## CONCLUSION

The decision of the district court is reversed. We remand the cause to the district court with directions to remand the case to the PSC to enter an order not inconsistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.

WRIGHT and STEPHAN, JJ., not participating.

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# SARPY COUNTY FARM BUREAU, A NEBRASKA NONPROFIT CORPORATION, ET AL., APPELLEES, V. LEARNING COMMUNITY OF DOUGLAS AND SARPY COUNTIES, ET AL., APPELLANTS, AND SARPY COUNTY TREASURER, RICH JAMES, IN HIS OFFICIAL CAPACITY, ET AL., APPELLEES.

808 N.W.2d 598

Filed February 3, 2012. No. S-11-805.

1. **Constitutional Law: Statutes: Appeal and Error.** Whether a statute is constitutional is a question of law; accordingly, the Nebraska Supreme Court is obligated to reach a conclusion independent of the decision reached by the court below.
2. **Pleadings.** A pleading serves to guide the parties and the court in the conduct of cases, and thus the issues in a given case are limited to those which are pled.
3. **Legislature: Municipal Corporations: Taxation: Property.** The levy of a property tax by a local governmental unit should not be treated as a state levy for state purposes merely because the Legislature has authorized or required the local governmental unit to make the levy. The converse is also true; where the Legislature has authorized and required local governmental units to make a property tax levy for state purposes, it should not be treated as a local levy for local purposes merely because it is made by a local governmental unit.
4. **Taxation.** The fact that a tax is for a governmental purpose does not automatically make it for state purposes rather than local purposes. This is so because in many, if not most, cases a governmental function may be accurately described as having both state and local purposes.
5. **Statutes: Intent.** Where state and local purposes are commingled in a statutory enactment, the crucial determination is whether the controlling and predominant purposes are state purposes or local purposes. While this is a judicial question, there is no sure test by which state purposes may be distinguished from local purposes. The court must consider each case as it arises and draw the line of demarcation.
6. **Taxation: Statutes: Legislature: Intent: Evidence.** In deciding whether a state or a local purpose predominates, the language of the statutory scheme is of prime

importance. A court may also consider the legislative history and evidence in the record relating to the history of the taxing scheme at issue.

7. **Constitutional Law: Statutes: Presumptions.** A statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality.
8. **Constitutional Law: Statutes: Proof.** The burden of establishing the unconstitutionality of a statute is on the one attacking its validity.
9. ____: ____: ____. The unconstitutionality of a statute must be clearly established before it will be declared void.
10. **Constitutional Law: Taxation.** The power to tax being a sovereign power, constitutional provisions relating thereto do not operate as grants of power of taxation to the government, but are merely limitations on a power which would otherwise be unrestricted.
11. ____: ____. Constitutional limitations on the power to tax must be strictly construed.
12. ____: ____. A commutation occurs in violation of the Nebraska Constitution when tax funds raised in one district are diverted entirely to the benefit of another district.
13. **Constitutional Law: Taxation: Public Purpose.** A tax levy does not equal a commutation merely because the taxing district is broadened to reflect the actual benefits to the public. So long as all taxpayers receive the benefit of the taxes they remit, the taxing district passes constitutional muster without offending the prohibition against commutation.
14. **Legislature: Taxation.** The Legislature creates a taxing district when it grants an entity the power to require the county clerk to levy a tax for the support of the district.
15. **Taxation: Valuation: Constitutional Law.** The object of Nebraska's uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge. Reversed and remanded with directions to dismiss.

Scott E. Daniel and Kurth A. Brashear, of Brashear, L.L.P., for appellant Learning Community of Douglas and Sarpy Counties.

Kenneth W. Hartman, Elizabeth Eynon-Kokrda, and Kelly R. Dahl, of Baird Holm, L.L.P., for appellant Douglas County School District No. 1.

Patrick J. Sullivan and Benjamin E. Maxell, of Adams & Sullivan, P.C., for appellant Sarpy County School District No. 1.

Thomas J. Culhane and Matthew V. Rusch, of Erickson & Sederstrom, P.C., for appellees Sarpy County Farm Bureau, John Knapp, and Ron Woodle.

Jeff C. Miller, Duncan A. Young, and Keith I. Kosaki, of Young & White Law Offices, for appellee Douglas County School District No. 17.

Michael F. Coyle and Patrick S. Cooper, of Fraser Stryker, P.C., L.L.O., for appellee Douglas County School District No. 66.

HEAVICAN, C.J., CONNOLLY, STEPHAN, and MCCORMACK, JJ., INBODY, Chief Judge, and SIEVERS and CASSEL, Judges.

STEPHAN, J.

In 2010, the Learning Community of Douglas and Sarpy Counties (Learning Community) established a common levy for the general fund budgets of its 11 member school districts.[1] After Sarpy County levied this tax on real property, three taxpayers brought an action in the district court seeking a declaration that the tax was unconstitutional. They alleged that (1) it was a property tax for a state purpose,[2] (2) it was a commutation of taxes,[3] and/or (3) it violated the requirement that taxes "be levied by valuation uniformly and proportionately upon all real property."[4] The Learning Community, each of its member school districts, and the Sarpy County treasurer were named defendants in the action. Ruling on cross-motions for summary judgment, the district court declared the Learning Community's common levy was unconstitutional as a property tax for state purposes but did not reach the alternative grounds of alleged unconstitutionality. The Learning Community and two of its member school districts appeal. We reverse, and remand with directions to dismiss.

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[1] See Neb. Rev. Stat. § 77-3442(2)(b) (Cum. Supp. 2010).

[2] Neb. Const. art. VIII, § 1A.

[3] *Id.*, § 4.

[4] *Id.*, § 1.

## I. BACKGROUND

### 1. Learning Community Structure

A learning community is a political subdivision authorized by legislation enacted in 2006.[5] Each Nebraska city of the metropolitan class is required to establish a learning community which includes all the school districts having a principal office in the county where the city of the metropolitan class is located and all the school districts having a principal office located in a county that has a contiguous border of at least 5 miles in aggregate with such city of the metropolitan class.[6] In addition, a learning community may be established at the request of at least three school boards located outside a metropolitan area, provided certain requirements are met.[7] A learning community shares the territory of its member school districts.[8]

When the Legislature enacted the learning community legislation, it amended a statute which had provided that "[e]ach incorporated city of the metropolitan class . . . shall constitute one Class V school district."[9] The statute currently provides that each such city "shall contain at least one Class V School district."[10]

A learning community is governed by a coordinating council.[11] The coordinating council has, among other powers, the authority to levy a common levy for the general funds and special building funds of its learning community's member school districts.[12] Section 77-3442(2)(b) provides that a learning community, for each fiscal year, "may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property

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[5] See 2006 Neb. Laws, L.B. 1024, § 103 (codified at Neb. Rev. Stat. § 79-2101 (Reissue 2008)).

[6] Neb. Rev. Stat. § 79-2102 (Reissue 2008).

[7] *Id.*

[8] § 79-2101.

[9] Neb. Rev. Stat. § 79-409 (Supp. 2005).

[10] § 79-409 (Reissue 2008).

[11] See § 79-2101.

