Report of:

COMMITTEE ON FISCAL POLICY

PART II

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 148

December 1969

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

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COMMITTEE
ON
FISCAL POLICY

COLORADO LEGISLATIVE COUNCIL

Research Publication No. 148

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

December 16, 1969

To Members of the Forty-seventh Colorado General Assembly:

In accordance with the provisions of House Joint Resolution No. 1034, 1969 Session, the Legislative Council submits the accompanying report and recommendations pertaining to matters of fiscal policy.

The report of the Committee appointed to carry out this study was accepted by the Legislative Council for transmission with recommendation for favorable consideration by the second regular session of the Forty-seventh Colorado General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/mp

COLORADO GENERAL ASSEMBLY

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December 16, 1969

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Pursuant to House Joint Resolution No. 1034, the Fiscal Policy Committee submits the following interim report for consideration by the Legislative Council. The Committee's findings and recommendations are based upon statements made to the Committee by individuals or groups representing more than a score of agencies or organizations interested in matters of fiscal policy and upon studies conducted by Legislative Council staff members assigned to it.

Respectfully submitted,

/s/ Senator Leslie R. Fowler
Chairman
Committee on Fiscal Policy

LEF/mp

FOREWORD

The Fiscal Policy Committee, appointed originally in 1968, was re-appointed in 1969 for a two-year period pursuant to the provisions of House Joint Resolution No. 1034. Those appointed to the Committee and now serving on it are:

Sen. Leslie R. Fowler
Chairman
Rep. Thomas Neal
Vice Chairman
Sen. Allen Dines
Sen. William S. Garnsey, III
Sen. Harry Locke
Sen. J. D. MacFarlane
Rep. Thomas Grimshaw
Rep. Kathryn Munson
Rep. Jerry Rose

During the interim soon coming to an end, the Committee has focussed attention on matters which appeared to be deserving of consideration by the General Assembly in its 1970 Session. Specifically, there have been four areas of special concern to the Committee, namely, ways and means of aiding political subdivisions in the financing of capital construction, strengthening of vocational education programs, separation of the administrative and judicial functions of property tax law and related considerations, and the wisdom of making certain changes in the Public School Foundation Act. Proposals pertaining to the first three of these items are set forth in subsequent sections of this report; it was finally decided that experience to date with the Public School Foundation Act is insufficient to warrant proposing any changes in it at this time.

Many individuals and groups appeared before the Committee in the course of its deliberations. Included among them are representatives of the following: State Department of Education; Colorado Tax Commission; Legislative Drafting Office; State Board for Community Colleges and Occupational Education; Colorado Association of Commerce and Industry; Council on Educational Development; Colorado Association of School Boards; Colorado State Association of County Commissioners; Colorado Public Expenditure Council; Colorado Assessors' Association; Denver and Rio Grande Western Railroad Company; Jefferson County School District R-1; Colorado Municipal League; Colorado Cattlemen's Association; Bosworth, Sullivan and Company, Inc.; Dawson, Nagel, Sherman and Howard; Willson and Lamm. The Committee expresses its appreciation for the contributions of all those who participated in the discussions.

Fitzhugh Carmichael and Dwight Heffner, Legislative Council Staff, had the principal staff responsibility for the preparation of the Committee report.

December, 1969

Lyle C. Kyle
Director

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FINANCING CAPITAL CONSTRUCTION FOR POLITICAL SUBDIVISIONS

The primary method by which political subdivisions of Colorado finance capital improvements is through the issuance of bonds. For most political subdivisions, including the public schools, this means general obligation bonds which require a mill levy against property to pay the interest on the bonds and to retire the principal over an extended period of time. Towns, cities and some special districts are permitted to issue revenue bonds to finance capital improvements and the revenues derived from such improvements are utilized to retire the debt. In most instances, the issuance of either general obligation or revenue bonds requires the approval of the electorate, and in the case of general obligation bonds only the taxpaying electorate may vote on the question.

Either by constitution or by statute, the state imposes limits on the amount of bonded indebtedness that a political subdivision may incur and the rate of interest that may be paid.

Developments Affecting the Stability of Bonds

Two recent developments have had a substantial effect upon the salability of school, special district and other municipal bonds in the state. First, two recent decisions of the United States Supreme Court have cast doubt upon the legality of bonds approved only by property taxpaying electors in Colorado (see Appendices A and B). In the cases of Kramer v. Union Free School District No. 15 et al. (New York) and Cipriano v. City of Houma et al. (Louisiana), the court held that statutory provisions which limited the franchise in local bond elections to property taxpayers were in violation of the Equal Protection Clause of the Fourteenth Amendment and, therefore, unconstitutional.

Neither of the above mentioned cases concerned general obligation bonds, though the Cipriano case did involve revenue bonds. However, by inference, many bond attorneys felt that the decisions had cast doubt upon the legality of restricting the vote on bond issues to taxpaying electors regardless of the type of bonds concerned. On November 17, 1969, the United States District Court in Arizona rendered its decision in the case of Kolodziejski v. City of Phoenix et al. This decision concerned revenue and general obligation bonds. The court held that the rule in Cipriano does apply to general obligation bond elections, saying that "we find no evidence which would justify a distinction between Revenue Bonds and General Obligation Bonds" (see Appendix C, p. 48). Thus, Arizona's constitutional and statutory provisions which limit the franchise in local bond elections to property taxpayers only were held also to be in violation of the

Equal Protection Clause of the Fourteenth Amendment. As a result, bond attorneys in Colorado have indicated that they will no longer approve for sale new bond issues which have been approved at elections in which such qualifications prevailed.

The second major development has been the rapidly increasing interest rates on municipal bonds which, for high quality bonds (according to the Bond Buyer's twenty-bond index), reached an all-time high of 6.37 percent as of September 5, 1969. This may be compared with the January 1965 rate of 4.85 percent. Two causes of the increases have been identified. First, tight money policies of the Federal Reserve Board have been promulgated to control inflation and are expected to continue for some time. Second, the proposed tax reform bill in the United States Congress (HR 13270) contained provisions which would have made the interest income on heretofore tax-free bonds taxable. An increase of three-fourths of a percentage point in the bond interest rate during the period July 1 -- September 5, 1969, has been attributed to the introduction of the bill. The Finance Committee of the Senate has acted recently to delete these provisions but the issue as of this date (December 5, 1969) remains unsettled.

The combination of these factors, and the existence, in most cases, of a six percent limitation on the allowable interest rate on school and other municipal bonds in Colorado have produced what many consider to be a crisis situation in regard to the financing of local capital construction. Rising interest rates have led bond-issuing authorities to resort to short maturity schedules in order to market their securities within the interest limitations imposed by statute. Others have been unable to market them at all; available data indicate that the value of authorized local bond issues blocked from sale by market conditions as of October 3, 1969, amounted to approximately $20,250,000 (see Appendix D). Similar data indicate that, in addition to the issues noted above which have already been authorized but remain unsold, a number of local authorities anticipate the approval of bond issues in upcoming elections; the market value of these total approximately $123,275,000 (see Appendix E).

Possible Means of Alleviating the Problem

The problem is thus identified as one which consists of two primary factors -- legal problems associated with taxpayer qualifications in local bond elections, and high interest rates which make it difficult to market school and other municipal bonds under existing state law. In the light of the trend toward an expanded role for the state in the financing of public education, a difficult question presents itself as to the selection of an appropriate and effective approach to the problem.

In line with suggestions from bond attorneys, public officials, and other interested persons, possible means of alleviating the problem were examined, including (among others) the following:

(1) Remove (or raise) the six percent interest rate limitations on:

  (a) School bonds

  (b) Other local government bonds

(2) Authorize schools and local governments to issue bond anticipation notes

(3) Remove statutory discounting prohibitions

(4) (a) Provide for mandatory public sale of bonds

  (b) Authorize payment for financial advice

(5) Make municipal bonds non-taxable in Colorado

(6) Authorize a second vote (if necessary) to raise limit on bonds previously authorized at an election

(7) Remove taxpayer qualifications wherever it can be accomplished by statute

(8) Provide for a dual ballot procedure

(9) Increase the capital reserve levy authorization

Recommendations

Because of the two-part nature of the problem (noted above), the committee's recommendations are set forth below under headings which denote the respective aspects of the problem to which they apply.

Voter Qualifications. In view of the Kramer and Cipriano decisions of the United States Supreme Court noted above, the committee feels that stuatuory changes are needed to enable all registered qualified electors to vote in local bond elections. To accomplish this, the committee recommends:

(1) Removal of taxpayer qualifications for participation in local elections wherever this may be accomplished by statute, except in the case of the School Foundation Act.

