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Procedure for Payment of Tuition; Affect upon State Appropriations.

SYLLABUS:

If the voters of a school administrative district have not authorized the directors of the district to contract for the schooling of secondary pupils of the district, the State Board of Education is not legally required to give consideration to any existing tuition arrangement in the district when computing and expending State aid to municipalities.

FACTS:

School Administrative District #73 was organized in February, 1969, consisting of the towns of Brooklin, Brooksville, Deer Isle, Sedgwick and Stonington. The provisions of 20 M.R.S.A. § 3456 requires that a school administrative district must house its secondary school students in a district facility within four years from the time of formation of the district, except for those children living remote from a public school as provided in § 912 of Title 20. The citizens in School Administrative District #73 have been unable to reach an agreement to construct a secondary school facility during the reference 4-year period. In conjunction with the above-described situation, the School Directors of the District scheduled a District meeting for the purpose of obtaining a vote of the District on the question of tuition of secondary pupils of the District. So, in February, 1972, an article was presented to the voters of the District at a District meeting, which article was in the following form:

> "Shall the School Directors of School Administrative District No. 73 be authorized to contract in the name of the District with George Stevens Academy for the schooling of secondary pupils for a term of three years?"

The form of the article followed the statutory language appearing in 20 M.R.S.A. § 225, sub-§ 3, D. The article was defeated. The vote on the article in the individual towns was as follows:

	Yes	No
Brooksville	201	63
Brooklin	102	107
Deer Isle	20	453
Sedgwick	152	71
Stonington	12	433
Total	487	1,127

At the present time, 46 secondary school students from the District are attending George Stevens Academy at the expense of the District: 18 from the Town of Brooklin; 14 from the Town of Brooksville; and 14 from the Town of Sedgwick. Under State law, expenditures made for tuition purposes by administrative units are used in computing State aid to all administrative units of the State. Consequently, such expenditures affect State appropriations and distribution of State monies.

QUESTION:

In light of the above facts, is the State legally required to recognize the tuition situation existing in School Administrative District No. 73 when computing, and expending, State aid to municipalities?

ANSWER:

No.

REASON:

The Legislature has prescribed the procedure by which directors of school administrative districts obtain authority to contract for the schooling of secondary pupils. That procedure is set forth in 20 M.R.S.A. § 225. Specifically, § 225 directs that a district meeting be held for various purposes, one of which purposes is: "to authorize the school directors to contract for the schooling of secondary pupils." The form of the article for such a district meeting is specified by the Legislature thusly:

> "When a meeting is called for the purpose of authorizing the school directors to contract for the schooling of secondary pupils, the article to be inserted in all warrants shall be as follows:
>
> Shall the school directors of School Administrative District No.____ be authorized to contract in the name of thethe district with_____
> (name of Administrative
> _____
> Unit or Academy)
> for the schooling of secondary pupils for a term of years?" 20 M.R.S.A. § 225.

The presence of statutory procedure whereby voters of a school administrative district may authorize their directors to contract for the schooling of secondary pupils, evidences a legislative intention that unless voters of a school administrative district authorize directors to enter into a contract for the schooling of secondary pupils, directors are without authority to act in the matter. Any other interpretation would mean that the language on this subject in § 225 is without legal significance.

It appears from a reading of § 225 that the subject of contracting for the schooling of secondary pupils of the district was not considered lightly by the Legislature. Note that under § 225 district meetings are required to be held for such important decisions as the issuance of bonds on notes for capital outlay purposes; the change in the selection of a school building site; the change in the method of sharing costs among the member municipalities; the agreement to add another municipality or municipalities to the district; an agreement to transfer a participating municipality to another school administrative district; an agreement to merge with another district; and approval of a proposed lease agreement with the Maine School Building Authority. These surely are important matters for a school administrative district. And, it is no less significant that the voters of the district be allowed to express themselves, under § 225, upon the question whether the school directors shall be authorized to contract for the schooling of secondary pupils.

The question respecting the authority of school directors to contract for the schooling of secondary pupils has been ordered by the Legislature to be submitted to the voters of the district. See: Frank E. Hancock, Attorney General ex rel. George L. Atkins, et al. v. Robert S. Fuller, Selectman, et als., Kennebec County, Supreme Judicial Court (March 9, 1960).*

In School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 458 P.2d 537, a contractor sued for recovery of damages against a school board for breach of contract to purchase a building which had not been approved by the electorate. The court held that the contractor's reliance on the school board's statements that they intended or desired to purchase the building, as a matter of law, was not justified. Certain of the language in the case seems pertinent here.

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* In the cited case, the Selectmen of Farmingdale had refused to allow the voters of Farmingdale to vote upon school administrative district formation by secret ballot. The court ruled the Selectmen were required to call a town meeting or meetings as may be necessary in order to permit the voters to vote upon the question of school administrative district formation. The court ruled that the questions relating to school administrative district formation were ordered by the Legislature acting through the school administrative district commission (now State Board of Education) to be submitted to the voters of Farmingdale. The questions which appear in § 225 respecting important district business are no less significant than those involved with the formation of the district.

> "School boards have only the authority granted by statute which must be exercised in the mode and within the limits permitted by the statute. (Citing two cases.) Thus, a prerequisite to the exercise of the Board's power with regard to school buildings and sites is the antecedent approval of the electorate. . . . " (Parenthesis supplied.)

In McLang v. Harper, 236 Iowa 1006, 20 N.W.2d 454, directors of a school district were not authorized to lease a vacate school building to a society without first submitting the question to the electorate under statute.

Under the given facts, secondary school students from three of the administrative units comprising the district are attending George Stevens Academy without the voters of the district having authorized the directors to contract for the schooling of secondary pupils. We perceive no legal basis by which the directors can so contract. Since that is so, the State is under no legal obligation to take into account the tuition arrangement existing in School Administrative District No. 73 when computing and expending State aid to administrative units.

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