[12] Neb. Rev. Stat. § 79-2104(1) and (2) (Cum. Supp. 2010).

subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073." That section provides as follows:

> On or before September 1 for each year, each learning community coordinating council shall determine the expected amounts to be distributed by the county treasurers to each member school district from general fund property tax receipts pursuant to subdivision (2)(b) of section 77-3442 and shall certify such amounts to each member school district, the county treasurer for each county containing territory in the learning community, and the State Department of Education. Such property tax receipts shall be divided among member school districts proportionally based on the difference of the school district's formula need calculated pursuant to section 79-1007.11 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the school fiscal year for which the distribution is being made.
>
> Each time the county treasurer distributes property tax receipts from the common general fund levy to member school districts, the amount to be distributed to each district shall be proportional based on the total amounts to be distributed to each member school district for the school fiscal year. Each time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the common general fund levy for member school districts or any entity issues an in lieu of property tax reimbursement based on the common general fund levy for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.[13]

Section 77-3442(2)(g) provides that a learning community may, each fiscal year, "levy a maximum levy of two cents on

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[13] Neb. Rev. Stat. § 79-1073 (Cum. Supp. 2010).

each one hundred dollars of taxable property subject to the levy for special building funds for member school districts. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.01." Neb. Rev. Stat. § 79-1073.01 (Cum. Supp. 2010) provides:

> Amounts levied by learning communities for special building funds for member school districts pursuant to subdivision (2)(g) of section 77-3442 shall be distributed by the county treasurer collecting such levy proceeds to all member school districts proportionally based on the formula students used in the most recent certification of state aid pursuant to section 79-1022. Each time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the levy of a learning community for special building funds for members [sic] school districts or any entity issues an in lieu of property tax reimbursement based on the levy of a learning community for special building funds for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.
>
> Any amounts distributed pursuant to this section shall be used by the member school districts for special building funds.

A levy by a learning community limits the permissible levies by its member school districts. Subject to certain exceptions not applicable here, a school district which is not included within a learning community is authorized to "levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy."[14] However, school districts which are members of a learning community "may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred

[14] § 77-3442(2)(a).

dollars of taxable property subject to the levy minus the learning community levies."[15]

Originally, a learning community was required to distribute tax receipts directly to its member school districts.[16] But that system of distribution was changed by legislative amendment[17] as a cost-saving and efficiency measure. Currently, the county treasurer for each county containing territory in a learning community distributes funds to the member school districts from the levy tax receipts.[18]

The Learning Community involved in this action was established in 2009. It has its own separate and distinct boundaries, but shares its territory with the public school districts in Douglas and Sarpy Counties as follows: Douglas County school districts Nos. 1 (Omaha Public Schools), 10 (Elkhorn Public Schools), 15 (Douglas County West Community Schools), 17 (Millard Public Schools), 54 (Ralston Public Schools), 59 (Bennington Public Schools), and 66 (Westside Community Schools); and Sarpy County school districts Nos. 1 (Bellevue School District), 27 (Papillion-La Vista Public Schools), 37 (Gretna Public Schools), and 46 (South Sarpy District 46). Each member school district retains its separate status as a political subdivision, as well as its boundaries and system of administration.

Prior to adopting its 2010-11 budget, the Learning Community solicited input from its member school districts and conducted public hearings on the proposed budget and levy. On September 16, 2010, the Learning Community's coordinating council adopted a 2010-11 budget which included a common levy for the general funds of its member school districts of $0.95 per $100 of taxable valuation of property subject to the levy. The common levy for special building funds of member school districts was set at zero. The council certified the levy

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[15] § 77-3442(2)(c).

[16] See §§ 79-1073, 79-1073.01, and 79-2104(1) and (2) (Reissue 2008).

[17] 2009 Neb. Laws, L.B. 392, §§ 13 to 16.

[18] Neb. Rev. Stat. § 79-1041 (Cum. Supp. 2010).

to the Douglas and Sarpy Counties boards of equalization[19] and certified the expected distributions from revenues generated by the levy to the member school districts, the affected county treasurers, and the State Department of Education.[20] On October 5, 2010, the Sarpy County Board of Commissioners sitting as the Board of Equalization of Sarpy County levied property taxes which included the Learning Community's common levy.

### 2. District Court Proceedings

This action was commenced on December 21, 2010, in the district court for Sarpy County by Sarpy County Farm Bureau, John Knapp, and Ron Woodle (collectively the taxpayers). Sarpy County Farm Bureau is a nonprofit corporation with its principal place of business in Sarpy County and pays property taxes in that county. Knapp and Woodle are residents of Sarpy County and pay property taxes there. The taxpayers sought a declaratory judgment that the Learning Community's common levy was unconstitutional, because it was a property tax for state purposes,[21] because the tax and its distribution constituted a commutation of taxes,[22] and because it was not levied uniformly and proportionately.[23] Named defendants were the Learning Community, each of its member school districts, and the Sarpy County treasurer. The taxpayers prayed that §§ 77-3442(2)(b) and 79-1073 be declared unconstitutional, that the tax levies and their distribution be declared void and illegal, and for such other relief as the court determined to be just and equitable.

The taxpayers subsequently filed a motion for summary judgment. Three of the defendants, namely, the Learning Community, Douglas County School District No. 1 (Omaha Public Schools), and Sarpy County School District No. 1

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[19] See Neb. Rev. Stat. § 13-508 (Cum. Supp. 2010).

[20] See § 79-1073.

[21] Neb. Const. art. VIII, § 1A.

[22] *Id.*, § 4.

[23] *Id.*, § 1.

(Bellevue School District) filed cross-motions for summary judgment. After conducting an evidentiary hearing, the district court sustained the taxpayers' motion. It determined that the Learning Community's common general fund levy made pursuant to § 77-3442(2)(b) and distributed pursuant to § 79-1073 was an unconstitutional property tax levied for a state purpose. It reasoned the legislative history showed that learning communities were created to pool the resources of the member districts in order to allow for a redistribution of tax dollars. Although not requested to do so, the district court also determined that the statutes authorizing learning communities to levy for special building funds of member school districts[24] and to distribute such revenues[25] were unconstitutional for the same reason. The district court did not reach the taxpayers' alternative constitutional claims. Accordingly, the district court declared §§ 77-3442(2)(b) and (g), 70-1073, and 70-1073.01 to be "unconstitutional as in violation of Neb. Const. art. VIII, § 1A."

The Learning Community, Omaha Public Schools, and Bellevue School District (collectively appellants) perfected a timely appeal. We granted the Learning Community's motion to stay the order and judgment of the district court pending resolution of the appeal and a second motion by the Learning Community to expedite the appeal. Separate briefs and notices of constitutional question were filed by each of the three appellants. The appellee taxpayers filed a joint brief. Appellee Douglas County School District No. 17 (Millard School District) filed a separate brief taking no position on the merits of the appeal but urging this court to adopt a prospective remedy if it determines that any of the challenged statutes are unconstitutional. Douglas County School District No. 66 (Westside Community Schools) did not file a brief but advised the court by letter that it joined in Millard School District's request. No other party has appeared on appeal.

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[24] § 77-3442(2)(g).

[25] § 79-1073.01 (Cum. Supp. 2010).

