



association of
ALASKA
school boards

WITH SPECIAL THANKS TO:
**THE DEPARTMENT OF EDUCATION AND
EARLY DEVELOPMENT (“DEED”).**

**LAW &
POLICY DAY**

April 28, and 29, 2022

Law & Policy Day:

MONEY MATTERS... BUT HOW?

April 28, and 29, 2022



association of
ALASKA
school boards

Map of Alaska, Yukon Territory
and British Columbia
Showing Connections of
THE WHITE PASS & YUKON ROUTE

John M. Sedor



SEDOR WENDLANDT **EVANS** FILIPPI



SEDOR

WENDLANDT

EVANS

FILIPPI

Law & Policy Day:

Education Funding in Alaska: The Baseline

April 28, and 29, 2022



association of
ALASKA
school boards

Part 1: Prior to Statehood:

Cities were required to provide Public School Services

“Every city shall constitute a school district and ... the [city shall] provide the [school district] with ... the necessary funds to maintain public schools ...”



Part 1: Prior to Statehood:

City School Boards had the power to tax to raise revenue for the schools.

ACLA 37-3-41; 37-3-25

The Territory could refund to the city a percentage of school costs from time to time.

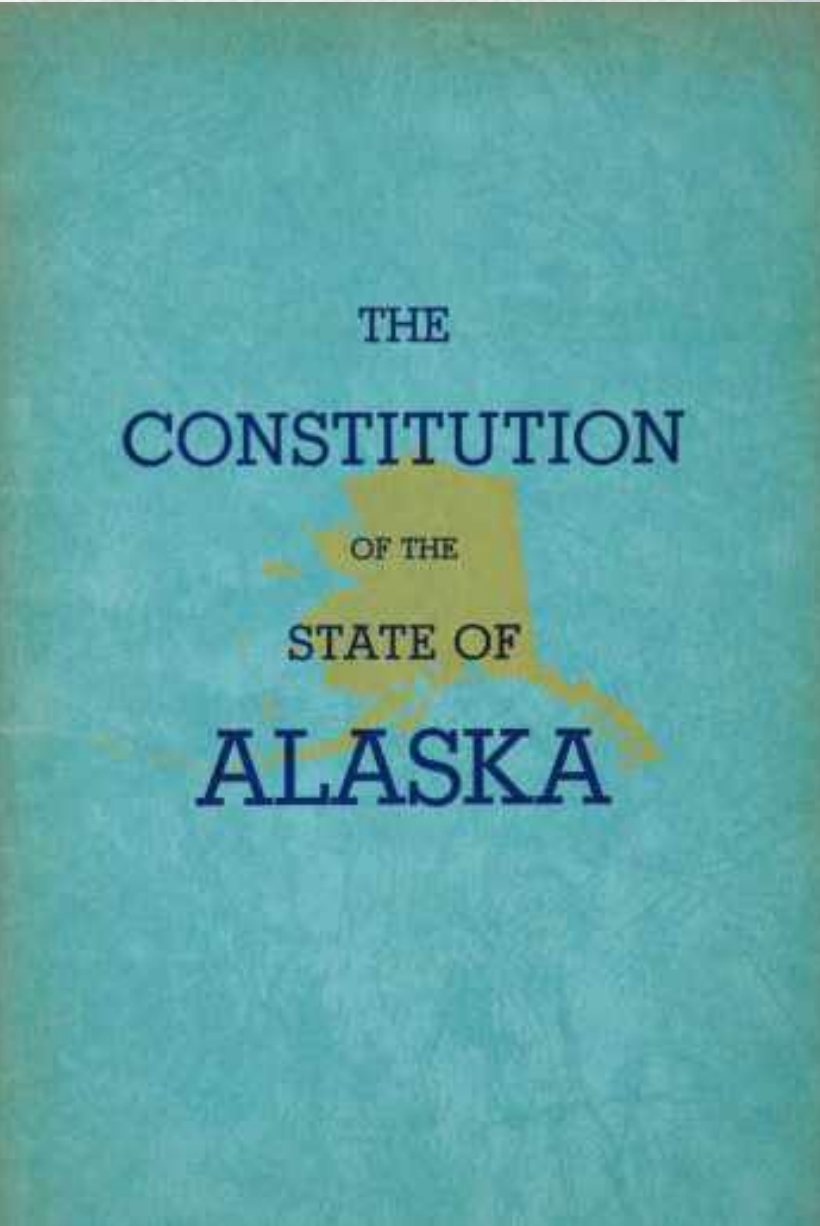
ACLA37-3-61-62.



