

## Summary and Conclusions

*A nation's school financing policies are a reflection of the value choices of its people, the order of priorities they establish in the allocation of their resources and their political philosophy.*

*...Dr. Roe Johns*

The purpose for conducting this historical study was to develop a history of public school finance law in the region that is now the state of Nebraska from the territorial years to 1997 that included the identification of emerging themes or patterns. This study focused on how K-12 public education funding evolved and identified the major laws and policies passed by the legislature. The study further defined the manner and means by which Nebraska's school finance law changed.

History, by definition, is what evolves over time. Nebraska's public school finance laws evolved through the process of constitutional and statutory changes. The choices made by Nebraska's legislators determined the direction for funding public schools. To change educational funding language in the state constitution, voters had to approve the issue on the ballot. Petition initiatives and referenda forced both constitutional and statutory change also. A third method for changing school finance law was

through the filing of law suits testing either statutory or constitutional law. From the early territorial days to the cyberspace world of today, Nebraska school finance laws followed nine dominant and reoccurring themes. These themes spiral through Nebraska school finance law and are addressed in the conclusions of this study.

Conclusion 1: Nebraska demonstrated a fiscally conservative approach to taxation and school finance law.

Nebraska has a strong history of supporting the use of property tax to fund government and schools. The Territorial Legislature adopted a property tax model in 1857 which became the major source of operating revenue for both state and local government. The Common Schools Act (1855) established a method for funding schools based predominately on property tax. The number of mills levied, times the property value equaled the amount of tax. This ad valorem method of taxation was simple, easy to calculate and reliable. When the majority of Nebraskans earned their living from the soil, this tax seemed the most efficient and fair tax regardless of economic times.

Nebraska used this school finance model from the late 1800s and well into the 1900s. Tax law did change during the first 100 years of statehood, however, most property

tax change was related to what should be taxed and how to assess property value. As other states began to significantly alter their school funding models, Nebraska merely tinkered with the model. In 1954, a special legislative session was called. A constitutional amendment, known as the Duis Amendment (LB 7), was passed by the legislature and placed on the ballot. This amendment deemed the collection of a state property tax unconstitutional. In November 1954, The Duis Amendment was approved by the voters. The language in this amendment required an alternative funding model to be established which used sales and income tax. At this time, Nebraska continued to have a state property tax system for funding government because the sales and income tax model was not in place. In 1966, additional constitutional amendments approved the adoption of a state income tax system. The new system was to be based on federal law. It would eliminate the state real estate tax for funding state government and terminate the state property tax. Local government would continue to use property tax revenue as its major funding source. This landmark legislation set the stage for changes in funding Nebraska's schools.

In 1967, 100 years after statehood, Nebraska's legislature passed The School Foundation and Equalization Act (1967). This legislation provided a more equitable model for state aid to schools. Both a foundation fund and an equalization fund were established with specific criteria defined. It was hoped that this legislation would provide needed assistance for funding Nebraska's schools.

Nebraska's over reliance on property tax to support local government was echoed throughout future decades. State revenue and tax studies, reports from the commissioners of education and governors reiterated the same theme. The legislature continued to hold the line on spending, keeping a policy of fiscal conservatism in place. Finally, in 1990, with a property tax revolt about to begin and a school finance lawsuit threatening on the horizon, the legislature designed a new school funding bill. The Tax Equity and Educational Opportunities Support Act (1990), better known as LB 1059, established a different funding formula. Intended to provide state aid to schools at a 40 percent level of funding, it was deemed as another significant step in Nebraska's school finance history. The goals of this legislation were never realized as

continued cries of unfairness were heard from land owners.

During the mid-1990s, additional legislation was passed to help shift the burden of school funding off property and provide increased state aid. Two funding measures in 1996, LB 806 and LB 1114, designed a new appropriations formula and added spending lids for district budgets.

Nebraska was slow to change its state tax model as well as its school funding system. Thus, Nebraska demonstrated a fiscally conservative approach to taxation and school finance law.

Conclusion 2: Significant change in school finance law was prompted by crisis.

Nebraska school finance laws changed in times of major crisis. During the early statehood years, mismanagement of the state school land funds caused the impeachment of Nebraska's first governor, David Butler. As a result of this impeachment, more stringent laws were passed to insure the safety of the state school funds.

Economic depression caused changes in funding laws. The panics during the end of the 19th century as well as The Great Depression of the 1930s, left people unable to pay property tax. With taxes not being paid, the legislature amended the laws and adjusted funding mechanisms in order

to keep schools open. Laws were adopted allowing schools to borrow additional dollars when necessary.

The population explosion following World War II created a tremendous burden on education and the tax system funding it. Over 48,000 more students were enrolled in Nebraska during the 1950s. Schools had to be built, teachers had to be hired, and books had to be purchased. Once again, property tax was the primary funding source and the laws of the 1950s allowed mill levies to be free from limitations. The enrollment crisis forced changes in the statutes.