## II. ASSIGNMENTS OF ERROR

Appellants assign, restated and summarized, that the district court erred in (1) finding the common general fund levy was an unconstitutional property tax for a state purpose, (2) finding unchallenged statutes to be unconstitutional, (3) granting the taxpayers' motion for summary judgment, and (4) denying appellants' motion for summary judgment.

## III. STANDARD OF REVIEW

[1] Whether a statute is constitutional is a question of law; accordingly, we are obligated to reach a conclusion independent of the decision reached by the court below.[26]

## IV. ANALYSIS

### 1. Preliminary Matters

[2] Before addressing the merits of the constitutional issues presented in this appeal, we consider two preliminary matters raised by appellants. First, they argue that because the district court was not asked to rule on the constitutionality of §§ 77-3442(2)(g) and 79-1073.01, which authorize a learning community's common levy for the special building funds of its member districts, it erred in doing so. We agree. The constitutionality of these statutes was not raised in the complaint. A pleading serves to guide the parties and the court in the conduct of cases, and thus the issues in a given case are limited to those which are pled.[27] A sua sponte determination by a court of a question not raised by the parties may violate due process.[28] We hold that the district court's conclusion that §§ 77-3442(2)(g) and 79-1073.01 are unconstitutional is void. Because the district court lacked authority to address this issue, we likewise lack such authority, and our analysis is limited to the constitutionality of §§ 77-3442(2)(b) and 79-1073.

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[26] *Kiplinger v. Nebraska Dept. of Nat. Resources*, 282 Neb. 237, 803 N.W.2d 28 (2011); *Yant v. City of Grand Island*, 279 Neb. 935, 784 N.W.2d 101 (2010).

[27] See *Spanish Oaks v. Hy-Vee*, 265 Neb. 133, 655 N.W.2d 390 (2003).

[28] See *id.*

Second, appellants urge us not to reach the constitutional issues presented on the premise that they are nonjusticiable political questions. Appellants contend that the taxpayers' complaints about the common fund levy are simply challenges to policy decisions made by the Legislature about the appropriate structure of and funding for public education. According to appellants, this is the heart of the legislative policymaking function and this court is not a proper forum for resolving such broad and complicated policy decisions. We agree that broad policy decisions are the Legislature's prerogative. But here, we are specifically asked to determine whether the Legislature's chosen means of implementing a particular policy violate specific provisions of the state Constitution. This is a judicial function which this court is obligated to perform.[29]

### 2. Property Tax for State Purposes

#### (a) General Background and Case Law

Article VIII, § 1A, of the Nebraska Constitution provides: "The state shall be prohibited from levying a property tax for state purposes." This provision was first adopted in 1954 and was amended to its present form in 1966 after Nebraska adopted a state sales and income tax.[30] The purpose of the provision was to require the State, after it adopted sales and income taxes, to leave the realm of property taxation.[31] Accordingly, no state interest or function can be financed by means of property taxes; all "traditional" state interests and functions must be financed by means other than property taxes.[32]

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[29] See *Davis v. General Motors Acceptance Corp.*, 176 Neb. 865, 127 N.W.2d 907 (1964).

[30] See, *State ex rel. Western Technical Com. Col. Area v. Tallon*, 196 Neb. 603, 244 N.W.2d 183 (1976), citing *State ex rel. Western Nebraska Technical Com. Col. Area v. Tallon*, 192 Neb. 201, 219 N.W.2d 454 (1974); *State ex rel. Meyer v. County of Banner*, 196 Neb. 565, 244 N.W.2d 179 (1976).

[31] *Garey v. Nebraska Dept. of Nat. Resources*, 277 Neb. 149, 759 N.W.2d 919 (2009); *Swanson v. State*, 249 Neb. 466, 544 N.W.2d 333 (1996).

[32] *Swanson, supra* note 31, 249 Neb. at 476, 544 N.W.2d at 340.

We first addressed article VIII, § 1A, in *Craig v. Board of Equalization*.[33] In that case, a taxpayer alleged that a statute requiring the county to levy property taxes to pay for the care of its indigent mentally ill residents in state institutions was unconstitutional. Noting a prior case in which we held that while the institutions were run by the State, "'maintenance of the insane is not necessarily a state burden, and therefore it is within the power of the legislature to require that the tax be levied and collected by each county for the purpose of reimbursing the state,'"[34] we concluded that although the statute commingled state and local purposes, it did not contravene the prohibition of article VIII, § 1A.

Later the same year, this court decided *R-R Realty Co. v. Metropolitan Utilities Dist*.[35] The challenged state statute required counties and municipalities to levy a tax on property within a metropolitan water district in order to provide fire hydrants. We rejected the taxpayer's argument that the tax was levied for a state rather than a local purpose, stating: "If we were to accept the reasoning urged by the plaintiff, any property tax for governmental purposes levied by a city or county under legislative directions fixing a maximum amount and a maximum levy would become a tax levy by the state for state purposes."[36]

In *Kovarik v. County of Banner*,[37] a county alleged that requiring it to use county funds from property tax revenue to pay attorneys for defending indigent county residents was a state purpose and violated article VIII, § 1A. Although we agreed that the services did benefit "countless people, not only in the county, but also in the state and country, and perhaps in the entire world," we also determined that the "mere chance that the collective benefits may be universal does not alter

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[33] *Craig v. Board of Equalization*, 183 Neb. 779, 164 N.W.2d 445 (1969).

[34] *Id*. at 783, 164 N.W.2d at 447, quoting *State v. Douglas County*, 18 Neb. 601, 26 N.W. 378 (1886).

[35] *R-R Realty Co. v. Metropolitan Utilities Dist.*, 184 Neb. 237, 166 N.W.2d 746 (1969).

[36] *Id*. at 240, 166 N.W.2d at 748.

[37] *Kovarik v. County of Banner*, 192 Neb. 816, 224 N.W.2d 761 (1975).

the fact there is a definite and substantial benefit accruing to the counties."[38] We noted that historically, counties had been responsible for funding criminal prosecutions, and found nothing about the constitutional amendment which indicated an intent to remove that historical responsibility from counties. We concluded that the purpose was predominantly local in nature and that the law did not violate the constitution.

Our first case holding a statute to be in violation of article VIII, § 1A, was *State ex rel. Western Nebraska Technical Com. Col. Area v. Tallon* (*Tallon I*).[39] In that case, the Legislature attempted to group previously independent junior and technical colleges into a "new statewide independent system of technical community colleges."[40] A state board was to control the new system, and it was given power over budget, qualifications and credentials of instructors, training program content, and admission policies. The system was to be financed in part by a property tax levy. In addressing whether this tax violated article VIII, § 1A, we noted:

> The fabric of an educational system is woven of many threads. It is impossible to separate the threads which proclaim a state purpose from those which proclaim a local purpose and difficult to pick them out or identify them in the overall pattern. It is transparently clear that the State has, and should have, an abiding purpose to further all educational opportunities for its citizens, whether the particular institution or system is controlled, operated, and financed by local units of government under the provisions of state law, or whether it is controlled, operated, and financed directly by the state government, also under the provisions of state law.[41]

But noting that our task was to discern whether the primary purpose of the new system was a state purpose or a local purpose, we reasoned:

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[38] *Id*. at 824, 224 N.W.2d at 766.

[39] *Tallon I, supra* note 30.

[40] *Id.* at 204, 219 N.W.2d at 456.

