

OPINION

JERRY CORNFIELD | AG acts to take heat off lawmakers on education funding

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State lawmakers know they violated an order of the state Supreme Court earlier this year when they failed to turn in a “complete plan” for fully funding public schools by 2018.

But that failure was due to honest political disagreement not “deliberate disobedience” and lawmakers should not be found in contempt nor sanctioned, a state attorney argued in a legal brief filed Friday.

“The Legislature continues to make progress toward meeting the 2018 deadline this Court established,” wrote Assistant Attorney General Dave Stolier. “Neither contempt nor sanction is necessary to compel continued progress toward that goal.”

However, if the high court finds the state in contempt, it should not impose any sanctions until after seeing what actions lawmakers take next year, attorneys argue.

“No sanction issued will be more effective at producing legislative agreement on an appropriate plan than giving the Legislature a full and fair opportunity to act in 2015,” he wrote.

Justices are holding a show-cause hearing Sept. 3 to determine whether the state should be found in contempt for violating the court’s order.

If the court finds the state in contempt it is considering sanctions. These include fines, a ban on spending on services and programs not related to education, or a directive to lawmakers to pass bills to increase funding for schools. Justices might consider ordering the closing of public schools until the state lives up to its constitutional obligation.

The hearing is a result of the court’s frustration with how lawmakers are responding to the 2012 ruling in the so-called McCleary case.

In that decision, justices determined the state had failed its constitutional obligation to fully fund a program of basic education in elementary and secondary schools. The high court gave lawmakers until the 2017-18 school year to comply and required annual reports on their progress.

In January, justices demanded a “complete plan” for achieving compliance be included in this year’s update. But lawmakers didn’t turn one in.

Stolier, in his brief, contended philosophical and political differences prevented agreement in the 60-day legislative session and ground work for reaching a grand agreement in 2015 had been laid.

He also questioned the court’s authority to impose some of the sanctions under consideration, arguing such steps as requiring lawmakers to spend money would breach the separation of powers between the legislative and judicial branches.

An attorney representing the parents and educators who filed the original lawsuit insisted Friday that justices must exact some form of sanction.

“The McCleary plaintiffs believe Court Orders and Constitutional rights matter,” Attorney Thomas Ahearne wrote in an email. “That’s why we’re asking the Court to at least hold the Legislature in contempt, to prohibit any more unfunded or underfunded mandates on our schools, and to impose even more serious sanctions if the legislature does not reconvene and obey the court’s orders by Dec. 31 of this year.”

Ahearne has until Aug. 11 to file a brief in response to the state’s filing.

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