

SENATE EDUCATION
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House Education Committee Meeting Jan. 7, 2009

MQEC Court Filing Update

Madame Chair, members of the committee--I have been asked to give the following status report on the School Funding Suit.

A little less than a month ago--on December ninth, 2008, District Court Judge Jeffrey Sherlock issued a two paragraph order denying any supplementary relief in this case that was initially filed in 2002. The plaintiffs in the suit--a coalition of school districts, unions, education associations and parents--had returned to court in early February of 2008, arguing that despite a 25 per cent increase in state funding over the past four years, many school districts still struggle with budget issues and cuts .

For those of you who attended Judge Sherlock's humourous

presentation at the Law School for Legislators yesterday, you might recall he described the latest round in the suit as "the lawyers coming back for kind of a touchup."

A few days after his abbreviated order, six days to be precise, Judge Sherlock followed it up with a 59 page monster set of findings of fact and conclusions of law. That's what he found the evidence showed-- and the law he applied to those facts-- in order to ultimately reach the conclusion he did.

Now as to the timeframe for an appeal which is the next issue I would venture is weighing on your collective minds.

As with just about everything in the law, there are rules, of course. Here, we specifically look to the Montana rules of appellate procedure since this would be an appeal from the

district court to the supreme court. Under Rule four, the plaintiffs in this matter--which is obviously a civil matter and not a criminal matter --would normally have thirty days to file their notice of appeal. But because the State is a party, they have sixty days from the date of Judge Sherlock's later Order, not counting the actual day his Order was filed. So looking to Rule Three of the rules of appellate procedure and doing the math, that takes us until Friday February 13th by five pm for the plaintiffs to file their notice of appeal.

Today, you will note, we are 23 days into the appeal time.

Despite the lack of any constitutional issues, I think it's a fair bet the plaintiffs will file an appeal to the Montana Supreme Court.

A decision from that Court probably would not be announced

during this Legislative session. If you asked me to really go out on a limb, I would venture to say the appeal would go in the State's favour. There's a general judicial reluctance to overturn a district court's decision, especially one that is so fact based.

Now let's look at the meat of the Judge's Order. ..the 59 page monster set of findings of fact and conclusions of law.

Normally judges are reluctant to issue what are called advisory opinions, that being how a court would rule should a matter be litigated. Here Judge Sherlock specifically wrote that "as loath as this court is to provide an advisory opinion, it will make a few comments so as to avoid future problems." This advice, which of course is not binding upon you, does form somewhat of a handy

checklist for you nonetheless.

In Finding of Fact one hundred and nineteen, the Judge set out that while the State has made excellent contributions to ongoing state aid from 2005 through 2008, that increase is expected to drop to one point nine percent. He wrote, and I am quoting, in order to avoid future problems this figure should reflect to the trend of 2005-2008

In finding of fact one hundred and twenty, the Judge wrote that although the total state aid to the school districts' general funds has increased from 2004 until today, the Court notes a slight relapse in 2009 and then goes on to write: in the view of this Court, this figure

should not be declining, but should either be increasing or at least staying the same.

In finding of fact 121, the Court notes that the costs of special education need to be addressed. As the Court had said in Finding of Fact seventy-two, special education funding was not keeping up with increasing costs. The court also noted the increased competition for general fund dollars between special and general fund education continues.

In finding of fact 122, the court wrote that increasing salaries for rural and isolated districts would have a noticeable impact on recruitment and retention problems.

The court did note and I am quoting " the magnitude of

these problems is far less than the problems confronting this Court in 2004. In the view of this court, the problems just mentioned in the preceding findings do not warrant this court's interference in the legislative process."

A couple of other points for you to consider. Due to unrelated issues, the lawsuit's lead attorney, James Molloy, withdrew from the case on November 14, 2008. He was then replaced on November 19th by James Goetz. That may or may not mean anything when you are trying to read the tea leaves relative to whether or not there may be an appeal.

I am happy to answer any questions you may have. Thank you .

You might recall that on May 5 of this year District Court Judge Jeffrey Sherlock issued his latest opinion in this case Judge Sherlock set a hearing in the matter for Monday, September 22 at nine. The parties had that entire five day work week to make their respective case to him as to whether the school funding formula has changed. They also had another morning in October for oral argument. The burden of proof in this matter was on the plaintiffs.

(Ultimate question: Should the DTCT grant supplemental relief? Has the State complied with its constitutional obligation? Does the legislation that was ultimately adopted and implemented meet the State's constitutional obligation?)

SUPCO noted that the primary problem with the-then existing funding system was that it did not correlate with what constitutes a quality education. The legislature had not defined quality and thus it could not be determined that the current funding system was designed to secure a quality education. Further, the funding formula was not linked to any factors that might constitute a quality education.

After a hearing April fourth, the Helena Judge refused the State's request to dismiss the case. The Montana Attorney General had argued the matter was moot --or dead--since there had been significant revisions to the school funding laws since the case was last in front of Judge Sherlock. However, in his six page decision, Judge Sherlock wrote, and I am quoting--the Court has to agree with Plaintiffs that these changes are not really substantial since--according to the affidavit of Tom Bilodeau, they account for only five percent of statewide general fund budgets in the

current fiscal year. Thus, some 95 percent of school funding is still provided through the same formula that existed at the time of the trial of this case.--end of quote.

Ultimately, Judge Sherlock placed the burden of proving that the funding formula has not changed-- as the State was ordered to do by the Supreme Court in upholding Judge Sherlock's original decision in the case in April of 2004--squarely on the shoulders of the plaintiffs.

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