(2) Provision for alternate balloting procedures to overcome constitutional difficulties pertaining to voter qualifications in local bond elections. The recommended system would retain present provisions which call for an election by property taxpayers only. However, an alternate method would also be provided whereby a local governing body could choose to permit all registered qualified electors to vote in such elections. Either method could be chosen, but bond counsel would advise local authorities to use both methods at one election (using separate balloting) in order to guarantee the legality of the obligations concerned. Before bond attorneys would approve an issue for sale, it would need the approval of both the taxpaying electors and all of the registered qualified electors (including taxpaying electors).

In view of Colorado Constitutional requirements, such provisions would be necessary for bond elections of school districts, municipalities and counties. When a court decision is rendered which relates specifically to Colorado law, one or the other of the two methods would become inoperative.

Interest Rates. In order to deal effectively with the difficulties caused by the rapidly rising interest rates as discussed above, the committee recommends that:

(1) All statutory interest rate limitations be removed on school and other local bonds, including refunding bonds.

(2) Statutory provisions which place limitations upon, or which otherwise prohibit, the sale of bonds below par value be eliminated.

(3) Payment for professional financial advice be authorized.

(4) Statutory provisions be enacted to permit a special election to increase the maximum interest rate on bonds when they have been authorized to be issued but have not been sold.

(5) Provisions be adopted to provide for the public disclosure of information relating to the sale of school bonds. In particular, the committee recommends (a) Whenever school bonds are sold, the board of the district selling the same shall cause to be prepared and filed with the state department of education, within ten days after said sale, a report setting forth a description of the bond issue, the applicable interest rate or rates, including the net effective interest rate, other terms of the sale, and applicable statistical, comparative bond market data, ratings, and indices relative to prevailing market conditions prior to and at the time of said sale, (b) One or more copies of said report shall be retained on file at the administrative headquarters of the district; and a copy thereof shall be made avail-

able upon written request to any officer or representative of any organization of Colorado school districts.

(6) Interest from obligations of Colorado or its political subdivisions be exempt from state income tax. Such exemptions should apply to taxable years beginning after December 31, 1969.

With respect to the recommendations for removal of interest rate limitations on local bonds and for permitting a special election to increase interest rate limitations on bonds previously authorized, the committee also recommends that provisions be included which would require the proposal submitted to the electorate to state the maximum "net effective interest rate" at which the bonds are to be sold.

"Pay-As-You-Go" Financing of Capital Construction

Another source of capital construction financing for schools has been the two mill capital reserve levy. It has been found that funds derived from this levy are generally utilized for minor construction and maintenance purposes. For these purposes, this approach is seen as preferable to expensive long-term bond financing.

Some districts, however, have viewed such funds as a highly useful source of "pay-as-you-go" financing for the construction of major facilities. Jefferson County School District R-1, for example, has indicated that substantial savings have been realized in this manner. A district official has pointed out that the county utilized over $8,325,000 in capital reserve funds for the construction of new school buildings over the past ten years. It has been estimated that, if this amount had been financed by means of long-term obligations, interest payments would have exceeded $4,800,000.

Statutory towns and cities have likewise been permitted to establish a "capital improvements fund" to be financed by an ad valorem tax. A levy not to exceed two mills for such a fund is permitted without submitting the question to a vote. Amounts in excess of two mills are permissible if approved by "a vote of the taxpayers."

However, the purposes for which towns, cities, and counties may use such funds are quite restricted. Thus, 139-78-3, Colorado Revised Statutes 1963 (1969 Supp.), states that such funds may be provided and accumulated for the purpose of constructing "public buildings or additions thereto, or to supplement bond issues for the same purpose." The resolution which establishes the fund must also set forth a description of the building or buildings to be constructed and the proposed location of the project.

In this regard, it should be noted that Colorado towns, cities and counties have been faced with the same difficulties in financing capital construction needs as those which trouble the schools. Attention has been directed to the especially difficult problems that these units have had in financing water and sewer facilities. Because such facilities are constructed and maintained for the benefit of the public, it would appear that they could properly be financed in the same manner as are schools and other public buildings. In fact, any facilities constructed and used for public benefit appear to constitute proper objects for funding by means of the capital reserve levy.

Recommendations

In view of the considerations discussed above, the committee recommends that the provisions of 139-78-3 and 36-3-2, Colorado Revised Statutes 1963 (1969 Supp.), be amended to include "public buildings, water facilities, sewer facilities, or other public works," as purposes for which capital improvements funds of towns, cities, and counties may be created.

The committee also recommends that the provisions of the statutes cited above be amended to specifically state that (1) such funds "may be accumulated and held over for expenditure in subsequent years," and (2) "the revenues derived from the operation of any public works or facilities, in excess of operating expenses and in excess of any amounts necessary to pay obligations required to be paid out of income from such public works or facilities, shall be credited to a separate account in the public works fund. Such revenues may be accumulated and held over for expenditure in subsequent years, but they shall be used only for the public works from whose operation the revenues were derived."

The committee also wishes to assure that local development of sewage treatment facilities will be consistent with comprehensive planning for the state and that such development will in no way work to the detriment of state water pollution control efforts. Therefore, it is further recommended that the following provisions be adopted: "No sewage treatment facility which will affect any stream within the state shall be constructed until the coordinator of state planning has certified that the construction of such facility will be consistent with comprehensive planning for the state, and the water pollution control commission has approved the location of such facility."

In order to provide "pay-as-you-go" financing capabilities consistent with those of towns, cities and counties, the committee recommends that public school and junior college districts be authorized an additional property tax levy of two mills for capital construction purposes. Such a levy, to be used for financing projects specifically approved by a vote of the taxpaying electors,

would supplement the present capital reserve levy to yield a total capability of four mills on the assessed valuation of the school district. The approval of the taxpayers would be necessary only for levies in excess of two mills; present authority for these districts to establish a two-mill levy without voter approval would remain unchanged.

It is also recommended that all funds derived from such levies be permitted to accumulate and to be held over for expenditure in subsequent years.

VOCATIONAL EDUCATION

Areas of Progress: Identifying Needs

Representatives of the State Board for Community Colleges and Occupational Education, the Council on Educational Development (COED), and the Colorado Association of School Boards have indicated that encouraging progress has been made in the state's junior colleges with respect to vocational education. This progress has been explained in several ways. First, reference is made to an increase in the number of students served by vocational education programs. It has been noted that, prior to the creation of the state board in 1967, approximately 18.2 percent of Colorado's two-year-college students were classified as vocational or technical students. A recent study, however, indicates that in the spring of 1969, the overall enrollment in vocational programs in the state's two-year colleges was approximately 31 percent. In the state system community colleges, 42 percent of the students were classified as vocational.

Progress has also been viewed in terms of program emphasis. That is, attention has been directed to past criticisms of vocational education programs for their emphasis upon home economics and vocational agriculture courses. The state board has pointed out, however, that in the 1970-71 budget request, yet to be submitted, only 4.8 percent of the proposed expenditures are for vocational agriculture. They note further that this figure is a "lesser percentage than is represented in the labor force of Colorado by agriculture." The board has also called attention to the fact that, for the same period, budget requests for home economics courses will total approximately 6.5 percent. Health, business and office, distributive education, and trades and industries are described as the major programs in vocational education.

There is also some indication that efforts are being made to promote improved use of facilities through sharing and through a maximum time-spread of use.

Finally, it has been pointed out that, with the 1968 amendments to the Federal Vocational Act of 1963, disadvantaged, handicapped, and special needs students have received special attention.

Attention has been called, however, to the need for more adequate funding of vocational programs in the secondary schools. To demonstrate this need, the state board has noted that it has been forced to discontinue payments for vocational equipment and that the rate of reimbursement for vocational programs in secondary schools has dropped from 43 percent in 1966 to 28 percent in 1969. There is, according to the board, no evidence that additional non-earmarked funds derived from the 1969-1970 state foundation program have led to an increase in vocational programs.

In fact, the board has indicated that the lack of additional funds has caused some programs in the planning stage to be dropped or postponed.

The Council on Educational Development (COED) has pointed out that approximately 75 percent of the students now enrolled in Colorado junior and senior high schools will seek employment within a period of one year after the anticipated date of graduation. Only 20 percent of the pupils who start public schools will complete a baccalaureate degree.

COED has also called attention to a survey conducted in 1967 by the Vocational Guidance Division of the state board which indicated that 75 percent of the students were interested in taking some vocational work before they left high school. In 1967-68, however, of the 59,500 students enrolled in the 11th and 12th grades in Colorado's 181 school districts, only 22 percent had an opportunity to participate in vocational education programs.

This phenomenon may be explained by other data which indicate that only 97 of Colorado's 181 school districts, or approximately 54 percent of them, now offer vocational education instruction. Also, less than five percent of Colorado's state educational expenditures for primary and secondary schools is directed to vocational education.