Effective January 3, 1959

ARTICLE VII, Section 1:

“The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.” Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”

The image shows the cover of the Constitution of the State of Alaska. The cover is a light teal color with a faint map of Alaska in the background. The text is centered and reads: "THE CONSTITUTION OF THE STATE OF ALASKA".

THE
CONSTITUTION
OF THE
STATE OF
ALASKA

Part 2: The Extent of the Constitutional Obligation

KeyCite Yellow Flag - Negative Treatment
Distinguished by *State v. Planned Parenthood of Alaska, Alaska*,
November 16, 2001

536 P.2d 793
Supreme Court of Alaska.

Molly HOOTCH, minor, by her father and next
friend James Hootch, et al., Appellants,
v.
ALASKA STATE-OPERATED SCHOOL SYSTEM,
a State Corporation, et al., Appellees.

No. 2157.

May 23, 1975.

May 23, 1975

[1] Res Judicata - Class actions

Absent a determination by superior court as to maintenance as a class action on behalf of native Alaskans of secondary age to compel the state to provide secondary schools in plaintiffs' communities of residence, the final judgment was binding solely upon the named plaintiffs.

Fed.Rules Civ.Proc. rule 23, 28 U.S.C.A.

[3] Constitutional Law - Right to Education Education - Right to education in general Education - Power to establish and maintain in general

The constitutional provision that legislature shall by general law establish and maintain a system of public schools open to all children of the state imposes a duty upon the state legislature, and it confers upon Alaska school age children a right to education. Const. art. 7, § 1.

1 Cases that cite this headnote

Affirmed and remanded.

Rabinowitz, C. J., dissented and filed opinion.

Erwin, J., did not participate

The Constitutional Tension: “Open to All?”



Accessibility

Uniformity

Hootch Legal Conclusions:

1. In Alaska, there is pervasive state authority in education.

Part 3: What Is the

Financial Role of Local

2. Children have a constitutional right to public education.

Communities and

3. The constitutional right does not include the right to attend secondary school in the community of residence.

Education?

4. Facts matter.

366 P.3d 86
Supreme Court of Alaska.

STATE of Alaska, Michael Hanley, Commissioner of Alaska Department of Education and Early Development, in his official capacity, Appellants and Cross-Appellees,

v.

KETCHIKAN GATEWAY BOROUGH, Agnes Moran, an individual, on her own behalf and on behalf of her son, John Coss, a minor, John Harrington, an individual, and David Spokely, an individual, Appellees and Cross-Appellants.

Nos. S-15811, S-15841.

Jan. 8, 2016.

Synopsis

Background: After making its contribution to fund local school district, borough brought suit against state asking the superior court to declare the required local contribution unconstitutional, to enjoin the state from requiring the borough to comply with the statute, and, to direct the state to refund its protested \$4.2 million payment. Both parties moved for summary judgment. The Superior Court, First Judicial District, Ketchikan, William B. Carey, J., partially granted borough's motion. State appealed and borough cross-appealed.

Holdings: The Supreme Court, Bolger, J., held that:

⁽¹⁾ as a matter of first impression, local school funding formula was not a state tax or license within meaning of state constitutional prohibition against dedicated taxes, and

⁽²⁾ required local contribution did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution.

Reversed and remanded.

Stowers, C.J., concurred and filed opinion.

Winfrey, J., concurred and filed opinion.

Procedural Posture(s): On Appeal; Motion for Summary

West Headnotes (6)

[1] **Appeal and Error**—De novo review

Supreme Court reviews a grant or denial of summary judgment de novo.

1 Cases that cite this headnote

[2] **Appeal and Error**—Standard of review in general

Questions of interpretation of a statute, are reviewed de novo by the Supreme Court on summary judgment.

