4-1983

Michigan Schools Must Provide Necessary School Supplies

Tommie D. Saylor
Western Michigan University

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This study was an attempt to determine how the schools in three Southwestern Michigan counties implemented the decision of the July 17, 1970 Michigan State Supreme Court ruling which required all school districts to provide students with all necessary school supplies. It was evident from the survey conducted that the schools are at different levels of compliance and that the only commonality is that all of them furnish textbooks and paper. One of the conclusions developed by the writer was that each Board of Education should carefully examine the policies that are being followed by their school district and compare these policies with the guidelines that were provided by the Michigan State Department of Education. Another conclusion of the writer was that students demonstrate very little appreciation of the fact that school supplies are provided and a significant number of parents share this same lack of appreciation.
ACKNOWLEDGEMENTS

Every specialist program is unique in its own way. Yet, every specialist program shares a commonality; it could not have been accomplished without the assistance of many concerned and understanding people. It is hoped that all who share in completion of this program realize their support and assistance is deeply appreciated.

There are some, however, whose contribution needs special recognition.

Special recognition and appreciation is extended to Dr. Lawrence Schlack, for the many hours spent in guiding this candidate through the program and especially the work contained here.

To my wife and family who willingly provided the love, encouragement, and support that is so necessary when undertaking a project of this magnitude.

Tommie D. Saylor
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MICHIGAN SCHOOLS MUST PROVIDE NECESSARY SCHOOL SUPPLIES

WESTERN MICHIGAN UNIVERSITY

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CHAPTER I

INTRODUCTION

Statement of Study

On July 17, 1970, the Supreme Court of the State of Michigan issued a decision that immediately commanded the attention of every school district in Michigan. The decision, Bond v. Ann Arbor School District, reversed prior decisions of the Washtenaw County Circuit Court and the Michigan Court of Appeals, and declared that books and school supplies were essential parts of a system of free public elementary and secondary schools, and therefore, schools could not charge students for such items (North Western Reporter, p. 484). Consequently, many educators felt that this ruling would force schools to seek additional millage or to cut present programs in order to meet the anticipated costs of providing books and supplies to all students.

Prior to the Bond decision, a large majority of the public elementary and secondary schools, each fall, required students to either pay a large deposit or purchase all necessary textbooks and supplies. At the end of the school year students would receive a refund from the deposit or they could resell the textbooks to the school. If textbooks were lost or damaged, students were charged accordingly. In addition, students enrolling in specific classes such as home economics, industrial arts, art, and physical education were charged non-refundable fees for consumable supplies used.
Immediately following the "Bond" decision, the State Board of Edu­
cation began developing guidelines setting forth the specific school
supplies that all public schools were required to furnish students as
a result of this state supreme court ruling. These guidelines were
originally issued on August 17, 1970 and supplemental guidelines were
later issued on December 1, 1970. These guidelines were distributed
to all public schools early in the 1970-71 school year and a complete
copy has been placed in the appendix for the readers review.

Purpose of the Study

The purpose of this study is to determine how some schools imple­
mented the requirements caused by the Michigan State Supreme Court
ruling of July 17, 1970. Since a study of this nature has not been
conducted, perhaps this study will serve as a resource for Boards of
Education when making or reviewing policy decisions which involve
furnishing school supplies to students. Further, this study may reveal
the financial impact of the additional cost incurred by school dis­
tricts because of this ruling. While the impact of this ruling on the
learning process is very important, it is outside the scope of this
paper, and therefore will not be addressed.

Scope of the Study

This study will involve Michigan School districts located in the
three southwestern counties of Van Buren, Berrien, and Cass. The spe­
cific school districts are as follows:
Significance of the Study

Furnishing all necessary school supplies has definitely become a part of all school budgets within the past decade. Therefore, it is important for us to study and attempt to understand the effects of this requirement on school finances. For example, how much has this ruling caused the annual budget to increase, what long-term
effects will this ruling have on school policies, what have been student attitudes toward the school furnishing textbooks, paper, pencils, etc., and finally what if any programs and/or personnel have been eliminated in schools to generate the monies necessary to comply with this requirement.

Through careful analysis of answers to these questions and several similar questions, perhaps enough interest would be generated to encourage a state wide study of this nature. If a state wide study showed that this ruling had significant economic effects, attempts might be made to change this particular ruling by the Michigan State Supreme Court.

Procedure

The procedures to be used in gathering data for this study are classified under the descriptive method of research, with particular emphasis on the technique of public opinion surveys. A questionnaire will be developed, and educators in the school districts identified will be asked to respond. A comparison of the results will be made to detect any similarities or differences and to help the investigator formulate meaningful conclusions.
CHAPTER II

PERTINENT LITERATURE

History of Free Education

Education affects the lives, welfare, and prosperity of all Americans and over half of all Americans are directly involved with education. Therefore, most Americans have developed the attitude that well educated young people are better prepared to get ahead in today's society than young people with a poor educational background. More importantly, Americans believe that education is the foundation of freedom. As stated by R. Freeman Butts (1960), "A truly democratic society cannot endure long without a good education being available to everyone." Consequently, education became a function of the government right from the very beginning of our American history.

The governing bodies of the newly formed New England colonies not only exerted authority over education but they also established, supported, and closely monitored their own schools. The early colonists supervised educational matters differently depending upon the governmental system adopted by each colony. Some were controlled by legislative assemblies, others by individual proprietors, and some by royal governors. The central government required parents to educate their children and to hire teachers. Taxes were established to pay teachers and teachers were directly supervised and controlled by the governmental authorities.

Various colonial groups responded to this same legal authority
to legislate educational matters in different ways. For example, the Southern colonies failed to pass laws requiring all school age children to attend school. They believed that parents who could afford to educate their own children should fulfill this responsibility by making individual arrangements with private tutors or by sending them to a private school. However, they did pass laws requiring poor and orphaned children to be taught the basics of reading and religion and to learn a trade. The Southern colonies directed their attention to the underprivileged children who had no parents or whose parents could not care for them.

The Middle colonies attracted several religious denominations because they adopted a more tolerant policy toward religion and how it was utilized in school. Each religious group wanted its own principles taught in school, and the governmental system developed by the middle colonies allowed schools to evolve based upon this concept. This practice proved to be very difficult since the school was open to all children of different religious backgrounds. Therefore, the middle colonies were faced with some additional problems not encountered by the other colonies where children came to school with the same or very similar religious background.

The colonial period saw gains in the growth of representative government, the spread of religious freedom, and a rise in the standard of living. The educational systems attempted to respond to the social changes as well as to changes in the beliefs of the people they served. For the most part, education was concerned as much with the moral training as with the intellectual training of children.
If anything, the moral aspects of education were perceived to be more important and closely related to religion. Teachers, for example, were expected to conform in their belief to the doctrines of whatever group controlled the schools. As stated by R. Freeman Butts (1960), "It was seldom argued that the teacher had a claim to freedom of teaching as an essential characteristic of a free society, a claim to deal freely with ideas even though they might be distasteful to the immediate managers of the school."

As the transition was made from the colonial style of government to a republican form of government, Americans debated, argued and fought over changes in their educational institutions. After many heated discussions they found that they needed an educational system that would support a republican form of government that was dedicated to equality, democracy and freedom.

If a republican government or society was to prosper and endure, then the people who elected the government, held office, made laws, and enforced laws must be educated as responsible citizens. However, this was not easy to do and required answers to several very difficult questions such as: How was this to be done? Who will pay? Who will control these schools? and What about religious education? Most Americans chose the common school, controlled and supported in common, and embracing a nonsectarian religious outlook.

The concept of universal common schooling for all children gained acceptance through the efforts of men such as Horace Mann, James G. Carter, Henry Barnard, Calvin Stowe and John D. Pierce. These men and others made presentations to thousands of people; wrote hundreds of
pamphlets, articles, and reports; and organized large numbers of groups to promote the concept of common schools. They attempted to convince people that the payment of tuition for schooling was unfair to children of poor parents who could not afford an education for their children. In addition, they stated that the older forms of public support, such as land grants, would not support schools on the large scale now necessary. They argued that the term free education did not mean a school in which only the poor children were given free education and all others paid tuition. They believed that class distinctions would only be reduced when a free education meant that all children were given a free education together and when the entire school system was supported by taxes levied upon everyone.

Gradually, the majority of the people accepted the idea of a free public school for all students and state legislatures began passing laws permitting local school districts to tax themselves for such schools. Some state legislatures released state funds to encourage local districts to tax themselves and eventually all local school districts were required to tax themselves for the purpose of providing public schools.

The idea of a free public school at the end of the first century, however, was limited to the elementary grades. This, consequently, left secondary schools largely in the hands of private individuals and/or religious groups. Many Americans, at this time, believed that a free elementary education for all children at public expense was sufficient to insure the basic security of a republican government. Furthermore, they believed that advanced education for important
positions in the state government or in the professions should be obtained privately by individuals who could afford it.

As the still young United States continued to grow, so did the need for more education. This need was not limited to just the governmental leaders, scholars, experts or professional men, but included everyone. As the society changed from a relatively small population scattered over large areas of land which relied mainly on farming and trading, to a society that relied on science and technology, the educational needs changed radically.

The people began to realize that a society based upon steam power, electric power, or nuclear power could be managed and controlled by only a few people. Therefore, they began to argue that there was no better way to prevent autocratic, dictatorial use of political and economic power by a few than to have an educational system devoted to freedom.