It should be noted also that estimates indicate that 83 percent of Colorado's work force are employed in occupations normally served by vocational education. These data suggest that the needs of a large majority of Colorado's public school students are not being met by the present emphasis upon academic curricula.

Recommendations - General

In view of the available evidence, the committee agrees that the need for increased state support of secondary vocational education has been adequately established. Therefore, the committee recommends that the basic program proposed by COED, as it appears amended below, be adopted. The proposal reads as follows:

The State Board for Community Colleges and Occupational Education shall adopt rules and regulations, and commence development of a state plan for vocational education to assure:

(1) Each program must provide students with an entry level occupational skill.

(2) The program should be of sufficient duration to provide entry level skills and related knowledge required by business and industry.

(3) Each program shall have a technical advisory committee which functions at the state, regional or local level to assist local schools in planning and operating their curricula.

(4) The vocational program must be housed in appropriate facilities equipped to perform its function. Such facilities may be housed within or without the district, and need not necessarily be housed in buildings owned or operated by a school district.

(5) There should not be unnecessary duplication of either facilities or staffing in any district or area schools involved in vocational programs; and sharing of facilities, where feasible, shall be mandated by the State Board.

(6) The program must meet an employment potential found to exist by the state board's survey of employment opportunities.

Recommendations Re Financing

The committee recommends that the program be funded by appropriations to the State Board for Community Colleges and Occupational Education in an amount between six and ten million dollars to supplement other available moneys according to the following methods.

Local Contribution. In order to encourage a sense of local responsibility for meeting vocational educational needs, the state board shall administer a four-to-one matching formula for local participation as follows: The state shall match each dollar of local contribution with four dollars of state funds until the local contribution reaches an amount equivalent to one-half mill on the valuation of the school district. No minimum contribution shall be required of the local district.

State Contribution. In order to minimize reliance on property taxation and to afford assured property tax relief to all Colorado school districts and to equalize vocational educational opportunity for all Colorado school children, the committee recommends that all actual costs of approved vocational education programs in excess of the proposed maximum one-half mill local contribution be reimbursed by the state board from funds appropriated for the purpose.

Distribution of Funds. In local school district claims for reimbursement for authorized vocational education programs, each district shall include only the following items:

(1) Vocational instructional and vocational supervisory salaries, including retirement and travel.

(2) Instructional books and supplies for approved vocational programs.

(3) Equipment for vocational programs which has had approval before purchase from the occupational division of the State Board for Community Colleges and Occupational Education.

(4) Transportation costs when incurred to transport students from one school to another for the purpose of receiving instruction in a regular, on-going vocational program, and upon prior approval from the occupational division of the State Board for Community Colleges and Occupational Education.

Payments. Payments under the provisions of this article shall in no way affect the amount of other state aid for which a school district may qualify.

Use of Funds. The use of the state funds requested for vocational education should exclude capital construction, vocational guidance, pre-vocational courses, pilot or exemplary programs, special classes for disadvantaged or handicapped students, and teaching of regular academic subject matter courses.

Other Support. The exclusions noted above will be supported by local funds other than those appropriated for the local contribution and, when appropriate, federal vocational funds.

Administration. The State Board for Community Colleges and Occupational Education shall be responsible for distributing any funds appropriated for this program, and shall have the authority to adopt reasonable rules and regulations for the administration of the program.

PROPERTY TAX ADMINISTRATOR - TAX COURT

Extensive committee consideration was given, during the 1969 session of the General Assembly, to a proposed Tax Court bill. Because of problems which arose in the course of committee hearings, including those of setting up proper due process provisions and the defining of responsibilities, it was decided to postpone action on it. In the meantime, a subcommittee of the Fiscal Policy Committee has prepared a proposal which, it is believed, meets the principal objections to earlier drafts.

In developing this proposal, the subcommittee was actuated by the belief that the administrative function of assessment and assessment supervision should be separated from the quasi-judicial function of equalization and appeals and, as recommended by the Colorado Committee on Government Efficiency and Economy, that the administrative function should be the responsibility of a single administrator.

Briefly, the committee recommends creation of (1) the division of property taxation in the department of local affairs, the head of which would be the property tax administrator, and (2) a three-member property tax court, also within the department of local affairs. The principal objectives of this recommendation are:

(1) To provide the taxpayer with a means of obviating the necessity of resorting to the usual expensive civil court process;

(2) To provide the taxing authority with a source of remedy with respect to actions involving one or more property classes; and

(3) To separate the administrative and judicial functions of property tax law.

The effect of this would be to abolish the Colorado Tax Commission and, as indicated above, to establish the office of Tax Administrator and a Tax Court.

The following excerpts from the proposed bill set forth the committee's recommendation pertaining to the duties, powers, and authority of the property tax administrator and the duties of the property tax court:

"137-3-9. Duties, powers, and authority. (1) (a) It shall be the duty of the property tax administrator and he shall have and exercise authority:

(b) To value the property and plant of all public utilities doing business in this state in the manner prescribed by law, and to prepare and furnish all forms required to be filed with him by public utilities;

(c) To supervise the administration of all laws concerning the valuing of taxable property, the assessment of same, and the levying of property taxes;

(d) To review the methods used by assessors in appraising and valuing taxable property in the several counties of the state, and the methods used by county boards of equalization in equalizing valuations for assessment;

(e) To approve the form and size of all personal property schedules, forms, and notices furnished or sent by assessors to owners of taxable property, the form of all field books, plat and block books, maps, and appraisal cards used in the office of the assessor, and other forms and records used and maintained by the assessor, and to require exclusive use of such approved schedules, books, maps, appraisal cards, forms, and records by all assessors to insure uniformity;

(f) To prepare and publish from time to time manuals and instructions concerning methods of appraising and valuing land, improvements, and personal property, and to require their use by assessors in valuing and assessing taxable property;

(g) To prepare and furnish to assessors all forms required to be completed by them and filed with the property tax administrator;

(h) To call, upon not less than ten days' prior notice, meetings of assessors at some designated place in the state, and upon reasonable notice, to call group or area meetings of two or more assessors."

"137-3-25. Duties of the court. (1) (a) The property tax court shall perform the following duties, such performance to be in accord with the applicable provisions of article 16 of chapter 3, C.R.S. 1963, as amended:

(b) Adopt procedures of practice before, and review by, the court;

(c) Hear appeals from orders and decisions of the property tax administrator filed not later than thirty days after the entry of any such order or decision;

(d) Hear appeals from decisions of county boards of equalization filed not later than thirty days after the entry of any such decision;

(e) (i) Conduct hearings upon complaints filed by the property tax administrator, upon his own motion, or upon petition by any tax levying authority in this state, concerning:

(ii) Valuations for assessment on one or more classes or subclasses of property; but such a hearing shall be conducted only if a reappraisal has not been conducted or ordered pursuant to the provisions of section 137-3-14, as amended;

(iii) Alleged dereliction of duty on the part of a county assessor.

(2) Complaints filed by the property tax administrator shall be advanced on the calendar and shall take precedence over other matters pending before the court."

THE PUBLIC SCHOOL FOUNDATION ACT

Experience with the Public School Foundation Act of 1969 is regarded as insufficient to warrant proposing any changes in it at this time. There was extensive committee consideration of the Act, however, wherein several unexpected difficulties were brought to the committee's attention. These difficulties are described briefly below:

Language Difficulty. During committee consideration of the problem, two aspects of language difficulty were recognized. In the first place, because there was no attempt in the wording of the bill to set forth a listing of specific categorical programs, the school district boards of education were given greater freedom in the preparation of budgets than was apparently envisioned by many supporters of it. In the second place, there is the definition of current expense in Section 2 (9) which excludes categorical support funds from it (such funds being construed by the Department of Education in its Rules for Administration of the Act -- II, 1 -- to exclude funds for categorical purposes contributed by the local school district), whereas in Section 19 (1) of the bill the general fund budget authorized for a school district for the ensuing year is limited to the sum of certain amounts, one of which is "one hundred six percent of the current expense per pupil in average daily attendance entitlement budgeted for the current year multiplied by the estimated number of pupils in average daily attendance for the ensuing budget year." The effect of the latter consideration was to cause the six percent increase to be applied to a base that is somewhat larger than that regarded by many supporters of the bill as being permissible.

It should be noted that there is difference of opinion as to the desirability of making any change in the Act in regard to the above matters. The budgeting flexibility which is afforded the local district is believed by some to be undesirable and by others to serve a useful and necessary purpose.

Six Percent Limitation. It has been suggested that limitations on school district budgeting and expenditures be removed by repealing Sections 18 to 23 of the Act. As an alternative, it was suggested that Section 19 (1) and (2) be amended to raise the amount by which budgeted current expense items may be increased from one hundred six percent to one hundred ten percent.

