

MAINE STATE LEGISLATURE

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July 3, 1973

Carroll R. McGary, Commissioner

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Computation of General Purpose Aid

SYLLABUS:

It was incorrect to compute the amount of General Purpose Aid payable to Limestone for the fiscal year beginning July, 1971, by requiring the appropriation through local taxation of \$30 per inhabitant.

FACTS:

At the Special Session of the One Hundred and Fourth Maine Legislature, the first sentence of the second paragraph of 20 M.R.S.A. § 851 was amended increasing the amount of "80¢" to "\$20" and substituting reference to section 3732 for the former penalty. By reason of the amendment, effective February 10, 1970, the section read as follows:

"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." P.L. 1969, c. 589, § 4-A.

At the time section 851 was being amended, section 3732 of Title 20 was being amended, effective February 10, 1970, in the 6th paragraph from the end of the section to read as follows:

"Any unit which fails to raise and expend annually \$20 per inhabitant for the support of its public schools for each of the 2 years preceding the convening of the Legislature shall receive the same percentage of its general purpose aid as the percentage determined when the units appropriation per inhabitant from local taxes for public schools is divided by \$20." P.L. 1969, c. 589, § 13-A.

At the Regular Session of the One Hundred and Fifth Legislature, section 851 was again amended, increasing "\$20" to "\$30." That amendment, coupled with a slight change in language in the section, effective June 25, 1971, made the section read as follows:

"Every administrative unit shall appropriate by local taxation, 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 \$30 for each inhabitant, according to the latest Federal decennial census, under penalties as set forth in section 3732." P.L. 1971, c. 530, § 10-A.

At the same Session, section 3732 was amended again, effective June 25, 1971, as follows:

"Any unit which fails to appropriate by local taxation annually \$30 per inhabitant as determined by section 851 for the support of its public schools for each of the 2 years preceding the convening of the Legislature shall receive the same percentage of its general purpose aid as the percentage determined when the units' appropriation per inhabitant from local taxes for public schools is divided by \$30." P.L. 1971, c. 530, § 37-C.

Payments of General Purpose Aid are made by the State to the administrative units in Maine monthly in twelve equal installments commencing with the first month of each fiscal year (July-June). 20 M.R.S.A. § 3455. The State informs administrative units in October or November of the amount of General Purpose aid which the unit will receive for the fiscal year beginning the following July 1st.

The first paragraph of 20 M.R.S.A. § 3732 provides that the amount of General Purpose Aid, computed under section 3731 be recommended by the State Board of Education to the Bureau of Budget, and that the Budget Bureau shall include a recommended amount in the Part 1 budget representing at least 1/3 of the operating cost for all public schools. By State law, the Part 1 budget must be presented to the Legislature not later than the close of the second week of the regular legislative session. 5 M.R.S.A. § 1666.

The present biennium began July 1, 1971, for payment of State General Purpose Aid. In the computation of such aid for Limestone, the figure of \$30 was used. (The legislative amendment, effective June 25, 1971, increased the figure from \$20 to \$30.) Pursuant to 20 M.R.S.A. § 3732, the applicable two-year period preceding the convening of the Legislature was 1969-1970.

QUESTION:

Was it correct to compute the amount of General Purpose Aid payable to Limestone for the fiscal year beginning July, 1971, by applying the statutory test of requiring appropriation by local taxation of \$30 per inhabitant for the base period of 1969 and 1970?

ANSWER:

No.

REASON:

The \$30 figure was placed in 20 M.R.S.A. § 851 and § 3732, June 25, 1971. Thus, the legislative mandate in section 851, that every administrative unit appropriate not less than \$30 for each inhabitant, under penalties provided in section 3732, was not effective until June 25, 1971. The base period for the fiscal year convening July 1, 1971, specified in section 3732 was "the 2 years preceding the convening of the Legislature", viz, 1969 and 1970. It was not a statutory requirement, for the years 1969 and 1970, that administrative units appropriate not less than \$30 per inhabitant.

Merely because the \$30 factor became effective five days prior to the commencement of the fiscal year July 1, 1971 - June 30, 1972, was not authority to use it when computing an administrative unit's school expenditure effort for the applicable base period of 1969-1970.

The provisions of the sixth paragraph from the end of 20 M.R.S.A. § 3732 constitute a requirement that compliance be had with the 20 M.R.S.A. § 851, "for each of the 2 years preceding the convening of the Legislature", or be penalized for lack of compliance. It was legally impossible, in 1969 and 1970, to comply with a statutory provision that didn't exist until June 25, 1971.

In order to utilize the \$30 provision for the base 2-year period, 1969-1970, pursuant to 20 M.R.S.A. §§ 851, 3732, retrospective

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Application of P.L. 1971, c. 530, §§ 10-A, 37-C (effective June 25, 1971) is required. A retroactive provision of a statute is valid only when it relates to a remedy and not to a substantive right. Miller v. Fallon (1936), 134 Me. 145, 183 A. 416; Dalton v. McLean (1940), 137 Me. 4, 14 A.2d 13. The application of 20 M.R.S.A. § 3732 (6th paragraph) as a penalty to reduce the amount of General Purpose Aid an administrative unit realizes from the State, is substantive in nature. A substantive statute is one which creates, defines and regulates rights and duties of parties, and it is the source of the obligation incurred or liability imposed. Sohn v. Bernstein (Me., 1971), 279 A.2d 529, 533. In effect, the legislative increase in the amount that an administrative unit is required to raise per inhabitant for the support of public schools therein constitutes an additional statutory indebtedness requiring additional levy of taxes. In Howard Kenyon Dredging Co. v. Merrill Gravity Drainage District #3, 193 La. 915, 192 So. 529, it was noted that incurring an additional indebtedness and the levying of additional tax involved substantive rights.

In conclusion, the computation of the amount of General Purpose Aid payable to Limestone for the fiscal year beginning July, 1971, should not have involved consideration of the \$30 statutory amount.

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