

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Plaintiffs,

vs.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

SUMMONS

No. 1KE-14-~~11~~ Civil

TO DEFENDANT: State of Alaska
Michael C. Geraghty
Attorney General
P.O. Box 110300
Juneau, Alaska 99811-0300

YOU ARE HEREBY SUMMONED and required to file with the court an answer to the complaint which accompanies this summons. Your answer must be filed with the court at 415 Main Street, Ketchikan, Alaska 99901, within twenty (20)* days after the day you receive this summons. In addition, a copy of your answer must be sent to Plaintiff's attorney, **K&L GATES LLP**, Attorneys at Law, whose address is 420 L Street, Suite 400, Anchorage, Alaska 99501. If you fail to do so, judgment by default will be taken against you for the relief

demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address/ Telephone number (TF-955)*, available at the clerk's office or on the court system's website at www.state.ak.us/courts/forms.htm, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(I).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

You are hereby given notice that this case has been assigned to Judge Carey.

(SEAL)

CLERK OF COURT

11/13/14
Date

By: S. Hays
Deputy Clerk

Clerk of Trial Court

* The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Plaintiffs,

vs.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

SUMMONS

No. 1KE-14- 116 Civil

TO DEFENDANT: State of Alaska
Michael Hanley
Commissioner of Alaska Dept. Of Education and
Early Development
801 West 10th Street, Suite 200
Juneau, Alaska 99811

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99501. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

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To: Plaintiff and Defendant

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CLERK OF COURT

11/3/14
Date

By: S. Hyl
Deputy Clerk

Clerk of Trial Court

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Plaintiffs,

v.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

Case No. 11KE-14-16CF

FILED in the Trial Court
State of Alaska First District
at Ketchikan

JAN 13 2014

Clerk of the Trial Court

By _____

COMPLAINT

Plaintiffs Ketchikan Gateway Borough, Agnes Moran, John Coss, John Harrington, and David Spokely, by and through their counsel of record, submit the following as their complaint.

Parties, Jurisdiction, and Venue

1. Ketchikan Gateway Borough ("the Borough") is a second-class borough, general-law municipality established under Article X, Section 3 of the Alaska Constitution, Chapter 52 SLA 1963 (1963 Mandatory Borough Act), and former AS 07.10.010; exists under AS 29.04.030(b); and is provided with the capacity to sue under AS 29.35.010(14).

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**THIS MATTER IS
FORMALLY ASSIGNED TO
WILLIAM B. CAREY
SUPERIOR COURT JUDGE**

2. Plaintiff Agnes Moran is an individual residing within the boundaries of the Borough. Ms. Moran pays property and sales taxes to the Borough. Ms. Moran is also an elected official of the Borough. As a public servant, taxpayer, and mother of a child attending school operated by the Ketchikan Borough School District (“KGB School District”), Ms. Moran possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution. Ms. Moran is the natural mother of Plaintiff John Coss, a minor.

3. Mr. Coss is an individual residing within the boundaries of the Borough. Mr. Coss is an eighth grade student at Schoenbar Middle School, a public school within the Borough operated by the KGB School District. Pursuant to Alaska R.Civ.P. 17, this suit is brought on Mr. Coss’s behalf by his mother and next friend, Plaintiff Agnes Moran. Mr. Coss is likely to continue to attend public schools within the KGB School District for the next four school years. Mr. Coss possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution. Mr. Coss is threatened with reduced educational opportunities because of the State’s current underfunding of education within the Borough.

4. Plaintiff John Harrington is an individual residing within the boundaries of the Borough. Mr. Harrington pays property and sales taxes to the Borough. Mr. Harrington possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution.

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5. Plaintiff David Spokely is an individual residing within the boundaries of the Borough. Mr. Spokely pays property and sales taxes to the Borough. Mr. Spokely possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution.

6. Defendant State of Alaska ("State") has enacted and enforced the unconstitutional statutory scheme that is the subject of this complaint. Defendant Michael Hanley is the Commissioner of the Department of Education and Early Development ("DEED"), the State agency responsible for enforcing the unconstitutional statutory scheme that is the subject of this complaint. The State and Commissioner Hanley are collectively referred to as "Defendants."

7. This court has jurisdiction over this action pursuant to AS 22.10.020.

8. Venue lies in this court pursuant to Alaska R.Civ. P. 3 because the First Judicial District is where the claims arose and is a judicial district where the Defendants may be personally served.

FACTS

9. Article VII, Section 1 of the Alaska Constitution provides that the State shall "establish and maintain a system of public schools."