Restricted and Nonrestricted Costs. Another matter of concern relates to specific items of expense which are to be included in the restricted and the nonrestricted portion of school district budgets. Two suggestions in particular were discussed by the committee. The first concerned a request that fixed PERA (Public Employee's Retirement Association) costs in excess of 6

percent of employees' salaries be moved from the restricted to the nonrestricted portion of the budget.

The other item discussed in this regard was transportation costs. It was proposed that costs associated with all types of transportation for educational purposes be included in the nonrestricted portion of the budget. The Act presently provides that "the total cost of transporting pupils to and from school" only shall be included in that category.

Small Attendance Centers. The date by which the state board of education must determine small attendance center entitlements was also discussed. It was suggested that the date in Section 12 (4) of the Act be changed from the first day of December to the fifteenth day of December because of problems which have been encountered in obtaining district's reports by the required date. In this regard, the committee expressed the view generally that moving deadlines will not solve the problem. Although the committee is making no recommendations regarding the foundation act, the suggestion has been made that the Department of Education be requested to review reporting deadlines and determine what action would be necessary in order to assure that they are met.

Declining Districts. Attention has also been directed to the possibility that it may be necessary to provide relief for school districts which have experienced a decline in enrollment. It has been pointed out that enrollment decreases present difficult budgeting problems for small districts. The difficulty appears to lie with the distribution of the enrollment decreases; such decreases are commonly distributed among several grades so that no immediate adjustments may be made in teacher and/or facility requirements.

Distribution of Benefits. The possibility that a number of smaller school districts will receive little or no benefits from the 1969 Act has also been noted. Further, the point has been made that some districts may be receiving less assistance under the provisions of the 1969 Act than under previous foundation programs.

The committee intends to study these possibilities during the next interim when more accurate information should be available.

Taxpaying Electors. In order to increase the general fund budget of a district beyond the limits established in Section 19, Section 21 of the act provides that the local school district must obtain approval for such an increase from the "registered qualified taxpaying electors of the district." In conjunction with this requirement, subsequent sections of the act also contain references to "taxpaying" electors. There was some feeling among

members of the committee and other interested persons that such "taxpaying" qualifications should be deleted. In this regard, it was pointed out that the Kramer and Cipriano decisions (noted above) suggest a possible trend toward the elimination of all taxpaying qualifications for electors regardless of the issue to be decided.

ITEMS FOR FURTHER STUDY

The committee has agreed that an in-depth study should be conducted during the next interim of the problems of financing the capital construction needs of all units of state and local government in Colorado. Discussions in past committee meetings have suggested that there are a number of possibilities in the area of financing procedures which have not been adequately explored.

The discussions have also demonstrated a need for considering possible revisions of articles X and XI of the state constitution pertaining to revenue and public indebtedness. Such a study would be concerned with the modernization of state fiscal policies.

It has also been suggested that the committee investigate the possibilities of a regional approach to the financing of state programs. The expectation is that substantial savings for the taxpayers might be realized by such an approach.

Appendix A

No. 258.--October Term, 1968.

Morris H. Kramer, Appellant,	On Appeal From the United States District Court for the Eastern District of New York
v.	
Union Free School District No. 15 et al.	

[June 16, 1969.]

Mr. Chief Justice Warren delivered the opinion of the Court.

In this case we are called on to determine whether § 2012 of the New York Education Law is constitutional. The legislation provides that in certain New York school districts residents who are otherwise eligible to vote in state and federal elections may vote in the school district election only if they (1) own (or lease) taxable real property within the district, or (2) are parents (or have custody of) children enrolled in the local public schools. Appellant, a bachelor who neither owns nor leases taxable real property, filed suit in federal court claiming that § 2012 denied him equal protection of the law in violation of the Fourteenth Amendment. With one judge dissenting, a three-judge District Court dismissed appellant's complaint. Finding that § 2012 does violate the Equal Protection Clause of the Fourteenth Amendment, we reverse.

I.

New York law provides basically three methods of school board selection. In some large city districts, the school board is appointed by the mayor or city council. N.Y. Educ. Law §§ 2553 (2), (4) (McKinney 1953) as amended (McKinney Supp. 1968). On the other hand, in some cities, primarily those with less than 125,000 residents, the school board is elected at general or municipal elections in which all qualified city voters may participate. N.Y. Educ. Law §§ 2502 (2), 2553 (3) (McKinney 1953). Cf. N.Y. Educ. Law §§ 2531 (McKinney 1953). Finally, in other districts such as the one involved in this case, which are primarily rural and suburban, the school board is elected at an annual meeting of qualified school district voters.[1]

[1]In some districts the election takes place on the Wednesday

The challenged statute is applicable only in the districts which hold annual meetings. To be eligible to vote at any annual district meeting, an otherwise qualified[2] district resident must either (1) be the owner or lessee of taxable real property located in the district, (2) be the spouse of one who owns or leases qualifying property, or (3) be the parent or guardian of a child enrolled for a specified time during the preceeding year in a local district school.

Although the New York State Department of Education has substantial responsibility for education in the State, the local school districts maintain significant control over the administration of local school district affairs.[3] Generally, the board of education has the basic responsibility for local school operation, including prescribing the courses of study, determining the textbooks to be used, and even altering and equipping a former schoolhouse for use as a public library. N. Y. Educ. Law § 1709 (McKinney 1953). Additionally, in districts selecting members of the board of education at annual meetings, the local voters also pass directly on other district matters. For example, they must approve the school budget submitted by the school board. N. Y. Educ. Law §§ 2021, 2022 (McKinney 1953)[4] Moreover, once

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following the district meeting. N.Y. Educ. Law § 2013 (McKinney Supp. 1968).

[2]The statute also requires that a voter be a citizen of the United States and at least 21 years of age. Appellant meets these requirements and does not challenge the citizenship, age or residency requirements of § 2012. See infra, at ___. The statute is set out in the Appendix, infra.

[3]But while the administration of schools and the formulation of general policies have been centralized in the State Education Department...the immediate control and operation of the schools in New York have to a large extent been vested in the localities. The thousands of districts...possess a high degree of authority in education. They decide matters of local taxation for school purposes, elect trustees and other school officials, purchase buildings and sites, employ teachers and...maintain discipline..." Graves, Development of the Education Law in New York, 16 Consolidated Laws of New York (Education Law) xxiii (McKinney 1953). See R. Pyle, Some Aspects of Education in New York 9-13 (1967).

[4]In districts which do not have annual meetings, the budget is not submitted to district voters. Thus, in city districts where the board of education is elected by all the voters, the board has the power to set the budget and assess taxes to meet expenditures. In large city districts, where the board is appointed, the board

the budget is approved, the governing body of the villages within the school district must raise the money which had been declared "necessary for teachers' salaries and the ordinary contingent expenses /of the schools/." N. Y. Educ. Law § 1717 (McKinney 1953).[5] The voters also may "authorize such acts and vote for such taxes as they shall deem expedient...for equipping for library use any former schoolhouse..../and/ for the purchase of land and buildings for agricultural, athletic, playground or social center purposes...." N. Y. Educ. Law § 416 (McKinney 1953).

Appellant is a 31-year-old college-educated stockbroker who lives in his parents' home in the Union Free School District No. 15, a district to which § 2012 applies. He is a citizen of the United States and has voted in federal and state elections since 1959. However, since he has no children and neither owns nor leases taxable real property, appellant's attempts to register for and vote in the local school district elections have been unsuccessful. After the school district rejected his 1965 application, appellant instituted the present class action challenging the constitutionality of the voter eligibility requirements.

The United States District Court for the Eastern District of New York denied appellant's request (made purusuant to 28 U.S.C. § 2281) that a three-judge district court be convened, and granted appellees' motion to dismiss appellant's complaint. Kramer v. Union Free School District No. 15, 259 F. Supp. 164 (D.C.E.D.N.Y. 1966). On appeal, the Court of Appeals for the Second Circuit reversed, ruling appellant's complaint warranted convening a three-judge court. Kramer v. Union Free School District No. 15. 379 F. 2d 491 (C.A. 2d Cir. 1967). On remand, the three-judge court ruled that § 2012 is constitutional and dismissed appellant's complaint. Pursuant to 28 U.S.C. § 1253, appellant filed a direct appeal with this Court; we noted probable jurisdiction. 393 U.S. 818 (1968).

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must submit requests to the city government, much as would any other city department. R. Pyle, Some Aspects of Education in New York 11 (1967).

[5]The legislation provides that the money shall be raised through a "tax to be levied upon all the real property in the... village...." And, "the corporate authorities shall have no power to withhold the sums so declared to be necessary...." N. Y. Educ. Law § 1717 (McKinney 1953).

II.

