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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MONTANA RURAL EDUCATION ASSOCIATION, et al.,

Plaintiffs,

- v -

THE STATE OF MONTANA; et al.,

Defendants.

Cause No. BDV-91-2065

COMBINED ORDER CONCERNING MOOTNESS ISSUE

HELENA ELEMENTARY SCHOOL DISTRICT NO. 1 AND HIGH SCHOOL DISTRICT NO. 1 OF LEWIS AND CLARK COUNTY, et al.,

Plaintiffs,

- v -

THE STATE OF MONTANA; and the MONTANA BOARD OF PUBLIC EDUCATION,

Defendants.

Cause No. BDV-91-1334

COMBINED ORDER CONCERNING MOOTNESS ISSUE

Presently pending before the Court in both of the aforementioned matters are motions by the State of Montana to dismiss on the basis of mootness. These cases were tried during January through March of 1993. On April 24, 1993, the Montana Legislature passed House Bill 667 (Fifty-Third Montana Legislative Session, 1993). This bill was signed by Governor Marc Racicot on May 12, 1993, and became effective on July 1, 1993.

These cases were tried under the school funding system established by House Bill 28 (Fifty-First Montana Legislature, 1989, Special Session). It is the contention of the State that passage of House Bill 667 has so changed the provisions of the school funding system set forth in House Bill 28 that these cases are moot. This Court agrees.

Before proceeding to a review of each case, it would be helpful to set forth the general rules on mootness that this Court has considered. "The central question of all mootness problems is whether changes in the circumstances that prevailed at the beginning of litigation have forestalled any occasion for meaningful relief. A wise answer to this question is always bound by the facts of the specific case." *13A Charles A. Wright & Arthur R. Miller Federal Practice and Procedure*, § 3533.3, 261 (2d ed. 1984).

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The Montana Supreme Court has defined mootness as follows:

> A moot question is one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual controversy. In the present case, the Forty-Sixth Montana Legislature has significantly modified the statute on which relators depend. . . . As a result, it would be superfluous for this Court to issue a declaratory judgment as requested by relators. The controversy cannot be repeated because the law has been decisively changed.

State v. Murray, 183 Mont. 499, 503, 600 P.2d 1174, 1176 (1979).

The Court has further refined the doctrine of mootness as follows:

> A case will become moot for the purpose of an appeal "where by a change of circumstances prior to the appellate decision the case has lost any practical purpose for the parties, for instance where the grievance that gave rise to the case has been eliminated . . ." 5 Am. Jur. 2d, Section 762, *Appeal and Error* (1962).

Matter of T. J. F., 229 Mont. 473, 475, 747 P.2d 1356, 1357 (1987).

MONTANA RURAL EDUCATION CASE

The Montana Rural Education (MREA) case was filed in December 1991. An analysis of the complaint shows that the matters originally complained of are no longer in existence.

At page two of the Complaint, it is stated as follows: "At issue is whether Montana's current system of funding its public elementary and secondary schools denies certain students equality of educational opportunity . . . ." Thus, it is clear that the MREA action focused in on the system of funding public schools as

COMBINED ORDER
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established by the now defunct House Bill 28.

When looking at various other allegations of the MREA Complaint, we see in paragraph 10 that the MREA Plaintiffs are challenging the system and level of financing elementary and secondary schools in Montana. As announced in the Complaint, implicated in this challenge were Montana's foundation program schedules contained in Sections 20-9-318 through 20-9-320, Section 20-9-145 and Section 20-9-353 (the permissive component of the general fund), and Sections 20-9-366 through 20-9-369, MCA (guaranteed tax base aid provisions). ***See*** Complaint, paragraph 10, p. 5.

Reference to House Bill 667 shows that all of these statutory schemes have been changed significantly. For example, the foundation schedules contained in Sections 20-9-318 through 20-9-320, MCA, have been repealed. Section 20-9-145, MCA, the permissive component of the general fund has also been repealed. The balance of the above statutes dealing with guaranteed tax base aid and the permissive component of the general fund were significantly altered by the new legislation. For example, the legislature has changed how a school district is entitled to guaranteed tax base aid, how the amount is figured, and the amount of the general fund that can be financed thereby.

The MREA Plaintiffs have filed a brief in response to the motion to

dismiss. The brief was dated June 2, 1993. At page two of that brief, Plaintiffs admit that the foundation schedules have changed. However, the MREA Plaintiffs allege that the problem has now been made worse under the new statutory scheme. This may be the case, but it would certainly seem that the weeks of proof that was adduced on how the old foundation schedules operated is now irrelevant. There will have to be new evidence on the new payments that school districts receive. Further, at page three of their brief, the MREA Plaintiffs acknowledge that the guaranteed tax base aid component of the new statute has changed the eligibility provisions and distribution of those funds.

Then at page nine of their brief, the MREA Plaintiffs indicate that they feel the basic issue is that in Montana, school finances are allocated by expenditure and not by the cost of providing those services. This may be true, but the specific allocation that the school districts will be getting in the future under House Bill 667 is different than it was under House Bill 28.

The MREA Plaintiffs point out, as do the Helena Education Plaintiffs, that two underlying conceptual disputes could be decided at this stage of the proceeding regardless of the change affected by House Bill 667. This is the contention by both Plaintiffs that Article X, section 1(1) of the Montana Constitution is a freestanding constitutional provision unmodified by Article X, section 1(3), contrary to

what the State contends. This Court agrees that this dispute between the parties would continue into any future suit challenging House Bill 667.

The other matter is the State's "test score defense." This defense is intended to show that the test scores of Montana school children are unaffected by the amount of money that the school district might spend on the child.

