity to examine the validity and accuracy of the study. (The study was completed after trial at the district court level was completed.)

The Court’s decision to dismiss the appeal was made on a 4-2 vote. Justices Carol A. Beier and Marla J. Luckert dissented in part from the majority decision, saying they agree with the Court’s implicit decision not to interfere with funding authorized for the current school year, but would have sent the case back to the district court so that the validity of the cost study used by the Legislature could be examined. Justice Eric S. Rosen concurred with the majority opinion to dismiss the appeal, but issued a separate opinion which, among other things, expressed his concern with including state equalization aid for the LOB toward meeting the state’s obligation to fund schools. Others in the majority were Chief Justice Kay McFarland and Justices Robert E. Davis and Donald L. Allegrucci.

### **Important Dates in *Montoy***

- December 14, 1999, USD 305 (Salina) and USD 443 (Dodge City) file a case in Shawnee County District Court on behalf of the districts and 31 students who primarily comprise protected classes.
- December 2, 2003, Judge Terry Bullock, Shawnee County District Court, issues a memorandum decision and preliminary interim order finding that “the current school funding scheme stands in blatant violation of Article 6 of the *Kansas Constitution* because it both fails to equitably distribute resources and fails to provide adequate total resources.” Judge Bullock’s order is appealed to the Kansas Supreme Court.
- The 2004 Legislature considers numerous school finance plans to address concerns raised by Judge Bullock but no school finance legislation is enacted.
- January 3, 2005, the Supreme Court finds that the Legislature has failed to meet its burden to “make suitable provision for finance” of public schools as required by the *Kansas Constitution*. The Court gives the Legislature until April 12, 2005, to enact corrective legislation.
- The 2005 Legislature enacts HB 2247, HB 2259, and SB 43, which amend portions of the school finance formula or affect the distribution of state aid, and appropriates \$141.1 million in additional funding for public elementary and secondary schools. The Governor allows HB 2247 to become law without her signature.
- June 3, 2005, the Supreme Court issues a supplemental opinion in which it finds that HB 2247 falls short of standards set by Article 6 of the *Kansas Constitution*. Citing a “continuing lack of constitutionally adequate funding” and “inequity-producing local property tax measures,” the

Court retains jurisdiction and tells the Legislature it has until July 1, 2005, to increase funding for the 2005-06 school year by an additional \$143.0 million.

- June 22, 2005, the Legislature convenes in special session called by the Governor to respond to the Court's ruling. On July 6, 2005, the Legislature enacts House Substitute for SB 3, which makes further revisions in the school finance formula, and adds an additional \$148.4 million for school finance, resulting in a total increase of \$289.5 million in funding for school year 2005-06.
- July 12, 2005, the Supreme Court rules that the Legislature has made an "interim effort" to comply with its order by adding additional funding; maintains a stay on certain provisions of the 2005 legislation; directs the 2006 Legislature to make policy choices based on actual costs of education, with specific reference to the Legislative Division of Post Audit cost study authorized by the 2005 Legislature; and retains jurisdiction in the case.
- January 2006, the Legislative Division of Post Audit issues a cost study analysis entitled *Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches*. The report consists of an "input-based" study estimating how much it would cost school districts to deliver services and programs mandated by state statutes and certain requirements of the State Board of Education and the Kansas Board of Regents and an "outcomes-based approach" estimating how much it would cost school districts to meet educational performance outcome standards set by the State Board of Education. The latter approach is the one the Court will consider in determining whether the Legislature has met its constitutional obligations.
- The 2006 Legislature enacts SB 549, a \$466.2 million, three-year school finance plan with increased funding of \$194.5 million in school year 2006-07, \$149.0.0 million in school year 2007-08, and \$122.7 million in school year 2008-09.
- July 28, 2006, the Supreme Court dismisses the case, ruling that the Legislature has complied with its prior orders and that SB 549, enacted by the 2006 Legislature, is "new law" whose constitutionality is not presently before the Kansas Supreme Court.