At the outset, it is important to note what is not at issue in this case. The requirements of § 2012 that school district voters must (1) be citizens of the United States (2) be bona fide residents of the school district, and (3) be at least 21 years of age are not challenged. Appellant agrees that the States have the power to impose reasonable citizenship, age and residency requirements on the availability of the ballot. Cf. Carrington v. Rash, 380 U.S. 89,91 (1965); Pope v. Williams, 193 U.S. 621 (1904). The sole issue in this case is whether the additional requirements of § 2012--requirements which prohibit some district residents who are otherwise qualified by age and citizenship from participating in district meetings and school board elections--violate the Fourteenth Amendment's command that no State shall deny persons equal protection of the laws.

"In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances of the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." Williams v. Rhodes, 393 U.S. 23, 30 (1968). And, in this case, we must give the statute a close and exacting examination. "/S/ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 377 U.S., 533, 562 (1964). See Williams v. Rhodes, supra, at 31; Wesberry v. Sanders, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.

Thus, state apportionment statutes, which may dilute the effectiveness of some citizens' votes, receive close scrutiny from this Court. Reynolds v. Sims, supra. See Avery v. Midland County, 390 U.S. 494 (1968). No less rigid an examination is applicable to statutes denying the franchise to citizens who are otherwise qualified by residence and age.[6] Statutes granting the franchise to residents on a selective basis always pose the danger of

[6]This case presents an issue different from the one we faced in McDonald v. Board of Election Comm'rs of Chicago, --U.S.-- (1969). The present appeal involves an absolute denial of the franchise. In McDonald, on the other hand, we were reviewing a

denying some citizens any effective voice in the governmental affairs which substantially affect their lives.[7] Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. See Carrington v. Rash, supra, at 96.

And, for these reasons, the deference usually given to the judgment of legislators does not extend to decisions concerning which resident citizens may participate in the election of legislators and other public officials. Those decisions must be carefully scrutinized by the Court to determine whether each resident citizen has, as far as is possible, an equal voice in the selections. Accordingly, when we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a "rational basis" for the distinctions made[8] are not applicable.

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statute which made casting a ballot easier for some who were unable to come to the polls. As we noted, there was no evidence that the statute absolutely prohibited anyone from exercising the franchise: at issue was not a claimed right to vote but a claimed right to an absentee ballot. Id., at __.

[7]Of course, the effectiveness of any citizen's voice in governmental affairs can be determined only in relationship to the power of other citizens' votes. For example, if school board members are appointed by the mayor, the district residents may effect a change in the board's membership or policies through their votes for the mayor. Cf. N.Y. Educ. Law §§ 2553 (2), (4) (McKinney 1953). Each resident's formal influence is perhaps indirect, but it is equal to that of other residents. However, when the school board positions are filled by election and some otherwise qualified city electors are precluded from voting, the excluded residents, when compared to the franchised residents, no longer have an effective voice in school affairs. This is precisely the situation with regard to the size the school budget in districts where § 2012 applies. See n. 4, supra.

[8]See, e.g., McGowan v. Maryland, 366 U.S. 420, 425-428 (1961); Allied Stores v. Bowers, 358 U.S. 522, 527 (1959); Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552, 556 (1947).

See Harper v. Virginia Bd. of Elections, 383 U.S. 663, 670 (1966). The presumption of constitutionality and the approval given "rational" classifications in other types of enactments[9] are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality. And, the assumption is no less under attack because the legislature which decides who may participate at the various levels of political choice is fairly elected. Legislation which delegates decision-making to bodies elected by only a portion of those eligible to vote for the legislature can cause unfair representation. Such legislation can exclude a minority of voters from any voice in the decisions just as effectively as if the decisions were made by legislators the minority had no voice in selection.[10]

The need for exacting judicial scrutiny of statutes distributing the franchise is undiminished simply because, under a different statutory scheme, the offices subject to election might have been filled through appointment.[11] States do have latitude in determining whether certain public officials shall be selected by election or chosen by appointment and whether various questions shall be submitted to the voters. In fact, we have held that where a county school board is an administrative, not legislative body, its members need not be elected. Sailors v. Kent Bd. of Education, 387 U.S. 105, 108 (1967). However, "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the

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[9]Of course, we have long held that if the basis of classification is inherently suspect, such as race, the statute must be subjected to an exacting scrutiny, regardless of the subject matter of the legislation. See, e.g., McLaughlin v. Florida, 379 U.S. 184, 192 (1964); Takahashi v. Fish and Game Comm'n., 334 U.S. 410, 420 (1948); Oyama v. California, 332 U.S. 633, 640 (1948).

[10]Thus, statutes structuring local government units receive no less exacting an examination merely because the state legislature is fairly elected. See Avery v. Midland County, 390 U.S. 474, 481, n. 6 (1968).

[11]Similarily, no less a showing of a compelling justification for disenfranchising residents is required merely because the questions scheduled for the election need not have been submitted to the voters.

Fourteenth Amendment." Harper v. Virginia Bd. of Elections, supra, at 665.[12]

Nor is the need for close judicial examination affected because the district meetings and the school board do not have "general" legislative powers. Our exacting examination is necessitated not by the subject of the election; rather, it is required because some resident citizens are permitted to participate and some are not. For example, a city charter might well provide that the elected city council appoint a mayor who would have broad administrative powers. Assuming the council were elected consistent with the commands of the Equal Protection Clause, the delegation of power to the mayor would not call for this Court's exacting review. On the other hand, if the city charter made the office of mayor subject to an election in which only some resident citizens were entitled to vote, there would be presented a situation calling for our close review.

III.

Besides appellant and other who similarly live in their parents' homes, the statute also disenfranchises the following persons (unless they are parents or guardians of children enrolled in the district public school): senior citizens and others living with children or relatives; clergy, military personnel and others who live on tax-exempt property; boarders and lodgers; parents who neither own nor lease qualifying property and whose children are too young to attend school; parents who neither own nor lease qualifying property and whose children attend private schools.

Appellant asserts that excluding him from participation in the district elections denies him equal protection of the law. He contends that he and others of his class are substantially interested in and significantly affected by the school meeting decisions. All members of the community have an interest in the quality and structure of public education, appellant says, and he urges that "the decisions taken by local boards...may have

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[12] In Sailors v. Kent Bd. of Education, 387 U.S. 105 (1967), each local school board sent one delegate to a biennial meeting at which the members of the county board of education were selected. We noted that "the choice of members of the county school board did not involve an election." Id., at 111. However, we also pointed out that the members of the local school boards, who in effect made the county board appointments, were elected, but that "no constitutional complaint /was/ raised respecting that election." Ibid.

grave consequences to the entire population." Appellant also argues that the level of property taxation affects him, even though he does not own property, as property tax levels affect the price of goods and services in the community.

We turn therefore to question whether the exclusion is necessary to promote a compelling state interest. First, appellees[13] argue that the State has a legitimate interest in limiting the franchise in school district elections to "members of the community of interest"--those "primarily interested in such elections." Second, appellees urge that the State may reasonably and permissibly conclude that "property taxpayers" (including lessees of taxable property who share the tax burden through rent payments) and parents of the children enrolled in the district's schools are those "primarily interested" in school affairs.

We do not understand appellees to argue that the State is attempting to limit the franchise to those "subjectively concerned" about school matters. Rather, they appear to argue that the State's legitimate interest is in restricting a voice in school matters to those "directly affected" by such decisions. The State apparently reasons that since the schools are financed in part by local property taxes, persons whose out-of-pocket expenses are "directly" affected by property tax changes should be allowed to vote. Similarly, parents of children in school are thought to have a "direct" stake in school affairs and are given a vote.

Appellees argue that it is necessary to limit the franchise to those "primarily interested" in school affairs because "the very increasing complexity of the many interacting phases of the school system and structure make it extremely difficult for the electorate fully to understand the whys and wherefores of the detailed operations of the school system." Appellees say that many communications of school boards and school administrations are sent home to the parents through the district pupils and are "not broadcast to the general public"; thus, nonparents will be less informed than parents. Further, appellees argue, those who are assessed for local property taxes (either directly or indirectly through rent) will have enough of an interest "through the burden on their pocket books to acquire such information as they may need."

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[13]The Union Free School District No. 15 and each member of its board of education were named as defendants. The Attorney General of New York intervened as an appellee.

We need express no opinion as to whether the State in some circumstances might limit the exercise of the franchise to those "primarily interested" or "primarily affected." Of course, we therefore do not reach the issue of whether these particular elections are of the type in which the franchise may be so limited. For, assuming arguendo that New York legitimately might limit the franchise in these school district elections to those "primarily interested in school affairs," close scrutiny of the §§ 2012 classifications demonstrates that they do not accomplish this purpose with sufficient precision to justify denying appellant the franchise.