[41] *Id*. at 209-10, 219 N.W.2d at 459.

> Under the act with which we are concerned here, the State has assumed the direct control of major policy decisions which affect the operation of each of the seven community college areas, and the statute reflects *a purpose to control the operation of all seven areas for the benefit of the residents of the state as a whole*. The provisions requiring that the tuition in any technical community college area for any resident of the State of Nebraska shall be the same as for a resident of the particular area is a strong indication of the *legislative purpose to benefit residents of the entire state as contrasted to residents of particular local areas*. The direct control by the State over capital expenditures . . . together with the complete and direct control of the individual budget of each technical community college area, demonstrate the dominance of the State as opposed to the local areas in all major matters of control and operation of the statutory system.[42]

After our decision in *Tallon I*, the Legislature took another approach to creating a system of technical colleges, and its new statutory procedure came before us in *State ex rel. Western Technical Com. Col. Area v. Tallon (Tallon II)*.[43] The new procedure no longer centralized state control, but instead gave technical community college areas many of the same powers as other political subdivisions, so that they operated much the same way as public school districts, "on a strictly local basis subject only to guidelines laid down by the Legislature."[44] We concluded that this new system, which authorized the area districts to levy property taxes, did not violate article VIII, § 1A. We noted in part that the mere fact that the area schools received state aid did not render their operation a state function, because "[s]tate aid to schools necessarily involves a commingling of state and local purposes."[45]

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[42] *Id.* at 211, 219 N.W.2d at 460 (emphasis supplied).

[43] *Tallon II, supra* note 30.

[44] *Id.* at 607, 244 N.W.2d at 186.

[45] *Id.* at 605, 244 N.W.2d at 186.

In *State ex rel. Meyer v. County of Banner*,[46] a county challenged the constitutionality of a state statute requiring it to use its property tax revenue to maintain county and district courts, prosecute state criminal violations, and conduct state and national elections. These functions had traditionally been financed by counties, and the constitutional amendment "does not affect the use of property taxes by a county . . . or other local subdivision. Counties . . . and other taxing subdivisions . . . have traditionally relied and still rely upon property taxes as their major source of revenue."[47] We concluded that the statutory requirement that such expenses be paid by the county from its property tax revenue was constitutional.

A somewhat similar situation was presented in *Rock Cty. v. Spire*.[48] There, the Legislature enacted a statute giving sole responsibility for the administration of social services programs to the State. Part of the statutory scheme required that all equipment that had been used by counties for the administration of public assistance programs was to be transferred to the State. These items had been purchased with property tax moneys collected from county residents. The county contended that because the items had been so purchased, converting them for state use violated article VIII, § 1A. We rejected this argument, reasoning:

> Although the State has assumed responsibility for the administration of social services programs, providing such services to people in need still remains a matter which is of local concern. Certainly, historically, the county has been responsible for certain of the costs of social services programs, including, obviously, the cost of purchasing the furniture and equipment at issue here. Under the ownership of [the State], the county's furniture and equipment will continue to be used for predominantly local purposes.[49]

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[46] *State ex rel. Meyer, supra* note 30.

[47] *Id.* at 568, 244 N.W.2d at 181.

[48] *Rock Cty. v. Spire*, 235 Neb. 434, 455 N.W.2d 763 (1990).

[49] *Id.* at 447, 455 N.W.2d at 771.

*Swanson v. State*[50] involved a constitutional challenge to legislation[51] which reorganized certain school districts and provided for a common levy for the benefit of multiple school districts grouped together as a Class VI school system. The legislation affected Class I school districts, which maintained only elementary schools, and Class VI school districts, which maintained only high schools. Under prior law, property within a Class I school district which had not chosen to become part of an affiliated school system was taxed only in an amount necessary to support the schools of that district and the Class VI district where its students attended high school. Affiliated Class I districts, however, were taxed as if all the school districts in the affiliated system were part of one large district. Hence, affiliated Class I school districts effectively paid property taxes to support other Class I districts, while unaffiliated Class I districts did not.

The challenged legislation created a "Class VI school system" out of Class I and Class VI districts. Each system included one high school and each of the elementary schools whose students would attend that high school. Each district within this local system maintained its independent school board and operated as an independent entity. But the property of residents within the local system was taxed based on the amount necessary to support the entire system, not just the elementary district and high school district affiliated with that property. The property tax levy was uniform throughout each local system, and the proceeds were distributed proportionally to the individual districts within the system. State aid was based on the resources and needs of the whole system, rather than on the resources and needs of each individual district.

A taxpayer alleged the legislation violated article VIII, § 1A, because under it, state aid to individual school districts depended on the common levy for the system. It was undisputed that under the legislation, state equalization aid to some school districts, including the district in which the taxpayer resided, was reduced. The taxpayer argued that the Legislature

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[50] *Swanson, supra* note 31.

[51] See 1993 Neb. Laws, L.B. 839.

had "in effect established a property tax for a state purpose, to expand property tax bases so as to make possible the redistribution of equalization aid."[52]

In addressing this issue, we reviewed our decisions in *Tallon I* and *Tallon II* and emphasized our conclusion in *Tallon I* that the legislative scheme at issue was unconstitutional, because it was primarily for the benefit of the state as a whole. We found a lack of state control in the scheme in *Swanson*; the State had no control over the budgets, programs, personnel, or administrative rules and regulations of the school districts within the new systems. We held that because the "State has assumed neither control nor the primary burden of financial support" of the new systems, nor had the State conditioned the property tax levy on something that would benefit the State, the levy was not unconstitutional as a property tax for a state purpose.[53]

More recently, in *Garey v. Nebraska Dept. of Nat. Resources*,[54] we held that a property tax was unconstitutional because it was levied for a state purpose. In that case, residents and taxpayers of natural resources districts challenged a state statute that authorized any district with "'a river subject to an interstate compact among three or more states'" to annually levy a property tax.[55] Legislative history clearly demonstrated that the controlling and predominant purpose of the tax was to create a fund to enable the State to comply with an interstate compact. Because the benefit was predominantly to the state as a whole, we held that the tax was unconstitutional.

(b) Legal Principles

[3] The levy of a property tax by a local governmental unit should not be treated as a state levy for state purposes merely because the Legislature has authorized or required the local

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[52] *Swanson, supra* note 31, 249 Neb. at 476, 544 N.W.2d at 340.

[53] *Id.* at 478, 544 N.W.2d at 341.

[54] *Garey, supra* note 31.

[55] *Id.* at 152, 759 N.W.2d at 925, quoting Neb. Rev. Stat. § 2-3225(1)(d) (Reissue 2007).

governmental unit to make the levy.[56] The converse is also true; where the Legislature has authorized and required local governmental units to make a property tax levy for state purposes, it should not be treated as a local levy for local purposes merely because it is made by a local governmental unit.[57] Construing the constitutional amendment to prohibit only a direct statewide property tax levy by the State itself would emasculate the amendment and render it virtually meaningless and wholly ineffective.[58]

[4-6] The fact that a tax is for a governmental purpose does not automatically make it for state purposes rather than local purposes.[59] This is so because in many, if not most, cases a governmental function may be accurately described as having both state and local purposes.[60] Where state and local purposes are commingled in a statutory enactment, the crucial determination is whether the controlling and predominant purposes are state purposes or local purposes.[61] While this is a judicial question, there is no sure test by which state purposes may be distinguished from local purposes.[62] The court must consider each case as it arises and draw the line of demarcation.[63] In deciding whether a state or a local purpose predominates, the language of the statutory scheme is of prime importance.[64] We may also consider the legislative history[65] and evidence in the record relating to the history of the taxing scheme at issue.[66]

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[56] See *R-R Realty Co., supra* note 35.

