

MAINE STATE LEGISLATURE

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Eligibility of town for state subsidy on payments to an academy in excess of the legal tuition rate.

FACTS:

At the annual town meeting held in Corinth in March, 1960, the townspeople voted "to authorize the superintending school committee to contract for five years with the trustees of East Corinth Academy for the schooling of all or part of the pupils within the town in the studies contemplated by § 90 of c. 41 of the Revised Statutes of 1954, as amended." At this same meeting, the town approved two other articles in the following form:

1. "To see whether the town will provide a sum of money by tuition or otherwise for the construction, repairs and maintenance of buildings of East Corinth Academy, with which Academy the town has a contract as provided in Chapter 41, Section 105 of the Revised Statutes of Maine, 1954, as amended, the amount and manner of payment thereof to be determined by the Superintending School Committee."

2. "To see whether the town will authorize the Superintending School Committee to guarantee on behalf of the town the debt or debts incurred by the Trustees of East Corinth Academy in the construction, repairs or maintenance of its school buildings as the same are required by the State of Maine Department of Education."

The minutes of the Corinth school committee meeting held on August 18, 1960 show that the committee considered the question of repairs, reconstruction and new construction of the buildings of East Corinth Academy. The committee considered the question whether it should co-sign the Academy's note in the amount of \$90,000 payable to the Newport Trust Company; said signing to be done for the purpose of guaranteeing the payment of principal and interest pursuant to the authority given the committee by the vote of the townspeople at the town meeting. The committee also discussed whether it would approve of a partial assignment of the proceeds of its tuition contract; which assignment was given by the Academy to the Newport Trust Company as security for the payment of another note owed to the trust company by the Academy in the amount of \$30,000. Following a discussion of these several matters, the committee recorded the following vote in its minutes:

"That the committee endorse its approval and acceptance on the assignment of the proceeds of its contract with East Corinth Academy; and that, the committee sign the endorsement of the \$90,000 note of the Academy to

Newport Trust Company and that it do any and all things necessary to complete the transaction."

The legal tuition rates for East Corinth Academy for the period 1958-59 to 1964-65, together with the number of secondary school students attending said Academy from the Town of Corinth, are given below with the total tuition charges which would be payable to the Academy on the basis of legal tuition rates. The chart also reveals the total amount of tuition payments prescribed in the contract and paid the Academy by the town.

School Year	No. of Secondary Students	Legal Tuition Rate of Academy	Total Tuition Payable at Legal Tuition Rates	Total Tuition Payments Prescribed by Contracts
1958-59	85	246.53	20,785.05	19,000
1959-60	76	262.93	19,892.68	19,000
1960-61	79	308.89	24,402.31	34,000
1961-62	80	410.03	32,802.40	40,000
1962-63	87	532.51	46,328.37	47,000
1963-64	104	484.19	50,345.48	50,000
1964-65	104	459.85	47,824.40	

The State of Maine, through the Department of Education, has paid subsidy to Corinth to the extent of the legal tuition rate; but the State has refused to pay subsidy in excess of the legal tuition rate for the years 1960-61 to 1962-63, inclusive.

The Department of Education has taken the position that the over-charge payments in question constitute expenditure for debt service of the Academy; and is not legal tuition. The Department recognizes that while a town has authority to appropriate or borrow funds for construction of buildings at a private academy, such an appropriation or fund cannot legally be administered by the school committee; and the school committee possesses no authority to provide capital outlay to an academy in the form of tuition.

QUESTION:

Whether the State of Maine is required to pay subsidy to Corinth on those amounts of tuition payments which are in excess of the total tuition computed at the legal tuition rates?

ANSWER:

No.

REASON:

The payment of State subsidy to an administrative unit having no approved secondary school is subject to statutory conditions.

* * * * The expenditure of any administrative unit for schooling of pupils as provided in this section shall be subject to the conditions of §§ 1291 and 1292 for the purposes of State subsidy to the administrative unit under § 3723." 20 M.R.S.A. § 1292. (Emphasis supplied.)

The provisions set forth in section 1291 contain, among other things, a reference to "legal tuition charge."

* * * * and pay the trustees, superintending school committee, or school directors of the receiving school the legal tuition charge thereof." 20 M.R.S.A. § 1291, 1st paragraph.

It should be noted that the legislature has placed a restriction upon the amount of the annual tuition charge regarding tuition students attending a school having 100 or more students and offering at least two occupational courses; and has also placed a restriction upon schools with fewer than 100 pupils enrolled or not offering at least two or more occupational courses.

"In the case of any youth attending school, under conditions as provided for in the preceding paragraph, in schools in which the average daily memberships, as reported in the preceding year, is 100 or more students, and the school offers at least 2 occupational courses, the annual tuition shall not exceed 125% of the average cost per pupil in all secondary schools of the State for the current fiscal year; except that, for schools with fewer than 100 pupils enrolled or not offering at least 2 or more occupational courses, the tuition shall not exceed the average cost per pupil in all secondary schools of the State for the current fiscal year." 20 M.R.S.A. § 1291.

Another applicable statutory provision regarding tuition charges is as follows:

" * * * Tuition charges for each pupil may be paid by administrative units to an amount not exceeding the receiving school's average cost per pupil for the current fiscal year; except that payments in excess of said average cost may be made by vote of the sending administrative unit, but such payment by an administrative unit for any pupil for any one year shall be subject to the limitations of section 1291." 20 N.R.S.A. § 1292.

Section 1292 continues by stating the method of determining the "average cost per pupil." Particular emphasis should be given to § 1292 as said section relates to the Commissioner's payment of State monies to the receiving school in the event that the sending school fails to pay tuition monies. In such instances, the State pays only what is rightly due the receiving school.

"When pupils are sent from one administrative unit to an approved secondary school in another, if any accounts for tuition of such pupils are not paid on or before August 15 of that year, the Commissioner shall pay such accounts, or so much thereof as he shall find to be rightly due, to the treasurer of the receiving administrative unit, academy, institute or seminary at the next regular annual apportionment, together with interest on such accounts at the rate of 6% annually, computed from said August 15th, and the Commissioner shall charge any such payment against the apportioned fund of the sending administrative unit." 20 N.R.S.A. § 1292.

In the instant case, it is fact that the Town of Corinth was entitled to credit for no more than \$24,402.31 for the school year 1960-61, \$32,802.40 for the school year 1961-62, and \$46,322.37 for the school year 1962-63, in computation of the foundation program subsidy amounts for the respective years. These are the sums which the Department of Education has recognized as being the limit of legal tuition which the Academy is entitled to receive from the Town of Corinth; and the Department has paid subsidy to the Town of Corinth to the extent of the legal tuition rate. The State is without authority to pay 'tuition subsidy' to a town which exceeds the legal tuition rate.

In your second question, you ask whether any action is necessary on the part of the Department of Education "if any acts of the town or school committee were improper or illegal." We respectfully decline to answer this question for the reason that the opinion herein renders the question moot.

John W. Benoit
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JWB/eh