Education: Local Control
LD 123

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Honorable Donald R. O'Leary
Senate Chambers
State House
Augusta, Maine

Dear Senator O'Leary:

This responds to your letter of March 8, 1977 with which you submitted seven questions concerning L.D. 123 for our opinion. That bill is titled "An Act to Clarify the Role of the Department of Educational and Cultural Services Relating to Local School Systems", and would enact three new sections to Title 20 M.R.S.A. Your questions and our answers are set forth below.

> Question 1. "With regard to the proposed 20 M.R.S.A. § 5, would this section express an intent to in any way reduce the control that voters or local elected officials have over local school matters?"

The proposed new § 5 would read, "It is the intent of the Legislature that the control and management of the public schools be vested in the legislative and governing bodies of the several local school administrative units so long as those units are in compliance with appropriate state statutes." It is our opinion that this expression of legislative intent would not reduce local control over local school matters. If anything, the statement will clarify where the power to control and manage public schools is vested.

However, it should be noted that the proviso which states ". . . so long as those units are in compliance with appropriate state statutes", raises some question as to the location of such authority if the unit is not in compliance with state statutes. Although it is not clearly expressed, other provisions of L.D. 123 would indicate that in such circumstances the Department of Educational and Cultural Services could have a large role in the control and management of the schools to the limited extent that the statutes are being infringed.

Question 2. "With regard to the same section, would it be an expression of intent to in any way reduce local control of school budgets?"

There have been certain situations in which the Legislature has mandated specific educational programs which are to be offered in the public schools, while leaving the question of financing those programs to the local budgetary processes. If the local budget as finally approved contains insufficient funds to support such programs, it is possible that the school unit might be considered not to be ". . . in compliance with appropriate state statutes." In this case, the wording of the statement of intent in § 5 could be interpreted as an intent to compel local units to include sufficient funding in their budgets. The question of sufficiency of the local appropriation would initially be determined by the Department of Educational and Cultural Services. To this extent, the statement may represent a reduction in local control of school budgets.

Question 3. "What would be the legal affect of the proposed section 6, subsection 1, in light of the fact that the Commissioner is already authorized to withhold state aid to assure compliance with reporting requirements by 20 M.R.S.A. § 3744?"

Title 20 M.R.S.A. § 3744 sets forth certain statistical information which each administrative unit is required to provide to the Commissioner of Educational and Cultural Services on an annual basis. That section ends with the sentence, "The Commissioner is granted the authority to withhold monthly subsidy payments from an administrative unit when information is not filed within specified time schedules." The proposed Section 6, sub-§ 1, in effect, restates this authority, but adds the provision that due notice must be given to the appropriate school officials, and that the withholding of funds may continue only until the statistical information is provided. As originally drafted, § 6 would have authorized the Commissioner to withhold aid ". . . to assure compliance with the administrative and reporting requirements prescribed by state statutes or by rules and regulations adopted by the Department of Educational and Cultural Services". The section was narrowed by specific reference to 20 M.R.S.A. § 3744 as a result of House Amendment "A" (h-35) which was offered specifically to insure that the section merely restated the department's present authority and did not give any broader authority to withhold funds. Legislative Record, House, February 24, 1977. Therefore, the answer to your question is that the proposed §6, sub-§ 1 as amended would have very little legal effect in light of the pre-existing authority to take such action.

Question 4. "What is meant by the term 'probable cause' as that term is used in the proposed subsection 3 to section 6?'

The term "probable cause" is used most frequently with regard to criminal proceedings. However, several cases from other jurisdictions have interpreted that term as it is applied in civil law, primarily with respect to malicious prosecution cases. One such definition is given in Grey v. Abboud, 87 P.2d 144, 148 (Okla. 1939) as follows:

> "Probable cause for the institution of proceedings in court is supported by such facts as would authorize an honest belief in the prosecutor, as a reasonable and prudent person, that the action and the means taken in prosecution of it are just, legal, and proper." (Cf. Nelson v. International Harvester Co. of America, 135 NW 808 -810 (Minn. 1912)

It has also been stated that "It [probable cause] may result from a reasonable belief in facts which prove to be unfounded, or from an interpretation of statute which, although rejected, was not unreasonable." Lee v. Dunbar, 37 A.2d 178 (Mun. Ct. of Appeals, Dist. of Col., 1944). In light of these decisions, it is our opinion that the term "probable cause" as used in the proposed § 6, sub-§ 3 would mean a belief by the Commissioner, on the basis of his investigation, that a cautious, reasonable and prudent man would determine that the non-compliance which was the basis of the complaint is in fact true.

Question 5. "What would be the nature of the hearings conducted by the State Board of Education under proposed subsection 3 of section 6, in light of the provision of paragraph B that the purpose of the hearing shall be limited to findings of fact and the provision of paragraph C which implies that the Board will make determinations of noncompliance?"

As indicated in the question, there appears to be an inconsistency between paragraph B which would limit the purpose of the Board's hearing to "findings of fact" and paragraph C which by implication indicates that the Board would reach a conclusion as to whether there had been compliance with the statutory provisions based upon its findings of fact. It is our opinion that a finding of "noncompliance" would actually be a quasi-judicial determination reached by the Board

after application of the pertinent statute to the facts which have been found. Therefore, it is also our opinion that the Board would be making conclusions of law as well as findings of fact, the language of paragraph B notwithstanding, if the Board were to pursue any given complaint to the extent of preparing it for reference to the Attorney General.

> Question 6. "If the result of a public hearing conducted by the State Board of Education is a determination that an administrative unit is not complying with statutory requirements, would there be any right of appeal or other post determination relief?"

Section 6 does not specify any appeal process or other post determination action other than reference to the Attorney General. No sanctions are directly imposed as a result of the Board determination. Thus, the Board determination represents advice to the Attorney General that non-compliance with the law may have occurred. Such an advisory finding is not appealable as it results in no action which directly harms a local district. The local district would get its day in court should the Attorney General deem follow up court action appropriate as discussed in response to question 7 below.

> Question 7. "With regard to the proposed section 6, subsection 1, paragraph A and subsection 3, paragraph C, what would be the effect of these provisions upon the Attorney General, i.e., would the Attorney General be forced to commence a legal action even if he believed that such action would not be appropriate in light of the circumstances of a particular case?"

Both provisions which are referred to in the question direct the Attorney General to ". . . take such action as he deems necessary to achieve compliance." The provisions seem to presuppose that the Attorney General will agree with the Board that there has been non-compliance with the administrative unit, a situation which may not always exist. Therefore, we interpret this provision as requiring the Attorney General to review the decision of the Board and determine, within his prosecutorial discretion, whether legal action is called for and what form that legal action should take. It is our opinion that the provision would not force this office to take any specific legal action if it is our judgment that such action is not warranted in light of the circumstances of the particular case.

Please continue to call on us whenever we may be of assistance.

Very truly yours,

Donald G. Alexander /jg

DONALD G. ALEXANDER
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