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MEMORANDUM

To: Special Committee on Education
From: Office of Revisor of Statutes
Date: November 30, 2021
Subject: Article 6 of the Kansas Constitution – Constitutional Duties and Authority of the Legislature, the State Board of Education and Local Boards

The Kansas Constitution establishes that three governmental entities possess roles in overseeing and providing for the public K-12 educational system of the state: The Legislature, the State Board of Education, and local boards of education. Article 6 of the Kansas Constitution sets forth these roles as follows:

§ 1. Schools and related institutions and activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

§ 3. Members of state board of education and state board of regents. (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

§ 5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

§ 6. Finance. (b) The legislature shall make suitable provision for finance of the educational interests of the state.

I. Constitutional Powers and Duties of the Legislature

In addition to the powers and duties established under Article 6 of the Kansas Constitution, the Legislature is vested with the legislative power of the state pursuant to Article 2 § 1 of the Kansas Constitution.

Article 2, § 1. Legislative power. The legislative power of this state shall be vested in a house of representatives and senate.

The power to pass, amend and repeal laws is an exclusive power restricted only by constitutional limitations that withhold or limit such power.¹ The Kansas Supreme Court has recognized that the provisions of Article 6 "must be read in conjunction" with such constitutional grant of legislative power to the Legislature.²

A. Obligations Concerning the Framework of the Public Education System

Article 6 of the Kansas Constitution requires the Legislature to exercise such legislative power to provide for the public education system of the state. The first section in Article 6 requires the Legislature to "provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities."³ Similar language has essentially existed in the Kansas Constitution since the adoption of the

¹ *State ex rel. Stephan v. Finney*, 251 Kan. 559, 578 (1992). See also *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 898 (2008); *Leek v. Theis*, 217 Kan. 784, Syl. ¶7 (1975).

² *State ex rel. Dix v. Board of Ed.*, 215 Kan. 551, 556 (1974).

³ Kan. Const. Art. 6 § 1.

original state constitution in 1861 - the Wyandotte Constitution. Such provision directs the Legislature to provide for a state system of schools and educational institutions.⁴

Article 6 §§ 2 and 3 require the Legislature to provide for the State Board of Education and the membership thereof. K.S.A. 72-243 et seq. provides for the State Board by establishing the general powers and membership of the State Board.

B. Obligation to Provide Suitable Financing

Article 6 § 6 requires the Legislature to "make suitable provision for finance" for the public education system. The Kansas Supreme Court in *Gannon I* held that such constitutional provision requires both an adequate and equitable school financing system.⁵ To evaluate whether the school financing system is both adequate and equitable, the Court established separate legal tests to determine whether the public education finance system is constitutionally compliant.⁶

i. Equity

To comply with the equity requirement, the Legislature must ensure that the school finance system provides school districts with "reasonably equal access to substantially similar educational opportunity through similar tax effort."⁷ Such test is geared towards an evaluation of the wealth-based disparities that exist among school districts. In the *Gannon* series of cases, equity implications often arose from statutory modifications to state aid equalization formulas, specifically the capital outlay state aid formula and the supplemental state aid formula. Additionally, equity challenges have also arisen when a school finance provision disproportionately benefits or impairs a district's ability to access state or local funding.

ii. Adequacy

To comply with the adequacy requirement, the Legislature must ensure that the public education financing system, through both its structure and implementation, is reasonably calculated to have all Kansas public education students meet or exceed the *Rose* capacities.⁸

⁴ *The Education Amendment to the Kansas Constitution*, Kansas Legislative Council Publication No. 256, at 9 (December 1965).

⁵ *Gannon v. State*, 298 Kan. 1107 (2014) (*Gannon I*).

⁶ For comprehensive reviews of all seven *Gannon* decisions and the legislation enacted in response to each such decision please go to www.ksrevisor.org and click on the *Gannon v. State* link in the right-hand column.

⁷ *Id.*

⁸ *Id.*

Codified at K.S.A. 72-3218, the *Rose* capacities provide the minimum student achievement goals of the public education system.

