

Bob Schaffer, Vice Chairman  
Colorado State Board of Education  
5027 Alder Ct.  
Fort Collins, CO 80525

29 March 2008

The Hon. Pam Suckla, Chairman  
Colorado State Board of Education  
23845 Cty. Rd. M  
Cortez, CO 81321



Dear Madam Chairman:

The Colorado State Board of Education should clarify immediately its position relative to the case of Mesa County Board of Commissioners, et al., vs. Colorado Department of Education (Case #: 07CV12064). I hereby formally request the question be put to a recorded vote of the Board at the Board's next regular meeting on 10 April 2008.

It has come to my attention that the law firm of Sherman & Howard L.L.C. has been acting on behalf of the Colorado State Board of Education in the case of the lawsuit in a manner that extends beyond the scope of authority, as approved by the State Board in Regular Session on 10 January 2008. At that meeting, the Board voted to retain the firm for purposes of filing a motion to dismiss the case and to otherwise petition the court to remove the Board as the defendant. These efforts were made on the Board's behalf and regrettably rejected by the Court.

As you know, the Board has not taken further action on the matter, nor has it taken any formal votes on its remaining legal options since the Court's rejection of the Board's petition for dismissal.

It appears the firm has subsequently entered additional motions before the Court, on behalf of the Board. The effect of these motions is to oppose Mesa County's and the taxpayers' claim that the claimants' rights and protections under the Constitution of Colorado have been violated by the state. In other words, the firm is acting on behalf of the Board without the Board having taken any formal position on its disposition relative to the complaint.

As such, I request the Board agenda for 10 April 2008 designate a specific action item whereupon you will accept a motion, allow for discussion, and call for a recorded vote on a question of whether the Board will defend the lawsuit or stipulate to the claims against the state.

In the meantime, I urge you to deny any payment of claims for legal fees that may be charged to the Department for any services billed to the State since the Court's rejection of the Board's last motion to dismiss, and to not authorize any payment of legal fees until the Board's position on the matter is made clear by a public vote of its membership.

Pam, as I have already expressed to you and our colleagues, I agree with the plaintiffs in the underlying case and believe the Board should, too. I think it is wrong for the Board to defend a tax-increasing law that is so clearly designed to deny the public the

democratic input guaranteed by the State Constitution. I intend to make a case for stipulating to the plaintiffs' arguments at our next Board meeting.

The Legislature and the governor have errantly placed the Board in an unfortunate position. As defendant, the Board should insist the provisions of the Colorado Constitution requiring the government to ask taxpayers first before raising their taxes are respected and upheld. We all swore an oath to uphold and defend this right – and all basic rights – enumerated in the State Constitution. This is a solemn duty we may neither deny nor ignore.

Moreover, the recent analysis by the Legislature makes it clear that local property taxes raised by the tax-increase law will be offset by declining State revenues to local school districts with the windfall being diverted to non-education purposes. Rural communities are being hit especially hard by the property-tax increase, now estimated to be \$3.8 billion over ten years.

While the onerous funding shift and the extraordinary expenses associated with it are serious punishing economic considerations, the most compelling reason to stipulate is that the tax-increasing law in question penalizes Colorado's middle-class homeowners, small business owners, farmers and ranchers excruciatingly hard at a time when it is most painful to pay – all without allowing these same taxpayers a voice to grant permission for the tax hike that the Constitution firmly guarantees them.

Our Oath of Office is the same as the Governor's, the same as legislators' and the same as those on the bench. Reasonable people may come to different conclusions, and I find the constitutionally based conclusion reached by Mesa County, et al., to be most reasonable.

The Board's vote on this matter should be clear and unambiguous. The taxpaying citizens of Colorado – the constituencies of the Colorado State Board of Education – deserve the honesty and transparency of a public vote in the light of day at our next regular meeting.

Very truly yours,

Bob Schaffer, Vice Chairman  
Colorado State Board of Education

The logo for "FACE THE STATE" is displayed in white text on a dark blue rectangular background. The word "FACE" is on the left, "STATE" is on the right, and "THE" is centered between them. The letters "T", "H", and "E" in "THE" are stacked vertically, with "T" at the bottom, "H" in the middle, and "E" at the top. There are horizontal lines under "FACE" and "STATE".

FACE THE STATE