A free elementary education for all students had fulfilled the needs of the United States for a period of time. However, it became increasingly clear that the opportunity to acquire an expanded education must be made available to everyone. An expanded education must be available to the poor students as well as the rich, to the slow as well as the bright, to girls as well as boys, to blacks as well as whites, to immigrants as well as native-born, to Catholics and Jews as well as Protestants and non-churchgoers. This idea developed rapidly and by the end of the nineteenth century the public high school became very prevalent in the United States.

Through the evolution of the educational system from the colonial
form of government to the new democratic society, two primary goals of education emerged: (a) the Quality of Opportunity and (b) the Freedom of Opportunity.

The local freedom of districts to ignore school for their children gave way to the concept of education for all. Local control by school districts was gradually limited by requirements set by state constitutions, state legislatures, state boards of education, and state superintendents of schools. The people decided that a free society could be better served if education was planned by the central authority of the states rather than left completely to the decentralized control of local school boards. This was not done without bitter conflict because many people believed that state control, as opposed to local, would be undemocratic, and, therefore, destroy freedom. However, after much debate, the people decided that a state government, which was responsive to public control, could preserve freedom as well as, if not better than, hundreds of local school districts. They concluded that if a local district were left free to provide a poor education or no education for their children, those children would be deprived of their birthright to an education that would prepare them for free citizenship. In addition, they concluded that the state must guarantee freedom and thereby exert its authority not only to insure that schools were available to all students, but also to make sure that students actually attended school.

The acceptance of the concept of "free education for all" was the first of many difficult issues faced by the newly formed United States. The separation of church and state, the democratic goal of
providing as much education as possible to all, the establishment of minimum standards, and the quality of education are but a few of the issues which had to be addressed as our educational system developed.

The ruling by the Michigan State Supreme Court made on July 17, 1970 is the beginning of another historical event in the development of the concept of "free education". The concept of free education was previously interpreted to mean that public schools were available to all students and that this included a physical plant, personnel, and some basic educational programs. The concept of free education, as a result of this ruling, is now also considered to include the basic school supplies needed by students to complete the educational requirements of the school.
CHAPTER III

A COMPARISON OF THE RESULTS

Twenty-six public schools in the southwestern counties of Van Buren, Berrien, and Cass were asked to respond to a written questionnaire involving the requirement of public schools to furnish students with all necessary school supplies. Of the 26 schools involved, the author received responses from 23 school districts which represents a return of 88.5 percent. The questionnaire and accompanying letter in their entirety may be found in the appendix. However, for the benefit of the reader, the author has included on the following chart, each of the yes or no questions asked on the questionnaire. An examination of the questionnaire will reveal a total of 19 yes or no questions and three questions which require a numerical response. The questions requiring a numerical response will be addressed later in this chapter.

Table 1

Table 1
Questionnaire Results from All Schools Surveyed

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes Answers</th>
<th>% of No Answers</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Does your school require students to pay a refundable textbook deposit?</td>
<td>4.3</td>
<td>95.7</td>
<td>0</td>
</tr>
<tr>
<td>C. Does your school charge students for damaged or lost textbooks?</td>
<td>95.7</td>
<td>4.3</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 1 (Continued)

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes Answers</th>
<th>% of No Answers</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>D. Are students required to pay a fee to cover the cost of consumable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>supplies in any class or classes?</td>
<td>13.1</td>
<td>86.9</td>
<td>0</td>
</tr>
<tr>
<td>E. Does your school provide, without any cost to students, any of the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>following items?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Pencils</td>
<td>95.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>2. Paper</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3. Ink Pens</td>
<td>47.8</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>4. Gym Suits</td>
<td>0</td>
<td>100.0</td>
<td>0</td>
</tr>
<tr>
<td>5. Work Books</td>
<td>95.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>6. Periodicals if required for classroom use</td>
<td>82.6</td>
<td>17.4</td>
<td>0</td>
</tr>
<tr>
<td>7. Materials for Industrial Art projects</td>
<td>82.6</td>
<td>17.4</td>
<td>0</td>
</tr>
<tr>
<td>8. Materials for Home Economics Projects</td>
<td>82.6</td>
<td>17.4</td>
<td>0</td>
</tr>
<tr>
<td>9. Art Supplies</td>
<td>95.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>10. Textbooks</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>F. Has the amount of money budgeted in your school district for</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>supplies furnished to students increased in the past ten years?</td>
<td>95.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>H. In the past five years has your school been forced to make financial</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>cut backs in programs and other areas?</td>
<td>91.3</td>
<td>8.7</td>
<td>0</td>
</tr>
<tr>
<td>I. Would your district have made fewer cuts in programs, personnel, etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>if not required by state law to furnish pencils,</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 1 (Concluded)

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes</th>
<th>% of No</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>paper, and other supplies to students?</td>
<td>60.9</td>
<td>30.4</td>
<td>0</td>
</tr>
<tr>
<td>J. In your opinion, do students appreciate the school furnishing all necessary school supplies?</td>
<td>13.0</td>
<td>73.9</td>
<td>0</td>
</tr>
<tr>
<td>K. In your opinion, do parents appreciate the school furnishing all necessary school supplies?</td>
<td>34.8</td>
<td>56.5</td>
<td>8.7</td>
</tr>
<tr>
<td>L. In your opinion, do students make good use of the supplies provided by your school?</td>
<td>30.4</td>
<td>43.4</td>
<td>26.1</td>
</tr>
</tbody>
</table>

The information reported by items B-E, inclusively, of the schools surveyed, did not present any real surprises to the author. Generally speaking, the survey indicated that most public schools in Southwestern Michigan do not charge refundable textbook fees or fees for consumable classroom supplies. In addition, these same schools do have an established fee for either damaged or lost textbooks.

Continuing, the schools surveyed furnished students with pencils and paper; however, only 47.8% of the schools surveyed supplied students with ink pens. No schools included in this sampling supplied students with gym suits for Physical Education. Workbooks, periodicals if required for classroom use, materials required for Industrial Arts, Home Economics, and Art were generally supplied by over 80% of the schools.
Interestingly, the responses to items F-H, inclusively, by the schools surveyed, disclosed a wider range of opinions with some interesting implications. Over 91.3% of the schools responding indicated that the amount of money budgeted for school supplies during the past 10 years has increased and that these same schools have been forced to make financial reductions in both instructional programs and personnel. This certainly leads one to believe that there may be some degree of correlation between these two factors. The impact of increased cost to school districts for supplies furnished to students can be placed in better perspective with at least one additional piece of information contained in the survey. Ninety-six percent of the schools surveyed indicated that the amount of money budgeted for supplies furnished to students fell in the range of 1.0% to 5.0% of the schools' total operating budget. Therefore, even though most of the schools surveyed indicated that the cost for furnishing students with the necessary school supplies increased, and that financial reductions were found to be necessary, the total financial impact caused by the Michigan Supreme Court ruling relative to furnishing students with all necessary school supplies may be rather limited.

Another question asked in the survey which may present another point of view involved the responses received to the question, "Could your district have made fewer cuts in programs, personnel, etc., if not required by state law to furnish pencils, paper, and other supplies to students?" Sixty-one percent of the schools surveyed responded "yes" to this particular question. Therefore, even though the author has suggested that the actual relationship between this state
law and the cost are minimal, many of the respondents believe that
this law has required some necessary reductions in the school pro-
grams and personnel.

Two items on the questionnaire asked the respondents if, in
their opinions, parents and students appreciated the school furnishing
all necessary school supplies. A clear majority of the schools respon-
ding reported that parents and students did not appreciate the school
furnishing all necessary school supplies. However, it was apparent
from the respondents that parents, rather than students, were seen as
being more appreciative of the school for furnishing all necessary
supplies.

The last question on the questionnaire showed a real mixture of
opinions. The question asked was, "Do students make good use of the
supplies provided by the school?" Forty-three and one-half percent
of the schools responding indicated that students do not make good
use of the supplies provided by the school, while 30.4% of the schools
indicated that students do make good use of the supplies provided by
the school. The remaining 26.1% of the schools responding answered
this question both yes and no. Obviously, this demonstrated mixed
feelings of the respondents which makes it more difficult to draw any
clear conclusions.

Believing that the size of a school district may have some
influence on how the respondents answered the questions on the question-
aire, the author compiled the same information after separating the
results in two major categories. The following table shows the respon-
ses given by twelve schools with an enrollment of 1274 or more students.
Table 2
Questionnaire Results from Schools with an Enrollment of 1274 or More Students

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes Answers</th>
<th>% of No Answers</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Does your school require students to pay a refundable textbook deposit?</td>
<td>0</td>
<td>100.0</td>
<td>0</td>
</tr>
<tr>
<td>C. Does your school charge students for damaged or lost textbooks?</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>D. Are students required to pay a fee to cover the cost of consumable supplies in any class or classes?</td>
<td>8.3 91.6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>E. Does your school provide, without any cost to students, any of the following items?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Pencils</td>
<td>91.6</td>
<td>8.3</td>
<td>0</td>
</tr>
<tr>
<td>2. Paper</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3. Ink Pens</td>
<td>66.7</td>
<td>33.3</td>
<td>0</td>
</tr>
<tr>
<td>4. Gym Suits</td>
<td>0</td>
<td>100.0</td>
<td>0</td>
</tr>
<tr>
<td>5. Work Books</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>6. Periodicals if required, for classroom use</td>
<td>83.3</td>
<td>16.7</td>
<td>0</td>
</tr>
<tr>
<td>7. Materials for Industrial Art projects</td>
<td>83.3</td>
<td>16.7</td>
<td>0</td>
</tr>
<tr>
<td>8. Materials for Home Economics projects</td>
<td>83.3</td>
<td>16.7</td>
<td>0</td>
</tr>
<tr>
<td>9. Art Supplies</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>10. Textbooks</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 2 (Concluded)

