IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

WILLIE & SOPHIE KASAYULIE, et al.,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 3AN-97-03782 CIV

FILED
In chambers of
Superior Court
Judge John Reese
12/7 2001
State of Alaska
Third Judicial District
at ANCHORAGE

ORDER

The state has moved to reopen the rural school facilities funding order of this court, citing a "mistake of law" made in its prior briefing. Specifically, the state argues that its prior briefing did not present the court with information about prior appropriations made for rural school construction and maintenance.

The court has carefully reviewed the supplemental briefing and the exhibits. They show that the State of Alaska has failed to fund the C.I.P. program, to follow the legally established funding priorities in the projects it did fund, or to allocate available school facility construction and maintenance funds in a non discriminatory way. The prior findings of this court are well supported in the record, and reinforced by the new filings.

Procedure.

The States motion is a Civil R. 60(b) motion premised on a "mistake of law". The State's failure to present a more detailed funding history certainly is not a mistake of law, nor in the final analysis was it a mistake in tactics.

However, the gravity of the issues involved requires that the litigants have every opportunity to fully air their claims and defenses, even if it appears superficially to excuse tactical decisions or legal mistakes. The rules of procedure are designed to do justice, and justice requires the State to be allowed a reasonable opportunity to test a new defense, to use

ATTACHMENT #5

different counsel, and perhaps even to craft its litigation strategy in a way to satisfy political pressures. Civ R.94 will be applied to relax the application of Rule 60(b) and Civ.R. 77 (l), and to allow the State its second bite at the apple.

Analysis:

The fundamental facts presented in the new briefing are how much money the State spent over the last 20 years or so on rural school facility funding. The State argues that since it spent hundreds of millions of dollars on rural school facilities, this courts findings of equal protection and civil rights violations was incorrect.

What this court found was that the systems for school facility funding, the C.I.P. for rural schools and the bond reimbursement program for districts with a tax base, have not been applied in a sufficiently even handed way to avoid constitutional and federal civil rights condemnation.

The C.I.P. program was established in 1990. Rural school per capita capital expenditures for FY 91, 92, 93 and 94, were roughly equal to the bond reimbursed urban expenditures, even though rural construction and maintenance costs exceed urban by a very large factor. In the six fiscal years prior to this court's order, the legislature chose to fund rural school construction at $30 or less per student four times, and at zero twice:

Fiscal Yr.	C.I.P.	Urban
95	-0-	869
96	30	724
97	389	627
98	24	581
99	1998	1009
00	-0-	556

After this court's order, the 2000-2001 fiscal year per capita funding for rural schools jumped to $6,200 versus $476 for urban schools. The State's brief claims this change was a result of the court's order, pressure from the governor, and the good faith of the legislature.

The court has no reason to doubt this, but there remains the flawed dual funding system that allowed the prior problems. The urban districts get 70% of their funding for schools reimbursed by the State. The rural districts get whatever the legislature chooses to give them.

The bond reimbursement program is automatic. The rural funding is political, and has been arbitrary, inadequate and racially discriminatory. Education health and safety of our youth have suffered. The dignity of our fellow citizens has suffered. The respect for public officials has suffered. The racial divisions in our state are further aggravated.

The media has reported legislators' comments on this issue: "It is cheaper to build a school in Homer than the bush", "There is only so much money to go around." These are absolutely true statements, of course - but they illustrate the fundamental legislative mistakes: We are constitutionally required to provide education on a substantially equal basis to all children, including rural mostly Native children, even if it costs more in the rural areas. As we spend the money available, we cannot spend it on urban, mostly non Native children first, and then say there is not enough to go around.

The present dual funding system is constitutionally flawed in form, and application.

Civ.R. 54(b).

Plaintiffs ask the court to enter a final order, and to require specific funding to correct the prior errors of the legislature. This court does have the power to require remedial action, within the limitations of separation of power, but would do so only with great reluctance.

The spending of the wealth of Alaska is for the legislature to manage, within the constitutional and federal limits. Legislation takes time, and school funding is expensive and complex. This court is not prepared to say the legislature will not, within a reasonable time, create a constitutionally proper system of funding, nor is this court prepared at this time to say the legislature will not, in the mean time, provide adequate remedial and ongoing capital funding for rural schools, in light of the FY 01 appropriation.[1]

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[1] This court is, however, concerned that the priorities established through the legislatively mandated process have not been followed even in the FY 01 funding. Urban school districts choose their capital plans, and the reimbursement law carries it out. The priority setting by the Department of Education is a surrogate for the rural districts choices. There is no inherent problem with this representative arrangement, but if the priorities are ignored, it leaves the rural districts, and the parents and children they represent, " out of the loop," effectively

What the legislature creates, and what is developed in the other parts of this litigation, will result in a comprehensive resolution. It should be done together, and therefore a Civ- R. 54 (b) partial final judgment will not be entered at this time. However, should progress be thwarted, or the good faith efforts of the players be successfully challenged, specific orders will be issued.

DATED this 27th day of March, 2001, at Anchorage, Alaska.

John Reese
Superior Court Judge

I certify that on 03-27-01
a copy of the above was mailed to
each of the following at their
addresses of record:
H. Trickey, C, Middleton.
B. Bjorkquist, AGO

Marie Suazo mo.
Secretary

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disenfranchised. Considering the impermissible racial impact of the prior funding choices made by the legislature, to deprive the rural children of even the indirect voice of the priority list seems to be treading on pretty thin legal ice. Endorsement of the priorities would seem to be a much better policy.