

Posted on Fri, Jun. 24, 2005

Opinion

School funding is a political question

BY JOHN R. LAPLANTE

There's something even more important than money at stake in the special session of the Kansas Legislature: some important constitutional principles, including the role of the Legislature and the courts.

Gerrit Wormhoudt, who has argued cases in front of the highest courts in the state and nation, worries about the "self-destructive actions" of the Kansas Supreme Court. Writing for the Flint Hills Center for Public Policy, Wormhoudt concluded that the constitutionally appropriate authority of the court itself is threatened.

Among the bedrock principles of the American form of government and politics is the separation of powers. The legislative, executive and judiciary branches each have distinct roles. Throughout Kansas history, the state's highest court has respected this principle.

In a case involving the Union Pacific railroad, for example, it noted that courts should exercise judicial power, but no other. The courts, the justices said in that case, should practice a "principle of noninterference" with respect to legislative powers. It singled out the power to tax as a political power reserved exclusively for the Legislature.

In various rulings involving the Montoy school-finance case, however, the Supreme Court has scolded the Legislature for letting political considerations influence its decision on how much money to allocate to schools.

But how could it be otherwise? State budgets are created when some people, elected to government office, decide how to provide for all of the obligations of the state. How much should the public be taxed? And how will the money raised through those taxes be allocated?

In other words, funding services through government -- and this includes most of our K-12 education -- requires legislators to vote upon questions that are political in the best sense of that term. Legislative deliberations also must consider the general welfare of the entire state.

Because "how much to tax ourselves" and "how will we spend this money" are political questions, not judicial ones, how is it that the Legislature is under fire from the Supreme Court for the particular answers it has given to these two political questions?

By its design, the court is supposed to ignore questions such as how much money to raise in taxes and how to spend it. Instead, it decided that the Legislature had given to a consulting firm the power to answer those questions, a power that the court had earlier ruled cannot be delegated to private sources. Ignore your constitutional role of making decisions as a political body, the court has told the Legislature; a consultant's report trumps normal political processes.

But those decisions, and the responsibility for them, cannot be delegated to the courts. Or to consulting firms.