

MAINE STATE LEGISLATURE

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August 24, 1965

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Education

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Appropriation of State School Funds by Municipalities; Control of School Budget in Municipalities.

FACTS:

At the 1964 annual meeting held in the Town of Topsham, the townspeople voted to raise and appropriate the sum of \$199,510.75 from taxation and to appropriate from State and Federal subsidies and miscellaneous school income the sum of \$134,998.74; all for a total of \$334,509.49 to be used to pay expenditures for general education as follows:

| | |
|-----------------------|-----------------|
| Administration | 7,425.53 |
| Instruction | 141,561.32 |
| Attendance and Health | 600.00 |
| Transportation | 29,771.00 |
| Operation of Plant | 20,773.64 |
| Maintenance of Plant | 4,000.00 |
| Fixed Charges | 1,600.00 |
| Outgoing Transfer | 133,803.00 |
| Capital Outlay | <u>1,975.00</u> |
| | \$334,509.49 |

The appropriation in the amount of \$134,998.74 represented receipts which were estimated as receivables from State, Federal, and other sources. Upon receipt of these revenues, they are credited to the general school account.

It developed that the receipts exceeded the estimates. The school committee, thereupon, employed an additional teacher and expended approximately \$1300 from the surplus revenues. No town meeting was held involving the use of the reference amount. At the close of the year, the school account had a balance of about \$8,000.

Mr. Chester Booth's March 6, 1965, memorandum sets forth the Department of Education's position with respect to local control of educational appropriations received from the State, which position appears to be as follows:

* * * *

"The purposes for which school committees legally may expend funds available to them are defined in state law. There are no restrictions upon the amounts which may be expended to these purposes other than the limits imposed by the total amount placed at their disposal through operation of state law, by appropriation from local taxation, or from income from trusts, devises, gifts and other miscellaneous sources, including specifically, Federal grants made to local school systems under provisions of P. L. 874, the so-called 'Impacted Area' law.

"With few exceptions, notably the amounts which are required to be raised for superintendence, for transportation of high school pupils, for secondary tuition, and for school physicians, state laws require only in general terms that local appropriations be made for the support of public schools. Other than these exceptions, there is nothing in either state education laws or in general laws relating to towns which give voters at town meetings the authority to specify for what specific expenditure functions within the overall purpose of operation of schools, at either elementary or secondary level, any appropriations made by them must be limited.

"Since town meetings are not given that specific authority a very strong case could be made that any attempt on the part of the town to so limit and segregate appropriations for specific expenditure classifications is, on their part, an ultra vires act not binding upon the school committee. Insofar as other funds available to school committees are concerned, whether they be derived from state apportionments, tuition receipts, unrestricted gifts, trust fund income, either public or private, or other sources of school revenue, there appears to be no question whatsoever that towns do not have the authority either to limit the total expenditures which can be made from these sources or to channelise the expenditures into classifications which the town might desire to specify." (Mr. Booth's March 6, 1965, memo, page 2.)

Recently, the Superior Court for the County of Androscoggin issued its rulings and order for judgment in the case entitled City of Auburn, et als, v. John B. Annett, et als, civil action #1866,

wherein Honorable Francis W. Sullivan, Associate Justice of the Maine Supreme Judicial Court, decreed that the Auburn City Council possessed the final authority "to fix the total maximum expenditures of the Auburn Superintending School Committee for the purpose of the annual municipal budget." Justice Sullivan recognized the existence of the following provision in the Auburn Charter:

"The superintending school committee shall have all the powers, and shall perform all duties in regard to the care and management of the public schools of this City which are now conferred and imposed upon the superintending school committee by the laws of this state, except as otherwise provided in this charter."
Charter, Art. IV, sec. 3.

Justice Sullivan also stated that: "The legislative intent as to the meaning of the language 'management, care and conduct' is the decisive criteria of the entire Charter and the public statutes must be examined to discover the legislative intention as such as been expressed." (Emphasis supplied.) The reference decision indicates that the Court was mindful of the fact that the Auburn Charter of 1917 granted no powers "of budgetary fixation" to the school committee; and that, in 1917, superintending school committees had no such powers under the public laws of this State. Too, the Charter contained no provision which was contrary to the general law relating to educational matters. In this respect, Judge Sullivan quoted from Bass v. Bangor, 111 Me. 390:

"It must be regarded as settled law, that charters or parts of charters, of cities are not repealed by a general law if the two can consistently stand together, unless the intention of the Legislature to repeal the charter or parts of charter is clear and plain-----"

QUESTIONS:

1. Whether the action taken by the townspeople was legal wherein state receipts were appropriated by the voters for school purposes?
2. In the event that the town's receipts for school purposes are in excess of the expenditures, may the superintending school committee legally expend the surplus for school purposes sans the approval of the voters?

