

JURISDICTIONAL STATEMENT

As noted in appellant's brief, (Brief, p. 1) the order of the Superior Court entered January 11, 1974, granted summary judgment to appellees on Count I of the amended complaint and severed that count from other claims presented below pursuant to Civil Rule 54(b), so as to allow immediate review by this Court as to Count I only. It must be kept firmly in mind that issues and facts relating to other counts of the amended complaint have not been fully discovered, tried, or briefed, and are not now before this Court.

The issue decided below was 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." Order Granting State Summary Judgment on Count I of Plaintiff's Complaint, (R. 897). Appellants (unlike the various amicus curiae) indicate an understanding of the limited nature of the current appeal. (Brief, p. 3 at N. 1).

The Superior Court expressly provided for an appeal of this issue pursuant to Alaska Rules of Civil Procedure 54(b) because:

. . . 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 the issues presented by the other counts. (Ibid, R. 898).

Respondents would concur that all parties shall be aided by this Court's resolution of the issues contained in Count I. However, respondents would also note that this appeal must be limited strictly to the issues arising out of Count I. As the Superior Court also noted, "the complexity of the other issues may require substantial additional time to fully develop the relevant facts" It would be a disservice to the parties in this litigation to consider only partially discovered factual assertions in resolving the issues of Count I. It is evident that much of the argument contained in the amicus curiae briefs, as well as portions of the brief in chief, slip well beyond the jurisdiction of this Court over the matters now before it. Just as this Court refused to grant an improvident petition for review (R. 896), it should also refuse to consider allegations beyond the scope and record of this unusual appeal.

STATEMENT OF THE ISSUES

I. Whether the Superior Court erred in ruling as a matter of law that there does not exist by constitution, statute or regulation an absolute right to attend a local public secondary school in every populated location in the state, no matter how small or remote or transitory that location might be, and regardless of exorbitant costs or educational deficiencies involved in providing such schools.

II. Whether the Superior Court erred in failing to find a denial of equal protection under the Alaska Constitution, Article I, Section 1, when appellants specifically waived any equal protection claim.

STATEMENT OF THE CASE

This appeal involves a challenge to the state's system of secondary education in rural Alaska. It has been brought by a group of the ever decreasing number of high school aged rural children who live in small settlements, apart from the state's highway system, which possess local school facilities providing programs only through grade 8. To receive their free public secondary education, these students may either enroll in school elsewhere in the state or remain in their local settlement and participate in correspondence programs.

While the named appellants desire to proceed as representatives of a class (R. 109), the legitimacy of their status as representatives of a class has been challenged by the respondents below. Respondents' motion in this regard has not yet been ruled on by the Superior Court nor have any findings or stipulations been made as to other "facts" as to the asserted class which appellants claim to represent (Brief, p. 3). Moreover, the determination as to the class action motion is wholly irrelevant to the legal claim involved in Count I of the complaint - which is the only matter now before this Court. Thus, it is apparent that appellants' "statement of the case" contains much by way of assertion that has not been properly established, and is irrelevant to the narrow legal issues now before this Court.

A more accurate statement of the necessary facts would note that there are 27 named appellants of whom only 6 (3 in Emmonak and 3 from Kwilgillingok) would be subject to the state's compul-

sory attendance law, ^{1/} AS 14.30.010. The named appellants live in the villages of Emmonak, (by far the largest of the three villages)(R. 664), Kongiganak, and Kwigillingok, each of which is located in the unorganized borough. Of the three villages, only Emmonak is incorporated, and none of them has taken the local initiative to operate its own schools. Thus, the schools which are operated in these villages, as well as the secondary programs which are available to petitioners elsewhere are operated and supported wholly by state and federal funds. (AS 14.12.020) Unlike organized school districts, no local effort is required for either program operation or school construction. (AS 14.17.071; AS 43.18.100) Additionally, it should be noted that prior to the filing of the original complaint in this action, appellees had already proceeded towards construction of a secondary school facility in Emmonak (as well as a number of other rural, predominantly native communities) with some 9 million dollars derived from the bond issue of ch. 170 SLA 1970. (R. 780 - 781) Approval of a second bond issue in November of 1972 (ch. 195 SLA 1972) made available an additional 16 million dollars for rural secondary school construction. Additionally, the past legislature authorized a new 40 million

1/ First Amended Complaint, paragraphs 3-30 (R. 101 - 108). It should be observed that all 6 of the named appellants who would be subject to the compulsory attendance law if they lived within two miles of a secondary school are in fact enrolled in fully accredited secondary programs. Further, of those named appellants who claimed not to be enrolled, each one is over the age of compulsory school attendance. There is no way of determining at this point whether any of them would be enrolled in any other hypothetical circumstances.

dollar bond issue for rural school construction. ch. 142 SLA 1974. If approved by the voters, this bond issue will provide among other things, for a new school facility in Kongiganak, which facility will be suitable for secondary educational programs as well as elementary programs when completed.

The new state financed secondary school in Emmonak should be operational during the 1974-75 school year. (R. 139) In the interim, respondents have made a secondary program available in Emmonak using existing elementary school facilities for any secondary school aged children who desire to participate. (R. 97) For the two years during which this program has been provided in Emmonak, very few secondary students elected to stay in their "community of residence" and participate in this specially established program. (R. 139)

It should be noted that all of the named appellants have been given the opportunity to attend secondary facilities in the State-Operated School district although not in their "communities of residence". (R. 783-84) Many have done so. Others have instead elected to leave the State-Operated School District to attend secondary programs elsewhere (e.g., Anchorage). (R. 692, 709-711, 727-729) None of the named appellants have been "forced" to leave their district of residence since the named appellants, like all others similarly situated, select the program which they prefer each year from the available programs, which includes programs near in the unorganized borough. Moreover, correspondence study

is available for any students who desire it. ^{2/} It is not contested that all of the educational costs for the named plaintiffs, including the cost of transportation and boarding where requested, have been paid for with public funds.

