Washington and Lee Law Review

Volume 25 | Issue 2 Article 5

Fall 9-1-1986

Federal Impact Fund Deduction In State School Appropriation Formulae

CASE COMMENTS

FEDERAL IMPACT FUND DEDUCTION IN STATE SCHOOL APPROPRIATION FORMULAE

The Congress has authorized, under Public Law 874, federal aid to local school districts in which there are substantial federal activities. Federal activities create a two-fold financial burden in local school districts. Local revenues are reduced as a result of the acquisition of real property by the United States and enrollment is increased as a result of education being provided for the children of federal employees.[1] The federal payments are supposed to ease the burden of these "impacted areas." However, fifteen states off-set these federal impacted area payments by reducing their state aid to those local educational agencies that receive federal funds.[2] The Virginia off-set procedure was recently tested in *Shepheard v. Godwin.*[3]

The Virginia Appropriation Act of 1966 provides for two types of state aid to local educational agencies: the *state basic share* and the *state supplementary share.*[4] The *state basic share* is an allocation on the basis of the salaries paid by the local school board, which by the 1966 Act is equal to sixty percent of the *minimum salary cost.*[5] No deduction of federal funds is made from this *state basic share.* The second type of aid, the *state supplementary share,* is arrived at by comparing all the income to the local agency with the projected minimum expenses for school operations during the year, any deficit being the amount of the *state supplementary share.* More particularly, the *state supplementary share* is computed in a three step process.

The first step is a determinaion of total income by adding together the three major sources of revenue to the local school agency: The *state basic share;* the *local share*[6] and one-half of any federal funds provided for local operating expenses. The second step is the computa-

---

[1]20 U.S.C. § 236 (1964), *as amended,* (Supp. II, 1966).

[2]U. S. CODE CONG. & AD. NEWS, 3878 (1966).

[3]280 F. Supp. 869 (E.D. Va. 1968).

[4]VA. ACTS OF ASSEMBLY ch. 719, § 3, Item 459 (1966); *renewed in* House Bill No. 20, § 3, Item 564 (Feb. 28, 1968).

[5]"[T]he cost of salaries paid teachers in State aid teaching positions, in accordance with the minimum salary schedule." VA. ACTS OF ASSEMBLY ch. 719, § 3, Item 459(b)(4) (1966).

[6]"[A]n amount equivalent to a uniform tax levy of sixty cents (60c) per one hundred dollars ($100) of true values of local *taxable* real estate and public service corporation property within a county or city." VA. ACTS OF ASSEMBLY ch. 719, § 3, Item 459 (b)(6) (1966) (emphasis added).

tion of the *minimum program cost* by adding the *minimum salary cost* for the teachers in the local district together with a minimum allowance of $100 for each pupil in average daily attendance.[7] The third step is the comparison of total income arrived at in step one, with the *minimum program cost* from step two, any deficit being the amount of the *state supplementary share.* The purpose is to establish a minimum amount that should be spent within the local district and then by the use of this *state supplementary share* to insure that the funds are available.[8] The inclusion of the federal funds in total income will result in a reduced *state supplementary share* in step three. This inclusion of the federal funds in the state formula and the resultant reduction in state aid formed the basis for the plaintiff's constitutional objection in *Shepheard,*[9] decided in the United States District Court for the Eastern District of Virginia.

The plaintiffs, property owners in the City of Norfolk, contended that the inclusion of federal impact funds in arriving at the *state supplementary share* had the same effect as a deduction of the federal payments and thus violated the supremacy clause of the United States Constitution.[10] The plaintiffs alleged that the state formula frustrated the intent and purpose of the federal law in that the school districts were not receiving the full amount of the additional federal funds because the *state supplementary share* was being reduced by one-half of the amount of these funds. After an examination of the legislative history and the "[T]erms, pattern and policy of the act [Public Law 874],"[11] the court held that the Virginia law did violate the supremacy clause.

The court went on to find item 459(c)(8)[12] of the Virginia law unconstitutional as violative of the equal protection of the laws clause.[13] This provision provided that in the event the availability of federal funds for local expenses is conditioned upon their being excluded from total income in the state formula, the average daily attend-

---

[7]VA. ACTS OF ASSEMBLY ch. 719, § 3, Item 459(b)(1) (1966).

[8]As an example of this formula in actual application for the City of Norfolk: $10,415,566 (total cost of salaries) + 5,202,500 (average daily attendance of 52,025 X $100) = $15,618,066 (minimum program cost). $1,350,000 (federal funds) + 6,864,696 (local share) + 6,249,340 (state basic share) = $14,464,036 (total income). $15,618,066 (minimum program cost) − 14,464,036 (total income) = $1,154,030 (state supplementary share). Brief for Plaintiff Appendix "B", Shepheard v. Godwin, 280 F. Supp. 869 (E.D. Va. 1968).