Whether classifications alledgedly limiting the franchise to those resident citizens "primarily interested" deny those excluded equal protection of the law depends, inter alia, on whether all those excluded are in fact substantially less interested or affected than those the statute includes. In other words, the classifications must be tailored so that the exclusion of appellant and members of his class is necessary to achieve the articulated state goal.[14] Section 2012 does not meet the exacting standard of precision we require of statutes which selectively distribute the franchise. The classifications in § 2012 permit inclusion of many persons who have, at best, a remote and indirect interest in school affairs and on the other hand, exclude others who have a distinct and direct interest in the school meeting decisions.[15]

Nor do appellees offer any justification for the exclusion of seemingly interested and informed residents--other than to argue that the § 2012 classifications include those "whom the state could understandably deem to be the most intimately interested in actions taken by the school board," and urge that "the task of...balancing the interest of the community in the maintenance of orderly school district elections against the interest of any individual in voting in such elections should clearly remain with the legislature." But the issue is not whether the legis-

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[14]Of course, if the exclusions are necessary to promote the articulate state interest, we must then determine whether the interest promoted by limiting the franchise constitutes a compelling state interest. We do not reach that issue in this case.

[15]For example, appellant resides with his parents in the school district, pays state and federal taxes and is interested in and affected by school board decisions; however, he has no vote. On the other hand, an uninterested unemployed young man who pays no state or federal taxes, but who rents an apartment in the district, can participate in the election.

[16]We were informed at oral argument, however, that a very small proportion of the eligible voters attend the meetings.

lative judgments are rational. A more exacting standard obtains. The issue is whether the § 2012 requirements do in fact sufficiently further a compelling state interest to justify denying the franchise to appellant and members of his class. The requirements of § 2012 are not sufficiently tailored to limiting the franchise to those "primarily interested" in school affairs to justify the denial of the franchise to appellant and members of his class.

The judgment of the United States District Court for the Eastern District of New York is therefore reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX TO THE OPINION OF THE COURT.

Section 2012, New York Education Law:

"A person shall be entitled to vote at any school meeting for the election of school district officers, and upon all other matters which may be brought before such meeting, who is: 1. A citizen of the United States. 2. Twenty-one years of age. 3. A resident within the district for a period of thirty days next preceeding the meeting at which he offers to vote; and who in addition thereto possesses one of the following three qualifications:

"(a) Owns or is the spouse of an owner, leases, hires, or is in the possession under a contract of purchase or is the spouse of one who leases, hires or is in possession under a contract of purchase of, real property in such district liable to taxation for school purposes, but the occupation of real property by a person as a lodger or boarder shall not entitle such person to vote, or

"(b) Is the parent of a child of school age, provided such a child shall have attended the district school in the district in which the meeting is held for a period of at least eight weeks during the year preceding such school meeting, or

"(c) Not being the parent, has permanently residing with him a child of school age who shall have attended the district school for a period of at least eight weeks during the year preceding such meeting. No person shall be deemed to be ineligible to vote at any such meeting, by reason of sex, who has the other qualifications required by this section."

MR. JUSTICE STEWART, with whom MR. JUSTICE BLACK and MR. JUSTICE HARLAN join, dissenting.

In Lassiter v. Northampton Election Bd., 360 U.S. 45, this Court upheld against constitutional attack a literacy requirement

applicable to voters in all state and federal elections, imposed by the State of North Carolina. Writing for a unanimous Court, MR. JUSTICE DOUGLAS said:

> "The States have long been held to have broad powers to determine the conditions under which the right of sufferage may be exercised, Pope v. Williams, 193 U.S. 621, 633; Mason v. Missouri, 179 U.S. 328, 335, absent of course the discrimination which the Constitution condemns." 360 U.S., at 50-51.

Believing that the appellant in this case is not the victim of any "discrimination which the Constitution condemns," I would affirm the judgment of the District Court.

The issue before us may be briefly summarized. New York has provided that in certain areas of the State, local authority over public schools shall reside in "Union Free School Districts," such as the District involved here. In such areas, the qualified voters of the District annually elect members of a Board of Education and determine by vote the basic fiscal policy of the school system: they adopt a budget and in effect decide the amount of school taxes that shall be imposed upon the taxable real property of the District. State and federal grants provide some additional funds for the operation of the school system, but the only method by which the District itself may raise its own revenue is through such property taxes.[1]

Three classes of persons are qualified under New York law to vote in these school elections: (1) parents or guardians of children attending public schools within the District; (2) persons who own taxable real property within the District, and their spouses; and (3) persons who lease taxable real property within the District, and their spouses.[2] The appellant, a bachelor who lives with his parents and who neither owns nor leases any real property within the District, falls within none of those classes, and consequently is disqualified from voting despite the fact that he meets the general age and residence requirements imposed by state law. The question presented is whether, by virtue of

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[1]The District Court's statement to this effect has been explicitly reiterated and emphasized by the appellees, and the proposition is apparently conceded by the appellant. See N. Y. Educ. Law §§ 416, 1717, 2021; N. Y. Real Prop. Tax Law §§ 1302, 1306, 1308.

[2]New York's general age and residence requirements must also be met.

that disqualification, the appellant is denied the equal protection of the laws.

Although at times variously phrased, the traditional test of a statute's validity under the equal protection clause is a familiar one: a legislative classification is invalid only "if it rest[s] on grounds wholly irrelevant to achievement of the regulation's objectives." Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552, 556.[3] It was under just such a test that the literacy requirement involved in Lassiter was upheld. The premise of our decision in that case was that a State may constitutionally impose upon its citizens voting requirements reasonably "designed to promote intelligent use of the ballot." 360 U.S., at 51. A similar premise underlies the proposition, consistently endorsed by this Court,[4] that a State may exclude nonresidents from participation in its elections. Such residence requirements, designed to help ensure that voters have a substantial stake in the outcome of elections and an opportunity to become familiar with the candidates and issues voted upon, are entirely permissible exercises of state authority. Indeed, the appellant explicitly concedes, as he must, the validity of voting requirements relating to residence, literacy, and age. Yet he argues--and the Court accepts the argument--that the voting qualifications involved here somehow have a different constitutional status. I am unable to see the distinction.

Clearly a State may reasonably assume that its residents have a greater stake in the outcome of elections held within its boundaries than do other persons. Likewise, it is entirely rational for a state legislature to suppose that residents, being generally better informed regarding state affairs than are nonresidents, will be more likely than nonresidents to vote responsibly. And the same may be said of legislative assumptions regarding the electoral competence of adults and liter-

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[3] See also McGowan v. Maryland, 366 U.S. 420, 425-426: "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

[4] Pope v. Williams, 193 U.S. 621; Lassiter v. Northampton Election Bd., 360 U.S. 45, 51; Carrington v. Rash, 380 U.S. 89, 93-94, 96; see Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666.

ate persons on the one hand, and of minors and illiterates on the other. It is clear, of course, that lines thus drawn cannot infallibly perform their intended legislative function. Just as "[i]lliterate people may be intelligent voters,"[5] nonresidents or minors might also in some instances be interested, informed, and intelligent participants in the electoral process. Persons who commute across a state line to work may well have a great stake in the affairs of the State in which they are employed; some college students under 21 may be both better informed and more passionately interested in political affairs than many adults. But such discrepancies are the inevitable concommitant of the line-drawing that is essential to lawmaking. So long as the classification is rationally related to a permissible legislative end, therefore--as are residence, literacy, and age requirements imposed with respect to voting--there is no denial of equal protection.

Thus judged, the statutory classification involved here seems to me clearly to be valid. New York has made the judgment that local educational policy is best left to those persons who have certain direct and definable interests in that policy: those who are either immediately involved as parents of school children or who, as owners or lessees of taxable property, are burdened with the local cost of funding school district operations.[6] True, persons outside those classes may be genuinely interested in the conduct of a school district's business--just as commuters from New Jersey may be genuinely interested in the outcome of a New York City election. But unless this Court is to claim a monopoly of wisdom regarding the sound operation of school systems in the 50 States, I see no way to justify the conclusion that the legislative classification involved here is not rationally related to a legitimate legislative purpose. "There is no group more interested in the operation and management of the public schools than the taxpayers who support them and the parents whose children attend them." Doremus v. Board of Educ., 342 U.S. 429, 435 (DOUGLAS, J., dissenting).

With good reason, the Court does not really argue the contrary. Instead, it strikes down New York's statute by asserting that the traditional equal protection standard is inapt in this case, and that a considerably stricter standard--under which

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[5] Lassiter v. Northampton Election Bd., 360 U.S., at 52.

[6] Presumably the rationale for including lessees and their spouses in the electoral process is that the cost of property taxes is in many instances passed on from owner to lessee.

classifications relating to "the franchise" are to be subjected to "exacting judicial scrutiny"--should be applied. But the asserted justification for applying such a standard cannot withstand analysis.