10. The basic unit of school administration in Alaska is the school district. State funding for operation of school districts depends on whether the schools within the school district are located within an organized borough, a home-rule or first-class city that is outside an organized borough, or a regional educational attendance area ("REAA"). The REAAs are educational service areas established under AS 14.08.031(a)

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for the sole purpose of administering schools within an area of the unorganized borough.

11. Alaska currently has fifty-three school districts. Each of Alaska's nineteen organized boroughs constitutes a borough school district ("Borough District"). Each of Alaska's fifteen home-rule and first-class cities within the unorganized borough constitutes a city school district ("City District"). Borough and City Districts are referred to collectively herein as "Municipal Districts." The remaining nineteen school districts are within the portion of the unorganized borough exclusive of City Districts. These school districts are divided into State-created REAAs.

12. The State has used various methods over the years to fulfill its responsibilities and obligations provided for in Article VII, Section 1 of the Alaska Constitution. The current State program for providing operating funds for education uses a specified education fund which consists of those funds appropriated by the Alaska State Legislature ("Legislature") for distribution to school districts, the State boarding school, centralized correspondence study, and pupil transportation. AS 14.17.300.

13. Each school district is eligible for "State aid" under AS 14.17.410 ("State Aid") in an amount determined by a formula, but if the appropriations in a given year are insufficient to pay the amounts authorized, then the amount provided by the State to each district, for centralized correspondence study, and the State boarding school, is reduced on a pro-rata basis. AS 14.17.400.

14. Whether a Municipal District or an REAA, each school district is entitled to be funded adequately according to its "Basic Need." According to *Alaska's Public*

School Funding Formula: A Report to the Alaska State Legislature, DEED, p. 8, January

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15, 2001, Basic Need is the level of educational funding at which “all districts are considered equal” and that “provides all districts with needed resources.” In accordance with AS 14.17.410, Basic Need is determined using a weighting formula which takes into account the relative costs of providing services in various school districts, the number of students with special needs, enrollment in each school and associated economies of scale, the costs of vocational and technical instruction, and the number of correspondence students. The formula multiplies some of these adjustment factors by the number of students in average daily attendance during a student count period and adds weighted amounts to arrive at an adjusted average daily membership. This number is then multiplied by the base student allocation in AS 14.17.470 to arrive at Basic Need.

15. The three sources of funding that fulfill Basic Need are “state aid, a required local contribution, and eligible federal impact aid.” AS 14.17.410(b). However, the State requires different combinations of this funding depending on whether the district is a Municipal District, on the one hand, or an REAA, on the other hand.

16. State Aid is provided from the funds appropriated to the Public Education Fund (AS 14.17.300) by the Legislature. These funds are subject to veto by the Governor of the State of Alaska (“Governor”) in accordance with Article II, Section 15 of the Alaska Constitution. If the balance in the Public Education Fund is insufficient to make the full payments of State Aid, then the DEED is required to reduce each district’s Basic Need on a pro rata basis.

17. Municipal Districts must be funded with a “required local contribution” (“RLC”) provided by their respective municipalities in accordance with AS 14.17.410(b)

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and AS 14.12.020(c). Not only are municipalities required to provide RLC payments to their districts -- the penalty for a Municipal District not doing so is that the State will not provide *any* State Aid to the Municipal District, AS 14.17.410(d), and the Municipal District will be disqualified from receiving supplemental funding under AS 14.17.490. Municipalities, therefore, are coerced to pay the RLC.

18. The RLC payments, which offset the amount of State Aid provided from the Public Education Fund to districts, are not appropriated by the Legislature to the Public Education Fund or for any other State expenditure. Correspondingly, the Governor is not given the opportunity to veto appropriations of RLC payments by the Legislature.

19. The RLC is 2.65 mills of the full and true value of the taxable real and personal property in the Municipal District in the second prior fiscal year (as of two preceding fiscal years ago). Taxable real and personal property in the "district" means taxable real and personal property within the City or Borough, because the City or Borough constitutes the district. The RLC is capped at 45% of a Municipal District's Basic Need in the preceding fiscal year. AS 14.17.410(b)(2).

20. Based upon the October 2013 student count period as reported by the KGB School District to DEED, expected FY 2014 Basic Need for the KGB School District is \$25,947,546. The Alaska Department of Labor and Workforce Development reported the population estimate of the Borough at 13,938 as of July 2012 (the most recent data available). This represents a Basic Need amount of approximately \$1.862 per person residing in the Borough.

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21. The Borough's FY 2014 RLC is \$4,198,727. This is based upon a property tax equivalent to 2.65 mills on the full and true value of \$1,584,425,200 (January 1, 2012 value) as determined by the Alaska Department of Commerce, Community, and Economic Development (DCCED). Because of certain optional property tax exemptions, the actual taxable value in the Borough in FY 2014 is \$1,314,675,800. Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough.