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes Answers</th>
<th>% of No Answers</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>F. Has the amount of money budgeted in your school supplies furnished to students increased in the past ten years?</td>
<td>91.6</td>
<td>8.3</td>
<td>0</td>
</tr>
<tr>
<td>H. In the past five years has your school been forced to make financial cut backs in programs, and other areas?</td>
<td>91.6</td>
<td>8.3</td>
<td>0</td>
</tr>
<tr>
<td>I. Would your district have made fewer cuts in programs, personnel, etc., if not required by state law to furnish pencils, paper and other supplies to students?</td>
<td>66.7</td>
<td>16.6</td>
<td>16.6</td>
</tr>
<tr>
<td>J. In your opinion, do students appreciate the school furnishing all necessary school supplies?</td>
<td>16.6</td>
<td>58.3</td>
<td>25.0</td>
</tr>
<tr>
<td>K. In your opinion, do parents appreciate the school furnishing all necessary school supplies?</td>
<td>41.7</td>
<td>41.7</td>
<td>16.6</td>
</tr>
<tr>
<td>L. In your opinion, do students make good use of the supplies provided by your school?</td>
<td>41.7</td>
<td>25.0</td>
<td>33.3</td>
</tr>
</tbody>
</table>

The following table shows the responses given by eleven schools with an enrollment of 1273 or less.
Table 3
Questionnaire Results from Schools with an Enrollment of Less Than 1274 Students

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes Answers</th>
<th>% of No Answers</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Does your school require students to pay a refundable textbook deposit?</td>
<td>9.1</td>
<td>90.9</td>
<td>0</td>
</tr>
<tr>
<td>C. Does your school charge students for damaged or lost textbooks?</td>
<td>90.9</td>
<td>9.1</td>
<td>0</td>
</tr>
<tr>
<td>D. Are students required to pay a fee to cover the cost of consumable supplies in any class or classes?</td>
<td>18.2</td>
<td>81.8</td>
<td>0</td>
</tr>
<tr>
<td>E. Does your school provide without any cost to students any of the following items?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Pencils</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2. Paper</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3. Ink Pens</td>
<td>27.3</td>
<td>72.7</td>
<td>0</td>
</tr>
<tr>
<td>4. Gym Suits</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5. Work Books</td>
<td>90.9</td>
<td>9.1</td>
<td>0</td>
</tr>
<tr>
<td>6. Periodicals if required for classroom use</td>
<td>81.8</td>
<td>18.2</td>
<td>0</td>
</tr>
<tr>
<td>7. Materials for Industrial Art projects</td>
<td>72.7</td>
<td>18.2</td>
<td>9.1</td>
</tr>
<tr>
<td>8. Materials for Home Economics projects</td>
<td>72.7</td>
<td>18.2</td>
<td>9.1</td>
</tr>
<tr>
<td>9. Art Supplies</td>
<td>90.9</td>
<td>9.1</td>
<td>0</td>
</tr>
<tr>
<td>10. Textbooks</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 3 (Concluded)

<table>
<thead>
<tr>
<th>Question</th>
<th>% of Yes Answers</th>
<th>% of No Answers</th>
<th>% of No Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>F. Has the amount of money budgeted in your school district for supplies furnished to students increased in the past ten years?</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>H. In the past five years, has your school been forced to make financial cut backs in programs, and other areas?</td>
<td>90.9</td>
<td>9.1</td>
<td>0</td>
</tr>
<tr>
<td>I. Would your district have made fewer cuts in programs, personnel, etc., if not required by state law to furnish pencils, paper, and other supplies to students?</td>
<td>54.5</td>
<td>45.5</td>
<td>0</td>
</tr>
<tr>
<td>J. In your opinion, do students appreciate the school furnishing all necessary school supplies?</td>
<td>9.1</td>
<td>90.9</td>
<td>0</td>
</tr>
<tr>
<td>K. In your opinion, do parents appreciate the school furnishing all necessary school supplies?</td>
<td>27.3</td>
<td>72.7</td>
<td>0</td>
</tr>
<tr>
<td>L. In your opinion, do students make good use of the supplies provided by your school?</td>
<td>18.2</td>
<td>63.6</td>
<td>18.2</td>
</tr>
</tbody>
</table>

Comparing the survey information based on the size of a school reveals that the responses to the questions were basically the same with the exception of items E-3, I, K, and L.

Reviewing the survey information on the basis of size clearly indicates that the majority of small schools do not furnish students with ink pens while 66.7% of the larger schools do furnish ink pens.

When asked "Would your district have made fewer cuts in programs,
personnel, etc., if not required by state law to furnish pencils, paper, and other supplies to students," only slightly over half of the small districts indicated "yes," while 66.7% of the larger districts answered this question "yes." This implies that the effects of this law are more significant for large schools than small schools.

A large percentage of small schools said "no" when asked if parents appreciated the schools furnishing all necessary school supplies. On the other hand, only half of the large schools responded in the same manner. Assuming that small schools have a greater opportunity to know a large percentage of parents within their school district, perhaps the percentage of parents who failed to appreciate the schools furnishing all necessary school supplies is much higher than what the results of this survey suggest at first glance.

The last question, "Do students make good use of the supplies provided by your school?", revealed some interesting differences when comparing the survey information based on school size. Of the smaller schools, 63.6% indicated that students do not make good use of the supplies provided, while only 25.0% of the larger schools responded in the same manner. This certainly raises some interesting questions, such as, are the large schools, because of the numbers, really in a good position to honestly know what students do with the school supplies furnished, and should more credence be given to the information by smaller schools since they may be in a better position to actually see how students use the school supplies furnished.
Analysis of information gained from the survey of twenty-six school districts furnishing students with all necessary school supplies points to several major conclusions. Each school district has reacted differently to the Michigan State Supreme Court ruling. It is evident that the schools are at different levels of compliance and that the only commonality is that all of them furnish textbooks and paper. This demonstrates a wide range of interpretations made by the local schools which may or may not be in compliance with the intent of this Michigan State Supreme Court ruling.

Therefore, the writer would conclude that each board of education should carefully examine the policies that are being followed by their school district and compare these policies with the guidelines that were provided by the state Department of Education.

Another conclusion involves the opinions of respondents from small school districts compared to those of respondents from large school districts, when asked if parents and students appreciated having the school provide all necessary school supplies. Since a definition of the word appreciate was not offered or defined on the questionnaire, each respondent made his/her own interpretation and responded to the question accordingly. Over 90.0% of the respondents from small school districts in conjunction with 58.3% of the respondents from large school districts believe that students fail to
appreciate having supplies furnished by the school. In addition, 72.7% of the respondents from small school districts along with 41.7% of the respondents from large school districts believe that parents fail to appreciate having supplies furnished by the school. This information leads the writer to the conclusions that students demonstrate very little appreciation of the fact that school supplies are provided and a significant number of parents share this same lack of appreciation.

A third, and perhaps more important conclusion, touches on the financial impact of the Michigan State Supreme Court ruling on each school district. The information reported by all school districts indicated that the amount of money budgeted for school supplies had increased between one and five percent during the past ten years. At first glance, this may not appear to be a significant change. However, realizing that the total operating budget of even a small school district will generally exceed $1,500,000 dollars, the impact becomes more significant. Over half of the respondents indicated that they would have made fewer reductions in programs and personnel if not required to furnish students with all necessary school supplies. These facts lead to the conclusion that the Michigan State Supreme Court ruling on July 17, 1970, did cause districts to make additional reductions in both programs and personnel.

The writer would hypothesize that class sizes may have increased, teacher aids may have been laid off, new textbooks may not have been purchased, buses may have not been replaced, custodial and secretarial services may have been reduced and perhaps fewer supplies purchased;
as a result of the Michigan State Supreme Court ruling made on July 17, 1970. The writer would further speculate that this ruling may have had some impact on the learning process of students. This would be a very interesting topic for another research paper and would perhaps provide some very relevant information on the effects of this ruling.

The final conclusion involves the constructive student use of supplies furnished by the school. Constructive student use or good use of school supplies for the purpose of this paper, means that students do not indiscriminately destroy or discard usable school supplies. While a majority of the respondents from small schools believe that students fail to make good use of the supplies furnished, the majority of the respondents from large districts are of the opinion that students make good use of supplies furnished by the school.

There may be several plausible reasons for this difference of opinion between the respondents of small school districts and large school districts. However, before any realistic conclusions can be formulated a more detailed investigation would be necessary.

Based upon the information obtained from this study and the conclusions stated above, two recommendations are offered: (a) The Michigan State Supreme Court when making a ruling that has far-reaching effects on many public agencies and/or private industry, should as a matter of policy establish, develop, or write some minimum standards and/or guidelines setting forth the requirements of the decision. Knowing that the court docket is extremely demanding and that this additional burden may be an unrealistic recommendation, perhaps the
development of these much needed minimum standards should be assigned by the state Supreme Court to another agency such as the state Department of Education or other appropriate agency; and (b) The second recommendation is that when the Supreme Court issues a ruling that some agency be required to monitor compliance. Currently, there are no agencies and/or procedures for monitoring the level of compliance by schools of the July 17, 1970 ruling requiring schools to furnish students with all necessary school supplies. The only assurance that taxpayers have that schools make some attempt at complying with this ruling is the threat to schools of a law suit. Therefore, the author would recommend that the same agency involved in the development of some minimum standards also act as monitor to assume reasonable compliance by schools.
APPENDIX A

INTRODUCTORY LETTER AND QUESTIONNAIRE
May 20, 1982

Dear Sir:

As a neighboring, fellow administrator I certainly appreciate busy schedules and the time required to complete another graduate student's survey. However, I believe you will find this survey very easy to complete and interesting.