5 Cases that cite this headnote

[3] **Appeal and Error**—Standard of review in general

On appeal, the Supreme Court adopts the rule of law that is most persuasive in light of precedent, reason, and policy.

3 Cases that cite this headnote

[4] **Constitutional Law**—Presumptions and Construction as to Constitutionality
Constitutional Law—Burden of Proof

Supreme Court presumes statutes to be constitutional, and the party challenging the statute bears the burden of showing otherwise.

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Appeal and Error—Statutory or legislative law

Questions of constitutional and statutory interpretation, including the constitutionality of a statute, are questions of law to which the Supreme Court applies its independent judgment.

5 Cases that cite this headnote

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Required Local Contribution ("RLC")

in the term "state tax or license." These factors distinguish this case from previous cases where we found that state funding mechanisms violated the dedicated funds clause. We therefore hold that the existing funding formula does not violate the constitution, and we reverse the superior court's grant of summary judgment.

II. FACTS AND PROCEEDINGS

A. School Funding Formula

Article VII, section 1 of the Alaska Constitution requires the state legislature to "establish and maintain a system of public schools" open to all children in the state.⁸⁸ To fulfill this constitutional mandate, the legislature has defined three types of school districts according to where the district is located: city school districts, borough school districts, and regional education attendance areas.⁸⁹ "[E]ach organized borough is a borough school district"; a borough must "[m]aintain [and] operate [] a system of public schools on an areawide basis." Local school boards manage and control these school districts under authority delegated by AS 14.12.020. This statute requires local borough and city governments to raise money "from local sources to maintain and operate" their local schools.⁹⁰

The school funding formula begins with the concept of "basic need." This concept is intended to equalize districts by providing them with needed resources, taking into account differences among districts.⁹¹ A statutory formula determines a district's basic need based on two variables: the district's adjusted average daily membership and the statewide base student allocation.⁹² The district's adjusted average daily membership accounts for several metrics such as enrollment, school size, relative costs in the district, the number of students with special needs, and the number of correspondence students.⁹³ The base student allocation is a per-student allowance set by a statute that the legislature periodically revisits.⁹⁴

To fulfill this basic need, districts receive "state aid, a required local contribution, and eligible federal impact aid."⁹⁵ State aid comes from the "public education fund," to which the legislature allocates funds annually.⁹⁶ The amount of state aid that a district receives is based on three variables: the district's "basic need," the district's required local contribution (if any), and the district's

amount of state aid calculated under AS 14.17.410, then the State must reduce each district's basic need on a pro rata basis.⁹⁷

The required local contribution offsets the amount of state aid provided to satisfy a district's basic need.⁹⁸ Satisfying the local contribution requires a local community to contribute an amount that falls within a statutory range that reflects the value of taxable real and personal property located within the district.⁹⁹ At minimum the contribution *\$9 must equal the "equivalent of a 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year."¹⁰⁰ The State, however, cannot require an organized borough or city to contribute more than "45 percent of a district's basic need for the preceding fiscal year."¹⁰¹ A city or borough school district also may make a voluntary contribution, but a statutory cap prevents a local community from contributing more than the greater of the "equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district" or "23 percent of the total of the district's basic need for the fiscal year."¹⁰² Thus, under the current framework, organized boroughs and cities work together with the State to support public schools.

B. Prior Proceedings

Ketchikan Gateway Borough is an organized borough that must annually contribute to fund its schools under AS 14.12.020.¹⁰³ The required payment, set by the school funding formula,¹⁰⁴ supports the Ketchikan Gateway Borough School District. In 2013, the district's "basic need" for the upcoming 2014 fiscal year was almost \$26 million; the required local contribution was about \$4.2 million. Though the Borough contributed this amount "under protest," it voluntarily contributed an additional \$3.8 million. After contributing the funds, the Borough brought suit against the State, asking the superior court, first, to declare the required local contribution unconstitutional; second, to enjoin the State from requiring the Borough to comply with the statute; and, third, to direct the State to refund its protested \$4.2 million payment. Both parties moved for summary judgment.

