

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. 1KE-14-00016CI

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

DEC 01 2014

Clerk of the Trial Courts

By _____ Deputy

**PLAINTIFFS' MOTION FOR PARTIAL RECONSIDERATION OF ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT**

Plaintiffs respectfully request that the Court grant reconsideration of part of its November 21, 2014 Order on Cross-Motions for Summary Judgment ("Order"). Plaintiffs request that the Court reconsider the portion of its Order denying a refund of the Required Local Contribution ("RLC") that was paid under protest and order that the State refund that RLC to the Ketchikan Gateway Borough ("Borough"). Plaintiffs respectfully submit that the RLC indeed did "provide the state with a tangible benefit."¹ First, the amount of educational funding provided by the State was significantly reduced

¹ Order at 25.

as a result of the RLC. Second, the Borough paid the School District directly, thus relieving the State of this obligation. Third, the RLC assisted the State in discharging its responsibility to “establish and maintain a system of public schools” under Article VII, Section 1 of the Alaska Constitution. Thus, the State received a tangible benefit equal to the amount of the RLC payment regardless of whether Article VII, Section 1 of the Alaska Constitution requires the State to fully fund education and regardless of whether the Borough paid the RLC to the School District or the State.²

The Order centers on the premise that the State did not receive a benefit from the Borough’s payment of the RLC because the State is not required to fully fund education.³ The State has no legal obligation to fully fund *any* State program other than those to which funds may be lawfully dedicated.⁴ This is the fundamental purpose of the dedicated funds clause.⁵ Therefore, whether the State has to fully fund education is not controlling. Instead, the State clearly receives a benefit from the RLC because for every dollar the RLC covered of education funding, one less dollar was required of the State.⁶ Thus, as a simple mathematical proposition, the State did receive a benefit from the RLC

² Under Alaska R. Civ. P. 77(k), the grounds for granting a motion to reconsider include that “(i) [t]he court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling,” and “(ii) [t]he court has overlooked or misconceived some material fact or proposition of law . . .”

³ See Order at 23-25.

⁴ See Alaska Const. art. IX, § 7 (“The 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.”); *cf. Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270, 1277 (Alaska 1985) (noting that private party could not force State to pay under contract provision without an appropriation).

⁵ See *Southeast. Alaska Conservation Council v. State*, 202 P.3d 1162, 1168 (Alaska 2009) (noting that purpose of dedicated funds clause is to *preserve* legislative control over public revenues); see also *Sonneman v. Hickel*, 836 P.2d 936, 938-39 (Alaska 1982) (purpose of dedicated funds clause is to “preserve control of and responsibility for state spending in the legislature and the governor”).

⁶ AS 14.17.410(b). See also Order at 4 (“[W]hen a municipal district pays the RLC, the district’s Basic Need is partially fulfilled, which in turn reduces the State’s Basic Need obligation.”); Order at 12 (“[W]ithout the RLC, the State would have to contribute more to the funding of State education programs.”)

because, as a result of the RLC, the State paid a diminished amount to fund education at the level required by State law.

The State concedes this point. It stated in its Opposition that the RLC “leaves more money in state coffers because schools received part of their funding from local sources.”⁷ Thus, the State admits that it “received a benefit” from the RLC, regardless of whether the Alaska Constitution requires the State to fully fund education. Because money is fungible, there is no meaningful distinction between having “more money in state coffers” as a result of the RLC and the School District directly receiving money from the Borough.⁸ Either way, the State is enriched because it has “more money” than it otherwise would have in the absence of the RLC. The State cannot be allowed to avoid an unjust enrichment claim by simply orchestrating payment from a surrogate (the Borough) to the School District for the State’s benefit.

Furthermore, as the Order recognizes at 2, under Article VII, Section 1 of the Alaska Constitution, the State must “establish and *maintain* a system of public schools open to all children of the State . . .”⁹ The State has the *sole* responsibility to maintain the public school system, and this duty is not shared with any other unit of government.¹⁰ The State’s authority over education is “pervasive” and “unqualified.”¹¹ “That that the legislature has seen fit to delegate certain education functions to local school boards in order that Alaska schools might be adapted to meet the varying conditions of different

⁷ Opp. at 15; *see also* Order at 12.

⁸ *See* Restatement (Third) of Restitution and Unjust Enrichment § 9 (noting that recipient of benefit may be unjustly enriched when “the recipient has been spared an otherwise necessary expense”).

⁹ Emphasis added; *see also* Plaintiffs’ Motion and Memorandum in Support of Motion for Summary Judgment at 1-2.

¹⁰ *Maccauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

¹¹ *Id.*

localities does not diminish this constitutionally mandated state control over education.”¹² Thus, the State need not fully fund education, but the State is solely responsible for it.

Because the State is solely responsible for Alaska’s education system, it follows that the Borough’s payment of the RLC helped to fulfill a State function, thus conferring a benefit upon the State. The State determined what level of funding was adequate to fulfill its constitutional duty, and demanded that the Borough provide a portion of that amount through a mechanism that the court has concluded was unconstitutional. Had the State built a ten-mile portion of a State highway that passes through a borough, and required the borough to pay for ten percent of the State highway, the State’s benefit from being relieved of the full cost of the highway would be ten percent of the cost of the State highway that it saved by passing the cost on to the borough. The same is true here. Plaintiffs assisted in fulfilling a State obligation by making the mandatory RLC payment, and by making that payment directly to the School District. The State’s role in fulfilling the obligation was correspondingly lessened. Clearly, the State received a tangible benefit.

The other two elements of an unjust enrichment claim are also met. The State undisputedly “appreciated” the benefit of the RLC, because it created the RLC, was made aware that the RLC was paid under protest, and did not decline to assess the RLC.¹³ Finally, as the Court has already concluded, the RLC was the result of an unconstitutional dedication, and it is unjust that the State benefit from the unlawful RLC.¹⁴

Because the State was enriched by the RLC, because the amount of educational funding provided by the State was reduced, and because payment of the RLC helped the

¹² *Id.*

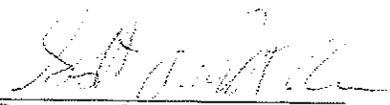
¹³ See also *Hill v. Cross-Country Settlements, LLC*, 936 A.2d 343, 354 (Md. App. 2007) (essence of appreciation/knowledge requirement is that the defendant had the opportunity to decline benefit).

¹⁴ See Order at 7-18; see also Restatement (Third) of Restitution and Unjust Enrichment § 19 (“Except to the extent that a different rule is imposed by statute, the payment of a tax by mistake, or the payment of a tax that is erroneously or illegally assessed or collected, gives the taxpayer a claim in restitution against the taxing authority as necessary to prevent unjust enrichment.”).

State to fulfill a constitutional obligation for which it is solely responsible, Plaintiffs respectfully request that the Court grant their motion to reconsider and order the State to refund the RLC to the Borough.

Dated this 1st day of December, 2014.

KETCHIKAN GATEWAY BOROUGH

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CERTIFICATE OF SERVICE

This is to certify that on this 1st day of December, 2014, a copy of the foregoing document was served on the following:

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