IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH, AGNES MORAN, JOHN CROSS, JOHN HARRINGTON, AND DAVID SPOKELY **Plaintiffs,** **v.** **STATE OF ALASKA AND MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT** **Defendants.**	)	FILED in the Trial Courts State of Alaska First District at Ketchikan JAN 21 2015 Clerk of the Trial Courts By _____ Deputy **Case No. 1KE-14-16CI**

ORDER ON MOTION TO RECONSIDER

INTRODUCTION

In its November 21st Order, the court found that plaintiff Ketchikan Gateway Borough's (the Borough) assumpsit and restitution claims against the State failed because it was not established, nor argued by either party, that the State has a constitutional obligation to fund Alaska's public schools to the full statutory Basic Need amount. In the court's view, such a finding was necessary in order to find unjust enrichment such as would justify claims on these theories. The Borough moves this court to reconsider whether or not the State received a tangible benefit from the Ketchikan Gateway Borough's (the Borough) 2013 Required Local Contribution (RLC) payment. For the following reasons this motion is **DENIED**.

DISCUSSION

The Borough argues the RLC payment gave the State a tangible benefit by: (1) reducing the State's educational funding obligation, (2) helping the State "establish and maintain" the Alaskan public school system, and (3) relieving the State of additional direct payments to the KGB School District. The Borough further argues that the State conceded in its briefing that the RLC leaves more money in State coffers. The State counters that the Borough failed to argue in underlying briefs both that the RLC reduced the State's funding obligation and that the RLC helps fulfill a State constitutional function. The State argues the RLC payment benefits only the Borough and Borough residents and that it never conceded the RLC leaves more money in State coffers.

1. The State is Not Enriched by the Borough's RLC Payment

The Borough argues that for every dollar contained in a RLC payment, the State retained one corresponding dollar in its coffers.[1] This argument fails for four reasons. First, AS 14.17.410 does not obligate the State to fully fund schools to the statutory Basic Need amount. Second, the legislature created a statutory back-up plan in the event insufficient monies are appropriated for education. Third, the statutory scheme contemplates a variety of school funding sources. Fourth and finally, the KGB School District is the only party enriched by an RLC payment. For all these reasons, the State does not receive a tangible benefit from an RLC payment.

Nothing in AS 14.17.410(b) directs the State to make up the difference left by an unpaid RLC. The statute sets out a mathematical equation used to determine the amount of State aid

[1] Pl.'s Mot. for Partial Reconsideration at 2, 3 ("[A]s a result of the RLC, the State paid a diminished amount to fund education at the level required by State law").

available to school districts in Alaska.[2] It does not direct the State to fully fund a district's Basic Need calculation in the full amount in the event of an absent RLC payment.[3]

Alaska's educational funding scheme contemplates a statutory back-up plan in the event the legislature does not appropriate enough money to satisfy its calculated educational aid.[4] Under this statutory back-up plan, if the legislature fails to appropriate enough money to fulfill the State's obligations under AS 14.17.410, the Department of Education may reduce the Basic Need amount of each district on a pro-rata basis. To analogize the case at bar: If the State of Alaska found that it's 2015 budget did not account for a dearth of RLC payments, the State would be able to reduce the final Basic Need calculations of all districts to account for this deficit and would give schools less funding as a result. As a practical matter, the State would not need to fill the gap left by unpaid RLCs, but would be able to adjust its amount of school funding to fit its current appropriations, as it is allowed to do under state statute.

AS 14.17.410 explicitly names three sources of school funding: Local, State, and Federal monies. Although the State is solely "responsible" to "maintain education," in reality a variety of sources are necessary from different governmental levels.[5] These sources include State aid, local aid, federal impact aid, federal grants, private grants, and even parental support. The drafters of Alaska's school funding scheme recognized that a variety of funding sources are required to fund schools, and that the onus should not fall solely with the State.