The Court is quite explicit in explaining why it believes this statute should be given "close scrutiny":

> "The presumption of constitutionality and the approval given 'rational' classifications in other types of enactments are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality." (Footnote omitted.)

I am at a loss to understand how such reasoning is at all relevant to the present case. The voting qualifications at issue have been promulgated not by Union Free School District No. 15, but by the New York State Legislature, and the appellant is of course fully able to participate in the election of representatives in that body. There is simply no claim whatever here that the state government is not "structured so as to represent fairly all the people," including the appellant.

Nor is there any other justification for imposing the Court's "exacting" equal protection test. This case does not involve racial classifications, which in light of the genesis of the Fourteenth Amendment have traditionally been viewed as inherently "suspect."[7] And this statute is not one that impinges upon a constitutionally protected right, and that consequently can be justified only by a "compelling" state interest.[8] For "the Constitution of the United States does not confer the right of suffrage upon any one...." Minor v. Happersett, 21 Wall. 162, 178.

In any event, it seems to me that under any equal protection standard, short of a doctrinaire insistence that universal suffrage is somehow mandated by the Constitution, the appellant's claim must be rejected. First of all, it must be emphasized--despite the Court's undifferentiated references to what it terms

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[7] Korematsu v. United States, 323 U.S. 214, 216; McLaughlin v. Florida, 379 U.S. 184, 192.

[8] Shapiro v. Thompson, ___ U.S. ___, ___; cf. NAACP v. Alabama, 357 U.S. 449, 463.

"the franchise"--that we are dealing here not with a general election, but with a limited, special-purpose election.[9] The appellant is eligible to vote in all state, local, and federal elections in which general governmental policy is determined. He is fully able, therefore, to participate not only in the processes by which the requirements for school district voting may be changed, but also in those by which the levels of state and federal financial assistance to the District are determined. He clearly is not locked into any self-perpetuating status of exclusion from the electoral process.[10]

Secondly, the appellant is of course limited to asserting his own rights, not the purported rights of hypothetical childless clergymen or parents of preschool children, who neither own nor rent taxable property. The appellant's status is merely that of a citizen who says he is interested in the affairs of his local public schools. If the Constitution requires that he must be given a decision-making role in the governance of those affairs, then it seems to me that any individual who seeks such a role must be given it. For as I have suggested, there is no persuasive reason for distinguishing constitutionally between the voter qualifications New York has required for its Union Free School District elections and qualifications based on factors such as age, residence, or literacy.[11]

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[9] Special-purpose governmental authorities such as water, lighting, and sewer districts exist in various sections of the country, and participation in such districts is undoubtedly limited in many instances to those who partake of the agency's services and are assessed for its expenses. The constitutional validity of such a policy is, it seems to me, unquestionable. And while it is true, as the appellant argues, that a school system has a more pervasive influence in the community than do most other such special-purpose authorities, I cannot agree that that difference in degree presents anything approaching a distinction of constitutional dimension.

[10] Compare Lucas v. Forty-fourth General Assembly, 377 U.S. 713, with Reynolds v. Sims, 377 U.S. 533. Since Carrington v. Rash, 380 U.S. 89, and Harper v. Virginia Bd. of Elections, 383 U.S. 663, dealt with requirements for voting in general elections, those decisions do not control the result here.

[11] A comparison of the classification made by New York with one based on literacy, for instance, presumably would attempt to weight the interest of the person excluded from voting against the reasonableness of the legislative assumption regarding his

Today's decision can only be viewed as irreconcilable with the established principle that "[t]he States have... broad powers to determine the conditions under which the right of suffrage may be exercised...." Since I think that principle is entirely sound, I respectfully dissent from the Court's judgment and opinion.

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competence as a voter or his connection with the subject matter of the election. In such a speculative analysis precision is not attainable for that very reason, it seems to me, the standard of adjudication should be a reasonably tolerant one. But even assuming such an analysis were attempted, it could not in my view justify drawing a constitutional line between the classification involved here and a literacy requirement. True, the appellant and persons in his class might be thought to have generally more ability to vote intelligently than do illiterates. On the other hand, illiterate citizens clearly have considerably more of a stake in the outcome of general elections than do the members of the appellant's class in the result of school district elections.

Appendix B

No. 705.--October Term, 1968.

Joseph Q. Cipriano, Appellant, v. City of Houma et al.) On Appeal From the United States District Court for the Eastern District of Louisiana.

/June 16, 1969./

PER CURIAM.

In this case we must determine whether provisions of Louisiana law which give only "property taxpayers" the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility are constitutional. This case thus presents an issue similar to the one considered in Kramer v. Union Free School District No. 15, ante. With one judge dissenting, a three-judge District Court determined that the Louisiana provisions were constitutional. However, as in Kramer, we find that the challenged provisions violate the Equal Protection Clause of the Fourteenth Amendment; we therefore reverse.

The Louisiana Constitution provides that the legislature may authorize municipalities to issue bonds "/f/ or the purpose of constructing, acquiring, extending or improving any revenue-producing public utility." La. Const., Art. 14, § 14 (f). Pursuant to this provision, the legislature enacted legislation authorizing Louisiana municipalities to issue revenue bonds. La. Rev. Stat. § 33:4251 (1950).1/ The legislature further provided, however, that the municipalities could issue the bonds only if they were approved by a "majority in number and amount of the property taxpayers qualified to vote.../who vote at the bond election/."2/

1/ The amount of debt a municipality may incur is limited by the Louisiana Constitution. La. Const., Art. 14, § 14 (f). These revenue bonds are not included in computing the municipal debt, however, if they are secured exclusively by a mortgage on the assets of the utility system and a pledge of the system revenues. La. Const., Art. 14, § 14 (m).

2/ We were informed at oral argument that "number and amount" means the bonds must be approved by a majority of the property

La. Rev. Stat. § 39:501 (1950). See also La. Rev. Stat. §§ 33:4258, 39:508 (1950)

Appellee City of Houma owns and operates gas, water, and electric utility systems. In September 1967 the city officials scheduled a special election to obtain voter approval for the issuance of $10,000,000 of utility revenue bonds. The city planned to finance extension and improvement of the municipally owned utility systems with the bond proceeds. At the special election a majority "in number and amount" of the property taxpayers approved the bond issue. However, within the period provided by Louisiana law for contesting the result of the election, La. Rev. Stat. § 33:4260 (1960), this suit was instituted in the United States District Court for the Eastern District of Louisiana.

Appellant alleged that he was a duly qualified voter3/ of the City of Houma, and that he had been prevented from voting in the revenue bond election solely because he was not a property owner. He sued for himself and for a class of 6,926 nonproperty taxpayers otherwise qualified as City of Houma voters. Appellant sought to enjoin the issuance of the bonds approved at the special election and to obtain a declaratory judgment that the limitation of the franchise to property taxpayers is unconstitutional. A three-judge District Court was convened pursuant to 28 U.S. C. §§ 2281, 2284 (1964 ed.). The court then dismissed the suit, finding the Louisiana provisions constitutional. Cipriano v. City of Houma, 286 F. Supp. 823 (D. C. E. D. La. 1968). Appellant brought a direct appeal to this Court, 28 U. S. C. § 1253 (1964 ed.); we noted probable jurisdiction - U. S. ---(1969).

As we noted in Kramer, ante, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others,4/ "the Court must determine whether the exclusions are necessary to promote a compelling state interest." Kramer v. Union Free School District No. 15, ante, at 6. Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because "the questions scheduled for the election need not have been submitted to the voters." Id., at 8, n. 11.

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taxpayers voting and their votes must also represent a "majority of the assessed property owned by those taxpayers who are actually voting."

3/ The qualifications are of age, residence, and registration. See La. Rev. Stat. § 39:508 (1950).

4/ Appellant does not challenge any other voter qualification regulations. The sole issue in this case is the constitutionality of the provisions of Louisiana law permitting only property taxpayers to vote in utility bond elections.

The State maintains that property owners have a "special pecuniary interest" in the election, because the efficiency of the utility system directly affects "property and property values" and thus "the basic security of their investment in /their/ property is at stake." Assuming arguendo5/ that a State might, in some circumstances, constitutionally limit the franchise to qualified voters who are also "specially interested" in the election, whether the statute allegedly so limiting the franchise denies equal protection of the laws to those otherwise qualified voters who are excluded depends on "whether all those excluded are in fact substantially less interested or affected than those the statute includes." Id., at 11.

At the time of the election, only about 40% of the city's registered voters were property taxpayers. Of course, the operation of the utility systems - gas, water, and electric - affects virtually every resident of the city, nonproperty owners as well as property owners. All users pay utility bills, and the rates may be affected substantially by the amount of revenue bonds outstanding.6/ Certainly property owners are not alone in feeling the impact of bad utility service or high rates, or in reaping the benefits of good service and low rates.