[9]280 F. Supp. 869 (E.D. Va. 1968).

[10]U.S. CONST. art. VI.

[11]280 F. Supp. at 874.

[12]VA. ACTS OF ASSEMBLY ch. 719, § 3, Item 459(c)(8) (1966); *renewed in* House Bill No. 20, § 3, Item 564(c)(9) (Feb. 28, 1968).

[13]U.S. CONST. amend. XIV, § 1.

ance of federal employees' children should also be excluded from the computation of the *minimum program cost.* The effect of this provision was that if the federal income to the local district was to be excluded from the state formula, then the expenses attributable to the federal employees' children would also be excluded.

In applying the supremacy clause to invalidate state legislation, state law is presumed valid unless it clearly conflicts with a federal law.[14] State police power regulation can conflict with federal law in one of two ways: either Congress's intent is to totally control the area leaving no room for state legislation;[15] or there is no such intent but a state law with a specific purpose *produces* a result inconsistent with the clear and manifest objective of a federal law on the same subject.[16] This presumption of constitutionality is also applicable to constitutional objections based on the equal protection clause as the Supreme Court pointed out in *Fort Smith Light & Traction Company v. Board of Improvement.*[17] The Court said: "[T]he Fourteenth Amendment does not require the uniform application of legislation to objects that are different, where those differences may be made the rational basis of legislative discrimination."[18]

This presumption of constitutionality is applicable to state school legislation since the courts have recognized that school regulation falls within the police power of a state.[19] The question then to be considered is whether there is a conflict between Public Law 874 and a state apportionment formula which in effect deducts federal aid in arriving at state aid to education. It would seem that the basis for

---

[14]Sweet v. Rechel, 159 U.S. 380, 392 (1895); Springfield Fire & Marine Ins. Co. v. Holmes, 32 F. Supp. 964, 984 (D. Mont. 1940); Carolene Prods. Co. v. Mahoney, 294 F. 902, 904 (D. Mass. 1923).

[15]Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947); Southern Pac. Co. v. Arizona *ex. rel.* Sullivan, 325 U.S. 761, 766 (1945); *see* Penn Dairies, Inc. v. Milk Control Comm'n, 318 U.S. 261 (1943).

[16]Hill v. Florida *ex rel.* Watson, 325 U.S. 538, 542 (1945).

[17]274 U.S. 387, 391 (1927).

[18]This doctrine has been expanded to validate state voting apportionment laws which in fact result in minor inequities. In *MacDougall v. Green,* 335 U.S. 281 (1948) the Supreme Court upheld an Illinois law that required a candidate of a new party to obtain two hundred signatures from each of at least fifty of that state's one hundred and two counties in order to be listed on the ballot in a state-wide election. The inequity arose in that fifty-two percent of the state's population resided in Cook County alone.

[19]See Cumming v. Board of Education, 175 U.S. 528 (1899). The court in *Cumming* stated: "[T]he education of the people in schools maintained by state taxation is a matter belonging to the respective states...." 175 U.S. 528, 545 (1899); *see* Davis v. County School Board, 103 F. Supp. 337, 339 (E.D. Va. 1952), *rev'd on other grounds,* 349 U.S. 294 (1955); Briggs v. Elliott, 98 F. Supp. 529, 532 (E.D. S.C. 1951), *rev'd on other grounds,* 349 U.S. 294 (1952).

any conflict would be that the state law *produces a result* inconsistent with the objective of the federal law. This assumption is founded on those provisions of Public Law 874 which clearly show that it was not the intent of Congress to control all aid and thus leave no room for state legislation.[20]

Since its passage in 1950, the prevailing theme of the Federal Act has been one of equality in taxation and in education. The legislative history clearly shows that the impacted communities had raised property assessments and taxes for school purposes to the legal maximum. At the same time the students in these areas were not receiving normal school services. The purpose of the Act was to alleviate these conditions and supply equal benefits to all children within a state.[21] This theme of equality is illustrated by the manner in which the funds are allocated. To determine the amount of federal aid to an impacted district, a comparable district within the state which has little or no federal activity is chosen. The local contribution in the comparable district is divided by the number of students in average daily attendance in that district. The resulting figure is then multiplied by the number of children who reside on federal property, plus one-half of those who do not reside on federal property, but

---

[20]U.S.C. § 236 (1964), *as amended,* (Supp. II 1966). Justice Douglas in *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218 (1947) outlined two situations where the courts could assume that Congress' intent in passing legislation was to preempt the entire field: "The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Id.* at 230 (citations omitted).

Chief Justice Hughes discussed the alternative to total preemption in *Kelly v. Washington ex rel. Foss Co.,* 302 U.S. 1 (1937): "There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissable is not forbidden or displaced.... [T]he exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' " *Id.* at 10.