The KGB School District was the only party enriched by the Borough's RLC payment, and therefore, the KGB School District is the sole party liable in a claim in restitution. The Borough cites Restatement (third) of Restitution and Unjust Enrichment § 19 to argue the RLC

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[2] *See* AS 14.17.410.
[3] *See id.*
[4] AS 14.17.400(b).
[5] *See Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997).

payments were a state tax, and the Borough therefore paid in excess of the proper amount.[6] However, this same authority indicates that the RLC provides the State no tangible benefit. If the RLC payments were an illegal state tax, even in the broadest sense of the word "tax," there would be a claim in restitution for the amount of the RLC payment.[7] A tax, in its broadest sense, is "a monetary charge imposed by the government on persons, entities, or property, to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people."[8] The State demanded the RLC from the Borough under the color of public authority. In this way, the State is taking something from the municipality, despite never receiving the RLC themselves. In this broad sense, the RLC payment is a "tax" for purposes of a Restatement analysis.

This court's November 21 Order discusses the compulsory, tax-like nature of the RLC under this extremely broad definition. This court held the RLC is a proceed of a state tax or license in violation of the dedicated funds clause under an equally broad definitional framework.[9] The court found the RLC to be a "payment"; that it "consists of public revenue"; that it is an "obligation"; that it "is a source of public revenue"; that it consists of "public funds"; and, that it "compels a set amount and does not let municipalities use their independent judgment as to how much to contribute to local schools." [10] As the court wrote:

> Here, rather than a private organization receiving funds raised by individuals, we have one unity of government (the municipal district) raising funds at the direction of another unit of government (the state) and paying those funds to a public institution (the

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[6] Pl.'s Mot. for Partial Reconsideration at 4.

[7] Restatement (third) of Restitution and Unjust Enrichment § 19 (2010)("[T]he 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 avoid unjust enrichment. 'Tax' within the meaning of this section *includes every form of imposition or assessment collected under color of public authority.*" (emphasis added)).

[8] BLACK'S LAW DICTIONARY 1469 (7th ed.1999).

[9] Order at 25.

[10] *See id.* at 4, 12, 13, 17.

municipal district's schools). These facts only further illustrate the public nature of the funds at issue.[11]

The holding of the court and the language used throughout the order implies that the RLC is a "tax" under the broad definitional framework of the Restatement.

If the RLC is a tax for purpose of this analysis, the party who is enriched from the RLC payment is clear. The "tax" was paid to a third party—the KGB School District. The Restatement addresses illegal tax payments to third parties in the following illustration:

> 16. A municipal zoning board has the statutory duty to approve new residential subdivisions on such terms as will serve the best interests of the community. The board adopts the practice of requiring developers to make a cash contribution to the local school district as a condition of obtaining development approval. Upon a judicial determination that the board has no statutory authority to require such contributions, the developers who have made them have a claim in restitution to recover their payments from the school district.[12]

When the method of taxation is illegal and the tax is paid to a third party the restitution claim lies against the body that actually received the funds. The KGB School District is the party that received the RLC and was thereby the only party enriched. Under the Restatement analysis, the KGB School District is the sole party against whom the Borough may bring a claim in restitution. The restitution claim against the State fails for this reason.

2. The Borough's Constitutional Obligation Argument is Not Timely and was Explicitly Waived in Briefs

The Borough argues that because the RLC lessens the State's role in fulfilling its constitutional duty to "maintain" public schools, the Borough assisted the State in fulfilling a State constitutional obligation.[13] The Borough argues for the first time, without citation aside from the text of the statute itself, that the State's statutory basic student allocation and Basic

[11] *Id.* at 13.
[12] Restatement (third) at cmt. illus. 16.
[13] Pl.'s Mot. for Partial Reconsideration at 3.

