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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

February 18, 1985

OPINION NO. 85-42

The Honorable Luther Hardin
State Senator
State Capitol
Little Rock, Arkansas 72201

HAND DELIVERED

Dear Senator Hardin:

You have requested an opinion concerning the following question as paraphrased:

"Assuming weighting for vocational technical schools, special education and gifted and talented programs are constitutional, would weighting for small schools also be legal? If not, please differentiate between the two."

In Dupree, et al. v. Alma School District No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983), the Arkansas Supreme Court was presented with the issue of constitutionality of Arkansas' statutory method of financing its public schools. Plaintiffs contended that the system violated the State constitutional guarantee of equal protection - Art. II, §2, 3 and 18 - which is consistent with the corresponding federal guarantee. Under the system scrutinized, small schools received additional State educational monies or were "weighted" for so-called phantom students. In a 6-1 opinion, the Court, in a majority opinion by Justice Hays (who is currently a member of the Court), held the State's formula distributing aid based on district size was violative of equal protection stating at page 346 that the system "has no rational bearing on the educational needs of the district."

In his concurring opinion, Justice Hickman noted:

I do not say any formula, except one based on a per pupil basis would fail legal examination, [sic] but it would certainly have a more difficult time surviving legal scrutiny. The evidence to justify any distribution, other than a per pupil basis, should be both clear and convincing.

Id. at 352. Justice Hickman is also currently a member of the Supreme Court. Thus, the Arkansas Supreme Court has clearly indicated its stance that weighting for small schools would violate state equal protection.

In the defense of the State's financing system in Dupree, supra, much testimony was presented through witnesses Sherman, Leppert, Willis, Schoppmeyer and Simpson that it costs the State significantly more per pupil to operate a very small school district. Considering that, it could be argued that the State has a rational reason for classifying small schools differently than larger ones. If the State chooses to classify one entity differently than another in a statute, its classification must bear "a rational relationship" to a legitimate purpose. The legitimate purpose of providing equal educational opportunities to Arkansas students could arguably be fulfilled by providing weighting to small schools.

However, as noted above, the Arkansas Supreme Court as currently constituted has strongly indicated it would not uphold such a practice.

It is, then, my opinion that weighting for small schools would not withstand constitutional scrutiny.

The foregoing opinion, which I hereby approve, was prepared by Deputy Chief of Staff R.B. Friedlander.

Sincerely,



STEVE CLARK
Attorney General

SC:ble