When the Kansas Supreme Court in *Gannon IV* applied the adequacy test to evaluate whether the public education financing system was reasonably calculated to have all students meet or exceed the *Rose* capacity goals, the Court considered evidence regarding both the structure and the implementation of the school finance formula that was in place at the time, the CLASS Act.⁹ Under the implementation component of such analysis, the Court considered evidence regarding both the inputs and outputs of the educational finance system.¹⁰ The following outline provides a condensed summary of the adequacy analysis that the Court undertook upon the CLASS Act in *Gannon IV*:

1. Structure

- The CLASS Act violates structure component because it does not profess to be a long term school finance formula that is responsive to financially important changing conditions, such as enrollment.

2. Implementation

- Consideration of Inputs
 - Funding Levels - Even though total spending is not the touchstone of adequacy, actual funding levels and estimated costs remain valid.
 - Funding Sources – Consideration should be given to all funding sources including federal funds, KPERS and locally raised funds.
 - Funding Impacts – Evidence showed that the state's reductions in funding beginning in 2009 resulted in reductions to educational programs, services, activities, staffing and certain classes which impacted achievement of the *Rose* capacities.
- Consideration of Outputs
 - State Assessment Results
 - The Court found that the evidence showed that not only is the State failing to provide approximately one-fourth of all its public school K–12 students with the basic skills of both reading and

⁹ *Gannon v. State*, 305 Kan. 850 (2017) (*Gannon IV*).

¹⁰ *Id.*

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math, but that it is also leaving behind significant groups of harder-to-educate students. The Court generally considered the following data regarding state assessment results:

% Scoring Below Proficient on State Assessments (All Students)

	ELA		Math	
	2011-2012	2015-2016	2011-2012	2015-2016
All Students	12.4%	23.3%	14.1%	26.3%
African Americans	28.9%	44.7%	32.3%	48.7%
Hispanic	22.1%	36%	22.2%	38.7%
ELL	28.2%	43%	24.8%	42.8%
Disabled	28.8%	57.9%	31%	60.7%
Free and reduced	20.2%	34.8%	21.8%	37.5%

% College Ready

	4 th Grade		8 th Grade		High School	
	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16
ELA/Reading						
All Students	55.4%	53.0%	29.8%	31.0%	31.8%	31.9%
African Americans	32.4%	26.0%	12.8%	12.0%	12.3%	12.2%
Hispanic	37.4%	36.0%	14.6%	16.7%	16.4%	16.7%
ELL	31.5%	29.2%	8.5%	9.9%	5.6%	6.2%
Disabled	24.9%	24.0%	7.7%	7.4%	7.6%	8.0%
Free and Reduced	39.8%	37.2%	16.6%	16.8%	17.8%	17.8%
Math						
All Students	35.8%	37.4%	23.0%	25.7%	24.7%	24.2%
African Americans	14.8%	13.5%	8.1%	8.5%	9.0%	8.8%
Hispanic	19.8%	20.3%	10.2%	13.3%	12.1%	11.2%
ELL	16.5%	17.1%	7.4%	9.8%	6.6%	6.1%
Disabled	14.4%	15.4%	4.4%	5.2%	4.0%	4.3%
Free and Reduced	21.8%	22.8%	11.2%	12.7%	12.0%	11.2%

○ Other Outputs

- ACT and NAEP scores showed achievement gaps.
- Graduation rates showed gaps as certain student subgroups had higher percentages of students who were unable to graduate in four years compared to all students.
- The Court held in *Gannon IV* that the evidence regarding both the inputs and outputs of the school finance system showed that through its implementation, the CLASS act was not reasonably calculated to meet the *Rose* capacities.¹¹

¹¹ *Id.*

iii. Current Status of *Gannon*

After *Gannon IV*, the Legislature worked on bringing the school finance system into constitutional compliance. During the 2018 legislative session, the Legislature passed legislation that attempted to return the school finance system to the same level of funding that was last approved by the Court at the end of the *Montoy* litigation. The Legislature did this by determining the inflation cost attributable to each school year since the school finance formula had last been deemed constitutional by the Court. The total of such inflation amounts was then phased to the school finance formula through five years of annual increases to the BASE aid. Such plan is known as the "*Montoy* safe harbor plan."