The superior court partially granted the Borough's motion. It agreed with the Borough that the required local contribution violated the dedicated funds clause under article IX, section 7 of the state constitution. The dedicated funds clause provides:

The Role of the City or Borough In Education Funding

Local school boards manage and control these school districts under authority delegated by AS 14.12.020. This statute requires local borough and city governments to raise money "from local sources to maintain and operate" their local schools.

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The Role of the City or Borough In Education Funding

Today's statutory program for funding local public schools falls squarely within the type of state-local cooperative programs the delegates sought to exempt from the constitutional prohibition on dedicated funds. We therefore conclude that the existing school funding formula does not violate the dedicated funds clause.

article IX, section 7.¹⁰⁴ In doing so, we recognized that a statute can impermissibly dedicate funds in various ways: A statute could require the legislature to use funds only for a specified purpose or, as in *Sonneman*, the statute could preclude agencies from requesting an appropriation for a given purpose.¹⁰⁵

But *Sonneman* does not control our decision here either. Nothing in *Sonneman* suggests that the restriction on executive authority over marine highway revenue existed before statehood. And, unlike the school funding formula at issue here, in *Sonneman* we did not consider a state-local cooperative program in which local communities and the State share responsibility for providing a local public service.

d. *Myers v. Alaska Housing Finance Corp.*

Another ten years passed before we again considered the dedicated funds clause. In *Myers v. Alaska Housing Finance Corp.*, we upheld a legislative scheme for selling anticipated future state revenue from a settlement against tobacco companies so that it could fund rural school improvements.¹⁰⁶ The legislature accomplished the scheme in three steps: First, the legislature deemed the State's right to future settlement payments to be an asset.¹⁰⁷ As with other assets, the State could sell the future settlement payments for a lump sum amount that reflected the present value of the anticipated revenue stream.¹⁰⁸ Second, the legislature issued \$100 revenue bonds secured by the estimated present value of the settlement.¹⁰⁹ Finally, the legislature then appropriated a portion of the bond proceeds to fund the necessary school improvements.¹¹⁰

Though the tobacco settlement fell within the scope of the dedicated funds clause and though the scheme dedicated future state revenue, we concluded that the scheme was constitutional.¹¹¹ We explained that unlike *Alex* and *Sonneman*, which clearly dealt with the allocation of future revenues, the revenue allocation scheme in *Myers* was different.¹¹² The scheme in *Myers* reduced future revenue to present value and used that value to secure bonds, the proceeds of which would be dedicated to fund school improvements that year.¹¹³

we returned to the dedicated funds clause when we struck down an act that transferred state land to the University of Alaska and then directed that income derived from that land be held in trust for the University.¹¹⁴ Before concluding that the act was unconstitutional, we engaged in a two-part inquiry. First, we concluded that proceeds from the land were within the scope of the clause's reference to "proceeds of any state tax or license."¹¹⁵ In doing so, we reiterated our warning in *Alex* that the "constitution prohibits the dedication of any source of revenue."¹¹⁶ And we explained that, unlike *Myers*, the act did not contemplate a non-recurring appropriation, which as in *Myers* would have been permissible under the clause.¹¹⁷

Second, we considered whether the University was exempt from the dedicated funds prohibition by virtue of an implied exception under article VII, section 2 of the *Alaska Constitution*, which authorized the University to hold title to real property.¹¹⁸ In rejecting this argument, we explained that our case law establishes that University lands are state lands over which the State retains authority regardless of whether the University holds title.¹¹⁹ As a result, all revenue from University land is state revenue subject to the clause.¹²⁰

Southeast Alaska Conservation Council did not rule out the possibility that we might find other statutes exempt from the dedicated funds clause. Like the other cases in this line, it did not address a longstanding cooperative program, like the school funding program, in which local governments and the State share responsibility for providing a local public service. Such programs do not violate the dedicated funds clause.