22. The per student amount for the Borough RLC payment in FY 2014 is approximately \$1,900. This number equals the FY 2014 RLC divided by the actual number of students in average daily membership reflected in the October 2013 student count period as reported by the KGB School District to DEED.

23. In FY 2014, the Borough and its residents provided \$4,198,727 in these compulsory payments, and an additional \$3,851,273 in optional local contributions and in-kind contributions allowed by AS 14.17.410(c), for a total property tax mill equivalent of 6.12 mills based on the FY 2014 assessed value in community resources allocated to operation of KGB School District schools.

24. The Borough raised revenues to meet these and other areawide Borough expenditures for FY 2014 through an areawide property tax levy of 5 mills and an areawide sales tax levy of 2.5%. There are additional taxes levied and fees charged for Borough service area and nonareawide functions, and additional sales and property taxes are levied by cities within the Borough for city services. These taxes are paid to the Borough by the taxpayer Plaintiffs Agnes Moran, John Harrington, and David Spokely

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("Taxpayer Plaintiffs").

25. As a result of the RLC, the KGB Borough School District has been substantially underfunded by the State, with the Borough and Taxpayer Plaintiffs being forced to make up the difference. The KGB School District receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need. The shortfall in this funding depletes the resources of the Borough and the Taxpayer Plaintiffs. The RLC consumes just under two-thirds of the Borough's areawide property tax levy, and the remainder of the levy (as well as additional sales tax revenue) is devoted to other education-related operations funding by the Borough.

26. The RLC component of the State's education funding scheme is an unfunded State mandate imposed on the Borough and the Taxpayer Plaintiffs. It is a mandatory State tax or other State revenue source, or a dedicated fund, that is dedicated to a special purpose and is not subject to appropriation by the Legislature or veto by the Governor.

27. On October 9, 2013, the Borough paid \$4,198,727 to the KGB School District to satisfy the FY 2014 RLC. The Borough notified Defendant Hanley that the \$4,198,727 payment "was made under protest ..." because it is unconstitutional and illegal.

28. The Borough made this payment under duress and compulsion because without the payment, the KGB School District would receive *no* State Aid in FY 2014. Without State Aid, the KGB School District would be unable to operate, and students within the Borough and the KGB School District (including Plaintiff Coss) would be

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deprived of educational opportunities.

29. The Borough is restricted by AS 29.45.090 with respect to a maximum mill rate of 30 mills for property taxes other than those required to pay bonds, and a limit of total property tax revenues of \$1,500 per person residing in the Borough. The anticipated FY 2014 Basic Need of \$25,947,546 is approximately \$1,862 per person residing in the Borough. Thus, the Borough would be precluded from taxing its residents to make up for lost State Aid if all State Aid were withheld. The maximum that the Borough could levy is \$20,907,000 (13,938 x \$1,500) which is only 80.6% of the FY 2014 projected Basic Need for the KGB School District.

30. The Borough notified Defendant Hanley that it intended to take legal action to invalidate the RLC and seek repayment from the State of the entire \$4,198,727 that it paid under protest.

31. Should the RLC continue to be enforced against the Borough, the Borough will continue to suffer devastating fiscal harm. In addition to the millions of dollars that the Borough has paid in RLCs prior to FY 2014 and the recent \$4,198,727 paid under protest for FY 2014, the Borough will be coerced into paying millions of dollars per year in the future in unconstitutional and illegal RLC payments.

**COUNT I: DECLARATORY JUDGMENT AS TO ARTICLE IX, SECTION 7 OF
ALASKA CONSTITUTION (AS 22.10.020(g))**

32. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraph 1 through 31.

33. Article IX, Section 7 of the Alaska Constitution provides that “[t]he

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proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.” This anti-dedication clause prohibits any and all dedications beyond those mentioned in the text of the provision.

34. The RLC is a legislatively mandated payment required to be made directly to a dedicated payee (the Muncipal Districts) on an annual basis. It therefore constitutes a dedicated tax or other source of State revenue, or a dedicated fund, in violation of Article IX, Section 7 of the Alaska Constitution.

35. Plaintiffs request a declaratory judgment that the RLC component of the education funding statutory scheme is a dedicated tax or revenue, or a dedicated fund, in violation of Article IX, Section 7 of the Alaska Constitution, and is therefore unconstitutional. Further, Plaintiffs request a permanent injunction barring future enforcement of the unconstitutional RLC statutory scheme.

**COUNT II: DECLARATORY JUDGMENT AS TO ARTICLE IX, SECTION 13
OF ALASKA CONSTITUTION AND ARTICLE II, SECTION 15 OF ALASKA
CONSTITUTION (AS 22.10.020(g))**

36. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraphs 1 -35.

