January 29, 2018

Honorable Sam Brownback  
Governor of Kansas  
State Capitol – 2nd Floor  
Topeka, Kansas 66612

Honorable Jeff Colyer  
Lieutenant Governor  
State Capitol – 2nd Floor  
Topeka, Kansas 66612

Honorable Susan Wagle  
President of the Senate  
State Capitol – 3rd Floor  
Topeka, Kansas 66612

Honorable Ron Ryckman Jr.  
Speaker of the House  
State Capitol – 3rd Floor  
Topeka, Kansas 66612

Honorable Anthony Hensley  
Senate Minority Leader  
State Capitol – 3rd Floor  
Topeka, Kansas 66612

Honorable Jim Ward  
House Minority Leader  
State Capitol – 3rd Floor  
Topeka, Kansas 66612

Honorable Jim Porter  
Chairman, State Board of Education  
900 S.W. Jackson Street  
Topeka, Kansas 66612

Honorable Randy Watson  
Commissioner of Education  
900 S.W. Jackson Street  
Topeka, Kansas 66612

Dear State Leaders:

A recent Performance Audit Report1 published by the Legislative Division of Post Audit (the “Audit Report”) made the following findings related to the distribution of transportation aid by the Kansas State Department of Education (KSDE):

"State law does not include a minimum funding level for transportation, and it does not give KSDE the authority to create one. The original transportation funding formula which was passed in 1965 did include provisions for a minimum funding level, but this minimum was removed by the Legislature in 1973. Since then, statute has not included a provision for a minimum funding amount, nor has it authorized KSDE to implement one.

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“KSDE officials told us they continued adding a minimum funding level because some legislators had requested it in previous years. KSDE officials told us they were aware that a minimum funding level for high-density districts was not part of the funding formula. However, they maintained the minimum at the request many years ago of several legislators to provide additional funding to large, high density school districts. Although this request may have been made, state law does not allow for it.”

The auditors concluded that “[o]ver the past five years, KSDE’s minimum funding level has provided a total of $45 million more in transportation funding than allowed by law.”

As the State’s counsel in *Gannon v. Kansas*, my office has an obligation to represent accurately to the Kansas Supreme Court both the structure and implementation of the Kansas system for funding public schools. The Audit Report’s findings call into question the implementation of transportation aid provisions of the school finance formula. While matters related to the Legislature’s confidence in KSDE personnel and processes are for the Legislature and KSDE to resolve, as Attorney General I am concerned about the substance of the Audit Report’s findings that KSDE distributes public funds in a manner not authorized by state law. Thus, I encourage all involved to stay focused on the important legal and policy issues raised by the Audit Report.

I am confident each of you shares the view that every public official who has taken an oath to uphold our Kansas Constitution, and thus the laws made pursuant thereto, must be committed to learning what enabled this unauthorized expenditure to occur and to preventing its recurrence. I trust you also want to know whether unauthorized expenditures are limited to transportation aid. For those reasons, I recommend you coordinate efforts to obtain a single, independent financial audit to determine whether these unauthorized transportation expenditures were an isolated departure from the law or part of a more systemic problem.

It appears at least three options are available to obtain such a comprehensive, independent financial audit:

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3 *Id.*


5 The Kansas Constitution commands that “No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law.” Kan. Const. Art. 2, Sec. 24. But the Audit Report found that $45 million in transportation aid not authorized by law was, in fact, drawn from the treasury over the past five years.

6 In its response to the Audit Report, KSDE indicated it will implement the recommendation to conform its transportation aid distribution to state law effective with the 2018-19 school year. That delay was recommended by the Legislature’s auditors.
1. The Legislative Post Audit Committee, upon request of any legislator or of the governor, may authorize such an audit pursuant to the Legislative Post Audit Act, K.S.A. 46-1101 et seq.;

2. The State Board of Education may authorize such an audit and/or the Department of Education may contract for such an audit;

3. The Legislature may enact new legislation specifically requiring such an audit.

In the interest of accuracy and consistency, I recommend a coordinated approach among the Legislature, the State Board of Education and the Commissioner of Education to obtain a single, independent audit in order to provide accurate information. Launching multiple, uncoordinated reviews would risk subsequent, potentially unproductive arguments about any differences in their respective approaches or conclusions. Particularly in light of the pending school finance litigation, a coordinated effort seems more prudent.

Thank you for your consideration.

Sincerely,

[Signature]

Derek Schmidt
Kansas Attorney General