May 11, 1971

Carroll R. McGary, Commissioner — Education

John W. Benoit, Jr., Deputy — Attorney General

Computation of General Purpose Aid Allocation; Public Law 874 Funds.

SYLLABUS:

Moneys received by an administrative unit from the Federal Government constituting Federal "impact area" funds are not considered as funds "raised" by the administrative unit under the provisions of 20 M.R.S.A. § 851.

FACTS:

In 1969, a municipality raised and expended $148,247.55 for school purposes. In 1970, the same municipality raised and expended $130,000 for school purposes. The two-year average was $139,123.78. Division of the latter amount by the 1960 census of the municipality, 13,102 inhabitants, reveals that the municipality raised and expended $10.62 per inhabitant. This last figure represents 53.1% of the $20 required to be raised and expended annually by every administrative unit for the support of public schools. 20 M.R.S.A. § 851. Therefore, the computed aid due the municipality from the State in the next biennium was reduced from $1,376,440.37 to 53.1% of that amount; or $730,889.83. The municipality claims that moneys paid it under Public Law 874 (Federal funds) are, in effect, tax moneys and, therefore, the municipality did meet the requirements set out in 20 M.R.S.A. § 851 and should not be penalized by reduction of the State aid. (Public Law 874 is found in 20 U.S.C. §§ 236-241-1, 243, 244.) The Superintendent of Schools in the municipality questions the State's determination of general purpose aid to be paid the municipality during the next biennium.

QUESTION:

Can the money received from the Federal Government under Public Law 874 be used by the municipality to meet the statutory requirements set out in 20 M.R.S.A. § 851?

ANSWER:

No.

REASON:

First, we examine the provisions of section 851 requiring every administrative unit to raise and expend, annually, not less than a specified amount for each inhabitant of the administrative unit for the support of public schools.

> "Every administrative unit shall raise and expend, annually, for the support of public schools therein, exclusive of the income of any corporate school fund, or of any grant from the revenue or fund from the State, or of any voluntary donation, devise or bequest, or of any forfeiture accruing to the use of schools, not less than $20 for each inhabitant, according to the census by which Representatives to the Legislature were last apportioned, under penalties as set forth in section 3732. * * * " 20 M.R.S.A. § 851.

The answer to the question seems to turn upon the meaning of the word "raise" in said section. Are moneys received by the municipality from the Federal Government under Public Law 874 funds which can be considered as "raised" by the municipality?

To "raise" is to levy (tax, etc.). Sprague v. Fisher, 184 Ore. 1, 197 P.2d 662, 674. Under the provisions of a municipal charter specifying that the amount that may be voted or "raised" within a year shall not exceed a certain percentage of the valuation, the word "raised" meant raised by taxation. Schnewind v. City of Niles, 103 Mich. 301, 61 N.W. 498, 499. In State ex rel. Krajci v. Kelly, 279 Ill. App. 22, it was determined that the word "levy", when used in relation to a tax, meant to raise or collect the tax. The words "collect" and "levy" are both given as definitions of the term "raised", according to the holding in Town of Amherst v. Erie County, 236 App. Div. 58, 258 N.Y.S. 76.

The intent of 20 M.R.S.A. § 851 is that each administrative unit shall make available from tax sources the sum of $20 per inhabitant for the support of public schools. When the municipality conforms to the reference statutory provision, it may have its full State subsidy for education purposes. It is our view that use of the word "raise" relates to the local tax effort. The subject word has a

well-known meaning as commonly used in Maine, i.e., the assessing and collecting of taxes. Money coming from another source, such as from the Federal Government by virtue of the provisions of Public Law 874, should not be considered as moneys "raised by the administrative unit. That has been the position of the State Department of Education and so expressed to the Superintendent of Schools of the municipality made the subject of your memorandum.

The Superintendent of Schools argues that the interpretation given in this matter by the Department of Education "is absolutely contrary to every Federal Court ruling" that the Superintendent is aware of. (See letter of March 26, 1971 submitted to you by the Superintendent.) The Superintendent's letter makes reference to a decision of a Federal three-judge court in Virginia, sans citing the case by title or giving the date of the decision. It is claimed that the reference decision supports the Superintendent's view that Federal funds received by the municipality from the Federal Government under Public Law 874 should be included when the State computes the amount of State aid to be granted the municipality. After research of the decisions of the Fourth Circuit (the Circuit having jurisdiction of cases from Virginia), we determined the existence of Shepheard v. Godwin (4th Cir., February 16, 1968), 280 F. Supp. 869, and we conclude that that is the case relied upon by the Superintendent. (The decision is authored by Judge Bryan; and we note that the Superintendent's letter quotes language of Judge Bryan.) Shepheard v. Godwin, supra, does not apply to the facts of the present matter because the issue in Shepheard v. Godwin concerned the legality of Virginia's deduction of State aid to a local school district nearly in proportion to the amount of Federal funds received by the district under Public Law 874. We have no quarrel with the decision in Shepheard v. Godwin, and other like cases, because they stand for a principle of law that a state must not, when making a grant of state aid for school purposes, deduct an amount of state aid predicated upon the fact that the receiving administrative unit obtains Federal "impact" funds under Public Law 874. The facts of the present matter clearly indicate that the municipality will receive all the State funds to which it is entitled under 20 M.R.S.A. § 851; and that no deduction is being made by the State due to the municipality's receipt of Federal "impact" moneys. The question raised here is whether the State of Maine is required to pay State aid based upon the amount of Federal funds received by the municipality; money which was not "raised" by the municipality. The facts of Shepheard v. Godwin are clearly distinguishable from the facts of the present matter.

In the Federal District Court case of Douglas Independent School District No. 3 v. Jorgenson (1968), 293 F. Supp. 849, facts like those in Shepheard v. Godwin were adjudicated in the same fashion as in the latter case. The Court noted that Federal funds given to school districts having population substantially enlarged by attendance of Federal employees' children are a supplement for local revenue, not a substitute for local revenue. While both of the cases just cited make it clear that no state shall reduce state educational aid in light of Federal aid received, neither case even implies that a state may not predicate the amount of state educational aid to be paid an administrative unit upon the basis of the local tax effort of that administrative unit. The provisions of section 851 do nothing more than specify that administrative units shall raise and expend, annually, for the support of public schools in the administrative unit an amount not less than $20 for each inhabitant of that administrative unit. That was not done by the municipality. Nothing in section 851 directs a deduction of State education moneys based upon Federal funds received by the administrative unit.

It is our view that the position expressed by the State Department of Education cannot be considered as State manipulation of Federal "impact area" funds. Of course, any such manipulation is prohibited by the provisions of Public Law 874. Hergenreter v. Hayden (Kan. D.C. 1968), 295 F. Supp. 251.

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