The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like non-property owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike.

Moreover, the profits of the utility systems' operations are paid into the general fund of the city and are used to finance city services that otherwise would be supported by taxes. Of course, property taxpayers may be concerned with expanding and improving the city's utility operations; such improvements could produce revenues which eventually would reduce the burden on the property tax to support city services. On the other hand, nonproperty taxpayers may feel that their interests as rate payers indicate that no further expansion of the utility's debt obligations should be made. Of course, these differences of opin-

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5/ As in Kramer v. Union Free School District No. 15, ante, we find it unnecessary to decide whether a State might, in some circumstances, limit the franchise to those "primarily interested."

6/ For example, a proposed decrease in utility rates may be forestalled by the issuance of new revenue bonds.

ion cannot justify excluding either group from the bond election, when, as in this case, both are substantially affected by the utility operation. For, as we noted in Carrington v. Rash, 380 U.S. 89, 94 (1965), "'/f/encing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."

The challenged statute contains a classification which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the State's sole justification for the statute is that the classification provides a "rational basis" for limiting the franchise to those voters with a "special interest," the statute clearly does not meet the "exacting standard of precision we require of statutes which selectively distribute the franchise." Kramer v. Union Free School District No. 15, ante, at 11. We therefore reverse the judgment of the District Court.

Significant hardships would be imposed on cities, bondholders, and others connected with municipal utilities if our decision today were given full retroactive effect. Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the "injustice or hardship" by a holding of nonretroactivity. Great Northern R. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358,364 (1932). See Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940). Cf. Linkletter v. Walker, 381 U.S. 618 (1965). Therefore, we will apply our decision in this case prospectively. That is, we will apply it only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision. Of course, our decision will not affect the validity of securities which have been sold or issued prior to this decision and pursuant to such final authorization.

The judgment of the District Court is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Mr. Justice Black and Mr. Justice Steward concur in the judgment of the Court. Unlike Kramer v. Union Free School District No. 15, ante, this case involves voting classification "wholly irrelevant to achievement of the State's objective. Kotch v. Board of River Port Pilot Comm'rs., 330 U.S. 552, 556.

Mr. Justice Harlan, while adhering to his views expressed in dissent in Reynolds v. Sims, 377 U.S. 533, 589 (1964); Harper

v. Virginia Board of Elections, 383 U.S. 663, 680 (1966); and Avery v. Midland County, 390 U.S. 474, 486 (1968), but considering himself bound by the Court's decisions in those cases, concurs in the result.

Appendix C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

EMILY KOLODZIEJSKI, Plaintiff, vs. CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN J. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona, Defendants.	No. Civ-69-335 Phx. OPINION AND ORDER

Before: Walter Ely, Circuit Judge, and Walter E. Craig and Wm. P. Copple, District Judges

PER CURIAM:

The above entitled cause was instituted pursuant to Title 42 U.S.C. Section 1983, Title 28 U.S.C. Section 1343 (3) (4), and Title 28 U.S.C. Sections 2201 and 2202.

Plaintiff, a resident of the City of Phoenix, within the District of Arizona, seeks to enjoin the City of Phoenix, a body politic, the Mayor and members of the City Council, from issuing certain bonds approved at a special election June 10, 1969, called for that purpose. The election was duly and regularly called by the City, pursuant to Article 7, Section 13 of

the Arizona Constitution, and Title 9, Section 781, A.R.S.[1]

The propositions offered to the electorate were ten in number, the first two related to Revenue Bonds: (1) for the Municipal Water System, $53,900,000, (2) for the Airport and related facilities, $58,900,000. The remaining eight propositions related to General Obligation Bonds: (3) Sewer System, $37,000,000, (4) Parks and Playgrounds, $9,000,000, (5) Municipal Buildings, $1,000,000, (6) Fire Department, $1,200,000, (7) Police and Public Safety Buildings, $4,500,000, (8) Maintenance and Service Facilities, $1,500,000, (9) Sanitary Landfills, $2,250,000, (10) Library, $4,000,000.

Pursuant to the Arizona Constitution and Statutes, the electorate was limited to duly qualified electors who, in addition, were real property taxpayers. Plaintiff is a duly qualified elector of the City of Phoenix, but not a real property taxpayer.

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[1] Article 7, Section 13, Constitution of Arizona: "Questions upon bond issues or special assessments shall be submitted to the vote of real property tax payers, who shall also in all respects be qualified electors of this state, and of the political subdivisions thereof affected by such questions."

Title 9, Section 782, A.R.S.: "When the governing body of an incorporated city or town determines to borrow money under the provisions of this article, the question of issuing bonds under this article shall be submitted to the real property taxpayers who are in all other respects qualified electors of the municipality. No bond shall be issued without the assent of a majority of such qualified electors voting at an election held for that purpose as provided in this article."

The canvass of the election took place June 23, 1969, and the several propositions were declared to be carried. Under Arizona law the period during which an elector may contest an election is limited to five (5) days following the canvass of the election and the declaration of the results thereof. 16 A.R.S. 1202, 1204.

This action was instituted August 1, 1969, in this Court, no State action having been instituted. A Three Judge Court was convened to hear the matter, pursuant to Title 23 U.S.C. Sections 2281 and 2284. The matter was submitted and argued to the Court upon an agreed Statement of Facts consistent with the foregoing statement.

We need go no further than Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886, and Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, both decided June 16, 1969.

In Kramer, supra, the Supreme Court has held that State Statutory and Constitutional provisions prohibiting the exercise of the voting franchise to some electors, while allowing it to others, must be subjected to close scrutiny to "determine whether the exclusions are necessary to promote a compelling State interest." If there is no compelling State interest to be promoted by the exclusion, the Constitutional and Statuory provisions are violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

As in Cipriano, supra, we find the challenged Constitutional provision and the challenged Statutes under which the

election was held to contain "a classification which excludes otherwise qualified voters, who are as substantially affected and directly interested in the matters voted upon as those permitted to vote." There was no evidence before this Court which would justify the conclusion that the exclusions under Arizona law are necessary to promote a compelling State interest. Moreover, in the instant case we find no evidence which would justify a distinction between Revenue Bonds and General Obligation Bonds.[2]

In Cipriano, supra, in order to avoid significant hardships on cities' bondholders and others, the Court held the rule of that case would be applied prospectively, "only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision."

In the instant case the authorization to issue securities was not legally complete by June 16, 1969, (the date of the Cipriano decision) nor had the time expired within which the election could have been contested. In the instant case we find the Arizona Constitutional and Statutory exclusions involved in

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[2] The defendants concede that Kramer and Cipriano require that the election be invalidated insofar as it authorized the issuance of Revenue Bonds.

the election called by the City of Phoenix and held June 10 1969, to be violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

IT IS ORDERED that the defendants will be permanently enjoined from the issuance of any securities purportedly authorized by the challenged election, and the plaintiff's counsel will submit a proposed form of judgment.

DATED this 17th day of November, 1969.

United States Circuit Judge

United States District Judge

United States District Judge

Appendix D

Colorado Bond Issues Blocked From Sale By Present Market Conditions

Issues Already Authorized and Ready to be Marketed

1)	Aurora School District..... (Population - 77,000)	$ 4,500,000
2)	Littleton School District..... (Population - 55,000)	$ 2,100,000
3)	Adams County School District No. 1..... (Population - 19,000)	$ 800,000
4)	Adams County School District No. 12..... (Population - 37,500)	$ 1,000,000
5)	Boulder Valley School District..... (Population - 85,000)	$ 8,000,000
6)	Harrison School District, El Paso County..... (Population - 15,500)	$ 2,200,000
7)	Air Force Academy School District..... El Paso County (Population - 12,000)	$ 1,650,000
	Total	$20,250,000

Appendix E

Colorado Bond Issues Blocked From Sale By Present Market Conditions

Issues Planned and to be Authorized by Election in Near Future

1)	Jefferson County School District (Population - 213,000)	$ 25,000,000
2)	Greeley School District (Population - 35,000)	$ 3,500,000
3)	Denver School District (Population 500,000)	$ 40,000,000
4)	City of Denver (Population - 500,000)	$ 5,300,000
5)	Pueblo County School District No. 70 (Population - 14,500)	$ 1,200,000
6)	Loveland School District (Population - 19,250)	$ 6,700,000
7)	Fort Collins School District (Population - 37,000)	$ 18,500,000
8)	Creede School District (Population - 1,000)	$ 325,000
9)	Eagle County School District (Population - 5,000)	$ 3,600,000
10)	Delta School District (Population - 10,000)	$ 3,150,000
11)	Pueblo School District (Population - 125,000)	$ 16,000,000
	Total	$123,275,000