IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

MOLLY HOOTCH, et al.,

Plaintiffs,

vs.

ALASKA STATE-OPERATED SCHOOL SYSTEM, et al.,

Defendants.

No. 72-2450

ORDER GRANTING STATE SUMMARY JUDGMENT ON COUNT I OF PLAINTIFF'S COMPLAINT

On March 21, 1973, plaintiffs moved for summary judgment on their first claim for relief in a complaint filed on October 5, 1972. After extensive briefing by the parties, this court entered its order denying plaintiff's motion for summary judgment on October 3, 1973. In its decision, the court advanced several grounds for denying the motion for summary judgment. First, the court did not feel that the issue of the court's jurisdiction by way of injunction or declaratory relief to compel a state agency to perform a duty allegedly assumed by the enactment of a regulation had been adequately briefed (see Order, text accompanying note 16). Secondly, I did not feel that the applicability of AS 44.62.570(e) had been adequately briefed (see Order, text accompanying note 17). However, my primary reason for denying the motion was my conclusion that neither the constitution, applicable state statutes, or the administrative regulation in question, compelled the state to provide secondary education in plaintiff's community of residence. Plaintiff petitioned the Alaska Supreme Court for review of this court's order which was denied without opinion on November 27, 1973. In the meantime, the state relying on this court's conclusions regarding applicable constitutional and statutory provisions moved to

dismiss Count I for failure to state a claim on October 24, 1973. Having reviewed all of the materials previously submitted, and reconsidered the contentions of the parties and the decisions reached in my order previously discussed, I have concluded that the state's position is well taken and that Count I should be dismissed with prejudice (see Civil Rule 12(b)(6) and cf. Civil Rule 41(b); and see Nizinski v. Currington, ___ P.2d ___ (Alaska, January 2, 1974, Op. No. 982, text accompanying nn. 2-4, slip opinion pp. 2-3).

I have reviewed plaintiff's complaint with particular reference to the interplay between Count I and the other counts, and have concluded that the claims for relief are sufficiently severable and distinct that judgment should be entered immediately on Count I. I, therefore, make the finding called for by Civil Rule 54 having expressly determined that there is no just reason for delay and expressly direct the entry of judgment at this time to enable an immediate appeal. My review of the file indicates that the complexity of the other issues may require substantial additional time to fully develop the relevant facts, and that it is highly likely that if Count I is appealed now, a final decision on the legal issues presented by the Supreme Court can be expected in time to substantially advance the ultimate termination of this litigation. Implicit in my decision is my understanding that the interests and rights of the parties might be prejudiced if they were compelled to wait to appeal my decision regarding Count I until a final judgment had been reached regarding the issues presented by the other counts.

DATED at Anchorage, Alaska, this 11 day of January, 1974.

James K. Singleton Jr.

JAMES K. SINGLETON, JR.
JUDGE OF THE SUPERIOR COURT

cc: Cooke (ALS)
Partnow (AG)