Attempts have been made to get the Congress to establish definite preemption standards: "No act of Congress shall be construed as indicating an intent on the part of Congress to occupy the field in which such Act operates, to the exclusion of all State laws on the same subject matter, unless such Act contains an express provision to that effect, or unless there is a direct and positive conflict between such Act and a State law so that the two cannot be reconciled or consistently stand together." H.R. 3, 85th Cong., 2d Sess. (1958). This Bill passed the House but not the Senate. For a general discussion of the standards of preemption see Note, 12 STAN. L. REV. 208 (1959).

[21]H.R. REP. No. 2287, 81st Cong., 2d Sess. 6 (1950).

whose parents are employed there.[22] This method of allocation attempts to assure that the impacted area will have available funds equal to the non-impacted area, thus assuring a comparable education.

Neither this Act nor the subsequent amendments, however, have shown a specific intent that federal aid should not be deducted in state apportionment formulas. In 1965 Congress amended Public Law 874 by adding Title II which provides funds to local agencies for aid in educating the children of low income families.[23] A section of this new title provides that, in the event the state deducts the federal aid in allocating state aid, the federal payments are to cease.[24] If this amendment applied to impacted area funds rather than to children of low income families, it would seem that Congress had indeed shown an intent that this deduction of federal funds should not be made under any circumstances.

The House of Representatives, in its committee report of August 1966, recognized that this deduction from state aid to the impacted school areas was being made and proposed an amendment to Title I of Public Law 874. In reference to the deduction the report said: "This is a direct contravention to congressional intent."[25] that being to assure no greater property tax burden on the impacted areas than on the non-impacted areas and to provide a level of education equal to the non-impacted areas within the state. The subsequent amendment of 1966 provided that if state aid was reduced the impact funds should be reduced in the same proportion. However, this reduction in federal aid, unlike the provision of the 1965 amendment, was to be at the discretion of the Federal Commissioner, who could waive or reduce it whenever exceptional circumstances existed.[26] Since the 1966 amendment dealing with impacted area funds included no such absolute provision as was found in the 1965 amendment, then perhaps there is indeed a different overriding theme to Title I of Public Law 874.

The Virginia law or any other state apportionment law must be considered, then, in light of the basic purpose of the Federal Act, reinforced by the flexibility of the 1966 amendment to that Act. If the deduction of federal aid in the state apportionment formula results in an increased burden on the property owners in the impacted areas through higher property taxes or results in unreasonable dis-

[22] 20 U.S.C. § 238d (1964), *as amended,* (Supp. II, 1966).
[23] 20 U.S.C. § 241 (Supp. II, 1966).
[24] *Id.* § 241g.
[25] U.S. CODE CONG. & AD. NEWS, 3874, 3878 (1966).
[26] 20 U.S.C. § 240d (Supp. II, 1966).

parities in the allocation of state aid to local districts, it would seem to violate the intent of Public Law 874.

The table below has been prepared to determine the actual effect of the deduction upon the local city districts in Virginia.

Income Sources to Local City School Districts

[All figures are dollars per pupil with the exception of the City levy, which is the amount of tax paid per $100 of assessed property evaluation.]

	Federal Aid	Local City Levy (1)	Local Aid	State Basic Aid	State Supp. Aid	Total State Aid
Alexandria*	32	3.11	292	126		126
Charlottesville		4.10	203	120		120
Chesapeake*	16	3.30	103	112	55	167
Colonial Hgts.*	12	1.30	101	111	59	170
Covington		3.85	127	131	59	190
Galax		5.50	178	123	3	126
Hampton*	21	3.00	99	111	52	163
Lynchburg		3.00	149	126	35	161
Newport News*	18	3.00	131	118	29	147
Norfolk*	25	3.00	131	120	22	142
Portsmouth*	19	2.00	79	116	78	194
Richmond		1.84	177	127	7	134
Roanoke		3.45	164	131	22	153
South Boston		3.60	114	108	57	165
Virginia Beach*	22	2.50	101	106	46	152
Waynesboro		4.30	153	122	27	149

*Indicates the city is a Federal Impact Area.

Source: All figures with the exception of the city levy have been computed from the information in, Brief for Plaintiff, Appendix "B", Shepheard v. Godwin, 280 F. Supp. 869 (E.D. Va. 1968). The source of the city levies is DEPARTMENT OF TAXATION, COMMONWEALTH OF VA., LOCAL TAX RATES TAX YEAR 1967, at 11 (1967).

Certain conclusions can be drawn from the information available on city real estate taxes within the State. The average city levy is $2.82 per one hundred dollars of assessed value. The average for the impacted communities is $2.62, while that for the non-impacted cities is $3.02. These statistics indicate that the property owner in an impacted community is not bearing any greater burden than the owner