While the above stated facts are all that are really necessary to decide the issues which appellant seeks to raise, some additional comments should be made to refute the inaccurate view conveyed by appellants' statement of the case. This Court has previously indicated that a historical perspective must be taken in order to adequately appreciate difficult social problems. In Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970) this Court quoted the words of former Supreme Court Justice Cardozo:

We take a false and one-sided view of history when we ignore its dynamic aspects. The year books can teach us now a principle or a rule had its beginnings. They cannot teach us that what was the beginning shall also be the end. (Cardozo, The Growth of the Law, 104-105 (1924). 471 P.2d at 401.

The need for a historical perspective is indeed evident to appreciate the instant case.

The history and evolution of public education in rural Alaska has been dealt with by a number of studies and publica-

2/ No school aged child has ever been denied the right to participate in state supported correspondence study. See Deposition of Margaret Justice (R. 848). Additionally, this past legislature more than tripled the appropriation for correspondence study. Free Conference Committee Report on Education Operating Budget, pp. 60 - 61. This increase in funding will allow increased professional supervision and development of Alaskan secondary curriculum.

tions.^{3/} It is not necessary to rehash this history at this point. Rather, respondents would observe several important factors which demonstrate its commitment since statehood of improving rural educational opportunities.

At the time of statehood, the availability of secondary educational opportunities for Alaskans from rural areas of the state was almost nonexistent. This is amply demonstrated by the record, incomplete though it may be, of this proceeding. During the 1965-66 school year, for instance, there were less than 300 rural students receiving local secondary education. (R. 334) For many students, the only alternative available were large, out-of-state boarding programs. Bringing these students back to the state and closer to home while providing quality educational programs became the primary objective of state educational policy. (R. 305) At least part of this goal has been achieved. During the 1969 school year, some 1100 rural students actually left the state to obtain secondary education at Bureau of Indian Affairs' Boarding Schools. As of last year, no new students were accepted in these schools, and a handful of Alaskans still leaving the state are upper classmen who have preferred to complete their secondary education in

3/ See for instance, "Systems of Education for the Alaska Native Population: by Frank Darnell, in Education in the North, (Darnell, ed.) 1972; An Overall Education Plan for Rural Alaska, (October 1968); Alaskan Native Education: An Historical Perspective, Charles K. Ray (A Report Prepared for the Alaska Native Needs Assessment in Education Project, 1973. Education in Northwest Alaska, by Warren I. Tiffany, Assistant Area Director of Schools, Bureau of Indian Affairs 1966; Some Problems in the Education of Native Peoples in Alaska, Don M. Nafoe (1959).

the same school.

The state initially set about this task through the construction of a number of large regional schools. Additionally, the boarding home program was initiated to accommodate the rural students who could not be placed in the large regional centers. While originally seen as a stop-gap measure, this program flourished as an alternative to the dormitory programs.

It should be noted that the regional school concept got substantial impetus from a study carried out for the state by the Training Corporation of America, Inc. out of Falls Church, Virginia. The report of this group concluded that:

The ideal high school must have at least 500 students and graduating classes of 100 or more students; there must be a comprehensive curriculum accommodating students from varied backgrounds with varied goals; and the school should reflect an urban technological society. State of Alaska Regional Secondary School System: Implementation Plan, February 1967, p. 1 - 2.

This program was also strongly supported by the state's native community, as was the boarding home program.

Educational policy remained in a state of flux in Alaska, and even as the large regional dormitories and schools were in the planning stages, a number of people felt that so-called "area" high schools, which would be smaller, and located closer yet to rural communities, would be the way to go. Transcripts of several public meetings indicate that the state's Native community, as well as a number of educational policy makers, strongly endorsed

this turn.^{4/} In fact, a number of Native organizations in the state continue to endorse this approach. The desire for and provision for local high schools in even the smallest of rural communities is but the latest tack in educational philosophy.

The number of rural students receiving local secondary education has increased dramatically in recent years. From the less than 300 State-Operated School students receiving local education in 1965-66, the figure jumped to close to 1200 by the 1971-72 school year. (R. 480) That figure, however, does not reflect the drastic increase in local secondary construction and programs made possible by the state's improved financial picture due to the 1969 oil lease sale and the anticipated continuing revenues once the Trans-Alaska Oil Pipeline is operational. Much of that expansion in local opportunities (R. 781 - 782) will be reflected for the first time in this coming school year. Well in excess of 500 additional local secondary school spaces are projected for the 1974-75 school year. See Free Conference Committee Report, Fiscal Year 1975 Operating and Capital Budget: Education, State-Operated Schools, p. 3. Additional programs, including new construction under a proposed 40 million dollar land issue (ch. 142 SLA 1974) will continue this trend.

All of this is set out to demonstrate how the State and its people have struggled in their efforts to face a monumental

^{4/} See, for instance, Proceedings from Conference on Alaska Native Secondary Education, Sitka, Alaska, December 19-20, 1968; and Hearings Before the Subcommittee on Indian Education of the Committee of Labor and Public Welfare of U.S. Senate, 91st Congress, First Session.

problem of providing quality education in rural Alaska. It has obviously been a trial and error approach to unique problems, and some approaches have failed. However, the key point is that a snapshot view such as petitioners provide in their memorandum cannot possibly give the proper perspective as to why things are as they now are in rural Alaskan education.