Subtle changes were taking place in the economy of the state. At the turn of the century, agriculture was the primary provider leaving the burden of property tax more equally distributed. In the 1950s and 1960s, occupations in Nebraska became more diversified with the growth of manufacturing and service professionals. Although property tax remained the primary source for funding government and schools, metropolitan areas had a broad tax base allowing urban schools to prosper. Meanwhile, the tax burden in rural areas began to fall on fewer and fewer people. Fewer farmers owned greater amounts of land but unstable markets provided inconsistency in income. At the same time, rural

towns were losing their ability to generate revenue in comparison to cities. This shift set the stage for the most recent property tax crisis.

The technological explosion that began in the mid 1950s was magnified by the computer revolution of the 1990s. More dollars were needed to support schools. Computers, teacher salaries and staff development were all addressed by new school finance legislation during the decade of 1990s.

Throughout the state's history, the legislature tinkered with changing mill levies, adopted levy lids and amended statutes. When tax payers cried of revolt, economic crisis loomed, or law suits challenged the finance system, the legislature passed major revisions to the school finance laws. Thus, significant change in school finance law was prompted by crisis.

Conclusion 3: Strong leadership accompanied major school finance change.

Change theory suggests that significant change occurs when leaders envision change and formulate plans to enact the vision. School finance changes in Nebraska were promoted by many leaders. Governors, legislators, superintendents of public instruction or commissioners all played varied roles in bringing about change in

Nebraska's school finance laws.

Territorial leaders included Robert Furnas, Chair of the Education Committee, who led the change to a township model of organization for schools and funding in 1858. Furnas became governor in 1873 and supported additional changes to school funding. At the end of the 19th Century, Sheldon pushed for legislation to prevent further sale of the school lands (HR 124, 1897) while Superintendent of Public Instruction Fowler, encouraged school district consolidation. In 1907, Governor George Sheldon signed landmark legislation providing state aid to weak school districts (HR 356, 1907). A bill allowing for four years of high school for all youth, supported by tuition charges of \$.75 was termed King's High School Bill (1907) named after Edwin L. King, a senator who served from 1907 to 1909 from Osceola. Senator Charles Epperson proposed the establishment of a county high school system in the same year.

In 1913 Governor Morehead established a special commission to investigate revenue and taxes in Nebraska. Recommendations were made to improve revenue and taxation in the state but many were not implemented. Morehead's



leadership was considered strong and progressive. In 1919, Governor McKelvie encouraged changes to tax law and consolidation of rural school districts. The Constitutional Convention held on December 2, 1919, brought forward additional measures that impacted schools including the distribution of temporary school funds, the creation of a state tax commissioner and a state Board of Equalization.

Superintendent of Public Instruction Taylor, advocated for more favorable investments of the permanent school funds and suggested greater returns from leasing the educational lands. He succeeded in pushing for a constitutional amendment that abolished the office of Commissioner of Public Lands and Buildings and supported a constitution amendment to place the state superintendent on The Board of Educational Lands and Funds. Taylor led a drive for equalizing educational opportunities pointing out that the property values across the state were not equitable. He understood the unfairness of the school funding system that seemed fair for urban schools but unfair for small rural schools.

Superintendent Decker and Governor Crosby worked to establish the Nebraska Department of Education that was

approved by constitutional change. It was during their tenure that the Duis Amendment was passed (LB 7, 1954) which would assist in altering the state taxation model. Governor Brooks, a former school superintendent from McCook, signed legislation adjusting the taxing of livestock and grain that impacted property tax dollars for schools. In 1961, Governor Morrison and Commissioner of Education Floyd Miller, led the school finance reform efforts. Senator Jerome Warner from Waverly promoted a different funding model for schools. In 1967, Warner was successful at having the legislature pass The School Foundation and Equalization Act (LB 488, 1967). Governor Tiemann was credited for leadership in state tax reform but only served one term in the governorship.

Recent leadership from Senators Tom Vickers, Ron Withem and Ardyce Bohlke, all chairs of the Education Committee, altered school finance law. These senators possessed strong skills and a keen understanding of Nebraska's school finance model. Vickers pushed for school consolidation and sacrificed his job on this issue. Withem, a former educator himself, understood first-hand the finance needs of public schools. Studies, symposia, and a School Financing Review

Commission were proposed by Withem to inform legislators about the school funding dilemma in the late 1980s. Withem introduced LB 1059 (1990) and brought it to fruition. Although Governor Orr vetoed LB 1059, the Legislature approved the bill again. A referendum vote in the General Election of 1990 kept the bill on the books despite Orr's opposition. Bohlke initiated a new state funding formula in LB 1114 (1996) and LB 806 (1996) which continue to support a shift in taxation away from property to income and sales and address efficiency.

