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April 1, 1991

Sen. Stephen C. Estes, Chair
Rep. Nathaniel J. Crowley, Sr., Chair
Committee on Education
State House Station 115
Augusta, ME 04333

Dear Senator Estes and Representative Crowley:

I am writing in response to your inquiry of March 27, asking a series of questions concerning P.L. 1991, c. 9, Part II, § II-1, the FY-91 supplemental budget bill, with an effective date of March 14, 1991. Your questions concern Part II, § II-1 of that bill which states:

Any legislation or rule containing a state mandate enacted after January 1, 1984 may be deferred by action of a local school board until such time as the State restores state aid to education to the levels required by the laws in effect on January 1, 1990. These mandates include, but are not limited to, minimum pupil-teacher ratios, guidance programs, gifted and talented programs, music programs and art programs.

Initially, you inquire about the meaning of the phrase "until such time as the State restores state aid to education to the levels required by the laws in effect on January 1, 1990." Secondly, you ask whether the mandate deferral provisions are triggered by the current level of state funding. Thirdly, you pose a series of questions to be answered if the response to the second question is in the affirmative. For reasons which are discussed below, it is the opinion of this Department that

the mandate deferral provision contained in P.L. 1991, c. 9, Part II, § II-1 is not triggered by the current level of state funding. It is therefore unnecessary to respond to your remaining questions.

Your initial question, concerning the meaning of the phrase "until such time as the State restores state aid to education to the levels required by the laws in effect on January 1, 1990", must be answered in the context of the School Finance Act of 1985, 20-A M.R.S.A. § 15601, *et seq.* as amended. In part, the School Finance Act describes the process used to predict educational costs on a state-wide basis for the coming year and to produce a recommended funding level intended to meet those estimated costs. Title 20-A M.R.S.A. § 15605 requires the Commissioner of Education to produce, prior to December 15 of each year, a recommended funding level for the academic year beginning the following July 1. The statute sets out a method for computing the recommended funding level. This method is based upon two-year-old costs but also reflects more recent changes in pupil enrollment, economic factors, actual changes in education costs, and "any other considerations which effect a change in the costs of education." Additionally, the costs are adjusted to reflect recent inflation. The Commissioner utilizes this method of computation and, with the approval of the State Board, certifies to the Governor and the Bureau of the Budget the recommended funding level for the coming academic year. The Governor is obligated, pursuant to 20-A M.R.S.A. § 15606, to make a recommendation to the Legislature within time schedules set forth in 5 M.R.S.A. § 1666. The Legislature then acts to appropriate the state share of the total allocation and, further, appropriates other amounts for the various adjustments contained in 20-A M.R.S.A. § 15612, e.g. quality incentive, geographic isolation, etc. It is important to note that the Commissioner's recommendation is not binding on the Governor nor upon the Legislature and, similarly, the Governor's recommendation is not binding upon the Legislature. Indeed, in December of 1989, the Commissioner's recommendation for academic year 1990-91 was that the state share of the total allocation be \$535 million. The Legislature appropriated just over \$521 million.^{1/}

^{1/} These numbers do not include approximately \$10 million in additional appropriations intended to fund the adjustments described in 20-A M.R.S.A. § 15612. This is because the "total allocation" is defined as "the total of the foundation allocation and the debt service allocation." 20-A M.R.S.A. § 15603(28). Adjustments are not included within either the foundation allocation or the debt service allocation. See also, 20-A M.R.S.A. § 15602(4).

Notwithstanding the recommendations made to the Legislature, the level of funding that the State provides toward the cost of educating students in the public schools of Maine is not determined until the Legislature acts to appropriate that sum of money. Only upon the passage of the appropriations bill containing the appropriation for state aid to education is a particular level of funding for state aid to education "required by law."^{2/}

Against this general description, it is possible to determine what level of state aid to education was required by the "laws in effect on January 1, 1990." On January 1, 1990, the law in effect that governed the level of state aid to education was the appropriations bill passed in the spring of 1989. According to information provided by the Department of Education, the state share of the total allocation for academic year 1989-90 was approximately \$466 million. This amounts to a 56.65% state share of the total allocation for academic year 1989-90. Thus, there are two possibilities for measuring the "level of state aid to education required by the law in effect on January 1, 1990"; the absolute dollar amount of state aid, or the percentage equal to the State's share of the total allocation. Although the Commissioner's recommendation for a level of state aid to education for academic year 1990-91 was pending on January 1, 1990, that recommendation was not tantamount to a "requirement" of the law. Again, no "requirement" exists until the Legislature determines the level of state aid and appropriates funds to match that level. Consequently, in answer to your first question, the "levels required by the laws in effect on January 1, 1990" are the levels of state aid to education contained in the appropriations bill establishing the level of state aid to education for academic year 1989-90.

Secondly, you ask whether the "application of the mandate deferral provision is triggered by the current level of state funding." As stated above, there are two possibilities for measuring the "level" of state aid to education as of January 1, 1990. The first is a dollar amount, approximately \$466 million. The second is a percentage, the 56.65% state share of

^{2/} 20-A M.R.S.A. § ,15602(1) states "it is the intent of the Legislature to provide at least 55% of the cost of the total allocation from General Fund sources or a percentage no less than that provided in the year prior to the year of allocation, whichever is greater." This expression of intent is merely precatory and is not binding upon succeeding legislatures. Therefore, there is no minimum percentage of state funding that is "required by law."


the total allocation represented by that amount. The law gives no guidance as to which of these two methods is to be used. However, it is possible to answer your question because, under either interpretation, the current level of state funding exceeds both the dollar amount and the state percentage share of the total allocation "required by the laws in effect on January 1, 1990." Applying the same analysis discussed above, the current level of state aid to education is that level of aid contained in the appropriation bills which set the level of state aid to education for the academic year 1990-91. According to the Department of Education, state aid for education for 90-91 was set by the Legislature at \$521 million or 56.76% of the total allocation. Because both figures are above their respective levels for January 1, 1990, the mandate deferral provisions are not triggered by the current level of state funding.

This Department recognizes that by using the phrase "until such time as the State restores aid to education to the levels required by the laws in effect on January 1, 1990", the Legislature may have assumed that the current level of funding is less than that required by "the laws in effect on January 1, 1990." It is possible the Legislature contemplated that, upon enactment, local school boards would immediately have available to them the option of deferring state mandates. However, this Department has been unable to identify any diminution of funding that has actually occurred under the Department's interpretation of the statutory language.^{3/}

^{3/} Section II-1 made its original appearance in slightly different form as part of the minority report on the supplemental appropriations bill. (See L.D. 275, § I-1) This language was later added to the bill containing the majority report (L.D. 274) and amended several times in both bodies before its enactment into law. The mandate language was mentioned several times in floor debate and was the subject of one roll call vote. Although the triggering event was not specifically discussed, several legislators expressed uncertainty as to exactly what the mandate language meant. (See 1991 Legis. Record S-162, 171, 173, 185-88; 248, 249; H-196, 272 (proof ed.))

Given my conclusion that the mandate deferral provision is not triggered by the current level of funding, I find it is unnecessary to answer the remaining questions contained in your letter.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

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