# OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

May 30, 2003

FILE NO. 03-004

CONSTITUTION:
Funding of Elementary
and Secondary Schools

The Honorable Emil Jones, Jr.
President of the Senate
327 Capitol Building
Springfield, Illinois 62706

The Honorable Miguel del Valle
Assistant Majority Leader
321A Capitol Building
Springfield, Illinois 62706



Dear President Jones and Senator del Valle:

On May 15, 2003, the Senate adopted Senate Resolution 94, the full text of which is attached as an appendix hereto. Senate Resolution 94 requests the issuance of an opinion by the Attorney General regarding the requirements of article X, section 1 of the Illinois Constitution of 1970, as they relate to the adequacy of public school funding. The resolution requests that the opinion specifically address the following questions:

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1) Does article X, section 1 of the Illinois Constitution require the State to develop a system of public school funding that provides every public school student with access to a "minimally adequate education"?

2) Does the current system of public school funding provide every public school student access to a "minimally adequate education"?

In preparing an opinion interpreting a statutory or constitutional provision, this office acts in a quasi-judicial capacity, analogous to that of a reviewing court. As such, this office is obligated to apply and to adhere to the same principles of legal construction and interpretation that are applicable to the reviewing courts when undertaking a similar review. Thus, the preparation of an opinion includes reference to any pertinent reported judicial decisions as well as relevant Attorney General's opinions to determine whether the issue has previously been addressed, and if so, whether the issue can be resolved on the basis of that precedent.

In this regard, it is axiomatic that the construction accorded to a provision of the Illinois Constitution by the Illinois Supreme Court is the law. (See Kraus v. Board of Trustees of Police Pension Fund of Niles (1979), 72 Ill. App. 3d 833, 846.) When the Supreme Court has decreed the meaning of the law, it alone can overrule or modify its interpretation, and all other tribunals of this State are therefore bound by the decision

and must follow it in similar cases. (Agricultural Transportation Ass'n v. Carpentier (1953), 2 Ill. 2d 19, 27; People v. Ladd (1998), 294 Ill. App. 3d 928, 937.) The Attorney General, likewise, must defer to the decisions of the Supreme Court when providing legal opinions. Consequently, in interpreting the meaning of article X, section 1 of the Constitution in response to this request, the inquiry cannot be limited to the language of the provision or the debates of the constitutional convention concerning its adoption, but due regard must also be given to the construction accorded to that provision by the courts which have had occasion to review it. To the extent that the Illinois Supreme Court has dispositively established the meaning of the provisions of article X, section 1 of the Constitution, neither the inferior courts nor the Attorney General are free to reject that interpretation.

The first question posed in Senate Resolution 94 is whether article X, section 1 of the Constitution requires the State to develop a system of public school funding that provides every school student with access to a "minimally adequate education". The term "minimally adequate education", however, is not used in article X, section 1 of the Constitution, nor is it

defined by statute or by the Resolution itself. Article X, section 1 of the Illinois Constitution of 1970 provides:

> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.

Since the adoption of the Illinois Constitution of 1970, numerous questions have been raised concerning the meaning to be accorded to the phrase "efficient system of high quality public educational institutions", as well as the parameters of the State's "primary responsibility for financing" the public school system. With respect to State funding, in Blase v. State (1973), 55 Ill. 2d 94, the Illinois Supreme Court construed the last sentence of article X, section 1 of the Constitution. In order to determine the intent of the language, the Court reviewed the remarks of Delegate Dawn Clark Netsch, who proposed the pertinent language to the members of the 1970 Constitutional Convention:

MRS. NETSCH: As I indicated, this is the same language that the Convention had voted on approximately ten days ago, and it was narrowly defeated at that time. Some of us felt that it was important enough for this Convention to state what we believe to be a widespread sentiment within the Convention that we should express the feeling that the state should be assuming a larger share and, in fact, the primary responsibility for the financing of the public school system.

* * *

The purpose of including the statement is to put the Convention on record with what I believe is a feeling widely held by the delegates to this Convention that the state, indeed, has the primary responsiblity for financing the public school system.

I think our motivations for that are varied and sometimes coalesce. Many of us feel that the property tax has carried too heavy a burden of financing schools and that the only way in which any relief will be obtained is by shifting a larger share to the state level. Many of us also feel that there is great inequality among the various school districts in the state and that only a greater degree of state aid is going to cure that inequality.