[57] See *Tallon I, supra* note 30.

[58] *Id.*

[59] *R-R Realty Co., supra* note 35.

[60] See *Kovarik, supra* note 37.

[61] See, *Garey, supra* note 31; *Tallon I, supra* note 30.

[62] *Id.*

[63] *Id.*

[64] See, *Garey, supra* note 31; *Swanson, supra* note 31; *Tallon II, supra* note 30; *Tallon I, supra* note 30.

[65] *Garey, supra* note 31.

[66] *Id.*; *Rock Cty., supra* note 48; *State ex rel. Meyer, supra* note 30; *Kovarik, supra* note 37; *R-R Realty Co., supra* note 35.

(c) Statutory Language

The taxpayers urge us to focus on only the common levy provision in the learning community legislation. But the constitutionality of the common levy cannot be considered in a vacuum. Instead, it must be considered in the context of the learning community legislation of which it is an integral part. In both *Tallon I* and *Tallon II*, we examined the statutory enactment as a whole and did not focus solely on the funding mechanism at issue. We conducted a similar analysis in *Swanson*, and conclude we must do so here.

Various provisions of the learning community legislation clearly relate to local issues by authorizing or requiring a learning community to provide educational services to the students and school districts within its territory. For example, a learning community must adopt a diversity plan designed to increase the socioeconomic diversity of enrollment at each school building within the learning community.[67] Learning communities employ an open enrollment attendance system, whereby a student residing in the learning community may apply to attend any school building within the learning community even if that school is not within the school district where the student resides.[68] A learning community may also establish and administer elementary learning centers which serve as resource centers for enhancing the academic success of elementary students.[69] The elementary learning centers may offer classes for family members, extended learning and summer school programming, health services, tutoring, support services programs, and resource advisors.[70]

We also note that the learning community legislation authorizes a learning community to levy a property tax for the general fund budgets of its member school districts, but does not require a common levy.[71] And by establishing a "maximum

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[67] Neb. Rev. Stat. §§ 79-2110 and 79-2118 (Cum. Supp. 2010).

[68] See §§ 79-2104(8) (Cum. Supp. 2010) and 79-2110.

[69] § 79-2104(11) and Neb. Rev. Stat. § 79-2112(1) (Cum. Supp. 2010).

[70] Neb. Rev. Stat. § 79-2114 (Reissue 2008).

[71] See § 77-3442(2)(b).

levy . . . of ninety-five cents per one hundred dollars of taxable valuation,"[72] the statute leaves the amount of any such levy to the discretion of the learning community's coordinating council.

But it is also clear that a learning community council has no discretion regarding the distribution of the proceeds of the common levy. Section 77-3442(2)(b) directs that such distribution be "pursuant to section 79-1073." That section directs that such proceeds be divided among member school districts in accordance with a formula that uses specific numbers calculated under sections[73] of the Tax Equity and Educational Opportunities Support Act.[74] While the act determines state aid to education, the state aid formula is different from the common levy disbursement formula.

(d) Legislative History

The legislative history related to learning communities is extensive. Although the taxpayers and the district court focused on only a specific and relatively small portion of the history, we conclude that our task is to examine the history as a whole.[75]

The examination begins with the history of L.B. 1024, the 2006 bill that established learning communities. According to the Introducer's Statement of Intent, L.B. 1024

> would provide for a new type of educational service unit (E.S.U.) to be referred to as a learning community. The territory of the learning community would form a single tax base for purposes of a common general fund levy and a common capital fund levy. The governing board for a learning community would be composed of one school board member from each member school district.
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> Students would be residents of the learning community and would be able to attend school in their attendance

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[72] *Id.*

[73] Neb. Rev. Stat. §§ 79-1002 (Reissue 2008) and 79-1007.11 and 79-1018.01 (Cum. Supp. 2010).

[74] Neb. Rev. Stat. §§ 79-1001 to 79-1033 (Reissue 2008 & Cum. Supp. 2010).

[75] See *Garey, supra* note 31.

> area or in any other school in the learning community that had capacity. Transportation would be provided if the student did not choose the closest school. School districts could operate focus schools with authorization from the learning community board and be eligible for additional resources.
>
> . . . Once in a learning community, the boundaries of any school district could only be changed through a plan submitted by the learning community board to the State Committee for the Reorganization of School Districts. The boundaries for districts in the counties that are required to be in a learning community would remain as they existed on January 1, 2005 until a plan is approved by the committee. Within the first 5 years, the learning community board would be required to submit a plan that assures member districts do not have more than 25,000 students and that equalizes economic diversity between member school districts.[76]

During committee debate on the bill, its principal introducer stated that it was intended to address "the metro area school organization issue."[77] The senator stated that by enacting the legislation,

> We achieve an opportunity for cooperation between school districts that is locally directed. The benefit of individual school districts and the variety of choices they offer students and parents is retained. The financial underpinnings of districts are made more equitable. Student mobility and opportunity [are] enhanced. The possibility of focus programs or campuses that serve the entire metro area is created.[78]

The principal introducer also stated that the learning community "would be responsible for a common financial base" and

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[76] Introducer's Statement of Intent, L.B. 1024, Committee on Education, 99th Leg., 2d Sess. (Jan. 30, 2006).

[77] *Id.*, Committee on Education Hearing at 15.

[78] *Id.* at 16-17.

would deal with "the broad issue of diversification of schools within that learning community."[79]

Also during floor debate, one senator noted that the learning community legislation was "for the purpose of working to integrate our schools, for the purpose of creating a common levy, for the purpose of trying to address the problems in Omaha."[80] Another senator stated, "And I think LB 1024 is about the metropolitan area becoming one family of schools, one learning community, far larger than just one city, one school, but all of us together, working to solve the problems."[81]

One of "the problems" in the metropolitan area was a boundary issue. At the time that the Legislature first considered the learning community legislation, a Nebraska statute provided that "[e]ach incorporated city of the metropolitan class . . . shall constitute one Class V school district."[82] The principal introducer of L.B. 1024 stated: "The issue we attempt to address in LB 1024 came storming onto the scene in June of last year, when OPS, Omaha Public Schools, proposed to expand its school district boundaries to the city limits of Omaha . . . ."[83] Other senators echoed the thought. One stated:

> I ask you, why are we here? We are here because of boundaries. We are here because no school board in the metro area—none—was willing to sit down and discuss the issue of boundaries, to discuss the issue of the segregated areas. No one was willing to sit down and talk about giving up territory, giving up part of their little fiefdom and/or growing. That is why we are here.[84]

Another senator observed:

> Now we've got a situation where some of our districts, some of our children, are in one fight. It is our responsibility and nobody else's to stop that fight. LB 1024 provides

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[79] *Id.*, Floor Debate at 12969-70 (Apr. 10, 2006).