In *Gannon VI*, the Court generally approved of the state's *Montoy* safe harbor plan but identified that some further financial adjustments were necessary to fully account for inflation.¹² After making such financial adjustments in the 2019 legislative session, the Court found that the Legislature had substantially complied with the Court's order from *Gannon VI*.¹³

Currently, the Legislature is financing the fourth year of the *Montoy* safe harbor plan. In school year 2023-24, the Legislature will complete the five years of phased funding increases which will return the school finance system back to that level of funding that was last approved by the Court as constitutional under *Montoy* when adjusted for inflation. After completing the five years of phased in funding, the school finance formula statutorily requires the state to continue to adjust school funding based upon inflation in subsequent school years.¹⁴ In *Gannon VII*, the Court recognized that such inflationary adjustment would continue to provide "protection" for the BASE aid amount going forward.¹⁵

The *Gannon* case has not yet been dismissed by the Court and the Court continues to retain jurisdiction to ensure "continued implementation of the scheduled funding."¹⁶

¹² *Gannon v. State*, 308 Kan. 372 (2018) (*Gannon VI*).

¹³ *Gannon v. State*, 309 Kan. 1185 (2019) (*Gannon VII*).

¹⁴ K.S.A. 72-5132(e).

¹⁵ *Gannon VII*, at 303.

¹⁶ *Id.* at 304.

II. Constitutional Powers and Duties of the State Board of Education and Local Boards

Article 6 also confers certain constitutional roles upon the State Board of Education and local boards. Article 6 § 2 provides that the State Board of Education shall have "general supervision" of the K-12 public education system. And Article 6 § 5 provides that local public schools shall be maintained, developed and operated by local boards of education. Both entities, like the Legislature, are "created, empowered, and obligated by the constitution created by the people."¹⁷ Thus, Article 6 requires a balancing of legislative power against the constitutionally established roles of the State Board and local boards.

A. Constitutional Authority of the State Board of Education

The Kansas Supreme Court has made clear that the State Board's general supervisory authority is "self-executing" meaning supplementary legislation is not required for the State Board to exercise such authority.¹⁸ The Court has held that the scope of this self-executing authority is related to the basic mission of the state board which is to equalize and promote the quality of education through such things as statewide accreditation and certification of teachers and schools.¹⁹ In addition, two state attorneys general have opined that it would also be appropriate to include the establishment of minimum curriculum and graduation requirements within the scope of the State Board's self-executing authority.²⁰

A self-executing constitutional power does not necessarily act as a bar to legislation that falls within the scope of such power. Instead, the Legislature may enact legislation to facilitate or assist in the operation of the self-executing provision so long as the legislation is in harmony with and not in derogation of the constitutional provision.²¹ The Court has held that legislation may be enacted to "facilitate the operation of such a provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the determination thereof, or place reasonable safeguards around the exercise of the right."²²

¹⁷ *Id.* at 1158.

¹⁸ *State ex rel. Miller v. Bd. of Ed. of U.S.D. 398 (Peabody)*, 212 Kan. 482, 486 (1973).

¹⁹ *NEA-Fort Scott v. Bd. of Ed. of U.S.D. 234, Bourbon County*, 225 Kan. 607, 610-11 (1979).

²⁰ See Attorney General Opinion No. 83-154; Attorney General Opinion No. 2019-5.

²¹ *NEA-Fort Scott v. Bd. of Ed.*, at 610.

²² *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 Kan. 654, 659-60 (1990).

B. Constitutional Authority of Local Boards of Education

The Kansas Supreme Court has held that the constitutional authority of local boards is not self-executing, meaning the exercise of such authority is generally dependent upon statutory and regulatory oversight.²³ However, the Court has suggested that the Legislature does not possess complete authority over the duties and actions of local school boards.²⁴ Instead, the constitutional duties and obligations of the Legislature and local boards "must be read together and harmonized so both entities may carry out their respective obligations."²⁵ Legislation must not unduly interfere with or hamstring the local boards in performing their constitutional duty to maintain, develop and operate local public schools.²⁶

C. Legal Intersections of the Constitutional Roles under Article 6

Since the ratification of the current version of Article 6 of the Kansas Constitution in 1966, the Kansas Supreme Court and the Attorney General have been called upon to weigh in on whether certain legislative enactments conflict with the constitutional authority of the State Board or local boards. When the constitutionality of a statute is subject to such a legal challenge, such legislative enactment begins with a presumption that the statute is constitutional with all doubts resolved in favor of its validity.²⁷ To this date, no legislative enactment has yet been declared unconstitutional under Article 6 §2 or §5 grounds.