Here we are asked for the first time whether local contributions to longstanding cooperative programs in which the State and local governments share funding responsibility run afoul of the dedicated funds clause. The minutes of the constitutional convention and the historical context of those proceedings reveal that the delegates did not intend for required local contributions to such programs to be included in the term "state tax or license."¹²¹ Today's statutory program for funding local public schools falls squarely within the type of state-local cooperative programs the delegates sought to exempt from §101 the constitutional prohibition on dedicated funds. We therefore conclude that the existing school funding formula does not violate the dedicated funds clause.

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Part 4: Is “Full Funding” of Education Constitutionally Required?

Must there be MORE money?

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KRISTINE MOORE and GREGORY MOORE, for themselves and as the parents or guardians of their minor children, JASON EASTHAM, SHANNON MOORE and MALLORY MOORE; MIKE WILLIAMS and MAGGIE WILLIAMS, for themselves and as the parents of their minor daughter, CHRISTINE WILLIAMS; MELVIN OTTON and ROSEMARY OTTON, for themselves and on behalf of their minor children, HELENA OTTON, FREDERICK OTTON and BENJAMIN OTTON; WAYNE MORGAN and MARTHA MORGAN, for themselves and as parents of their minor children, WAYNE MORGAN II, PATRICK MORGAN, RILEY MORGAN, and SKYE MORGAN; JERRY S. DIXON, on behalf of himself and as the father of KIPP DIXON and PYPYR DIXON, minors; the YUPIIT SCHOOL DISTRICT; the BERING STRAIT SCHOOL DISTRICT; the KUSPUK SCHOOL DISTRICT; NEA-ALASKA, INC.; and CITIZENS FOR THE EDUCATIONAL ADVANCEMENT OF ALASKA'S CHILDREN, INC.,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

Case No. 3AN-04-9756 Civil

DECISION AND ORDER

MOORE

VS.

STATE

June 21, 2007

457. Dr. Guthrie did not address whether students in Alaska are actually being provided with a realistic opportunity to achieve the State's expectations, nor did he address the State's role with respect to those schools or districts in which a substantial majority of the children did not appear to be achieving the State's standards, based on the test scores and other data available.

VII. The Status of the State's Current Role in Education

A. Is more funding needed?

458. Based on all of the evidence presented at this trial, this Court finds that the Plaintiffs have failed to demonstrate that the State of Alaska is inadequately funding public education for its children at this time.

459. The Court does find, based upon consideration of all the evidence, that there are at least a few schools within this state in which children are not being accorded an adequate opportunity to receive basic instruction in the subjects tested by the State: reading, writing, math, and sciences. Clearly, as former Commissioner Covey acknowledged, "we have a very serious issue" with student achievement at some schools in the state. And based on the substantial evidence presented in this proceeding, this Court agrees with his conclusion that "we cannot buy our way out of the problem." [Tr. 3637]

460. Likewise, former Commissioner Shibley Holloway testified persuasively: "[I]f money were the answer, we had it on the North Slope. If

Findings of Fact:

458. Based on all of the evidence presented at this trial, this Court finds that the Plaintiffs have failed to demonstrate that the State of Alaska is inadequately funding public education for its children at this time.

And based on the substantial evidence presented in this proceeding, this Court agrees with his conclusion that "we cannot buy our way out of the problem."

money were the silver bullet, we would have nailed it ... It's just far more complex than just having money." [Tr. 3420]

461. Commissioner Sampson also testified in this regard: "My belief is that money was not the predictor of student performance." [Tr. 2384] The Commissioner further stated:

[W]e have examples of many schools in many districts where children are excelling from all of our ethnic groups. They're – they're getting similar resources, similar assistance from the department, they're operating under the same performance and content standards, the same assessment system. There's – there's many factors beyond just identifying the standards and funding that's making a difference on whether students reach proficiency or not.

[Tr. 2438]

462. The State has proven by a preponderance of the evidence that it is adequately funding education for school children within the State of Alaska. The evidence fully supported the testimony of Commissioner Sampson in this regard, who stated he believes the State is:

very adequately funding education. That is not to say that I don't support additional funding for K-12. I do. What I don't support is a blanket increase in funding. I'm absolutely a champion for targeted specific funding that we know is either new and has potential to give us great results or something that is already proven that more want to replicate, but just to add more money without targeting where the money goes, we spend a tremendous amount of money, we have tremendous challenges. There's enough money there to educate our kids well, but we have to stop doing things that are hard to change, that aren't getting us a return for our investment for kids.