Leadership from Nebraska State Department personnel, University of Nebraska's Dr. Cale Hudson, and school organizations like the Nebraska Council of School Administrators and the Nebraska State Education Association, supported revisions to Nebraska's school finance laws. Thus, strong leaders assisted in prompting change to school finance law.

Conclusion 4: Both the citizens initiative and referendum process as well as the Constitutional amendment process have been used to change school finance law.

Throughout Nebraska's history, petition initiatives have been placed on the ballot to change constitutional or statutory law. Less than two dozen of the initiated and

referred measures placed on the ballot from 1914 to 1996 were related to education and taxation. In a state with only one legislative house, the petition process has taken the place of the second legislative house and allowed citizens an opportunity to make constitutional and statutory change. The petition process itself created the unicameral form of government in Nebraska in 1934.

Initiated and referred measures relating to schools have been fewer in number than constitutional amendments related to schools and accompanying tax law. In 1946, a state aid to schools issue failed. Issues have addressed the election of a state Commissioner of Education (1960, 1964), the approval of the income tax law (1966), the termination of property tax (1966), prohibiting income tax (1968), state aid to schools (1974), providing increased state support for public schools (1978), limiting political subdivisions budget increase to 5% (1978), school consolidation (1986), establishing a state lottery system (1990), establishing a 2% limit on annual budget increases of all governmental subdivisions (1990), retention of the Tax Equity and Educational Opportunities Support Act, LB 1059 (1992) and make "quality education" a fundamental

constitutional right (1996). Some of these issues have passed while some have failed.

Recent laws have significantly changed the initiative process. New legislation increased the number of signatures required to place an issue on the ballot. This may make the petition process a big business tool. Future educational changes may be difficult to get on the ballot through the initiative process due to this new law. Businesses may have the financial resources to pay petition workers to obtain the necessary signatures. It is questioned whether other organizations, including educational ones, would have the necessary dollars to fund this type of effort.

To amend Nebraska's constitution, the legislature proposes amendments to be placed on the ballot. Tax and education issues have been voted on during general and primary elections that have supported change in school finance law. The constitutional amendment process remains a viable option for changing school finance methods and law in Nebraska. Thus, both the citizens initiative and referendum process as well as the Constitutional amendment process have been used to change school finance law.

Conclusion 5: Local control dominated political thinking.

The theme of local control is woven throughout the history of Nebraska school finance law. Most Nebraskans associate their local schools with the survival of their towns and community. This assumption may not be accurate, but it has become a powerful argument against consolidation and redistricting. As a result, Nebraskans are willing to spend extra dollars to maintain local schools and local control. As Nebraska entered the 20th Century, there were over 6,700 school districts.

Funding this many schools has created problems. School consolidation discussions may be traced through Nebraska's legislative history, however, efforts to mandate change in the six class organization model of schools has been difficult. As a result, the statutes have been amended almost yearly to adjust to the needs of Class I schools, free high tuition and other small district issues. Class I schools became tax havens for many property owners. Farmers wanted to hold onto this tax advantage as long as they could. Petition initiatives were tried and constitutional amendments have been on the ballot, but have failed to force school redistricting and consolidation. Thus, to date the

issues of local control continue to dominate political thinking.

Conclusion 6: Politics impacted tax law.

Throughout the evolution of school finance law, politics played a role in school funding. People have different political perspectives on tax issues. The question remains, who should pay? Farmers, railroads, and corporations continue to lobby the legislature and petition the courts over property tax laws. The history of property tax law in Nebraska is a study in and of itself. The winners and losers have changed over time. Farm equipment is taken off, then it is put back on, rolling stock cars are taxed and then removed, and corporations pay taxes and then become exempt to promote business expansion. "Don't tax me, tax the guy behind the tree," creates a simple analogy of the taxation policy in Nebraska. Historically, the changes in Nebraska's property tax law have forced school finance laws to change.

The governors of Nebraska confronted taxation and spending issues annually. For political reasons, it was often best for a governor not to increase taxes. If tax reduction, however, was a viable option, governors responded

quickly and positively to the measure. Governors understand that education, like government, depends on tax revenue for funding. The most significant change to Nebraska's tax law occurred when sales and income tax became approved methods of supporting government and eventually schools. Few Nebraska governors have significantly restructured tax law, while all governors have amended tax statutes. In the political arena, the quality of education has taken second place to being reelected.

Political party influence in a unicameral state is less obvious, however, the gamesmanship of politics plays the large district against the small district. Disparities continue to exist between large and small schools. Swimming pools and indoor running tracks appear in some districts while rural districts try to keep the roof from leaking. Politics have impacted tax law in Nebraska.

Conclusion 7: School lands and funds have created management concerns.