The major cases and opinions that have ruled upon the intersection of legislative authority and the constitutional authority of the State Board and local boards are summarized below.

i. State ex rel. Miller v. Bd. of Ed. of U.S.D. 398, Marion County (Peabody) (1973).

Perhaps the seminal case to rule upon the scope of the State Board's general supervisory authority under Article 6 is the *Peabody* case. In 1971, the State Board promulgated a regulation requiring each school district to adopt specific school conduct policies that were to apply to all persons employed by or attending the school district. The local school board of U.S.D. 398 argued that the State Board did not possess constitutional authority to enact and enforce such a regulation

²³ U.S.D. 380 v. McMillen, 252 Kan. 451, 463 (1993).

²⁴ *Id.* at 464.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Brennan v. Kansas Ins. Guar. Ass'n*, 293 Kan. 446, 450 (2011).

under its general supervisory power and that the regulation unconstitutionally encroached upon the authority granted to local boards under Article 6 § 5.²⁸

In its analysis of the constitutional issues, the Court made some important declarations regarding the constitutional grant of general supervisory authority to the State Board. First, the Court affirmed that the State Board's constitutional authority is a self-executing power, meaning the State Board may exercise its general supervisory authority without the need for legislation to render such authority operative.²⁹ Next, the Court recognized that the general rule with a self-executing constitutional provision is that the Legislature may enact legislation to facilitate or assist in the operation of such authority but may not "thwart a self-executing provision of the constitution."³⁰

The Court also commented upon scope of the State Board's supervisory powers over local boards and found that the term "supervision" generally means something more than to advise but something less than to control.³¹ Though, the Court noted that it was difficult to be precise as to the meaning of the term general supervision because "much depends on the context for which it is set out."³²

Ultimately, the Kansas Supreme Court upheld the regulation finding that such regulation fell within the general supervisory powers of the State Board.³³ In so holding, the Court stated:

"The people of this state, by constitutional fiat, have placed the maintenance, development and operation of local public schools with locally elected school boards, subject to the general supervision of the state board of education. Local boards of education as well as the state board of education, will have sufficient duties to perform and will find plenty of authority to exercise without getting into each other's hair or without encroaching upon each other's domain. The need to educate our young persons is far too urgent a priority for the members of either state or local boards to permit relations between them to deteriorate and become abrasive."³⁴

²⁸ *State ex rel. Miller v. Bd. of Ed. of U.S.D. 398 (Peabody)*, 212 Kan. 482, 483-484 (1973). *Id.* at 483-484.

²⁹ *Id.* at 486-488.

³⁰ *Id.* at 489.

³¹ *Id.* at 492.

³² *Id.* at 491.

³³ *Id.* at 492.

³⁴ *Id.* at 492-493.

ii. NEA-Fort Scott v. U.S.D No. 234, Bourbon County (1979)

During the 1977 legislative session, the Legislature amended the statutory procedures relating to collective negotiations between teachers and local boards. One such amendment assigned certain negotiation and mediation functions to the Secretary of Human Resources and not to the State Board of Education. The State Board argued that such statutory change was unconstitutional because it usurped the State Board's constitutional role under Article 6.

The Kansas Supreme Court held that the statutory changes to the collective negotiation procedures did not conflict with the State Board's constitutional authority.³⁵ The Court noted that even when a constitutional provision is self-executing, the Legislature may enact legislation that facilitates or assists in such operation "so long as the legislation is in harmony with and not in derogation of the provisions of the constitution."³⁶ The Court found that even with the statutory amendment, the State Board continued to possess all power and authority that it had previously exercised over public schools before the Legislature created the underlying statutory scheme governing collective negotiation procedures.³⁷

Additionally, the Court determined that the scope of the State Board's general supervisory authority is related to the basic mission of the State Board which is to equalize and promote the quality of education through such things as "statewide accreditation and certification of teachers and schools."³⁸ Since collective negotiation procedures do not fall within this constitutional purview, the involvement of the Secretary of Human Resources in certain teacher negotiation and mediation functions were found to not be in conflict with Article 6.³⁹

iii. Hainline v. Bond (1992)

In 1990, the State Board suspended the teaching certificate of Todd Hainline, a teacher who had recently been arrested and charged for the commission of burglary and

³⁵ *NEA-Fort Scott v. Bd. of Ed. of U.S.D. 234, Bourbon County*, 225 Kan. 607, 612 (1979).