[Tr. 2441-42]

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[Tr. 2441-42]

Conclusions of Law

Based upon consideration of the Findings of Fact and the Legal Analysis as set forth herein, this Court enters the following:

CONCLUSIONS OF LAW

I. *The Education Clause*

1. The Alaska Constitution requires that the Legislature "establish and maintain a system of public schools." Art. VII, § 1. The primary question in this case – whether the public education system in Alaska is constitutionally adequate – can not be framed solely in terms of funding, but must also address the opportunity for children to obtain an education. Funding is just one component of the State's public school system.

2. The Legislature has the ultimate responsibility and plan power over the education of Alaska's children. Macauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971). It has chosen to delegate that responsibility in large part to the local school districts operating throughout the state. Certainly, the Legislature has the authority to delegate this important responsibility, so long as it establishes adequate standards to guide the local districts. See, e.g., Heron v. State, 22 P.3d 895, 903 (Alaska 2001). However, the Legislature retains the constitutional "responsibility and the authority" to maintain the schools in the state. Macauley, 491 P.2d at 122.

3. In addition to delegating the operation of schools to the local school districts, the Legislature has delegated supervision of education to the executive branch, through the creation of the State Board of Education and the

I. *The Education Clause*

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students at constitutionally inadequate schools can be addressed as needed at further proceedings. Of relevance could be the extent of any remedial services offered to students in the interim who have not yet passed the exam.

CONCLUSION

The Education Clause of Alaska's Constitution provides that "The legislature shall by general law establish and maintain a system of public schools open to all children of the State."

For the reasons set forth in this decision, this Court finds that the State of Alaska's funding of public education fully comports with the Education Clause. The Plaintiffs' claims with respect to inadequate funding are, accordingly, dismissed.

However, this Court has found that the State has violated the Education Clause in one significant respect. Although the State may delegate its responsibility to maintain public schools to local school districts, as it has done, it has failed to exercise adequate supervision and oversight. Specifically, it has failed to identify those schools within the state that are not according to children a meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to the other content areas in the State's educational standards. And as to those schools that are deficient in that regard, the State has failed to provide adequate supervision and oversight in a concerted effort to remedy that situation.

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Local District Expenditure Decisions

286. Cynthia Reilly was called as a witness on behalf of the State. Ms. Reilly was the business manager at Yupiit for approximately five years until June 2006. [Tr. 3520-21]

287. Ms. Reilly testified that in her view, "there were sometimes [funding] decisions made that had other priorities besides the classroom ... Maybe cultural ma...

288. A comparison of Yupiit's operating budget between FY 2004 and FY 2006, demonstrates the following:

- Total revenue over this two-year period increased from \$6.2 million to \$7.48 million -- a total of nearly \$1.5 million -- due primarily to increased funding from the State of Alaska.
 - During that time, the amount spent on instruction by the district increased only \$102,000 - from approximately \$2.69 million to \$2.79 million.
 - During that same three-year time frame, spending for administration at the school sites decreased about 4.9%.
-
- Meanwhile, spending at the district office for administration and administration support increased over 37% during that same time period -- from \$448,694 to \$616,656 - an increase of over \$160,000 - an amount considerably greater than the dollar amount increase spent for instruction.

period -- from \$448,694 to \$616,656 -- an increase of over \$160,000

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For the reasons set forth in this decision, this Court finds that the State of Alaska's funding of public education fully comports with the Education Clause. The Plaintiffs' claims with respect to inadequate funding are, accordingly, dismissed.

However, this Court has found that the State has violated the Education Clause in one significant respect. Although the State may delegate its responsibility to maintain public schools to local school districts, as it has done, it has failed to exercise adequate supervision and oversight. Specifically, it has failed to identify those schools within the state that are not according to children a meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to the other content areas in the State's educational standards. And as to those schools that are deficient in that regard, the State has failed to provide adequate supervision and oversight in a concerted effort to remedy that situation.