HELENA EDUCATION CASE

In Cause No. 91-1334, Plaintiffs began their suit by filing a complaint in August of 1991. Their basic contention was that general fund spending disparities between school districts constitute a denial of equal educational opportunity. However, most of the system of funding the general fund has been changed under new House Bill 667.

Also at issue in the Helena Education case were the financing of capital outlay items, teachers retirement, transportation, and special education. However, it is clear that many of these provisions of the old school funding law have either been changed or, if they have not been changed, they are intricately intertwined with the school's foundation schedule monies. As noted earlier, the previous foundation schedules have been changed. Plaintiffs in the Helena Elementary case recognized this relationship between the foundation schedules and capital outlay, retirement, transportation, and special education in their pretrial order. As noted in Plaintiffs'

proposed findings of fact filed with this Court on February 4, 1993, "it is clear that the method of financing special education contributes to already existing inequities in Montana's school finance system." *See* Plaintiffs' Proposed Findings of Fact and Conclusions of Law, No. 186. Similar statements are made about tax burdens associated with transportation costs and retirement costs at Findings Nos. 172 and 176. Concerning capital outlay, the Court has already held in its order on summary judgment dated December 28, 1992, that it is necessary to look at the whole system of school finance to determine the constitutionality of capital outlay. *See* December 28, 1992, Order on Motion for Summary Judgment at page 3.

The Helena Elementary Plaintiffs point the Court to one of the exceptions to mootness doctrine, that being "the capable of repetition yet evading review" exception. As stated by the authors of Wright, Miller, and Cooper, ***Federal Practice and Procedure***, at p. 370: "Courts confronting discontinued or expired official acts frequently deny mootness on the ground that the acts are 'capable of repetition, yet evading review.'" Although the Court is cognizant of the fact that the new school funding system provided by House Bill 667 may contain many of the inequities complained of by Plaintiffs in both of these cases, this Court is not convinced that those inequities can, in any way, evade review. There is no history here of the Montana Legislature passing laws on school finance to evade this or any other court's

review. In order for this Court to accept this contention by Plaintiffs, it would have to, in effect, rule that House Bill 667 is an unconstitutional attempt by the Legislature to evade its obligations under the Montana Constitution. However, such a finding cannot be made absent a lengthy factual hearing on the actual impacts of the school funding provided in House Bill 667. This Court again is convinced that although a mootness finding is frustrating for both Plaintiffs, ultimately this Court will have the opportunity to address the constitutionality of the new school finance system.

Further, the Court must acknowledge that, as pointed out by both Plaintiffs, these cases have taken a considerable amount of judicial time (most of January, February, and March of 1993) and have cost all of the parties a considerable amount of public funds. While the Court is aware of these factors, they cannot provide the controversy that is currently lacking between these parties. If this Court were to rule that House Bill 28 were unconstitutional, such a ruling would only be of academic or historic interest. It would not affect how any school district is receiving money in the future or how any school districts operate in the future.

However, although this Court does find that the controversies in Cause Nos. BDV-91-1334 and BDV-91-2065 are moot, this Court is not convinced that dismissing the two cases is the right thing to do. This Court has heard a considerable amount of evidence. It might well be a waste of judicial time to have another court

hear the same evidence as it might relate to House Bill 667. Rather, as suggested by the Supreme Court of Kansas in ***Knowles v. State Board of Education***, 547 P.2d 699 (Kan. 1976), dismissal of an action contesting a school financing system that was later changed by the Legislature after the Court hearing would not be appropriate. The Court should allow the parties to amend their pleadings and introduce evidence relevant to the constitutional issues as they may exist on the new statute.[1]

This appears to be a reasonable course of action. For example, the Court is convinced that at least a couple of the major issues dividing these parties could be resolved prior to any new trial on House Bill 667. Underlying the State's test

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[1] It should be noted that the ***Knowles*** court stated as follows:

> The constitutional challenges launched by plaintiffs against the 1973 School District Equalization Act depended in large part upon the ultimate effect of the law on the distribution of state funds to the respective districts affected by the Act. The same constitutional challenges when considered in light of the 1975 law depend in like measure upon the ultimate distributions resulting from the operation of the 1975 law.
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> ***Knowles*** at 704.

A similar statement could be made concerning House Bill 28 and House Bill 667. That is to say, the constitutional challenges ultimately depend on the ultimate factual effect of the law on the distribution of state funds to school districts. Since that ultimate actual distribution of funds will be changed under the new law, there is no reason to address the issues as they might arise out of House Bill 28.

score defense was a report prepared by Drs. John Pincus and John Adams dated February 19, 1993, and received as Defendants' Exhibit CM3. At page two of that document, Dr. Pincus states as follows: "For the range of values seen here and most probably for the range of values within the reach of reasonable policy changes, there is no noticeable affect." This would seem to say to this Court that the test score evidence, for the most part, will not change from one reasonable financing system to another. Thus, as asserted by Plaintiffs at oral argument on this motion to dismiss, the Court may be able to decide the test score issue by motion prior to any trial, or if a trial actually occurs on the new law, perhaps it would be unnecessary to introduce any new testimony.

Further, on the interrelationship between Article X, section 1(1) and Article X, section 1(3) of the Montana Constitution, there is a good likelihood that this issue could also be decided prior to any trial. The Court should note that the MREA Plaintiffs have already filed a petition to amend their complaint to challenge the provisions of House Bill 667. The Helena Education Plaintiffs have not done so. The Court will grant the Helena Education Plaintiffs and the MREA Plaintiffs 30 days from the date of this order to file an amended complaint. If no such amended complaint is filed, then the Court would reconsider an actual outright dismissal of this action.

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