This project attempts to assess the effect of the July 17, 1970 ruling made by the Michigan State Supreme Court requiring all public schools to furnish students with all necessary school supplies.

Your cooperation and assistance will be sincerely appreciated. Please return the completed survey in the enclosed self-addressed stamped envelope. Thank you.

Respectfully,

Tommie D. Saylor
Principal
Gobles Public Schools
INSTRUCTIONS: Please circle or place a check mark by your answer.

A. The number of K-12 students enrolled in your school district on 4th Friday 1981:
   1274 or more
   1273 - 656
   655 - 338
   338 or less

B. Does your school require students to pay a refundable textbook deposit?
   YES
   NO

C. Does your school charge students for damaged or lost textbooks?
   YES
   NO

D. Are students required to pay a fee to cover the cost of consumable supplies in any class or classes?
   YES
   NO

E. Does your school provide, without any cost to students, any of the following items?
   1. Pencils
      YES
      NO
   2. Paper
      YES
      NO
   3. Ink Pens
      YES
      NO
   4. Gym Suits
      YES
      NO
   5. Work Books
      YES
      NO
   6. Periodicals if required for classroom use
      YES
      NO
   7. Materials for Industrial Art projects
      YES
      NO
   8. Materials for Home Economics projects
      YES
      NO
   9. Art Supplies
      YES
      NO
  10. Textbooks
      YES
      NO
F. Has the amount of money budgeted in your school district for supplies furnished to students increased in the past text years?

   YES
   NO

1) if YES, how much?

   0-10% ______
   11-20% ______
   21-30% ______
   31-40% ______
   41-50% ______
   51-60% ______
   61-70% ______
   71-80% ______
   81-90% ______
   91-100% ______

2) more than 100% ____________________________

G. What percent of your total budget is allocated for supplies furnished to students?

_____________________

H. In the past five years has your school been forced to make financial cut backs in programs, personnel, and other areas?

   YES
   NO

I. Would your district have made fewer cuts in programs, personnel, etc., if not required by state law to furnish pencils, paper, and other supplies to students?

   YES
   NO

J. In your opinion, do students appreciate the school furnishing all necessary school supplies?

   YES
   NO

K. In your opinion, do parents appreciate the school furnishing all necessary school supplies?

   YES
   NO

L. In your opinion, do students make good use of the supplies provided by your school?

   YES
   NO
APPENDIX B

STATE BOARD OF EDUCATION POSITION STATEMENT on FREE TEXTBOOKS, MATERIALS AND THE CHARGING OF FEES

Michigan Department of Education
Lansing, Michigan
March 1972
STATE BOARD OF EDUCATION

Term Expires

Edwin L. Novak, O.D., President
Flint ---------------------------------- Jan. 1, 1973

Michael J. Deeb, Vice President
Detroit ---------------------------------- Jan. 1, 1977

Dr. Gorton Riethmiller, Secretary
Chelsea ---------------------------------- Jan. 1, 1975

Thomas J. Brennan, Treasurer
Dearborn ---------------------------------- Jan. 1, 1979

Marilyn Jean Kelly
Detroit ---------------------------------- Jan. 1, 1977

Annetta Miller
Huntington Woods ---------------------------------- Jan. 1, 1979

Dr. Charles E. Morton
Detroit ---------------------------------- Jan. 1, 1973

James F. I'Neil
Livonia ---------------------------------- Jan. 1, 1975

Dr. John W. Porter, Superintendent
of Public Instruction,
Chairman, Ex-Officio

William G. Milliken, Governor
Member, Ex-Officio
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INTRODUCTION

At least since 1965, the State Board of Education has been firmly on record as favoring the provision of free textbooks and other consumable materials to the children attending public schools in the state of Michigan. State funds were never available for the purpose, so the historical practice of local school districts to require students to provide -- to varying degrees -- such materials as books, writing materials, athletic equipment of certain types, and a host of other items used in the educational process, continued.

On July 17, 1970, the Michigan Supreme Court ruled, in the case of Bond, et al vs. the Public Schools of Ann Arbor, that any requirement that a child duly enrolled in the public schools furnish materials needed for the provision of education was violative of the Michigan Constitution.

The Court's language in so ruling was general but sweeping, and was interpreted by the Michigan Attorney General to apply widely to both required and elective courses in the public schools.
Policies and Supplemental Policy Guidelines

The following pages represent State Board of Education interpretations, based on legal counsel, of the application of the "Bond" decision as regards the public schools of Michigan. The interpretations were developed in two parts: Policy Guidelines were originally issued on August 17, 1970, and Supplemental Policy Guidelines were issued originally on December 1, 1970. The two sets of guidelines are combined in this document.

Included as Appendix A is a memorandum opinion from the office of the Attorney General setting forth the legal reasoning which has been applied. This opinion, along with interpretive memoranda dated August 17 and December 1, 1970, was circulated to all public school superintendents and widely to others in Michigan early in the 1970-71 school year.

Subsequent to the issuance of the guidelines, a detailed questionnaire was circulated to Michigan high school districts in an attempt to assess the statewide financial impact of the "Bond" decision. A report on this survey is included here as Appendix B.

John W. Porter
Superintendent of Public Instruction
I. GENERAL FEES

A. School districts may not make charges for any required or elective course such as for:
   a. General or registration fees
   b. Course fees or materials ticket charges
   c. Textbooks and school supplies

B. School districts may charge fees for extracurricular activities when students are not graded or evaluated and academic credit is not given, or for any activity in which participation is not required for obtaining a diploma. Provision should be made on a reasonable basis so that students without financial means are not excluded.

C. Schools can make a reasonable student attendance charge for admittance to school assemblies or other extracurricular activities when students are not graded or evaluated and credit is not given. Attendance at these activities cannot be required if a charge is made for students to attend. If attendance is required of all students at an assembly, then no charge can be made to the students. The services of the professional organization putting on the assembly must then be paid for by the board of education.

D. Voluntary extracurricular activities, such as attendance at sports, musical concerts, movies and plays, need not be provided free of charge. The cost of this admission or ticket must be borne by the person attending the activity. Consequently, fees (charge for tickets) for participation as a spectator may be charged.

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II. TEXTBOOKS AND MATERIALS

A. School districts may charge for damages or loss of school property when such property has been provided to students without charge.

B. School districts may require students to place a deposit to cover damage to textbooks, non-consumable materials, and supplies provided free by the school district, for those economically able to pay as determined by school authorities, after consulting with the parent. These deposits must be reasonable and refundable.

C. School officials may determine the quality and quantity of school supplies such as textbooks, paper and pencils that are reasonable for the use of pupils, and determine the length of time such materials shall be provided. Likewise, pupils may voluntarily bring their own school supplies for any curricular subject.

D. Textbook deposits must be both reasonable and refundable. It is not considered reasonable by this office or the Office of the Attorney General that deposits be as much as the cost or replacement value of the book. It is believed that "reasonable" means that boards could consider the usableness of a textbook as being either four or five years. If the four-year figure were to be used, a deposit of one-fourth of the value would be reasonable. If the five-year term were used, then one-fifth of the value would be reasonable as a deposit. Care should be taken to keep a record of the condition and age of all books so that a reasonable approach can be made in making a determination as to whether more than the usual wear and tear from usage were made on a book. If no more than the usual wear and tear from usage were made on a book, the full refund must be made. Refunds must be made at the end of each school year or during the year if the student leaves the school system. Deposits cannot be kept by the school district until the student goes to another building within the system, graduates, or leaves the system in any other way.

E. If a school district receives tuition students, the receiving district must provide textbooks on the same terms it would to a resident student. This is true if a sending board of education or the parents or guardian pay the tuition.

F. Interest received by a school district as a result of book deposits received and banked belong to the school district and can be used for the general operation of the school district. These are considered as "trust" funds.
III. INTERSCHOLASTIC ATHLETICS PARTICIPATION

A. Fees for participation in interscholastic athletic activities are legally possible if they are extracurricular in nature, students are not required to take them, and no grade or credit is given.
IV. BAND AND ORCHESTRA

A. If band (or orchestra) is considered as an extracurricular subject, the time consumed while taking this music class cannot be counted toward the 900 or 990 hour requirement. If it is extracurricular, is given outside of the 900 or 990 hours and no credit or grade is given, the local school board is not obligated to provide instruments. On such an arrangement fees may be charged. If band or orchestra is offered as part of the curriculum and a grade and credit is given, then the board is required to provide instruments free, on a reasonable basis, to qualified students. It is our belief that it is reasonable for boards to provide the large or more expensive instruments and a few of the less expensive instruments such as clarinets, trumpets, drums, etc. If a district owns 6 clarinets, as an example, and 12 students appear to be qualified and want to play clarinet, it would seem reasonable to assign 2 students to each clarinet, and for health reasons have each student provide his or her own mouthpiece and reed. It might also be reasonable to have some of these students start on another kind of available instrument.

B. It is not felt that it is the intent of this decision that a board must consider owning enough instruments to provide each eligible student with an instrument of his or her choice, only that some kind of instrument be available on a reasonable basis to all qualified students. Qualified refers to reasonable student aptitude or ability, not availability of an instrument. No rental charge can be made if credit or grade is given. A reasonable deposit against damage or loss may be required by the school. Parents may purchase, rent, or lease instruments to be used by their children.

