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MEMORANDUM

To: Senate Committee on Judiciary
From: Jason B. Long, Senior Assistant Revisor
Re: Section 1 of Article 6 of the Kansas Constitution
Date: February 7, 2013

This committee requested further information as to what is meant by the term “improvement” in Section 1 of Article 6 of the Kansas Constitution. That section states “[t]he legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.” The term “improvement,” however, has been a part of Article 6 since the first adoption of the Kansas Constitution. From adoption in 1859 until it was revised in 1966, Section 2 of Article 6 stated that the “legislature shall encourage the promotion of intellectual, moral, scientific and agricultural improvement.”

In 1949, the Kansas Supreme Court, in *State ex rel. Fatzer v. Board of Regents*, held that Section 2 of Article 6 mandated that the Legislature encourage improvement, but that there was no exclusive method of doing so. The Legislature may utilize alternative means of satisfying this obligation. In that case the Legislature had passed a law authorizing the Board of Regents to issue bonds for the construction of student dormitories. The Court held that this act was constitutional because the language of the constitution is binding on the Legislature but not exclusive in its implementation.

Other than the *Fatzer* case the case law on this provision of the Kansas Constitution is relatively quiet until the School District Finance and Quality Performance Act litigation.

Additionally, the advisory committee's report that recommended the current language of Section 1 is silent on why this section was included in the recommended revisions, and why the word "improvement" was retained. At this point the most relevant discussion of this language is the *Montoy* series of decisions.