When Nebraska's first governor was impeached for taking money that belonged to the school lands fund, suspicion began. Through the Land Ordinance Act of 1785, lands were given to the state by the federal government to provide income for education. During early statehood times,



bookkeeping records were not perfect, and allocation of funds were questioned. The school lands required constant management and the laws reflect the various management stages. Early legislation encouraged the sale of these lands. By the late 1890s, however, only one third of the original school lands given to the state remained state property. Further sale of the school lands was prohibited in 1897.

Laws continued to deal with school land lease agreements, percentage fees, surveying the land, land values and allocation of the school land funds. Questions of fraud and misappropriations were asked continuously. One hundred years after the school lands were prohibited from being sold, Nebraska's Legislature decided to reverse their decision and have all school lands sold by 2008. Thus, through Nebraska's history, the school lands and funds have created management concerns.

Conclusion 8: As state revenue increased for funding schools, school districts were expected to meet additional criteria to receive more revenue from state coffers.

As the legislature provided increased funding to local school districts from state revenue, the requirements to participate were tied to specific criteria. The School

Foundation and Equalization Act (1967) required levies to be set at certain levels. If these were met, then additional foundation aid was available. The equalization fund had similar criteria. Districts were forced to comply with requirements if they desired state dollars.

School finance legislation during the 1990s had similar expectations. Legislative bill 1059 (1990) classified schools into different funding tiers. Budget lids were established. If districts wanted to increase budget requirements beyond the intended limits, boards of education voted to exceed the lid. With LB 1114 (1996) and LB 806 (1996), the board of education could vote to exceed the levy limits of \$1.10 per hundred dollars valuation by proposing an election to the voters of the district. If the district vote supported overriding the budget limit, the district could establish a higher levy. Thus, as state revenue increased for funding schools, school districts were expected to meet additional criteria in order to receive more revenue from state coffers.

Conclusion 9: Funding schools through property tax alone creates inequity in funding.

Funding schools from property tax revenue was established during the Territorial Legislature by The

Common Schools Act (1855). Initially, when the majority of Nebraskans were farmers and the state's economy was based on agriculture, funding schools through property tax appeared to be an equitable method of taxation. As Nebraska's population has slowly shifted away from farming to business and service professionals, the financing of public schools has been even slower to change. Equity in funding schools continues to be debated. Currently, those who possess the greatest wealth in Nebraska are not contributing to funding education unless they own real estate.

Throughout Nebraska's history, the only major tax available for funding schools was property tax. Due to poor assessment practices and income potential, property tax was not, and is not by itself, an equitable tax. Equality for schools was adjusted by changing organizational patterns and adding state aid. The access to new taxes, income and sales, were added to the mix for funding Nebraska's schools. Taken alone, income and sales tax have inequalities as biased as property tax. However by: (1) mixing the three major tax bases, (2) reorganizing of school districts for efficiency, (3) broadening the tax base by incorporating

state and federal aid, and (4) attempting to set goals and purposes for schools, it is possible to move toward a more balanced financial support system for education.<sup>894</sup>

The nine conclusions drawn from this study reflect the major themes that spiral through Nebraska school finance history. This information may be useful to educators, administrators, state legislators, tax consultants, lawyers and policy makers. By understanding the history of Nebraska's school finance law, future funding laws may be more easily developed.

#### Future Study

Recommendations for further study on this topic include a detailed analysis of the case law that impacted Nebraska's school finance laws. Case law tests constitutional issues or statutory fairness. An abundance of case law was noted during this study; if identified and researched, the history of Nebraska's school finance law would be more complete. State funding revenue allocation for various school districts differ. Further study in the area of curriculum equity across the state of Nebraska would be helpful. Although statistics are available that identify the specific

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<sup>894</sup> Dr. Cale C. Hudson, Personal Communication, October 16, 1998.

dollars that each district receives, it would be interesting to see how the dollars are used to provide equity in curriculum offerings. Funding for new school facilities has traditionally been funded by bond elections. Many of the current school buildings in Nebraska are in need of major renovation or replacement. A future study might analyze how Nebraska's current funding system might allow additional dollars for the support of new facilities. As Nebraska investigates Charter Schools, school vouchers, and standards-based education, the redesign of state and district funding models may be necessary. A study analyzing Nebraska's current model with that of states implementing funding these alternatives may be helpful. A final recommendation for further study might be a comparative study of Nebraska's school finance laws with the laws of other states. The insight gained from this analysis could be helpful to creating new school funding formulas for Nebraska.

*Nebraska's K-12 education funding system has used the instruments of legislation, litigation and the petition, referendum and amendment process to build the laws of today. The major laws have evolved and will continue to evolve based on political, economic and social factors of the time. The laws have changed based on the values of the Nebraska people, their priorities and their thinking.*