State of New Mexico
Legislative Council Service

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The Legal Theory Underlying the Public School Capital Outlay System

The *Zuni* Lawsuit

The district court found that the 1998 public school capital outlay system violated Article 12, Section 1 of the constitution of New Mexico; which provides:

> A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

Background

In 1998, school districts were largely responsible for their own capital expenses.

- Projects were funded by:
  - Voter-approved general obligations bonds with a maximum of 6% of a school district's assessed value, which is authorized and limited by Article 12, Section 11 of the constitution;
  - A voter-approved two-mil levy authorized by the Public School Capital Improvements Act, which included some state matching funds;
  - A voter-approved ten-mil levy authorized by the Public School Buildings Act; and
  - "Last resort" grant assistance for "critical capital outlay" needs pursuant to the Public School Capital Outlay Act.
- School district revenues like mil levies for operational expenses as well as federal impact aid and forest reserve aid were offset for the purpose of the SEG.
  - From Zuni's perspective, "[a]s a result of the sate attempting to equalize operational funds, it has created a disparity in the distribution of capital outlay funds". (*2nd Amended Complaint, 1998*)
- There were no limitations on direct capital outlay appropriations ("pork") for school districts.
  - "[C]ertain school districts having political clout" regularly received direct capital outlay appropriations and other school districts never received any. (*Special Master's Report, 2002*)

The Solution: Uniformity through Equity <u>or</u> Adequacy

- The court held that the 1998 system violated the constitutional requirement for "<u>a uniform system</u>" because it created "<u>substantial and impermissible disparities</u>".
- Uniformity could be achieved through one of two approaches: an "equity approach" or an "adequacy approach". (*Task Force Memorandum, 2000; Special Master's Report, 2002*)
    - An equity approach seeks "equal protection in the form of equal funding for all students"—this could mean absolute equality in funding or a minimum standard for per-pupil spending.
        - Key considerations for this approach are educational outcomes (equal spending does not guarantee equal outcomes) and local control (an equity approach could significantly infringe upon or outright eliminate local control).
        - Generally, there are three options for an equity approach:
            - the state could assume full responsibility for collecting revenues for public schools and eliminate local control altogether;
            - the state could consolidate school district tax bases to equalize per student spending; or
            - the state could require wealthier school districts to share property tax revenues with poorer districts.
    - The adequacy approach establishes minimum standards for education. Schools that lack the ability to raise sufficient funds will receive state aid to ensure compliance with minimum standards. (*Task Force Memorandum, 2000; Special Master's Report, 2002*)
        - "Such a system seeks to ensure that everyone receives a good education, rather than an equal education, and can still allow for the retention of local control".
        - Some disparities are tolerable, but substantial and impermissible disparities are unconstitutional.
        - <u>**The state's funding mechanism, however, cannot be the cause of the difference or disparity.**</u>
        - The two-prong analysis to review the constitutional integrity of an adequacy approach:
            - First, legislatively proscribed sufficiency standards are necessary: regulation of the basic physical infrastructure of school buildings, a mandate for compliance with local codes and set of minimum gross square footage requirements.
            - Second, if there are differences between district funding, the differences should be caused by a particular district's ability to exceed those standards.