37. Article IX, Section 13 of the Alaska Constitution provides: “No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by

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law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.”

38. Article II, Section 15 of the Alaska Constitution provides that the Governor “may, by veto, strike or reduce items in appropriation bills.”

39. Under State law, RLC payments must be provided directly to Municipal Districts instead of being paid into the State treasury for possible appropriation by the Legislature to school districts, or for some other purpose to be determined by the Legislature. Instead, the RLC circumvents the Legislature’s authority to appropriate the funds by compelling a direct transfer from the Borough or City to the respective Borough or City District. The RLC therefore violates the appropriations power of the Legislature provided for in Article IX, section 13 of the Alaska Constitution.

40. Similarly, the Governor has no opportunity to exercise his item veto power. The RLC therefore violates Article II, section 15 of the Alaska Constitution.

41. Plaintiffs request a declaratory judgment that the RLC component of the education funding statutory scheme violates the appropriations power of the Legislature provided for in Article IX, Section 13 of the Alaska Constitution and/or the Governor’s veto power provided for in Article II, Section 15 of the Alaska Constitution. Further, Plaintiffs request a permanent injunction barring future enforcement of the unconstitutional RLC statutory scheme.

COUNT III: ASSUMPSIT

42. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraphs 1 - 41.

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43. The Borough remitted the FY 2014 RLC to the KGB School District, as required by AS 14.17.410(b). This payment was required in order to compensate for the State's failure to fully meet the Basic Need of the KGB School District. The RLC is unlawful, as it constitutes an unconstitutional dedicated tax or other revenue source, or dedicated fund, and circumvents the Legislature's power to appropriate funds and the Governor's right to exercise an item veto over any appropriation.

44. The Borough made this payment under duress, namely the threat of all State Aid for the KGB School District being withheld. The Borough made this payment under express protest.

45. The State has been unjustly enriched by the RLC because it relieved the State of the obligation to fully fund the KGB School District's Basic Need.

46. The State should be required to pay back the \$4,198,727 RLC for FY 2014, and any subsequent RLCs, in assumpsit.

COUNT IV: RESTITUTION

47. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraphs 1 - 46.

48. The RLC is a form of imposition or assessment (hereafter "assessment") required by the State under the color of public authority.

49. The RLC is an illegally collected assessment, as it constitutes an unconstitutional dedicated tax or other source of revenue, or dedicated fund, and circumvents the Legislature's power to appropriate funds and the Governor's right to exercise an item veto over any appropriation.

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50. The State was unjustly enriched as a result of the RLC because it relieved the State of the obligation to fund the KGB School District's Basic Need.

51. The State should be required to pay back the \$4,198,727 RLC for FY 2014, and any subsequent RLCs, in restitution.

PRAYER FOR RELIEF

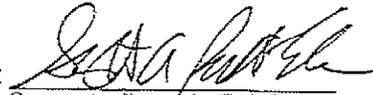
Wherefore, Plaintiffs pray for the following relief:

1. For a declaratory judgment that the RLC component of the State education funding statutory scheme is a dedicated tax or other revenue, or a dedicated fund, in violation of Article IX, Section 7 of the Alaska Constitution;
2. For a declaratory judgment that the RLC component of the State education funding statutory scheme violates the requirement of a legislative appropriation under Article IX, Section 13 of the Alaska Constitution;
3. For a declaratory judgment that the RLC component of the State education funding statutory scheme violates the requirement that the Governor have the opportunity to exercise an item veto under Article II, Section 15 of the Alaska Constitution;
4. For a permanent injunction (a) prohibiting Defendants from requiring the Borough to pay the RLC in accordance with AS 14.12.020 and AS 14.17.410(b); (b) prohibiting Defendants from denying State Aid in accordance with AS 14.17.410 and State supplemental aid in accordance with AS 14.17.490(c) to the KGB School District as a result of enjoining the State from requiring the Borough to pay the RLC; and (c) requiring Defendants to fund the Basic Need of the KGB School District notwithstanding the absence of an RLC;

5. For an order requiring the State to pay back the FY 2014 RLC of \$4,198,727, and any subsequent RLCs paid by the Borough;
6. For Plaintiffs' full attorneys' fees and costs; and
7. For such other, further, and different relief as the court deems just and proper.

Dated this 13th day of January 2014.

KETCHIKAN GATEWAY BOROUGH

By: 
Scott A. Brandt-Erichsen
Ketchikan Gateway Borough Attorney
Alaska Bar No. 8811175

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By: 
For Louisiana W. Cutler
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