ANSWERS:

See REASON below.

REASON:

We answer the first question in the affirmative. In order to meet the 1964 school budget, the townspeople voted to utilize all the State and Federal subsidies plus miscellaneous school income, and to raise the required additional moneys by taxation. Through no fault of the townsfolk, the Federal and State subsidies exceeded the estimates and expenditures thereby creating a surplus in the school account. Because State subsidy is involved with the given facts, we are asked to determine whether the reference action of the townspeople at the 1964 town meeting was proper; and whether the school officials were authorized to make use of surplus moneys in the school account.

The mere fact that the vote of the townspeople has resulted in the town's using less than the full amount of school subsidies does not, in and of itself, amount to a violation of the Maine Statutes. At the time the townspeople voted upon their school budget, they believed that they were making use of the entire amount of school subsidies. We know of no Maine Statute which requires a town to utilize in a particular year every penny of subsidy which it receives in that year. We note that the State subsidy found its proper niche, i.e., the general school account.

As we read the decision in City of Auburn, et al. v. John B. Annett, et al., supra, and note the principles expressed therein by the Court, superintending school committees possess no absolute powers regarding use of moneys in the school account. We note that Article IV, section 3, of the Auburn Charter contains language very similar to that appearing in 26 M.R.S.A. § 473, i.e., that such school committees possess duties regarding the management of the schools and the custody and care of the school property. A comparison of the Auburn Charter and the Maine Statutes, as both relate to education, fails to indicate that the general law clothes town superintending school committees with fiscal powers exceeding those granted to the City of Auburn's Superintending School Committee. Because Justice Sullivan found it necessary to examine the public statutes in arriving at his decision, certain guidance may be gleaned from the decision.

We respectfully decline to answer the second question for the reason that it presents a question of local import. In support of this position, it is to be noted that the reference issue of law existing between the City of Auburn and its superintending school committee was presented to the Court for determination rather than to the State Department of Education. We are satisfied that the State subsidy money was credited to the town's general school account. Whether or not a portion of the moneys in that account were used in an improper manner is a question for determination at the local level. A reading of Judge Sullivan's decision in the case referred to above could lead the reader to conclude that a superintending school committee should abide by the budget approved by the townspeople, and that the committee should not depart therefrom. We conclude by citing, as did Justice Sullivan, certain language appearing in Board of Education v. Board of Finance, 127 Conn. 345, 16 A. 2d 681, 685:

"It is probably true that in many instances a board of finance does not have as sound an understanding of the educational needs of a town as does the board of education and that therefore a decision by the former to reduce an estimate submitted by the latter may not in fact conduce to the best possible educational interests of the people of the town; but, on the other hand, it is more than possible that a board of education, less familiar with the finances of the town or perhaps with financial matters in general, if left without a check, might incur expenditures which are not reasonably necessary to serve those interests and the expenses of which the town could ill afford to meet. One purpose of the legislature in establishing town boards of finance is --to afford a check against the incurring of such expenses on the part of the town. It is also true that where a board of finance reduces an estimate of a board of education so that the sum appropriated is less than is reasonably necessary to carry out the purpose to be served, or where it takes such action not in the exercise of a sound judgment but from improper motives or without sufficient understanding, there would seem to be no adequate remedy which the board of

education might effectively invoke. The legislature, however, evidently deemed it necessary in the interests of sound municipal finance to give to town boards of finance the powers we have outlined. If such boards do not exercise their judgment intelligently, fairly and disinterestedly, the situation is one, unfortunately not unknown, wherein a public official fails to properly perform the duties of his office, and the remedy is that inherent in the theory of representative government, to replace him by another. If the result brought about by the statutes, which are evidently designed to produce a nice balancing of powers between the two boards, do not serve the public interests, the recourse is not, where no justiciable rights are involved, to seek to make the court arbiters in a controversy essentially political, but to ask the legislature to change or better define the respective powers of the boards."

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JWB/eh