I think for those reasons the feeling is that the state should, indeed, assume this primary responsibility for the financing of the public school system. It is not a legally obligatory command to the state legislature. I think it is useful, because I think it is something that can be pointed to every time the question of appropriations from the state to the school districts is at issue. I think this can be cited to them, and it can be explained to them that if this

> constitution is approved, that the people of this state also share the feeling that the state should be paying a larger share of that burden. (5 Record of Proceedings, Sixth Illinois Constitutional Convention 4502.)

Based upon the foregoing, the Court concluded that the language of article X, section 1 creates a goal, rather than an obligation which is judicially enforceable. (See generally Blase v. State (1973), 55 Ill. 2d at 100.) Therefore, the plaintiffs in the case were incorrect when they contended that the Constitution required the State to provide not less than 50% of the funds needed to operate the public school system. Specifically, the Court held:

> In view of the history of the proposal and the repeated explanations of its principal sponsor, it cannot be said that the sentence in question was intended to impose a specific obligation on the General Assembly. Rather its purpose was to state a commitment, a purpose, a goal. The trial court therefore did not err in dismissing the plaintiffs' complaints and entering judgment for the defendants. Blase v. State (1973), 55 Ill. 2d at 100.

This holding was reaffirmed in People ex rel. Carey v. Board of Education of Chicago (1973), 55 Ill. 2d 533, 535, and again in Cronin v. Lindberg (1976), 66 Ill. 2d 47, 57. Consequently, it is clear that article X, section 1 of the Constitution does not require any specific level of educational

funding to be met by the State, and the courts have refused to impose such a requirement upon the General Assembly.

The meaning of the constitutional reference to an "efficient system of high quality public" schools was addressed in Committee for Educational Rights v. Edgar (1996), 174 Ill. 2d 1, in which the plaintiffs contended that the statutory scheme governing the funding of public schools in Illinois was violative of article X, section 1 of the Constitution because students who attend school in poorer districts receive a "normatively inadequate education". The Court noted that, under article VIII, section 1 of the 1870 Constitution, which provided that "[t]he general assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education", it had consistently held that questions relating to the efficiency and thoroughness of the school system were solely for the General Assembly to answer, and that the courts lacked the power to intrude. Committee for Educational Rights v. Edgar (1996), 174 Ill. 2d at 24-25.

Further, in Committee for Educational Rights v. Edgar the plaintiffs asked the Court to determine whether the alleged disparity in educational funding and opportunity due to variations in local property wealth was a violation of the equal

protection clause of the Illinois Constitution. (Ill. Const. 1970, art. I, § 2.) The Court stated that "while education is certainly a vitally important governmental function * * *, it is not a fundamental individual right for equal protection purposes, and thus the appropriate standard of review is the rational basis test." Committee for Educational Rights v. Edgar (1996), 174 Ill. 2d at 37.

Under the rational basis test, if any set of facts can reasonably be conceived to justify the classification, it must be upheld. Observing that the general structure of the State's system of funding public schools through State and local resources represents an effort on the part of the General Assembly to strike a balance between the competing considerations of educational equality and local control, the Court noted that reasonable people might differ as to which consideration should be dominant. However, the Court held that "the highly deferential rational basis test does not permit us to substitute our judgment in this regard for that of the General Assembly, and we have no basis to conclude that the manner in which the General Assembly has struck the balance between equality and local control is so irrational as to offend the guarantee of equal protection." (Committee for Educational Rights v. Edgar (1996),

174 Ill. 2d at 39.) Consequently, the Court concluded that although "the present school funding scheme might be thought unwise, undesirable or unenlightened from the standpoint of contemporary notions of social justice, these objections must be presented to the General Assembly." Committee for Educational Rights v. Edgar (1996), 174 Ill. 2d at 39.

Subsequently, in Lewis E. v. Spagnolo (1999), 186 Ill. 2d 198, the Supreme Court again reviewed the Illinois public school funding system. The plaintiffs in Spagnolo asked the Court to determine whether either the State or East St. Louis School District No. 189 had violated schoolchildren's rights under the education article of the Illinois Constitution, the due process clauses of the United States and Illinois Constitutions (U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2) and various provisions of the Illinois School Code (105 ILCS 5/1-1 et seq. (West 2000)). With respect to the education article of the Constitution, the plaintiffs argued that article X, section 1 of the Illinois Constitution granted them the right to a "minimally adequate education." The Court, however, concluded that the decision in Committee for Educational Rights v. Edgar was dispositive of this issue and again noted that "'questions relating to the quality of education are solely for the

legislative branch to answer.'" Lewis E. v. Spagnolo (1999), 186 Ill. 2d at 206, quoting Committee for Educational Rights v. Edgar (1996), 174 Ill. 2d at 24.

