

Final Minutes

Legislative Commission on Statutory Mandates Meeting

2:00 p.m. • Wednesday, April 9, 2008
Room 424 • State Capitol Building
100 N. Capitol Avenue • Lansing, Michigan

Members Present:

Amanda Van Dusen, Chair
Robert Daddow, Co-Chair
Ralph "Skip" Maccarone
J. Dallas Winegarden, Jr.

Members Excused:

Dennis Pollard

I. Call to Order

The Chair called the meeting to order at 2:00 p.m. and the clerk took the roll. A quorum was present.

II. Approval of the Agenda

The Chair asked for a motion to approve today's meeting agenda. **Mr. Daddow moved, supported by Mr. Winegarden, to approve the April 9, 2008 agenda. There was no further discussion. The minutes were unanimously approved.**

III. Approval of Minutes – March 26, 2008 Meeting

The Chair asked for a motion to approve the minutes of the last Legislative Commission on Statutory Mandates meeting. **Mr. Daddow moved, seconded by Mr. Winegarden, to approve the minutes of the March 26, 2008 meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Presentation by Doug Drake, Public Policy Associates, Inc.

The Chair began with an introduction of Mr. Doug Drake, a senior policy consultant with Public Policy Associates, Inc. She thanked him for his willingness to come before the Commission to provide a historical perspective of what the State has done to comply with the Headlee amendment and to share some insight based upon his involvement with the implementing legislation, Public Act 101. After the presentation, Mr. Drake responded to questions from the Commissioners.

V. Report on Adair – Richard Kroopnick, Thrun Law Firm

In the absence of Commissioner Pollard, the Chair called on Mr. Richard Kroopnick of the Thrun Law Firm to provide an update on the status of and the insight to be gained by the Adair litigation. Mr. Kroopnick provided the members with a handout which is attached to these minutes. He proceeded with a chronology of the legal proceedings and provided a brief overview of the opinion of the Special Master that was released in February 2008.

VI. Status of Surveys by Associations

The Chair offered the representatives of the associations who were present at today's meeting the opportunity to ask questions or seek clarification of what they have been asked to do in regards to the compilation of their list of up to ten top mandates. Representatives of the Michigan Townships Association, Michigan Association of Counties, Michigan Association of School Boards, Michigan Municipal League, and Michigan Community Colleges provided a status update of their efforts to survey their membership.

VII. Public Comments

The Chair asked for public comment. Eric Lupher from the Citizens Research Council reported that they have begun an initial literature search to lay the groundwork, but are waiting for their intern to start to intensify their efforts to conduct a survey of the policies and procedures used by other states.

VIII. Next Meeting Date

The Chair noted that the next meeting is scheduled a few days before the association responses are due. To give Commission members an opportunity to review the responses and prepare questions in advance of the next meeting, the date of the next meeting has been changed to **Tuesday, May 27, 2008, at 2:00 p.m.** in Lansing.

IX. Adjournment

Having no further business, Mr. Winegarden moved, supported by Mr. Maccarone, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 3:10 p.m.

(Approved at the May 27, 2008 LCSM Meeting)

*Legislative Commission
on Statutory Mandates*

Report on *Adair v State of Michigan*

April 9, 2008



State Capitol Building
100 N. Capitol Ave., 4th Floor, Room 424
Lansing, MI 48933

	<p>By: Richard E. Kroopnick, Esq. THRUN LAW FIRM, P.C. 38505 Woodward Avenue, Suite 2300 Bloomfield Hills, Michigan 48304-5096 (248) 258-2850 (248) 258-2851 Facsimile RKroopnick@ThrunLawBH.com © 2008, Thrun Law Firm, P.C.</p>
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LEGISLATIVE COMMISSION ON STATUTORY MANDATES (“CSM”)

Adair v State of Michigan

I. CHRONOLOGY

- A. November 15, 2000 – Original action filed in the Michigan Court of Appeals on behalf of 460 Michigan public school districts.
- B. June 9, 2004 – Michigan Supreme Court reverses Court of Appeals on Plaintiffs’ claims concerning the Center for Educational Performance and Information (“CEPI”) and remands case to Court of Appeals.
- C. August 4, 2005 – Court of Appeals enters summary disposition in favor of State.
- D. March 8, 2006 – Michigan Supreme Court vacates judgment of Court of Appeals and again remands the case to the Court of Appeals.
- E. April 18, 2006 – Court of Appeals enters an Order appointing retired Wayne County Circuit Court Judge Pamela R. Harwood to serve as Special Master.
- F. June 26, 2007 through July 31, 2007 – Trial conducted by Judge Harwood.
- G. February 21, 2008 – Judge Harwood’s Opinion released.

II. THE OPINION OF SPECIAL MASTER PAMELA R. HARWOOD

G. Conclusions of Law

- 1. The record keeping requirements imposed by MCL 388.1752 and EO 2000-9 present an increase in the level of activity beyond that required prior to the conclusion of *Durant I* and violates the POUM clause when compared to existing law as of December 23, 1978. While the activity of state mandated educational record collection,

maintenance and reporting existed before 1997 and before 1978, the creation of CEPI and the data requirements that it mandated increased the level of that activity as described in this opinion.

Opinion, pp. 25-26.

* * *

. . . The issue in this case is not whether plaintiffs proved the amount of additional expenditures incurred, but whether they established that the increased data reporting results in necessary increased costs that have not been funded by the state.

Opinion, p. 27.

* * *

The record herein supports the finding that plaintiff [sic] have sustained its burden of proof with respect to the “necessary increased costs” requirement.

Opinion, p. 28.

The legislature has not allocated any categorical funding to the districts to comply with the reporting requirements of CEPI, with the exception of the one time two dollars per pupil appropriation to help fund the implementation of the SRSD. Therefore, the districts must pay for any CEPI related costs and expenses from its general operating budget which is funded by unrestricted funds from the state and locally generated property taxes.

Opinion, pp. 28-30.

Judge Harwood concluded her Opinion with the following statement:

Simply put, the increased record keeping and reporting requirements imposed on the school districts by the state is an

attempt by the state to shift the burden to comply with these additional requirements to the districts without appropriating the necessary costs to comply. The result is a shifting of the record keeping and reporting requirement burden from the state to the local units of government in violation of the Headlee Amendment. The fact that the state provides a percentage of school district funding does not mean that the state can impose additional mandates upon the districts without appropriating the necessary costs to perform those mandates.

Opinion, p. 31.

III. FUTURE PROCEEDINGS

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