C. In some schools band program begins in the 5th or 6th grade and operates six periods a day. If the total number of clock hours per year clearly exceeds the requirement of the minimum school year, students may be released for 1/2 hour per day within the school day to participate in band. During this release time the other students will remain in class for instruction.
V. TRIPS AND TRAVEL

A. Entrance fees or ticket admissions that are a part of a required field trip must be paid by the school district. If the trip is "extracurricular" in nature and attendance is not required or credit given, and attendance does not enter into the grade given, the student can be required to pay for the entrance fees or tickets. In neither case can any charge be made for transportation on a school bus to a play, etc. No transportation charge can be made to students on any spectator bus to games, etc.

B. If a trip (such as a senior trip or one to a city for a play, ball game, etc.) is extracurricular and no credit or grade is given, and a trip is on a chartered bus, train, plane, etc., the school need not pay the transportation.
VI. SPECIAL COURSES AND PROJECTS

A. School districts may require a person to pay for adult education courses offered by the public schools, provided that the adult is not earning credit toward a high school diploma and is not counted in membership for state aid purposes.

B. If students take an extra course, such as, but not limited to cosmetology, advanced math or the sciences, from an approved private school, a college, university or community college, and high school credit is given, the school district must pay the tuition and textbook charges. If no high school credit is given, the local school board is not required to pay the tuition or book charges. Credit for the completed course may be given by the school where the work was completed in addition to the credit received by the school district. This dual credit does not release the school district from its responsibility to pay for the tuition and books.

C. Students should be allowed the opportunity to take a class(es) at night school at a school outside of the residency of the student and given credit toward graduation for a class successfully completed. This is only referring to credit toward graduation and would not alter a local school district's credit and residency requirements for graduation.

D. If a fulltime day student wishes to take an additional class at night school that is offered during the school day but prefers to take the course(es) at night in the same school district, the charging of a tuition fee is permissible (not mandatory), provided that the school district offers at least 180 days of school to its students exclusive of the night school program, and the district offers during the regular school year the required 900 or 990 clock hours of student instruction, or less if approved by the State Board of Education. The Board of the district of which the student is a resident may charge tuition for this (these) night school class as long as attendance is on a voluntary basis regardless of the fact that a grade or credit is given toward grade advancement or graduation.

E. Items (projects) made as a requirement for shop, art or home economics are made on school purchased materials. They are school property but may be sold to the student making the project (or any other person) at cost upon direction of the Board of Education stating by resolution that the items (projects) made in shop, art and home economics and not needed for school purposes may be sold by the superintendent or his representative. Funds so received will revert to the general fund of the district.
F. Materials used to make special projects (not required for credit) such as special wood or cloth, for a bookcase, gun rack, or dress, etc., need not be supplied by the school district. Students making such special projects must pay for this material, and the finished project is their property. Schools may purchase this material and sell it to the students at cost.
VII. SUMMER SCHOOL

A. School districts may charge for summer school except where such activities are a part of a regularly scheduled year-around program. Charging of fees for summer school is permissible provided that the school district offers at least 180 days of school to its students exclusive of the summer school program and the district offers during the regular school year the required 900 or 990 clock hours of student instruction, or less if approved by the State Board of Education. A school board may charge tuition for summer school as long as attendance is on a voluntary basis regardless of the fact that a grade or credit is given toward grade advancement or towards graduation.

B. School districts may charge for summer school, if the school district is not in regular session. In other words, school is "out" about June 1 and is closed until after Labor Day. Summer school is then defined as a special session for remedial or additional work taken on a voluntary basis during the summer when the schools of the district are normally closed.

C. No charge can be made for summer classes if the school district is operating a year-around school program that includes the summer months.

D. If the school district requires the attendance of a student during the summer session in order for that student to obtain a diploma or grade advancement, no fee can be charged.
VIII. CLOTHING AND FOOD

A. School districts may require fees for clothing and food which are offered during the regular school program.

B. Swimming suits, gym clothing, gym shoes, football shoes, baseball shoes, spats, leggings or special shoes to wear with a band uniform need not be supplied by the school district. School districts may make a reasonable charge for the use of any of these items that it supplies to its students. Parents, however, may purchase or supply their own above-mentioned items that are satisfactory for use.

C. If a specific color, style and manufacturer is required by the school district, then the district must supply the item free of charge.

D. Special clothing (not robes or band uniforms) for extracurricular activities such as choir or band or orchestra need not be supplied or paid for by the school district. Example: for choir, a white blouse or shirt, dark trousers or skirt, and black shoes and stockings.

E. Towels, if provided by the school district, must be provided free of charge. No charge can be made for laundering the towels. Towels must be provided without charge if showers are required for a credit course.

F. Schools are not authorized to charge for providing a place for students to eat a "carry in" lunch. Some schools are charging a yearly fee so that working mothers can have their children stay at school at noon rather than come home for lunch. This charge is not legal.
IX. CAMPING PROGRAM

A. If the school district has a camping program and attendance is not required and no grade or credit is given, a reasonable charge may be made for meals while at the camp. Clothing must be provided by the parent or guardian.
X. PRE-COLLECTED FEES

A. Any locker fees, instrument or uniform rental fees collected in advance should be refunded to the students.

Example: Some school districts require a student, when a freshman, to pay for all of his high school years. This collected fee must be refunded.
XI. SOME SPECIFIC EXAMPLES

In order to further help clarify some of the questions regarding fees charged to students which were raised by the Michigan Supreme Court decision in Bond, et al. v. the Public Schools of the Ann Arbor-School District, staff of the Michigan Department of Education solicited specific questions from local school administrators.

In accordance with the stated policy guidelines of the State Board of Education, some of the allowable and unallowable charges are provided below.

School districts **must** provide the following items free of charge for any required or elective course:

1. Pencils, paper, crayons
2. Textbooks (regular or supplemental)
3. Band instruments
4. Weekly readers or other periodicals if required for classroom use

School districts **may not** make charges related to any required or elective course for:

1. Towels
2. Locks
3. Lockers
4. Shop materials
5. Drafting supplies
6. Home Economic materials
7. Workbooks
8. Materials in science classes
9. Book rental
10. School educational trips that are required to successfully achieve course credit
11. Vocational or special education

School districts **may** charge students for:

1. Class or organizational dues
2. Admission fees to athletic contests, dances and plays
3. Student activity cards on voluntary basis
4. Fees for external tests, such as National Merit and college entrance
5. Deductions for damage or loss of school-owned books and non-consumable supplies through the collection of reasonable refundable deposits
6. Club dues (FFA, FHA, etc.)
7. Lunch
8. Yearbooks
9. Football shoes
10. Gym shoes
11. Swimming suits
12. Bus transportation for nonresident students
13. School sponsored educational trips, unless such trips are a requirement of the course, in which case they must be provided without charge.
14. Shots (vaccinations)
15. Summer school courses, when such courses (programs) are not part of a scheduled year-around program
16. Caps and gowns
17. Insurance fees for interscholastic athletics consistent with present statutes
MEMORANDUM

TO: State Board of Education  August 12, 1970
FROM: Eugene Krasicky
Assistant Attorney General


Introduction

In the Bond case, the Michigan Supreme Court unanimously held that the provisions of Article VIII, Section 2 of the 1963 Michigan Constitution, commanding the legislature to "... maintain and support a system of free public elementary and secondary schools ..." included free textbooks and school supplies. This decision has prompted many requests concerning its scope and application to a variety of charges currently imposed in one or more public school districts. This memorandum will provide clarification of the controlling law although it must be observed that it is virtually impossible to anticipate all the potential questions in the area of charges and fees.

I. Matters adjudicated in Bond.

A. General or Registration Fees.

In Bond, the Circuit Court held the general fees, which were referred to as registration fees, invalid under Article VIII, Section 2 of the 1963 Michigan Constitution. The Supreme Court granted the refund of general fees collected after commencement of the suit, thus confirming the holding of unconstitutionality. Thus, it is crystal
clear that school districts may not impose any general fees or registration fees.

B. Materials tickets charges or course fees.

In Bond, the Circuit Court held the materials tickets charges, referred to as course fees, invalid under Article VIII, Section 2. These fees were paid by each child, prior to taking certain courses such as industrial arts, home economics and art, to pay for the cost of materials used in the course. The Circuit Court denied the requested refund of these fees, as did the Court of Appeals, although the Court of Appeals affirmed the basic holding of the trial judge as to the invalidity of charging the fee. This issue was not raised in any way in the Supreme Court. Thus, the conclusion is compelled that school districts may not impose any course fees or materials tickets charges.

In this regard, it should be noted that in OAG No. 4376, 1963-64, pp. 484-86, it was held that, under Article VIII, Section 2 of the 1963 Michigan Constitution, school districts were barred from charging either registration fees or course fees. Thus, the decision in Bond on these items is hardly a new development in the law affecting school districts.

C. Interscholastic Athletic Fee.

The Circuit Judge held the fees for participation in interscholastic athletic activities unlawful, under MSA 1968 Rev Vol §15.3788, for the reason that defendant's
official policy did not take into account those students who could neither pay the fee nor earn it. No appeal was taken on this issue by either side.

D. Textbooks and School Supplies.

The trial judge and the Court of Appeals held that Article VIII, Section 2 does not include free textbooks and school supplies. The Court of Appeals specifically ruled that the word "free" employed therein was not to be equated with the words "without cost or charge." See (1969) 18 Mich App 506, 512. The Supreme Court, at p. 6, expressly reversed that ruling. However, the Supreme Court, at pp. 6-8, clearly indicated that the question still remains as to what is "free." Textbooks and school supplies are free only because:

Applying either the "necessary elements of any school's activity" test or the "integral fundamental part of the elementary and secondary education" test, it is clear that books and school supplies are an essential part of a system of free public elementary and secondary schools. (p. 8)

Thus, the holding on these questions compels the conclusion that school districts must provide free textbooks and school supplies. However, the rationale of the holding clearly indicates that not every aspect of public elementary and secondary education is free.