[80] *Id.* at 13166-67 (Apr. 11, 2006).

[81] *Id.* at 13548-49 (Apr. 13, 2006).

[82] § 79-409 (Supp. 2005). See L.B. 1024, § 23.

[83] Floor Debate, L.B. 1024, 99th Leg., 2d Sess. 12405-06 (Apr. 4, 2006).

[84] *Id.* at 13157 (Apr. 11, 2006).

> an excellent way of doing that. It provides a learning community in which everyone is fully to the table.[85]

The issue of boundaries also appeared as the learning community legislation evolved. L.B. 1024 froze school district boundaries in the learning community subject to later redrawing, while 2007 Neb. Laws, L.B. 641, permanently froze school district boundaries.

The legislative history of L.B. 1024 also reflects concern about educational issues unique to a metropolitan area. One senator stated that L.B. 1024 encouraged "suburban districts" "to be involved with the urban district in making sure that all children have the best opportunities for educational success."[86] The principal introducer of L.B. 1024 stated, "One of the main objectives of the learning community is to address . . . the issue of integration within the entire learning community . . . ."[87] He stated that the legislation "basically involves a cooperative arrangement for funding, for addressing building needs, and for addressing whatever student mobility issues and educational opportunity issues that may be available, and the last may be the most important."[88] Another senator described the learning community structure as one in which the member districts are "interrelated," explaining, "We're trying to find a way to bring better delivery of services, to bring the benefits of local control and shared responsibilities in the larger group all together in one bill . . . ."[89]

It is also evident that the Legislature considered the impact of a learning community's common levy on state equalization aid. One senator remarked, "not only are we as a Legislature, through our policies, making equity . . . but the sharing of the property tax amounts throughout the learning community make a significant difference on the funding side of things."[90]

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[85] *Id*. at 13159-60.

[86] *Id*. at 12417 (Apr. 4, 2006).

[87] *Id*. at 12994 (Apr. 10, 2006).

[88] *Id*. at 12423 (Apr. 4, 2006).

[89] *Id*. at 13548 (Apr. 13, 2006).

[90] *Id*. at 12440 (Apr. 4, 2006).

The principal introducer of the legislation stated during floor debate that

> part of this proposal is the formation of a learning community and a common operating levy within that learning community and a sharing of that entire community resource. You're right that any one of these or any other district in the learning community that happened to be relatively low on property tax resources would rely relatively more on state aid. But . . . that's the way it does now happen in our aid formula.[91]

One colloquy during floor debate on L.B. 1024 is particularly instructive, and because various parties rely on portions of it, we quote it at some length:

> SENATOR HOWARD: Thank you. As you know, you and I worked closely on the issue of the common levy and I'm very supportive of that. I think that's a way to address the needs of all children equally. But my question is the common levy, and I know that you can understand this and really can help me better understand it, the common levy is used to equalize the resources among districts. Am I correct in that?
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> SENATOR RAIKES: Yes.
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> SENATOR HOWARD: My second part of this question then, would you see this issue, would you see this as . . . this equalization, this funding being used for a purpose for the state, a more general purpose regarding the students?
>
> SENATOR RAIKES: I'm not sure I follow your question, Senator. Are you talking about the common levy within the learning community and its implications for statewide finance or policy?
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> SENATOR HOWARD: Well, my question really is . . . and I'm sorry if I'm vague. I'll have to try to phrase this better to be . . . to have some more clarity in it. But the levy will result, no matter what the levy is, that amount of money will come from property tax, is that correct? I mean the source of it, when you boil it right down.

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[91] *Id.* at 12811 (Apr. 6, 2006).

SENATOR RAIKES: Right.

SENATOR HOWARD: So if we take that then and look at that money that's going to be used for educational purposes for all students, is this considered a state purpose, since education funds come from the state, it's governed . . . the educational program is governed by the decisions made by the legislative body for the state, and is the levy going to be used for a state purpose?

SENATOR RAIKES: No, the levy is to support the local school system.

SENATOR HOWARD: But isn't that the state? Aren't we ultimately responsible for that? And I know it's local in that many of the decisions are made locally and by the school boards, but ultimately isn't this the state that is responsible?

SENATOR RAIKES: Well, it's a shared responsibility between the state and local districts, and the local property tax is the local share of the financing of the school districts.

SENATOR HOWARD: Okay. I think I have a better concept of this. So that the levy, the common levy would be divided by the committee, no longer being called a board, now called the committee, they would . . .

SENATOR RAIKES: It's a council.

SENATOR HOWARD: . . . they would make the . . .

SENATOR RAIKES: Coordinating council.

SENATOR HOWARD: Thank you. Thanks. The council. We've changed that name a few times. But they would have the leverage to make the decision regarding the funding.

SENATOR RAIKES: They . . . that council has the authority to set the common levy up to a maximum . . .

SENATOR HOWARD: And that would be . . .

SENATOR RAIKES: . . . much the same as an individual school board now has the authority to set a local school district levy up to a maximum.[92]

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[92] *Id.* at 12852-54.

In 2007, the year after the Legislature enacted L.B. 1024, it considered L.B. 641, which was introduced by the same senator who had introduced L.B. 1024 the previous year. He described the bill as one of several "introduced this year to deal with what we have come to know as the metro area issue."[93]

As with L.B. 1024, the floor debate on L.B. 641 included a discussion of the school district boundary issues which precipitated the learning community legislation.[94] And there was further discussion of educational goals, with one senator noting that the problem which the bill sought to address was "an achievement gap for minority students in Omaha that must not be permitted to continue."[95] Speaking on the subject of learning community structure, another senator remarked:

> But you've got to have a governance to be able to commingle and send assets and resources and dollars to areas of the two-county learning community that need the special aid to make good things happen so that we improve education and learning and ultimately test scores and everything else that's important to us that we talk about. Quality education is what we're working on.[96]

The floor debate on L.B. 641 also included a discussion of the impact of a learning community's common levy on state aid to education. The introducer of L.B. 641 explained how the common levy would work:

> Let's assume that the learning community council establishes a common general fund levy of 95 cents. That would be levied against all the valuation in the entire learning community and that money collected from that would be distributed to the learning community school districts in proportion to their needs, the needs as calculated in the state aid formula.[97]

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[93] Floor Debate, L.B. 641, 100th Leg., 1st Sess. 54 (May 9, 2007).

[94] *Id.* at 54-56.

[95] *Id.* at 72.

[96] *Id.* at 103.

[97] *Id.* at 148 (May 21, 2007).

In response to a question of how learning community operating costs would affect the state's budget over time, he stated:

> There are effects sort of going both ways. The idea of a common levy within a learning community whereby you have a sharing of high valuation and low valuation districts actually does, I'll say, free up state aid money for the state. So you may view that additional state aid money that is available as funding that could be made available for learning community operations. I will tell you that I am hopeful, at least, that the learning centers, the learning community council will be successful in getting leveraging money from the community in the metro area to help support some of these programs.[98]

During floor debate on 2008 Neb. Laws, L.B. 1154, which made additional amendments to the learning community legislation, the principal introducer explained that the proceeds of the common levy did not go to the learning community itself, but, rather, to the individual school districts within the learning community "in proportion to need."[99] He described the common levy as

> a critical part of the needed funding arrangement for the educational opportunities in the learning community. It enhances the provision of educational opportunities, the open enrollment provisions, and it also enhances the notion that you get, at least financingwise, equal educational opportunities for students in the metro area.[100]

(e) Disposition

Because a learning community is a political subdivision having defined boundaries which circumscribe its operational and taxing authority, its property tax levy is not facially "for state purposes." But our jurisprudence requires that we look deeper to determine whether the Legislature has attempted to "avoid or circumvent [the] constitutional mandate" of article VIII,

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[98] *Id.* at 29.