The Court also addressed the issue of whether the plaintiffs had a cause of action under the due process provisions of the Federal or State Constitutions. The plaintiffs advanced an argument under the due process clauses that the Illinois compulsory education law constitutes a deprivation of the plaintiffs' liberty, which gives rise to an affirmative duty on the part of the State to provide a minimally adequate education; and, second, that this duty arose because the defendants subjected the plaintiffs to State-created dangers. The premise for plaintiffs' first argument was that the Illinois compulsory education law, mandating that children of a certain age attend school (105 ILCS 5/26-1 (West 2000)), operates as a restriction on plaintiffs' liberty similar to the restriction on liberty present in Youngberg v. Romeo (1982), 457 U.S. 307, 102 S. Ct. 2452, wherein the Supreme Court found that "'[w]hen a person is institutionalized [as an involuntarily committed person]-and wholly dependent on the State * * * a duty to provide certain services and care does exist.'" (Lewis E. v. Spagnolo (1999), 186 Ill. 2d at 213, quoting Youngberg v. Romeo (1982), 457 U.S.

at 317, 102 S. Ct. at 2459.) The Illinois Supreme Court found that compulsory education is not the type of restraint on liberty envisioned by the Supreme Court in Youngberg v. Romeo as a basis for imposing an affirmative duty on the State. Accordingly, the due process clause may not be used to impose upon the State an affirmative duty to provide a certain standard of education.

As this discussion illustrates, in its decisions, the Illinois Supreme Court has repeatedly concluded that the Illinois Constitution does not create an enforceable right to a specific level of funding by the State or guarantee that every child in Illinois will receive the same quality of education. The Court has repeatedly held that it is the province of the General Assembly, and not the courts, to determine the method of providing funds and the level of funding to be contributed by the State to satisfy the requirement to provide an adequate public school education.

The gravity of the school funding problems that exist today in Illinois cannot be ignored. As Senate Resolution 94 describes, the amount of per pupil spending in Illinois varies dramatically from school district to school district, ranging from less than $4,000 per pupil in some of the poorest districts to more than $15,000 in the wealthiest. Similarly, property tax

rates levied for educational purposes in Illinois range from less than 1.00% in some communities to over 8.00% elsewhere. It is anticipated that 80% of the school districts in Illinois either are now, or in the near future will be, unable to balance their annual budgets to support necessary programs and will be forced into deficit spending. Overall, Illinois ranks a lamentable 49th among all States with respect to the level of school funding provided by the State. The inequities within the current system simply cannot be denied.

The Illinois Education Funding Advisory Board, which was created by Public Act 90-548, effective July 1, 1998, has recommended an increase in the "foundation level" funding available to public schools. The "foundation level" is defined as "a figure established by the State representing the minimum level of per pupil financial support that should be available to provide for the basic education of each pupil in Average Daily Attendance." (105 ILCS 5/18-8.05(B) (West 2001 Supp.), as amended by Public Acts 92-604, effective July 1, 2002; 92-636, effective July 11, 2002; and 92-651, effective July 11, 2002.) The Board recommended in October 2002, among other things, that:

> 1. Effective for the 2003-2004 school year, the General State Aid formula foundation level should be $5,665. This amount was determined using the Board

> consensus parameters applied to the Augenblick [and Myers 2001 Study] methodology. The $5,665 represents a district weighted, CPI adjusted amount and would cost an additional $1.8 Billion. The recommended foundation level each year should be calculated using the Augenblick methodology.

Clearly, an increase in the State's "foundation level" funding for public school students will not cure the disparities that exist under the current public education funding system. It would, of course, be a positive first step toward equalizing the educational opportunities that should be available to all of our children.

The decision to take such a step is, however, a decision for the General Assembly. As this opinion makes clear, only the General Assembly can define what constitutes a "minimally adequate education" for the children of Illinois and decide whether the current school funding scheme is adequate to meet those requirements. Just as the courts cannot dictate school funding policy, the judgment of the Attorney General also cannot be substituted for that of the General Assembly in this critical area.

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL