



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

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TO Members, Joint Revenue Committee
Members, Select Committee on School Facilities

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SUBJECT School Finance: Constitutional Duties, Powers, and Approaches

I. Introduction

This memorandum discusses the Legislature's constitutional duties regarding school finance as well as its constitutional authority to fund schools. It also provides a general overview of possible approaches that the Legislature may consider in exercising that authority. This memorandum does not address the amounts generated by various potential sources of revenue. That information has been provided to the Revenue Committee by LSO fiscal staff.

II. Legislature's Constitutional Duties and Powers Regarding School Finance¹

Under the Wyoming Constitution, the Legislature "shall make such further provision *by taxation or otherwise*, as with the income arising from the general school fund will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state."² The Wyoming Supreme Court stated that the Legislature wields an "apparent unlimited power" under the state Constitution in making such further provision by taxation or otherwise to fund schools.³

III. Approaches to Funding Schools

The Legislature's primary approach to funding the operation of schools has been through property taxation. Approximately 75% of school district funding for the 2015-16 school year was generated by property tax revenue, about 60% of which stemmed from mineral production. The 75% figure does not take into consideration school capital construction, which is primarily

¹ It should be disclaimed that a number of the Wyoming Supreme Court's statements contained in this memorandum may be considered dicta because the statements regarded issues not directly before the Court. Therefore, courts may or may not consider themselves to be bound by such statements.

² Wyoming Constitution Article 7, Section 9 (emphasis added).

³ *Washakie Cty. Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 320-21 (Wyo. 1980).

funded by coal lease bonus revenue. Nevertheless, the Legislature may take other approaches, or combination of approaches, in exercising its constitutional authority to adequately fund schools.

The following is an overview of possible approaches, as well as any limitations, that the Legislature may consider to fund schools:

1. Taxation

The Legislature has broad taxing authority to fulfill its constitutional duty to support and maintain the statewide system of schools. The Legislature may levy any tax so long as the tax has a proper purpose and is authorized by a law enacted within the confines of any constitutional limitations.⁴

With respect to mill levies, the *Campbell II* court stated:

The Wyoming Constitution does not prohibit the state from imposing a statewide mill levy taxation level for capital construction, nor does it limit the number of mills that can be levied for such a fund. It merely requires that it be uniform. Nothing in the state constitution prevents the legislature from raising the entire amount needed...for capital construction by enacting statutes imposing a new category of statewide mill levy for capital construction at whatever level is required to raise the desired amount of money, and, if it so desires, the legislature can act within any time frame including raising all funding in a single year.⁵

Based on this reasoning, coupled with that of the Court in *Washakie*, it seems that the Legislature may raise revenue for all school-related purposes through a necessary statewide mill levy without any apparent constitutional limitations on the number of mills that can be levied, other than Article 15, Section 11's proviso that any property tax must be "uniform" and "just."

In levying property taxes for school support, the Legislature should be mindful of the following constitutional provisions:

- As stated in *Washakie*, under Article 7, Section 9 the Legislature possesses an "apparent unlimited power" to fund schools whereby "the legislature shall make such further provisions *by taxation or otherwise*, as with the income arising from the general school fund will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state."

⁴ Wyoming Constitution Article 15, Section 13. *See also* THOMAS COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION, pp. 746-47 (Univ. Press 7th ed., 1871), *available at* <https://ia800301.us.archive.org/5/items/treatiseonconsti00coolrich/treatiseonconsti00coolrich.pdf>. Article 15, Section 16 of the Wyoming Constitution, for example, requires that fuel tax revenue be expended only for costs related to highways and roads.

⁵ *Campbell II*, 19 P.3d 518, 560-561 (Wyo. 2001) (internal citations omitted).

- Pursuant to Article 15, Section 4, "[f]or state revenue, there shall be levied annually a tax not to exceed four mills *except for the support of state educational and charitable institution...*" (emphasis added).
- Under Article 15, Section 15: "For the support of the public schools in the state there may be levied each year a state tax not exceeding twelve mills on the dollar of the assessed valuation of the property in the state."⁶
- Article 15, Section 17 provides: "There shall be levied each year in each county of the state a tax of not to exceed six (6) mills...of the assessed valuation of the property in each county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer and disbursed among the school districts within the county as the legislature shall provide. The legislature may authorize boards of trustees of school districts to levy a special tax on the property of the district. The legislature may also provide for the distribution among one (1) or more school districts of any revenue from the special school district property tax in excess of a state average yield, which shall be calculated each year, per average daily membership."⁷
- Article 15, Section 5 provides: "For county revenue, there shall be levied a tax not to exceed twelve mills for all purposes including general school tax, exclusive of state revenue."
- Article 7, Section 9 apparently justifies the 25-mill school district tax under W.S. 21-13-102 even though there is no specific authority for this tax in the Wyoming Constitution.⁸
- Article 15, Section 11(d) states: "All taxation shall be equal and uniform within each class of property. The legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."
- Under Article 15, Section 13: "No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied."

2. Appropriations

Appropriating funds is the "pay as you go" approach. The Legislature may appropriate available funds, under the terms and conditions it specifies, to fund costs related to schools.⁹ Appropriations may include existing revenues as well as any new revenue sources that the

⁶ W.S. 21-13-303 implements Article 15, Section 15's provisions.

⁷ W.S. 21-13-201 implements Article 15, Section 17's provisions.

⁸ *Washakie*, *supra* note 3, at 322.

⁹ *See also* Wyoming Constitution Article 7, Section 2.

Legislature chooses to specify. In addition to a direct appropriation of a set dollar amount of funds from existing accounts, the Legislature could redirect numerous sources of “earmarked” funds.¹⁰ Of course that redirection means a reduction in funding to the current recipient. This memorandum does not further address redirection of current revenue streams, other than to note this option.

3. Bonding

The issuance of bonds, general obligation or revenue, is the “pay later” approach. General obligation bonds are paid by pledging future tax revenues.¹¹ Revenue bonds are paid by pledging future non-tax revenues. Each type of bond has its own legal requirements and limitations.

(a) General Obligation Bonds

General obligation bonds create debt in the constitutional use of that term because there is the present legal potential that the issuing governmental entity will have to exercise its power to tax to pay such bonds.¹² Thus, the issuance of state general obligation bonds triggers the State's debt limit under Article 16, Section 1 of the Wyoming Constitution, which prohibits the State from creating debt in excess of 1% of the total statewide assessed property valuation as shown by the last general assessment. The last certified total statewide assessed valuation was \$26,057,281,969.¹³ The current 1% general obligation limit, then, is \$260,572,819.69. The issuance of state general obligation bonds also triggers Article 16, Section 2's election requirement.¹⁴

(b) Revenue Bonds

Revenue bonds entail payment pledges that do not create debt in the constitutional use of that term because there is no present legal potential that the issuing governmental entity will have to exercise its power to tax to pay such bonds.¹⁵ Revenue bondholders can seek repayment only from pledged revenue sources. The issuance of state revenue bonds, therefore, does not trigger Article 16, Section 1's debt limitation or Section 2's election requirement. Non-tax state revenue sources that are available to pledge include federal mineral royalties and lease bonus payments as well as earnings from investments, e.g., a pledge of general fund revenues from the Permanent Mineral Trust Fund or a pledge of earnings from the corpus of other permanent land fund accounts, if the earnings are not constitutionally dedicated to another use.

¹⁰ The LSO Budget and Fiscal Data Book shows the distribution of a number of major revenue streams that could be redirected. It is available at <http://legisweb.state.wy.us/budget/2015databook.pdf>.

¹¹ Property tax revenue is the most traditional means of paying off general obligation debt.

¹² *State ex rel. Wyo. Farm Loan Bd. v. Herschler*, 622 P.2d 1378, 1387 (Wyo. 1981).

¹³ CONSENSUS REVENUE ESTIMATING GROUP, REVENUE FORECAST FISCAL YEAR 2016 TO FISCAL YEAR 2020, Table 9, available at http://eadiv.state.wy.us/creg/GreenCREG_Oct15.pdf.

¹⁴ W.S. 22-21-201 specifies the process for state general obligation bond elections.

¹⁵ *Wyo. Farm Loan Bd.*, *supra* note 12.

Pursuant to existing statute, the School Facilities Commission may issue up to \$100 million in revenue bonds for school capital construction purposes.¹⁶ These bonds are funded by up to \$8 million in state mineral royalties that would otherwise be deposited into the School Capital Construction Account (SCCA).¹⁷ After available state mineral royalties have been pledged, any investment income from the Common School Account, which would otherwise be distributed to the School Foundation Program (SFP), shall also be pledged, as necessary, to pay these bonds.¹⁸ Additional revenue sources must replace any revenues diverted from the SCCA or SFP to guarantee payment of revenue bonds issued for school capital construction purposes.

(c) Bonding and Property Leasing

A government can generate revenue by bonding through a third-party nonprofit entity whereby the government transfers property to that entity, which finances the transfer by issuing special obligation bonds. The nonprofit entity then leases the property back to the government. The government's lease payments are used to pay the bonds. Such leasing does not create any debt in the constitutional use of that term because the government has the right to cancel the lease at any time. W.S. 21-15-112 and W.S. 21-15-119(a)-(b) contain the procedures and requirements for this type of leasing with respect to school facilities.¹⁹

IV. Additional Considerations or Limitations

1. Optional Mill Levies

The Wyoming Supreme Court has held that optional local mill levies imposed to fund statewide education system requirements are generally unconstitutional because they engender wealth-based disparities among school districts.²⁰ According to the *Campbell* cases, the State is charged with funding the statewide school system requirements necessary to deliver the "full basket of goods" to students.²¹

In *Campbell I* the Court declared unconstitutional a school finance scheme under which school districts could levy three mills for operations and three mills for maintenance.²² Such mills were

¹⁶ W.S. 21-15-108(b). This authority has never been exercised for purposes of funding the State's obligation for school construction or operations.

¹⁷ See W.S. 21-15-108(a); W.S. 9-4-305(b).

¹⁸ See W.S. 21-15-108(a); W.S. 21-13-301.

¹⁹ This authority has never been exercised for purposes of funding the State's obligation for school construction or operations.

²⁰ *Campbell I*, 907 P.2d 1238. School districts may levy optional mills to fund "local enhancements," as defined under W.S. 21-15-111(a)(iii). *Id.* at 1274; W.S. 21-13-701(b) ("It is the intention of the legislature that school districts be empowered to create indebtedness under this section for any purpose which, directly or indirectly, enables the district to provide facilities which are *in excess of the statewide standards* for the adequacy of school buildings and facilities.") (emphasis added). The funding available through revenue raised and expended at the local school district level in excess of the State's obligation is not addressed in this memorandum, which reviews statewide revenue options.

²¹ See *Campbell II*, *supra* note 5, at 527.

²² *Campbell I*, *supra* note 20, at 1249.

outside of the SFP, and did not reduce a district's state entitlement.²³ Even though the State would "power equalize" one operations mill and one maintenance mill levied in poorer districts by raising them to the statewide average assessed valuation per average daily membership, the Court found such power equalization did not eliminate wealth-based disparities. By way of example, the Court cited how a "power-equalized" mill in Laramie County School District #1, which raised the mill's value from \$19.14 per student to \$64.55 per student, was still worth nearly \$100 per student less than a mill levied in Carbon County School District #1.²⁴

Campbell II reaffirms that optional mills are generally unconstitutional. The *Campbell II* court held unconstitutional local bonding indebtedness levies which served as the primary funding source for school capital construction projects. The Court found that funding school capital construction through local bonding indebtedness levies created wealth-based disparities because school districts did not uniformly impose such levies, while the districts that did impose them generated disparate amounts of revenue to fund school capital construction projects.²⁵

2. Mill Levy Supplements

Before it was repealed by 2014 Wyoming Session Laws, Chapter 15, Section 1, W.S. 21-15-105 permitted school districts to apply to the Department of Education to receive a mill levy supplement for bonds issued on or before February 23, 2001 and for refunds of those bonds issued prior to April 1, 2010. To qualify for a mill levy supplement, districts were required to fall below 150% of the statewide average assessed valuation per average daily membership, notwithstanding the first two mills. School districts were then required to decrease their current year mill levy to reflect the supplement.

²³ *Id.*

²⁴ *See id.* at 1269.

²⁵ *Campbell II*, *supra* note 5, at 560.