[99] Floor Debate, L.B. 1154, 100th Leg., 2d Sess. 117 (Mar. 26, 2008).

[100] *Id.* at 115.

§ 1A, "by converting the traditional state functions into local functions supported by property taxes."[101]

[7-11] We undertake this analysis in the context of familiar general principles. A statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality.[102] The burden of establishing the unconstitutionality of a statute is on the one attacking its validity.[103] The unconstitutionality of a statute must be clearly established before it will be declared void.[104] The power to tax being a sovereign power, constitutional provisions relating thereto do not operate as grants of power of taxation to the government, but are merely limitations on a power which would otherwise be unrestricted.[105] Constitutional limitations on the power to tax must be strictly construed.[106]

One factor we must consider is whether operational control of the entity supported by the property tax lies with the state or with the local entity.[107] In *Tallon I*, we concluded that the Legislature had assumed direct control of major policy decisions which affected each of the seven technical community college areas which were financed by a property tax. This included control over capital expenditures, the right to control and direct facilities and training available in each area, and the "complete and direct control of the individual budget of each technical community college area."[108] But in upholding the revised legislation in *Tallon II*, we noted that the colleges were no longer dominated by the State, but, rather, were governed by area boards which "exercise the same powers and functions

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[101] *Swanson, supra* note 31, 249 Neb. at 476, 544 N.W.2d at 340.

[102] *Kiplinger, supra* note 26; *Yant, supra* note 26.

[103] *Id.*

[104] *Id.*

[105] *Dwyer v. Omaha-Douglas Public Building Commission*, 188 Neb. 30, 195 N.W.2d 236 (1972).

[106] *Id.*

[107] See, *Swanson, supra* note 31; *Tallon II, supra* note 30; *Tallon I, supra* note 30.

[108] *Tallon I, supra* note 30, 192 Neb. at 211, 219 N.W.2d at 460.

as other political subdivisions."[109] We noted that the technical community colleges were "now in largely the same position as our school districts. They operate on a strictly local basis subject only to guidelines laid down by the Legislature."[110] The absence of operational control by the State was also a key factor in upholding the legislation before this court in *Swanson*. There, we noted that the legislation did not give the State "control over individual budgets, capital expenditures, availability of programs, whether and how to hire personnel, or administrative rules and regulations. All of these decisions remain within the province of the individual . . . school districts."[111] We concluded that the Class I and VI school districts "maintain[ed] their autonomy and independence in all respects except their grouping for property tax support."[112]

Operational control within a learning community is similarly local. The school boards of the member districts retain control over their budgets, educational programs, and other operational matters in much the same manner as if no learning community existed. Operational control over programs of the learning community itself, such as diversity plans, open enrollment, and elementary learning centers rests with the learning community's coordinating council, not with any state agency.

Our prior school financing cases have also examined whether the challenged property tax levy is mandated by the State or left to the discretion of the local taxing authority. In *Tallon I*, we concluded that while the statute did not require area boards to certify a levy of one mill, it effectively enforced that result by voiding any state appropriation to an area whose mill levy was less than that amount. The legislation which we upheld in *Tallon II* empowered but did not require local college areas to levy property taxes, and we noted this factor as a part of the basis for our conclusion that the tax did not violate article VIII, § 1A. And upholding the property tax challenged in *Swanson*,

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[109] *Tallon II, supra* note 30, 196 Neb. at 606, 244 N.W.2d at 186.

[110] *Id.* at 607, 244 N.W.2d at 186.

[111] *Swanson, supra* note 31, 249 Neb. at 478, 544 N.W.2d at 341.

[112] *Id.*

we reasoned that the State had not "conditioned state funding on the performance of some act, or the levying of some tax, to benefit the State."[113]

Similarly, a learning community is not statutorily required to levy the property tax challenged in this case. Section 77-3442(2)(b) provides that a learning community "may levy" a property tax of up to $0.95 per $100 of taxable valuation for the general funds of its member school districts. Unlike the statute in *Tallon I*, there is no penalty for failing to do so. To the extent that a learning community elects to levy, the taxing authority of its member school districts decreases; and conversely, to the extent that a learning community elects not to levy, the authority of its member school districts increases subject to the statutory maximum levy.[114]

But the taxpayers urge us to focus on § 79-1073, which directs that the proceeds of a learning community levy be divided among member school districts in accordance with a formula which utilizes numbers calculated according to the provisions of the Tax Equity and Educational Opportunities Support Act. The taxpayers argue that through this statute, the State, not a learning community, controls the distribution of revenue from a learning community's levy. They alleged in the complaint that

> [w]hat the Legislature has done in the learning community legislation is to convert the traditional state function of providing "equalization aid" (i.e., providing state sales and income tax dollars to school districts that have a greater need and less ability to generate property tax receipts) into a local function supported by property taxes.

They argue the common levy thus serves a state purpose by using "property tax funds to 'equalize' aid to education within the Learning Community and thus save the state from committing additional aid from other sources."[115] They contend that as a result of a learning community's common levy, "the State of

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[113] *Id.*

[114] See § 77-3442(2)(c).

[115] Brief for appellee taxpayers at 24.

Nebraska is able to reallocate state education aid and is able to avoid making an additional commitment of income tax or sales tax proceeds to some school districts within the Learning Community despite knowing that additional aid is needed by those districts."[116]

For purposes of our analysis, we assume without deciding that the Learning Community levy challenged here will decrease the amount of state equalization aid which would otherwise be paid to one or more of the school districts within the Learning Community. We further assume without deciding that this decrease in equalization aid would save the State from committing additional aid from other sources. Based on these assumptions, the State may derive some financial benefit from the learning community legislation and, specifically, the common levy authorization. But the mere fact that a state-authorized tax supports a governmental purpose does not render it a tax for state rather than local purposes.[117] Indeed, the "mere granting of state aid does not render a school operation a state function."[118] Rather, given the commingled state and local purposes, the dispositive issue is whether achieving a reduction in state equalization aid in order to benefit the State as a whole was the controlling and predominant purpose of the legislation.[119]

In *Tallon I*, we struck down the proposed legislation under article VIII, § 1A, because, although state and local purposes were commingled, there was a "strong indication of [a] legislative purpose to benefit residents of the entire state as contrasted to residents of particular local areas."[120] In contrast, neither the language of the legislation before us nor its legislative history indicates that the Legislature's predominant purpose was to save money for the benefit of the state as a whole. Much of the learning community legislation demonstrates a predominantly

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[116] *Id.* at 25.

[117] *Swanson, supra* note 31; *Rock Cty., supra* note 48.

[118] *Tallon II, supra* note 30, 196 Neb. at 606, 244 N.W.2d at 186.