The opinion in Bond, supra, does not draw any distinction between required and elective courses. Further, the decision is not based upon whether the cost of the textbook or school supply is large or small. Rather, the decision is premised upon the idea that textbooks and school supplies are essential to elementary and secondary
education. Thus, the decision is given meaning, in concrete circumstances, by reference to the required items in the curriculum of the various public school districts.

The unanimous holding in Bond precludes any rental fee for textbooks or any requirement that students purchase their textbooks from private sources. This holding also prohibits any charge for such required instructional materials as workbooks, weekly readers or other required magazine subscriptions. These items, to the extent they are required for use in the classroom curriculum, must be provided free of charge by the school district.

The decision in Bond also means that school districts must provide, without charge, such school supplies as paper, pencils and crayons together with whatever other supplies are required for use in classroom activities. This would also include the materials to make whatever projects are necessary to meet the course requirements in such classes as shop, industrial education, home economics, art and drafting. In addition, musical instruments must be provided free, on a reasonable basis, to the extent that they are required for use by qualified students enrolled in curricular music courses who do not voluntarily provide their own instruments.

A towel fee may not be imposed in connection with physical education courses. Also, lock and locker fees for usage during the school day for the purpose of storing books, supplies and clothing are prohibited. In this context, these items are necessary elements of the school's curricular activity.
II. Other types of fees and charges in light of the
decision in Bond.

A. Fees for extracurricular activities.

In Webster's Seventh New Collegiate Dictionary, p. 296, the word "extracurricular" is defined, in substance, as school activities outside the scope of the regular curriculum that carry no academic credit. The distinction between curricular and extracurricular activities has previously been recognized by the Michigan Supreme Court in the case of Cochrane v. Mesick Consolidated School District Board of Education (1960), 360 Mich 390. In Cochrane, supra, Justice Kavanagh, writing for affirmance, in an opinion concurred in by two other justices, stated the following:

"... Football contests between schools are extracurricular in nature. The right to provide such activities is clearly recognized. Constitutional provisions and statutes giving the right to receive education and physical training cannot properly be said to include interscholastic sports as a necessary requirement of education. ..." (p. 418)

In Paulson, et al v. Minidoka County School District No. 331, et al (1970), 463 P 2d 935, the Idaho Supreme Court ruled that optional social and other extracurricular activities were not necessary elements of a public school education. Thus, the Court concluded that such activities need not be provided free of charge under the Idaho Constitution.

Thus, based upon the language quoted above in Cochrane, supra, together with the ruling in Paulson, supra, and the rationale employed in the Bond case that only necessary or...
fundamental aspects of public education must be provided free, it is concluded that voluntary extracurricular activities need not be provided free of charge under Article VIII, Section 2 of the 1963 Michigan Constitution. Consequently, such items as fees for participation in interscholastic athletic activities, admission fees to school athletic contests, dances or plays, school club or class dues, and charges for school yearbooks or cap and gowns, are constitutionally permissible.

However, they are only permissible to the extent that participation in such activities is optional with the student outside the regular curriculum. Any activity in which students are graded or evaluated and academic credit is given, or any activity in which participation is required for obtaining a diploma, does not fall with the phrase "extracurricular activity" as employed herein.

Moreover, it should be observed that fees for extracurricular activities are subject to appropriate statutory regulations. For example, the legislature has chosen to regulate the charging of insurance fees for participation in interscholastic athletics. (See MSA 1968 Rev Vol §15,3788). Further, fees for student activity cards designed to cover the cost of various extracurricular activities in a lump sum are only permissible on a voluntary basis. This type of fee may not be imposed generally upon all students regardless of whether they choose to participate
in the extracurricular activities. Paulson, supra.

Further, any sanctions for failure to pay required fees for extracurricular activities may only relate to participation in the specific extracurricular activity for which the fee was not paid.

B. Charges for damage or loss of school property and refundable deposits.

The decision in Bond obviously did not create any right in students to abuse or lose the public property of a school district. Pursuant to MSA 1968 Rev Vol §15.3578, boards of education may make and enforce rules and regulations for the preservation of school district property. Further, pursuant to MSA 1968 Rev Vol §15.3886, boards of education may establish rules and regulations for the careful use and return of textbooks. Thus, it is clear that boards of education may charge students for damage to books and supplies, over and above ordinary wear and tear, and for the loss of books and supplies.

In this regard, there is also substantial support for the proposition that boards of education may impose reasonable refundable deposits to cover damage to textbooks over and above ordinary wear and tear. Segar, et al. v. Board of Education of the School District of the City of Rockford (111. 1925), 148 NE 289, and Paulson, supra, at page 938, Footnote 8. Such deposits, if both reasonable and refundable, would also be permissible for school
supplies of substantial value that are not consumable items. Any required deposit should not exceed several dollars in amount. Further, provision must be made for those children unable to pay the deposit in a manner that is reasonably calculated to protect them from embarrassment. This can best be done through contact with parents, rather than children, in determining inability to pay, whenever possible.

Finally, it should be observed that it is the school officials who determine the quality and quantity of school supplies, such as paper and pencils, that are reasonably required for use by the pupil for a given length of time. Also, any pupil who voluntarily decides to bring his own school supplies may do so.

C. Miscellaneous items not covered under the Bond decision

The express language of Article VIII, Section 2, relating to elementary and secondary education, obviously does not include adult education courses offered by the public schools.

Also, during the oral presentation of this cause before the Supreme Court, it was stated, in response to questions from the bench, that no claim was being made that Article VIII, Section 2 included free food or clothing. Consequently, the opinion in Bond cannot be read as requiring either free school lunches or clothing.
under Article VIII, Section 2 of the 1963 Michigan Constitution.
QUESTIONNAIRE ON FEES

In November, 1970, after extensive staff work, a detailed questionnaire was developed and sent to all superintendents of public high school districts. The main thrust of this document was to gather information to assist the department in determining the estimated additional funds that are needed, for the 1970-71 school year, by the schools to maintain present school programs and comply with the requirements of the decision of the Michigan Supreme Court in the Case of Bond, Fusfeld and Frank J. Kelley vs. the Public Schools of the Ann Arbor School District.

The figures listed below represent the estimated spending for the listed items of the 402 districts returning the questionnaire. These districts have a total 1970-71 student enrollment of 1,410,607, or 65% of the total enrollment of the public schools of the state (2,179,494).

As a result of information obtained on the questionnaires, the following is a listing of the amounts spent by the 402 school districts in the 1969-70 school year and prior to the decision of the State Supreme Court, and the estimated spending in the 1970-71 school year (after the decision was in effect) for selected expenditure items:

<table>
<thead>
<tr>
<th>Questionnaire</th>
<th>1969-70</th>
<th>1970-71</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Education Programs</td>
<td>$2,302,956</td>
<td>$2,982,716*</td>
</tr>
<tr>
<td>Band Instruments</td>
<td>584,536</td>
<td>1,041,924</td>
</tr>
<tr>
<td>Book Rental</td>
<td>519,440</td>
<td>151,408</td>
</tr>
<tr>
<td>Home Economics Materials</td>
<td>306,466</td>
<td>522,354</td>
</tr>
<tr>
<td>Paper</td>
<td>921,392</td>
<td>2,129,634</td>
</tr>
<tr>
<td>Pencils</td>
<td>113,109</td>
<td>331,116</td>
</tr>
<tr>
<td>Science Materials</td>
<td>276,061</td>
<td>395,967</td>
</tr>
<tr>
<td>Shop Materials</td>
<td>909,565</td>
<td>1,307,036</td>
</tr>
<tr>
<td>Summer School</td>
<td>1,443,585</td>
<td>1,491,799</td>
</tr>
<tr>
<td>Textbooks (regular)</td>
<td>5,541,543</td>
<td>9,795,590**</td>
</tr>
<tr>
<td>Textbooks (supplemental)</td>
<td>882,207</td>
<td>1,158,183**</td>
</tr>
<tr>
<td>Weekly Periodicals</td>
<td>187,900</td>
<td>429,426</td>
</tr>
<tr>
<td>Workbooks</td>
<td>868,542</td>
<td>1,742,694</td>
</tr>
</tbody>
</table>

Totals | $14,857,302 | $23,479,867 |

1970-71 increase over 1969-70 = 8,622,565

*(Item 5) The increased costs for adult education as indicated is the difference in spending for the two years (1969-70 and 1970-71). This increase is due to the fact that, as a result of the Court's decision, school boards may not charge tuition if the students are working toward high school graduation. This has resulted in increased spending by local boards of education, as many boards have previously charged tuition to all students enrolled in adult education.
The increase in anticipated spending for textbooks for the 1970-71 school year amounts to approximately $4,200,000. This increase is for approximately 2/3 of the students of the state. The total state spending for textbooks is estimated at $6,300,000. Supplemental textbooks would increase that figure by about $600,000, for a total of $6,900,000.

In February, 1970, the State Board of Education, as a result of a 1966 survey and based on the estimated use of textbooks as five years, estimated the cost for each of the 2,500,000 students at $10.00 per student, for a total (five year) expenditure of $25,000,000.

It was recommended that the State assume one-half of the cost of the books, and based on the assumption that no more than 40% of the books would be required the first year, the State Board recommended that $5,000,000 be appropriated the first year and that $1,875,000 be appropriated for each of the four succeeding years, for a total of $12,500,000.