³⁶ *Id.* at 610.

³⁷ *Id.*

³⁸ *Id.* at 610-611.

³⁹ *Id.* at 610-611.

theft. In suspending such teaching certificate, the State Board relied upon a combined interpretation of K.S.A. 72-1383 and K.A.R. 91-1-61 since the statute authorized the State Board to cancel teaching certificates "on the grounds of immorality" whereas the regulation only permitted the State Board to suspend or revoke a teaching certificate upon "conviction of, or a plea of guilty for" any crime classified as a felony."⁴⁰ Hainline later entered into a diversion agreement regarding the charges.

Hainline argued that the State Board's suspension of his teaching certificate was invalid because the statute the State Board relied upon to suspend his certificate based on an act of "immorality" was unconstitutional. The premise of Hainline's argument was that the State Board's regulation ought to supersede the statute due to the self-executing general supervisory authority of the State Board under Article 6.

The Court held that the statute that the State Board relied upon was constitutional because such statute was not in derogation of Article 6 and that the statute and regulation could be supplementary to each other.⁴¹ The Court commented that the statute "does not reduce the Board's supervisory authority by delegating any part thereof to another entity" and that it "does not require the board to do or not do anything."⁴²

iv. U.S.D. 380 v. McMillen (1993)

At issue in this litigation was whether K.S.A. 72-5443 violated §2 or §5 of Article 6.⁴³ This statute prohibited local boards from making the final decision regarding whether a teacher's contract should be terminated or nonrenewed and vested such final decision-making authority to a separate hearing committee.⁴⁴ The local school district argued that the power to hire and fire is a constitutional power of local school districts granted pursuant to §5 and that the statute also encroaches upon the State Board's authority under §2.⁴⁵

Regarding the §2 argument, the Court found that the powers granted to the hearing committee by such statute in no way impinges upon on the State Board's general supervisory

⁴⁰ *Hainline v. Bond*, 250 Kan. 217, 219 (1992).

⁴¹ *Id.* at 220.

⁴² *Id.*

⁴³ *U.S.D. 380 v. McMillen*, 252 Kan. 451 (1993).

⁴⁴ *Id.* at 454.

⁴⁵ *Id.* at 459.

authority.⁴⁶ The Court held that the "hiring and firing of teachers and employees . . . has never been considered part of the supervisory duty of the state board of education and certainly is a duty best administered by local authorities."⁴⁷

Regarding the §5 argument, the Court held that the statute is not "so unreasonable that it unduly interferes with or hamstrings" the constitutional authority of local boards.⁴⁸ In so holding, the Court gave weight to the fact that the right to hire and fire teachers was a right created by statute and noted that as a statutorily created right, "it is within the authority of the legislature to modify or refine that right so long as the legislation is in harmony with, and not in derogation of" the constitution.⁴⁹

The Court also held that, unlike the authority granted to the State Board, the constitutional authority of local boards is not a self-executing power, meaning the constitutional authority conveyed to local boards is "dependent on statutory enactments from the Legislature."⁵⁰ Though, the Court noted that it was not implying that the Legislature has "carte blanche authority over the duties and actions of local school boards."⁵¹ Rather, the Court stated that the constitutional duties and obligations of the Legislature and local boards "must be read together and harmonized so both entities may carry out their respective obligations."⁵²

v. Board of Ed. of U.S.D. No. 443, Ford County v. Kansas State Board of Ed. (1998)

In 1987, the Legislature amended K.S.A. 72-8230 relating to the duration of interlocal agreements between school districts. Such statutory amendment deemed that all interlocal agreements, including existing agreements, shall be perpetual unless terminated by the State Board pursuant to statutory procedures.⁵³ Prior to such statutory amendment, all interlocal agreements were statutorily required to be limited to a certain term of years and could be terminated by local boards.

Upon the effective date of the statutory amendment, U.S.D. 443 was a party to an interlocal agreement which was expressly set to expire on a date certain. Through the statutory amendment,

⁴⁶ *Id.* at 460.