[119] See, *Swanson, supra* note 31; *Tallon II, supra* note 30; *Tallon I, supra* note 30.

[120] *Tallon I, supra* note 30, 192 Neb. at 211, 219 N.W.2d at 460.

local purpose in that operational control remains local and a learning community provides a number of distinctly local services. Similarly, when viewed as a whole, the legislative history makes it clear that the learning community legislation was enacted to resolve specific, local problems and that the predominant purpose of the legislation was not to benefit the state as a whole.

Our conclusion is bolstered by the fact that we upheld a taxing scheme nearly identical to that at issue in this case in *Swanson*, and we see no reason to deviate from that opinion. Under the legislation challenged in *Swanson*, state equalization aid to some school districts was decreased and the districts were allowed to increase their property tax requirements. The taxpayer challenging the legislation argued that the Legislature had effectively established a property tax for a state purpose by expanding property tax bases to allow redistribution of state aid. We rejected the argument, noting that the districts "maintain[ed] their autonomy and independence in all respects except their grouping for property tax support."[121]

We are required to presume a statute is constitutional.[122] In light of that presumption and based on the language of the learning community legislation and its legislative history, we cannot conclude that the controlling and predominant purpose of the legislation which authorized the common levy was to utilize property tax revenue to reduce or redistribute state equalization aid to schools, thereby saving the state as a whole sales and income tax dollars. Instead, viewing the statutory language, the legislative history, and the evidence before us, we conclude that the controlling and predominant purpose of the learning community legislation was to address complex educational issues presented within metropolitan school districts. We therefore conclude that the Learning Community's common levy for the general funds of its member school districts is a tax levied for substantially local purposes, and it does not contravene article VIII, § 1A, of the state Constitution.

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[121] *Swanson, supra* note 31, 249 Neb. at 478, 544 N.W.2d at 341.

[122] See, *Kiplinger, supra* note 26; *Yant, supra* note 26.

### 3. Prohibition of Commutation

The district court did not address the taxpayers' alternative arguments that the common levy is an unconstitutional commutation of property tax and/or a nonuniform tax that violates the Nebraska Constitution. Because these are issues of law based upon undisputed facts, and they have been briefed by the parties, we address and resolve them in the interest of judicial economy.

[12] Article VIII, § 4, of the Nebraska Constitution provides:

> [T]he Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever[.]

This proscription against commuting a tax prevents the Legislature from releasing either persons or property from contributing a proportionate share of the tax.[123] A commutation occurs in violation of the Nebraska Constitution when tax funds raised in one district are diverted entirely to the benefit of another district.[124]

*Peterson v. Hancock*[125] is the only case in which we have found an unconstitutional commutation of taxes. That case involved a statute authorizing the levy of a property tax in all elementary school districts. To receive funds from the levy, however, a school district was required to have five or more pupils, and some of the districts taxed did not. We held, "The only conclusion that can logically be drawn is that districts having less than five pupils are required to pay the blanket levy on all their property into the fund for the sole benefit of districts with five or more pupils."[126] Although

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[123] *Kiplinger, supra* note 26.

[124] *Swanson, supra* note 31.

[125] *Peterson v. Hancock*, 155 Neb. 801, 54 N.W.2d 85 (1952).

[126] *Id.* at 812, 54 N.W.2d at 92.

we noted the Legislature's "laudable" intention of inducing smaller elementary districts to consolidate, we held the statute was unconstitutional because it was "levied upon one district of the county for the exclusive benefit and local purpose of other districts."[127]

[13] In *Swanson*, we rejected a claim that the school system's common levy resulted in an unconstitutional commutation of taxes. Citing the rule that a "commutation occurs in violation of the Nebraska Constitution when tax funds raised in one district are diverted entirely to the benefit of another district,"[128] we reasoned that the taxing district which imposed the common levy was the Class VI school system and that no commutation occurred, because the proceeds of the common levy benefited the taxpayer's district. Distinguishing the case from *Peterson*, we concluded, "A tax levy does not equal a commutation merely because the taxing district is broadened to reflect the actual benefits to the public. So long as all taxpayers receive the benefit of the taxes they remit, the taxing district passes constitutional muster without offending the prohibition against commutation."[129] We applied this same principle in *Kiplinger*,[130] holding that landowners within certain natural resources districts who received a benefit from projects funded by an occupation tax imposed on irrigation within those districts did not establish that the tax violated the constitutional prohibition against commutation. The taxpayers ask that we reconsider and limit this principle, arguing that it would permit the Legislature to create expansive taxing districts in order to evade the constitution's prohibitions of commutation. But that is not the case before us, and this court does not issue advisory opinions.[131]

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[127] *Id.* at 813-14, 54 N.W.2d at 93.

[128] *Swanson, supra* note 31, 249 Neb. at 471, 544 N.W.2d at 337.

[129] *Id.* at 474, 544 N.W.2d at 339.

[130] *Kiplinger, supra* note 26.

[131] See *Stewart v. Advanced Gaming Tech.*, 272 Neb. 471, 723 N.W.2d 65 (2006).

[14] As we noted in *Swanson*, the Legislature creates a taxing district when it grants an entity the power to require the county clerk to levy a tax for the support of the district.[132] Here, that taxing district is a learning community, a political subdivision with defined boundaries and specified authority to provide services and levy taxes within those boundaries. A learning community's common levy operates in a manner similar to that which we upheld in *Swanson*, in that it benefits not only the school district in which the taxpayers reside, but also other school districts within the learning community. None of the proceeds are expended outside the learning community.[133] We conclude that a learning community's common levy under § 77-3442(2)(b) does not violate the constitutional prohibition against commutation of taxes.

### 4. Uniformity Clause

[15] The uniformity clause of Neb. Const. art. VIII, § 1, provides: "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution . . . ." The object of Nebraska's uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.[134]

As we have noted, a learning community, not its member school districts, is the taxing jurisdiction which imposes the common levy challenged here. *Swanson* involved a common levy by a school system comprised of several school districts. A learning community's common levy taxes all property within the learning community at the same rate. As in *Swanson*, because the member school districts within the learning community are part of the same taxing district and the levy is uniform throughout that district, the common levy is uniform and does not violate the uniformity clause.

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[132] *Swanson, supra* note 31.

[133] See § 79-1073.

[134] *County of Douglas v. Nebraska Tax Equal. & Rev. Comm.*, 262 Neb. 578, 635 N.W.2d 413 (2001); *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 606 N.W.2d 786 (2000).

## V. CONCLUSION

The district court erred in addressing the constitutionality of §§ 77-3442(2)(g) and 79-1073.01, because the issue was not presented by the pleadings. We have jurisdiction and an obligation to decide the constitutional questions presented to us, as they are not merely political questions. The statutory language, the legislative history, and the record as a whole demonstrate that a learning community's common general fund levy under § 77-3442(2)(b) serves a predominantly local purpose, not a state purpose. Because all members of a learning community receive benefits from the taxes levied and the levy is uniform throughout the community, no commutation occurs and there is no violation of the uniformity clause. The judgment of the district court is therefore reversed, and the cause is remanded to that court with directions to dismiss.

REVERSED AND REMANDED WITH DIRECTIONS TO DISMISS.

WRIGHT, GERRARD, and MILLER-LERMAN, JJ., not participating.