Need calculation is an expression of the State's constitutional obligation under the Alaska Constitution, article VII, section 1.[14]

However, the Borough specifically waived this argument in its briefing.[15] In the Borough's April 28th Reply, it stated explicitly that: "The Borough will not address the extent to which the State must provide school funding, and it will not speculate in a case in which it has not presented that issue." In its November 21st Order, this court stated: "[N]either party has argued that the Alaska Constitution's education clause compels the state to fully fund all public schools in Alaska."[16] Therefore, this contention cannot be considered on this motion to reconsider because the Borough both explicitly waived the issue and failed to raise this issue in briefing previous to their motion for reconsideration.[17]

3. The RLC Payments Do Not Spare the State an "Otherwise Necessary Expense"

Because the State need not fill the gap left by an unpaid RLC in the State's statutory aid calculation, *supra*, there can be no claim in restitution on the basis the RLC payment spared the State an "otherwise necessary expense." In its November 21st Order, the court considered that there could be no unjust enrichment because RLC payments never passed through State coffers, stating: "[T]here was no unjust enrichment because there was no type of enrichment at all."[18] The Borough argues, "[t]he 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

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[14] *Id.* at 4.
[15] Pl.'s Reply in Support of Motion for Summary Judgment at 10.
[16] Order at 24. *See also* Amicus Curiae Fairbank's North Star Borough's Reply at 8 (the Fairbanks North Star Borough argues that the State bears *some* duty or obligation to provide an amount of school funding, but states any argument regarding full funding is a red herring); Pl.'s Reply in Support of Motion for Summary Judgment at 10.
[17] *Clemensen v. Providence Alaska Medical Center*, 203 P.3d 1148, 1155 (Alaska 2009); *Stadnicky v. Southpark Terrace Homeowner's Ass'n, Inc.*, 939 P.2d 403, 405 (Alaska 1997)("An issue raised for the first time in a motion for reconsideration is not timely.").
[18] Order at 24.

State's benefit."[19] The Borough cites Restatement (third) of Restitution and Unjust Enrichment § 9 in support, which stands for the proposition a party who mistakenly confers a non-monetary benefit on another party has a claim in restitution to the extent "the recipient has been spared an otherwise necessary expense."

A claim in restitution for a benefit other than money is measured in to the extent "the recipient has been spared an otherwise necessary expense." It has not been shown that he gap left by an unpaid RLC payment leaves an "otherwise necessary expense" to the State because the State need not fill the gap left by an RLC payment, thereby leaving no measure by which this claim in restitution can be calculated. Therefore, this claim fails.

4. The State Did Not Concede that an RLC Payment Leaves More Money in State Coffers

The State explicitly argued in briefs that the State was never meant to be the sole source of educational funding in the State of Alaska.[20] The Borough argues the State conceded that the RLC leaves more money in State coffers.[21] The relevant language contained in State's briefing and cited by the Borough as a concession reads: "Local contribution likewise does not curtail budgetary control; on the contrary it leaves more money in state coffers because schools receive part of their funding from local sources."[22] This language is contained in a section of the State's Opposition that discusses dedicated funds in a historical context.[23] Here, the State compares a discussion about earmarking in the Alaska Constitutional Convention record to the RLC in order to further differentiate the RLC from dedicated funds. The court does not view this as a

[19] Pl.'s Mot. for Partial Reconsideration at 3.
[20] State's Opp. to Pl.'s Mot. for Summary Judgment at 17.
[21] Pl.'s Mot. for Partial Reconsideration at 3.
[22] *Id.* (*citing* State's Opp. to Pl.'s Mot. for Summary Judgment at 15).
[23] *See* State's Opp. to Pl.'s Mot. for Summary Judgment at 14-15.

concession as to the Borough's assumpsit or restitution claims, but is rather as an illustration used to distinguish a separate point of law unrelated to the assumpsit and restitution claims.

CONCLUSION

For the foregoing reasons and because it has not been established that the State has an obligation to fill the gap left by an unpaid RLC payment, and because the Borough did not argue the RLC helped fulfill a constitutional mandate in briefs; and because the RLC payments do not spare the State an "otherwise necessary expense" and the State made no concession that they do, the Borough's motion to partially reconsider is **DENIED.**

Otherwise this order, together with the court's Order on Motion and Cross Motion for Summary Judgment shall comprise the court's decision in this matter. Counsel for plaintiff Ketchikan Gateway Borough shall prepare and file an appropriate judgment for the court's signature.

IT IS SO ORDERED

Dated at Ketchikan, Alaska this 21 day of January 2015.

William B. Carey
Superior Court Judge

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