The figure, $23,479,867, represents the anticipated spending of the 402 reporting school districts representing 65% of the total state school enrollment. Assuming that the remaining 121 high school districts (those not returning questionnaire) spent the same amount per pupil as the 402 included in this report, the schools of this state will spend nearly $36,000,000 for items listed above, or approximately $16.50 per pupil.

It was recommended to the State Board of Education that one-half of the cost, or $18,000,000, be included as part of the proposed State Aid Act to provide funds to school districts to pay one-half of the cost of textbooks, supplies and equipment. Board members should recognize that the total $18,000,000 will not have to be duplicated each year, because some items such as textbooks and band instruments do not have to be replaced on an annual basis.

It was further recommended to the State Board of Education that the method of distribution of this fund be based on a sliding scale predicated upon the State Equalized Valuation of school districts—high valuation districts getting the least per pupil, low valuation districts receiving the most per pupil. This can be done either on the basis of a line item categorical appropriation, or the appropriation can be included as part of the basis membership allowance. It is my recommendation that the net basic membership allowance of each district be increased 2.31 percent, which will provide for the distribution of $18,000,000 in 1971-72.
<table>
<thead>
<tr>
<th>No. of Pupils in each group</th>
<th>No. of Districts</th>
<th>S.E.V.</th>
<th>Per Pupil</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>135,548</td>
<td>61</td>
<td>$30,000 &amp; above</td>
<td>$4.00</td>
<td>$542,192.00</td>
</tr>
<tr>
<td>106,840</td>
<td>28</td>
<td>25,000 - 29,999</td>
<td>5.25</td>
<td>560,910.00</td>
</tr>
<tr>
<td>351,216</td>
<td>72</td>
<td>20,000 - 24,999</td>
<td>6.50</td>
<td>2,282,904.00</td>
</tr>
<tr>
<td>807,848</td>
<td>138</td>
<td>15,000 - 19,999</td>
<td>7.25</td>
<td>5,856,898.00</td>
</tr>
<tr>
<td>636,144</td>
<td>214</td>
<td>10,000 - 14,999</td>
<td>9.50</td>
<td>6,043,368.00</td>
</tr>
<tr>
<td>198,295</td>
<td>100</td>
<td>5,000 - 9,999</td>
<td>12.50</td>
<td>2,478,687.50</td>
</tr>
<tr>
<td>8,988</td>
<td>13</td>
<td>Below 5,000</td>
<td>15.00</td>
<td>134,820.00</td>
</tr>
<tr>
<td>2,244,879</td>
<td>626</td>
<td></td>
<td></td>
<td>$17,899,799.50</td>
</tr>
</tbody>
</table>

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APPENDIX C

BOND V. ANN ARBOR PUBLIC SCHOOLS

(NORTH WESTERN REPORTER)
Lillian B. Bond and Daniel Fusfeld, on behalf of themselves and all parents of children attending the elementary and secondary schools of the Defendant School District, Plaintiffs-Appellants,

and

Frank J. Kelley, Attorney General of the State of Michigan, Intervenor-Appellant,

v.

The PUBLIC SCHOOLS OF the ANN ARBOR SCHOOL DISTRICT, a municipal corporation, Defendant-Appellee.

No. 5.

Supreme Court of Michigan.

July 17, 1970.

Class action to enjoin alleged unconstitutional collection of fees for books and school supplies and to recover fees collected. The Circuit Court, Washtenaw County, William F. Ager, Jr., J., enjoined assessment and collection of fees, upheld fees for purchase of textbooks and school supplies and denied recovery of fees collected unconstitutionally. The Court of Appeals, 18 Mich.App. 506, 171 N.W.2d 557, affirmed and plaintiffs appealed. The Supreme Court held that books and school supplies were essential part of system of free public elementary and secondary schools and school could not charge for such items, and that where school district continued to collect fees after commencement of action and notwithstanding Attorney General's opinion holding imposition of registration fees to be invalid, plaintiffs were entitled to judgment for fees paid even though school district had spent such fees and refund to each plaintiff would be small.

Affirmed in part, reversed in part and case remanded.

1. Constitutional Law 14

First rule court should follow in ascertaining meaning of words in Constitution is to give effect to plain meaning of such words as understood by people who adopted it.

2. Schools and School Districts 159

Term "free" as used in constitutional provision relating to free schools means without cost or charge. M.C.L.A.Vonst. 1963, art. 8, § 2.
3. Constitutional Law  16

Where meaning of word used in Constitution is plain, it is not necessary to resort to extrinsic evidence to determine meaning of that word.

4. Schools and School Districts  168

Books and school supplies were essential part of system of free public elementary and secondary schools and school could not charge for such items. M.C.L.A.Const. 1963, art. 8, § 2.

5. Judgment  204

If class action was properly brought, fact that sum to be recovered is small for each member of class, or that expense may be entailed in making refund, or that funds have been used by defendant, ought not to bar recovery.

6. Judgment  204

If class action is successful, fruits of action should not be denied to class unless reasons for denial are most cogent.

7. Schools and School Districts  159

Where notwithstanding Attorney General's opinion that imposition of registration fees was invalid school district continued to collect fees after commencement of action claiming their collection was invalid, plaintiffs were entitled to judgment for fees paid even though school district had spent such fees and refund to each plaintiff would be small.

8. Costs  32(1)

Where parties are arrayed in lawsuit in which both sides undoubtedly conceive themselves to be proceeding in public interest, some balance must be struck so that side prevailing is not compelled to bear burdensome cost of achieving favorable decision.

9. Attorney and Client  155

Procedure to be followed in awarding attorney's fees out of recovery in class action set forth.
Douvan, Harrington & Carpenter, by Arthur E. Carpenter, Ann Arbor, for plaintiffs-appellants.


Roscoe O. Bonisteel, Roscoe O. Bonisteel, Jr., Richard B. Bailey, Ann Arbor, for defendant-appellee.

Before BRENAN, C. J., and DETHMERS, KELLY, BLACK, T. M. KAVANAGH, ADAMS and T. G. KAVANAGH, JJ.

PER CURIAM.

I. Statement of Facts

Plaintiffs sued defendant School District, a municipal corporation, on their own behalf and on behalf of all other parents of school children attending the elementary and secondary schools of defendant. They designated their action as a class suit and sought a judgment requiring the district to permit all qualified children to enroll and attend school without payment of any fees or the purchase of any books, supplies, or equipment incident to any portion of the curriculum or other recognized school activity; an injunctive order restraining defendant from assessing or collecting any fees and from requiring the purchase of any books, supplies or equipment by children entitled to attend its schools; and a judgment ordering defendant to refund to the members of the plaintiff class all sums assessed to and collected from the members or their children as general fees commencing with the fall term of 1966 and continuing for each semester thereafter until the injunctive relief against such fees was granted.

Plaintiff's demands were based on the provisions of Article 8, § 2, Constitution of 1963.

Plaintiffs conceded in their amended complaint "that no children to the knowledge of the Plaintiffs are refused admittance or expelled from the Defendant's schools for failure to pay said fees." Plaintiffs claimed, however, that large amounts were illegally collected by defendant from its pupils as general fees, so-called, determined pursuant to a schedule adopted by the Board of Education of defendant. Student fees were deposited in the general fund of the School District, the same as tax revenues, but were identified by a separate account.

Plaintiffs also challenged the legality of defendant's action in collecting for materials tickets in specialized courses such as photography, art, home economics and industrial arts, and the imposition of interscholastic athletic fees. Defendant explained the materials ticket as a card which the student purchased at the general office. As materials were used, the teacher punched out the amount
The trial court adjudged the general fees to be illegal and in violation of Article 8, § 2, Constitution of 1963. By a judgment filed May 10, 1968, it permanently enjoined defendant from assessing or collecting any general fees as then established from the children or their parents for attendance in the elementary and secondary schools of the District. Refund of the general fees collected since commencement of plaintiffs' suit was denied. The trial judge denied relief from the requirement that children of the plaintiff class purchase textbooks, miscellaneous supplies, and equipment, holding that there was no conflict with the Constitution's requirement of free education. He found the materials tickets system as then established to be in violation of the Constitution and permanently enjoined defendant from requiring any of its students to pay any fees for materials tickets as a condition of enrollment in any class offered by defendant. Refund of amounts expended for materials tickets was denied. The trial court struck down the interscholastic athletic fees as unconstitutional and issued a permanent injunction against further collection. No refund had been requested and none was allowed.

Plaintiffs appealed those portions of the circuit judge's decision regarding the purchase of textbooks and school supplies and the denial of the refund. Defendant did not file a cross-appeal. The Court of Appeals affirmed the decision of the lower court (18 Mich. App. 506, 171 N.W.2d 557). We granted leave to appeal (382 Mich. 787). Plaintiffs request here a determination that defendant is without power under our present Constitution to require that pupils in the elementary or secondary schools furnish books and supplies at their own expense; that defendant be enjoined from requiring or requesting any student enrolled in any course or recognized school activity to furnish any textbooks or supplies at his own expense; and a judgment for the full amount of the general fees collected, aggregating $140,862, together with interest, with remand to the circuit court for administration of the judgment in accordance with this Court's opinion.

II. The Meaning of the Word "Free" in Article 8, § 2, Constitution of 1963

Does the word "free," as used in Article 8, § 2, Constitution of 1963, mean free books and supplies to students in attendance at public elementary and secondary schools? Article 8, § 2, reads as follows:

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.
Article 11, § 9, Constitution of 1908, provided in pertinent part as follows:

The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; * * *.