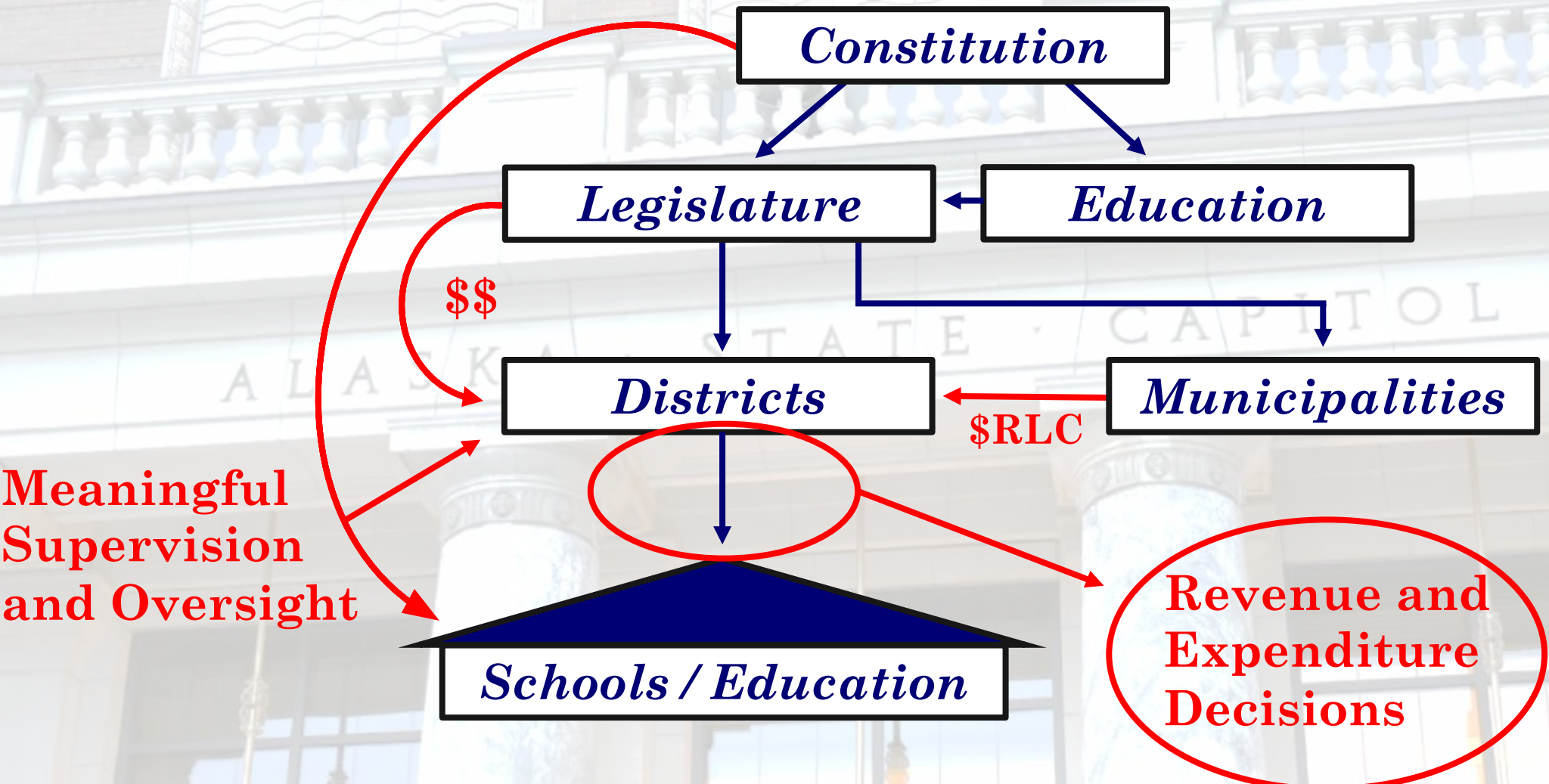
Conclusions of Law

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Whether there is adequate funding cannot be considered in the absence of analyzing spending decisions...

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Flow Chart Review:







The End