⁴⁷ *Id.*

⁴⁸ *Id.* at 463.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 464.

⁵² *Id.*

⁵³ *Board of Ed. of U.S.D. No. 443, Ford County v. Kansas State Board of Ed.*, 266 Kan. 75, 78 (1998).

U.S.D. 443 was immediately prohibited from unilaterally withdrawing from its interlocal agreement contract because such agreement had become perpetual by operation of the statutory amendment.⁵⁴ Among other legal arguments advanced by U.S.D. 443, the district argued that the statutory amendment violated both §2 and §5 of Article 6.⁵⁵

The Court dismissed such arguments holding that the Kansas Constitution "does not grant local school districts any inherent absolute power."⁵⁶ The Court stated that the authority of local school districts to maintain, operate and develop local public schools is qualified in that such authority is both subject to oversight of the Legislature and the general supervisory authority of the State Board.⁵⁷ Additionally, the Court held that §5 further restricts local board authority regarding interlocal agreements because it expressly states that "such agreements shall be subject to limitation, change or termination by the legislature."⁵⁸

The Court also looked to the history of Article 6 to evaluate whether the Legislature could constitutionally provide the State Board with the authority to approve or deny a local district's request to terminate an interlocal agreement.⁵⁹ The Court looked to the legislative history of Article 6 and noted that such legislative history suggests that the State Board was given broad supervisory authority over school districts.⁶⁰ The Court also noted that the Legislature did not give the State Board unlimited authority to terminate such agreements.⁶¹ Rather, the State Board must operate pursuant to specific statutory criteria before rendering any decision to approve or deny a district's request to withdraw from an interlocal agreement.⁶² The Court ultimately held that given the legislative history of Article 6, the Legislature did not grant the State Board with powers that were constitutionally prohibited.⁶³

vi. Kan. Atty. Gen. Op. No. 83-154

In 1983, Attorney General Robert Stephan was asked for an opinion summarizing the scope of the State Board's general supervisory authority under Article 6 and areas of potential conflict

⁵⁴ *Id.*

⁵⁵ *Id.* at 94.

⁵⁶ *Id.* at 95.

⁵⁷ *Id.* at 95-97.

⁵⁸ *Id.*

⁵⁹ *Id.* at 95.

⁶⁰ *Id.* at 96-97.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

with the Legislature. With the *Peabody* case and the *NEA-Fort Scott* case as precedent, Attorney General Stephan opined that the scope of the self-executing general supervisory authority of the State Board is related to the basic mission of the State Board which is to equalize and promote the quality of education in the state. The attorney general agreed with prior caselaw holding that such self-executing authority is limited to matters such as statewide accreditation and certification of teachers and schools, but he also opined that it would be appropriate to add similar matters such as "minimum curriculum and graduation requirements" to the scope of such authority.

The Attorney General stated that, regarding such matters, the State Board may exercise its constitutional authority without the need for legislation. Though, such constitutional authority does not prohibit the Legislature from adopting legislation regarding such matters. Rather, the Legislature would only be prohibited from enacting legislation that is not in harmony with or is in derogation of the State Board's self-executing constitutional authority.⁶⁴

vii. Kan. Atty. Gen. Op. No. 2019-5

In 2019, Attorney General Derek Schmidt was asked to weigh in on the constitutionality of a statutory amendment in K.S.A. 74-120 relating to requirements regarding certification and licensure of school personnel. Such amendment required the State Board to revise its existing licensing processes and requirements in accordance with the statute.

Attorney General Schmidt agreed that the scope of the State Board's self-executing authority under Article 6 includes the certification of school personnel. Though, Attorney General Schmidt opined that the test for determining the constitutionality of legislation that happen to touch upon matters that fall within such self-executing authority is to evaluate whether the legislation unduly interferes with or hamstring the State Board in performing its constitutional function. The Attorney General opined that the State Board was subject to such statutory amendment because it did not unduly infringe upon the authority of the State Board and no provision in the Kansas Constitution clearly precluded the Legislature from enacting such legislation.⁶⁵

⁶⁴ Attorney General Opinion No. 83-154.

⁶⁵ Attorney General Opinion No. 2019-5.