

MAINE STATE LEGISLATURE

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December 30, 1965

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Tuition Charges at Boothbay-Boothbay Harbor Community School District.

FACTS:

The Boothbay-Boothbay Harbor Community School District was organized under the provisions of Chapter 156 of the Private and Special Laws of 1953. This particular act, section 9, contains a provision which regulates the amount of tuition that can be charged by the Community School District.

"Sec. 9. Application of general law; certain exceptions. The community school, for which provision is herein made, when established shall be considered the official secondary school of the participating towns and all provisions of general law relating to public education shall, so far as applicable, apply to said school. Teaching positions, special courses and other basis for allocations to towns because of this school, shall be divided according to the proportional (sic) assessment of each participating town for operating expenses as determined in section 13 of this act. The district shall have no obligation to transport pupils but each participating town shall provide and arrange for such conveyance of pupils from such town to the community school as may be required by law. Tuition charges for pupils from outside the district accepted at this school shall be determined by the trustees, notwithstanding other provisions in the general law; provided, however, such tuition shall not exceed the average cost per pupil paid by a participating town for the year preceding the year for which the tuition is paid, as determined by the trustees." (Emphasis supplied.)

The 102nd Legislature amended 20 M.R.S.A. § 1291 so that the same, in part, presently reads as follows:

"In the case of any youth attending school, under conditions as provided for in the preceding paragraph, 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 as determined in section 1292; except that, for schools not offering at least 2 occupational courses, the tuition shall not exceed the average cost per pupil in all secondary schools of the State as determined in section 1292. Payments in excess of the legal tuition charge as defined in this section may be made when authorized by the voters of the sending administrative unit at a regular or special town meeting. * * * "

The portion of § 1292 relating to the determination of "the average cost per pupil" is as follows:

* * * * The State, an administrative unit or academy average cost per pupil shall be determined as follows: (1) All expenditures for secondary education shall be included except expenditures for community services, capital outlay, debt retirement, tuition and transportation from July 1st to June 30th of a given year; (2) the expenditures thus obtained shall be divided by the average daily membership of all regularly enrolled students for the same year. Said per pupil cost shall be increased by 7% and in addition an administrative unit or academy may add thereto an amount obtained by dividing 5% of the insured value of secondary school buildings and equipment by the average daily membership of all regularly enrolled students for the same year. * * * "

It is stated as fact that the subject community school district has charged the participating member towns the amount of \$718.66 as the per pupil cost of tuition for the 1965-66 school year. The reference per pupil cost for tuition exceeds the legal tuition charge (as computed under the general law pursuant to § 1292) by an amount of \$33.52.

QUESTIONS:

1. May the subject community school district charge tuition in excess of the legal tuition rate established under the provisions of § 1292 of the general laws?
2. If the community school district charges and receives tuition in excess of the legal tuition rate set forth in the general law, is the State legally obliged to pay subsidy on the amount of tuition in excess of the legal charge?

ANSWERS:

See REASON.

REASON:

Because the 102nd Legislature amended 20 M.R.S.A. § 1291 so as to permit a sending administrative unit to pay in excess of the legal tuition charge, it can be reasoned that, therefore, a receiving school may charge in excess of the legal tuition rate. Note that the voters of the sending administrative unit must first approve such excess payments at a special or regular town meeting. We conclude that P. & S. 1953, c. 156, § 9 and 20 M.R.S.A. § 1291 permit the subject community school district to charge in excess of the legal tuition rate.

If the community school district charges and receives, from the sending town, tuition in excess of the legal tuition rate, the State is not obligated to pay subsidy to the sending town based upon the amount of tuition in excess of the legal charge. 20 M.R.S.A. § 1292. See our opinion dated October 1, 1965 addressed to the Department of Education entitled "Eligibility of Town for State Subsidy on Payments to an Academy in Excess of the Legal Tuition Rates." In that opinion, we ruled that

the State of Maine was not required to pay subsidy to a town on those amounts of tuition payments which were in excess of the total tuition computed at the legal tuition rates.

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JWB/eh