Because there was no specific discussion at the Constitutional Convention of 1961 of the reasons for the use of the word "free" in Article 8, § 2, Constitution of 1963, the trial judge and the Court of Appeals concluded that there was merit in defendant's contention that to adopt a concept of complete and total subsidizing of pupils would have required persuasion and extended discussion at the convention. Since there was almost no discussion of the provision, those courts concluded that the word "free" did not include textbooks and school supplies.

[1] The first rule a court should follow in ascertaining the meaning of words in a constitution is to give effect to the plain meaning of such words as understood by the people who adopted it. See People ex rel. Twitchell v. Blodgett (1865), 13 Mich. 127, 141, 167; People v. Board of State Canvassers (1949), 323 Mich. 523, 528-529, 35 N.W.2d 669; and Michigan Farm Bureau v. Secretary of State (1967), 379 Mich. 387, 390-391, 151 N.W.2d 797.

[2] The word "free" is susceptible of various meanings, depending upon the context in which it is used. As the word is used in Article 8, § 2, Constitution of 1963, however, it clearly means without cost or charge and must have been so commonly understood by the people.

[3] Since we hold that the meaning of the word "free" is plain, as used in Article 8, § 2, Constitution of 1963, it is not necessary to resort to extrinsic evidence to determine the meaning of that word.

The question still remains, however, as to whether books and supplies are necessary to a system of free public elementary and secondary schools. In the case of Paulson et al. v. Minidoka County School District No. 331 et al. (1970), 93 Idaho 469, 563 P.2d 935, a school district had adopted a fee schedule charging each student $25.00, with $12.50 being itemized for textbooks and $12.50 being itemized for school activities. Plaintiff refused to pay the fee. Upon his graduation, the school district refused to furnish him a transcript of courses studied and grades achieved. Plaintiff brought suit to compel the school district to furnish him a transcript, claiming that the $25.00 fee violated Article 9, § 1, of the 1890 Idaho Constitution, which provides:

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to
establish and maintain a general, uniform and thorough system of public, free common schools.

The Idaho Supreme Court said (pp. 938-939):

Textbooks are necessary elements of any school's activity. They represent a fixed expense peculiar to education, the benefits from which inure to every student in equal proportion (ignoring differences in ability and motivation) solely as a function of his being a student. Unlike pencils and paper, the student has no choice in the quality or quantity of textbooks he will use if he is to earn his education. He will use exactly the books, prescribed by the school authorities, that his classmates use; and no voluntary act of his can obviate the need for books nor lessen their expense. School books are, thus, indistinguishable from other fixed educational expense items such as school building maintenance or teachers' salaries. The appellants may not charge students for such items because the common schools are to be "free" as our constitution requires.

The test adopted by the Idaho Supreme Court—"necessary elements of any school's activity"—is a sound construction of the meaning of the word "free," as used in the Idaho Constitution.

Upon trial of this case, plaintiff class sought to introduce evidence of the importance of textbooks to the educational system of this State by means of the testimony of Robert Trezise of the Michigan Department of Education. The following occurred:

THE COURT: The Court would take judicial notice and I believe we have had testimony that there are textbooks used in the Ann Arbor Public School System. Would this be the extent of his testimony?

MR. CARPENTER: No, his testimony would go further, your Honor. I think the Court would properly take judicial notice that the textbooks are an integral fundamental part of the elementary and secondary education.

THE COURT: Is there any denial of this, Mr. Bailey?

MR. BAILEY: No.

THE COURT: I think we could stipulate to it.
In the case of Crowley v. Bressler (1943), 181 Misc. 59, 41 N.Y.S.2d 441, at 445-446, the court notes: "No education of any value is possible without school books."

[4] Applying either the "necessary elements of any school's activity" test or the "integral fundamental part of the elementary and secondary education" test, it is clear that books and school supplies are an essential part of a system of free public elementary and secondary schools.

III. Refund of Fees Paid Since Commencement of Suit

The trial court denied repayment of the fees on the ground that plaintiff's action was not a proper class suit, because of administrative inconvenience and costs to defendant, and because the court found the School District acted in good faith. Plaintiffs have waived claim of refund for all charges or payments except the refund of general fees collected by defendant since the commencement of this suit.

[5-7] The Court of Appeals found plaintiff's action to be a proper class suit. The action was treated as a class suit by the trial court. If the class action was properly brought, the fact that the fees to be recovered are small for each member of the class, or that expense may be entailed in making a refund, or that the funds have been used by defendant, ought not to bar recovery. It is in the very nature of a class action that the claim of each individual member of the class may be such as to alone scarcely warrant pursuit of repayment. If an action is successful, the fruits of the action should not be denied to the class unless the reasons for denial are more cogent. We do not perceive here such difficulties as would merit denying recovery. This situation was one peculiarly adapted to a class suit. The claim of each member of the class alone did not warrant an action, all members were affected in like manner by the action of defendant, and the issue was one that demanded legal clarification.

As bearing on the question of good faith, on October 16, 1964, the Attorney General rendered an opinion (OAG 1963-64, No. 4376) in which he ruled that Article 8, §2, Constitution of 1963, providing for free public elementary and secondary schools, bars boards of education from imposing registration fees as a condition to registration of pupils in elementary and secondary schools of the school district and that a board of education may not lawfully charge fees for participation in courses such as band or for participation in athletic programs. This suit was commenced on September 6, 1966. At that time the plaintiff class sought an injunctive order restraining defendant from assessing or collecting any fees. In an effort to prevent the collection of fees for the 1967-68 school year, on July 28, 1967, plaintiffs obtained an order to show cause why the collection of fees should not be enjoined. The injunction was denied. In the face of the opinion of the Attorney General, of the action of the plaintiff class in instituting this lawsuit, and of their continued effort to prevent the collection of fees during the two years...
the suit was progressing through the circuit court, we do not find upon this record such a showing of good faith by defendant as warrants refusal of relief.


Following the decision in Merrelli, in Beachlawn Building Corporation v. City of St. Clair Shores (1963), 370 Mich. 128, 121 N.W.2d 427, an action was brought to recover excessive fees paid for building permits under the ordinance that had been declared invalid in Merrelli. In holding the payments to have been involuntary, Justice Dethmers, speaking for a unanimous Court, quoted with approval the following from the early case of City of Detroit v. Martin (1876), 34 Mich. 170 (p. 174):

There is no doubt but that where the parties do not stand upon equal terms, as * * * where the plaintiff was entitled to a license, and the defendant to grant it, but refused to deliver it except upon payment of a sum of money he was not entitled to * * * in all such cases, the party pays under compulsion and may afterwards in an action of assumpsit recover back the amount of the illegal exaction.

See also, Beachlawn Building Corporation v. City of St. Clair Shores (1965), 376 Mich. 261, 136 N.W.2d 926.

The case of Theatre Countrol Corporation v. City of Detroit (1963), 370 Mich. 382, 121 N.W.2d 828, involved an annual "demand charge" by the City of Detroit for users of water furnished by the city to parties operating air conditioning equipment which did not recirculate the water. This Court found the charges were arbitrary and unreasonable. It was pointed out that plaintiffs could, from a practical standpoint, pursue no other course but to pay the added charges and await a determination of their rights by final disposition of the case. Plaintiffs were held entitled to a return of the unwarranted charges.

One of the reasons for requiring a refund of the fees in this case is to provide a fund from which can be paid a reasonable attorney fee to the attorneys for plaintiffs. This action has progressed through three courts of this State. Suit was begun in circuit court on September 6, 1966, and was concluded with judgment filed May 10, 1968. Proceedings in the Court of Appeals ran from May 17, 1968 to August 25, 1969. Proceedings in this Court were begun on August 20, 1969, with application for leave to appeal and conclude with opinion and order.
of this Court in mid-1970. Plaintiffs' appendix in this Court alone runs to 478 pages.

[8] We are not unmindful of the fact that the fees which were exacted were used by defendant or of the relative smallness of each fee. Nevertheless, where the parties are arrayed in a lawsuit, as here, in which both sides undoubtedly conceive themselves to be proceeding in the public interest, some balance must be struck so that the side prevailing is not compelled to bear the burdensome costs of achieving a favorable decision.

[9] We remand this cause to the circuit court for the entry of a judgment against defendant for the amount of the general fees collected by it in the sum of $140,862, plus interest from date of collection of same, from which there shall be deducted the fees of plaintiffs' attorneys as shall be set forth in itemized statement of same and approved by the Circuit Judge, costs of notification and distribution to the plaintiff class, and other non-taxable costs. The trial court shall determine the ratio which the remainder of said judgment bears to the total judgment and such ratio shall be used to determine the proportion of refund to be paid to each individual member of the class for general fees paid by that member to the School District during the school years 1966-67 and 1967-68. The court shall designate, as its officer for the purpose of making refund to the members of the class. The court shall provide for notice by regular mail to each member of the plaintiff class advising that the demand of such member, as prorated will be paid upon claim for payment by the member to the designated officer. In addition to notice by regular mail, the court shall provide for notice once each week for three consecutive weeks in a newspaper of general distribution in Washtenaw County. The court shall provide for a cut-off date for the filing of claims, which date shall be not less than six months from the last date of the giving of notice by regular mail and publication. Following the cut-off date for the filing of claims and the payment of all proper claims, the officer designated by the court shall make report of his doings to the court and the judgment rendered by the court shall be deemed satisfied notwithstanding the fact that the total amount of said judgment may not have been paid out. Any funds then outstanding to satisfy the balance of said judgment shall be returned to defendant.

The circuit court and the Court of Appeals are affirmed in part and reversed in part in accordance with this opinion. The case is remanded to the trial court for further proceedings in accordance with this opinion. Costs to plaintiffs in all courts.
BIBLIOGRAPHY


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