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Does Mississippi's System for Financing Public Schools from "School Lands" Violate Federal Law?

by Richard B. Collins

B. H. Papasan,
Superintendent of Education

v.

William A. Allain,
Governor, State of Mississippi
(Docket No. 85-499)

Argued April 22, 1986

ISSUES

There are school lands throughout the southern three-quarters of Mississippi that yield sizable incomes to local school districts. The northern quarter of the state has no school lands, so that school districts there are much poorer. In this case, this scheme is challenged under federal statutes respecting school lands and under the Equal Protection Clause of the Fourteenth Amendment.

FACTS

Since 1803, federal law has granted most newly-admitted states federal land in trust for public school support, known as "school lands." Thirty states received more than 77 million acres of federal school lands.

School lands granted long ago have varying importance today. Usually, grants of equal acreage were made in each township to support schools in that township. The present value of the land, or of its proceeds when the land has been sold, differs enormously from township to township based on location, natural resources and the skill, wisdom and honesty of its managers.

Mississippi has an extreme version of school lands disparities. The state was granted the 16th section (640 acres) in each township in the southern three-quarters of the state—territory acquired from the Choctaw Nation. In the northern quarter, acquired from the Chickasaw Nation, the state received "lieu lands" instead. These had the same total acreage as the 16th section grants, but they were granted in larger blocks and were located away from the benefited townships.

In the mid-nineteenth century, the state sold the Chickasaw Cession lieu lands and invested the proceeds

in railroad bonds. Civil War action destroyed the railroads and made the bonds worthless. Since then, the state legislature has appropriated funds annually to replace the lost school lands proceeds for school districts in the Chickasaw Cession. But in modern times, the return from 16th section school lands in southern Mississippi greatly exceeds the amount the state has appropriated for northern schools. In recent years, an energetic state auditor has caused the return on 16th section lands to improve significantly, adding to the disparity. In 1983, 16th section lands returned more than 100 times the amount the state appropriated for northern districts. Since then, larger appropriations have reduced the disparity to about four times—suggesting once again that a lawsuit can achieve some success even if it loses.

In 1981, a number of northern Mississippians sued the state in federal court. They included county school boards, superintendents of education and children from Chickasaw Cession school districts. The lawsuit claimed that the state denies children in northern Mississippi "a minimally adequate level of education." It laid the blame on illegalities in the handling of school lands, retracing the history of Mississippi school lands from the 1830s.

The state asked the federal district court to dismiss the suit without a trial as legally insufficient. The court agreed, and its ruling was affirmed by the federal court of appeals in New Orleans. Some parts of the case were held barred by the state's immunity from federal court suit under the Eleventh Amendment; other parts were held not to state any illegal action by the state.

BACKGROUND AND SIGNIFICANCE

Even without recalling Faulkner, one can concede that the public schools in northern Mississippi may be very poorly funded compared with those in the rest of the state or with those in other states. But a basis for a federal court to do anything about it is hard to define. It is challenging to try to guess why the Supreme Court decided to review this case.

By this time, plaintiffs in the case have recognized the constraints imposed here by the state's immunity from federal court authority under the Eleventh Amendment. The Eleventh Amendment immunity usually bars a federal court from imposing on a state any remedy for past wrongs. Federal courts can only order state officials to obey federal law in the future. Since many of the claimed wrongs in handling Mississippi school lands occurred long ago, the Eleventh Amendment bars federal court review.

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Papasan claimed that Mississippi's handling of school lands violates state law, as well as federal. But the Supreme Court has held that the Eleventh Amendment prevents federal courts from enforcing any state law claims against states.

The Supreme Court has decided a number of Eleventh Amendment cases in recent years, and in many of these the Court has been sharply divided. Hence, one possible reason for the Court to hear this case is to clarify an aspect of Eleventh Amendment law. The court of appeals arguably drew the immunity line too broadly around the claims that the state is violating ongoing obligations under federal school lands laws.

But looking past immunity to the school lands laws, it is still hard to find a wrong that a federal court can remedy. There are federal standards applicable to school lands. The Supreme Court has held that Arizona must pay fair market value for school lands taken for highways. But there are vast disparities in income from school lands all over the country, and inequality alone has not been thought to violate federal law.

Papasan and the others argue that federal law imposes trust duties on Mississippi in managing school lands, and the state is in continuing violation of these duties. This theory is vague, but trust law does provide enough play for some uncertainty about the outcome. They also assert that the scheme violates the Constitution provision that forbids states from impairing the obligation of contracts, in Article I, Section 10.

Papasan and the others have abandoned their exclusive focus on school lands. They now argue forthrightly that the disparity in Mississippi school financing denies northern Mississippi children a minimally adequate level of education in violation of the Equal Protection Clause of the Fourteenth Amendment, regardless of the handling of school lands. In 1973, the Supreme Court held that great disparities in Texas school district financing did not violate the Equal Protection Clause. But the Court's opinion stressed that Texas was providing a minimally adequate education to all children. The claim in this case tests whether less than that violates the Equal Protection Clause. Since the case was dismissed without any trial or even documentary evidence, there is no record about the absolute level of educational funding

in northern Mississippi. Possibly, the Court will hold that the plaintiffs should have a chance to back up their claim of no minimally adequate support.

If the Supreme Court were to reverse on any of these grounds, the case would be important nationally. Although the Court has resisted claims based on unequal funding of public education, the issue is important enough that litigants keep raising it, undeterred by long odds.

ARGUMENTS

For B. H. Papasan, Superintendent of Education (Counsel of Record, T. H. Freeland, III, Box 269, Oxford, MS 38655; telephone (601) 234-3414)

1. The federally-created school lands trust is enforceable in federal courts against state officials who breach their duties as trustee.
2. State officials are breaching contract obligations imposed by the federal school lands trust compact.
3. Prospective injunctive relief is not barred by the Eleventh Amendment.
4. The disparity in school financing between northern and southern Mississippi violates the Equal Protection Clause of the Fourteenth Amendment.

For William A. Allain, Governor (Counsel of Record, R. Lloyd Arnold, Box 220, Jackson, MS 39205; telephone (601) 359-3680)

1. The Eleventh Amendment bars this action against the state and its officers.
2. There is no case or controversy under Article III of the Constitution.
3. Plaintiffs have not shown a violation of the Equal Protection Clause of the Fourteenth Amendment.

For Dick Molpus, Secretary of State and Constance Slaughter-Harvey, Assistant Secretary of State, siding with Papasan(Pro Se), Box 136, Jackson, MS 39205; telephone (601) 359-1350)

1. Chickasaw Cession school children do not receive the school lands trust income to which they are entitled.
2. Chickasaw Cession school children are denied equal protection in violation of the Fourteenth Amendment.