A STUDY OF THE ROLE OF CONGRESSIONAL INTENT AND THE PROTECTION AFFORDED LOCAL SCHOOL DISTRICTS AGAINST A REDUCTION IN STATE AID FUNDS AS A CONSEQUENCE OF RECEIVING FEDERAL REVENUE SHARING FUNDS

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PREFACE

This study attempts to determine the legislative and judicial protection afforded local school districts against a reduction of state aid funds as a consequence of receiving federal revenue sharing funds. While no special revenue sharing for education programs has yet been enacted by the United States Congress, such a program has been before the Congress since 1971. It can be anticipated that the concept of revenue sharing shall be an important aspect of public finance in the United States in the future, and this study is directed to some of the potential results of the concept being employed in financing public education.

I wish to express my appreciation to my adviser, Dr. Lloyd L. Garrison, Head of the Department of Administrative Services and Business Education, and to the other members of my advisory committee, Dr. Carl R. Anderson, Dr. Joe W. Fowler, and Dr. Herbert M. Jelley, for the opportunity to conduct a study somewhat different from those usually undertaken in the Department. They have afforded me a unique chance to combine past educational and professional experience with the field of business education.

Hopefully, this study will serve as a word of encouragement to my brother, Jim. Preparation for the legal profession is long and arduous, but the many and varied opportunities presented to the successful candidate make the effort required for entry worthwhile, which, perhaps, this study, in some way, demonstrates.

Finally, special gratitude is expressed to my wife, Marilyn, who, while engaged in her own academic endeavors, has consistently provided encouragement and understanding through my doctoral program.

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CHAPTER I

INTRODUCTION

Revenue Sharing

The year 1972 long will be remembered as the year in which bold experimentation was undertaken in the area of governmental finance. That year saw the initial sharing of federal revenue directly with the states and local governments.[1]

The mechanics of revenue sharing are relatively easy to describe. Under the federal legislation, funds currently are being provided to state governments by the federal government virtually "with no restrictions."[2] Congress only prohibits revenue sharing funds from being used as a state's contribution where other federal programs provide funds on a matching basis.[3]

Local governments as well are receiving federal revenue sharing funds, and Congress has directed that they be used only for priority items, including public safety and transportation, environmental protection, health, recreation, libraries, social services, and financial administration.[4] While at the present time the list is rather all-inclusive from the standpoint of the services

traditionally provided by local governments in the United States,[5] the existence of restrictions on the use of revenue sharing funds by such governmental units makes this facet of the program significantly different from that involving state participation in revenue sharing.

As enacted in 1972, federal sharing of revenue with these two types of governmental bodies is to exist for at least five years.[6] The significance of revenue sharing for purposes of this study, however, is the potential role it has in financing public education. Currently, local ad valorem property taxes play a large role in such funding in every state except Hawaii.[7] President Richard M. Nixon, and others, however, have criticized the inequities in the property tax method of school financing,[8] and the federal administration has proposed taking the pressure off the states through revenue sharing.[9]

A federal program of special revenue sharing to aid the educational efforts of states and local educational agencies is currently before the United States Congress. The Better Schools Act of 1973, supported by President Nixon, has been introduced in the Senate by Senator P. Dominick (R-Colo.),[10] and in the House of Representatives by Congressman A. Bell (R-Cal.).[11] The major purpose of the Act is to repeal a number of existing federal educational assistance programs and to replace them with special revenue sharing.[12]

Statement of the Problem

Education funds provided by local ad valorem property taxes and by certain federal programs traditionally are supplemented by aid from state governments to local school districts. The major problem to which this study addressed itself was to determine the sources and degrees of protection (if any) that are afforded local educational agencies from having state aid reduced as a consequence of those agencies receiving federal revenue sharing funds. The current methods of calculation of the amount of state aid vary from state to state,[13] and no value judgments were made concerning each state's respective plan. Rather, the study sought to determine whether and to what extent a state plan for providing aid to local educational agencies can take into consideration federal aid funds provided to local agencies through revenue sharing.

Within the framework of the above described general purpose of this study, three major objectives can be identified. They are

1) to gather in one document representations of the rationale of every American appellate court opinion which has decided issues relating to reductions in state aid to local school districts as a consequence of those districts receiving federal funds;

2) to provide state and local school administrators and other interested individuals an analysis of the potential consequences of alternative congressional statutory formulations in federal revenue sharing for education; and

3) to analyze federal revenue sharing for education proposals currently before the Congress, so that, should circumstances warrant, state and local school administrators may be able to respond effectively to those proposals to the maximum benefit of their students and districts.

Procedure

Since the major portion of this study required the analysis of cases from various jurisdictions dealing with the same point of law, extensive use was made of the Key Number System of Classification of the American Digest System, published by West Publishing Company, St. Paul, Minnesota. The West Key Number classification system provides a topical listing of subject matter, with a short analysis, usually no longer than a brief paragraph, of each reported appellate case dealing with a particular subject.[14]

The American Digest, comprised of the Century Digest, the Decennial Digests, and the General Digest, is the master index to all of the case law of the United States. It provides the citation for every case relevant to the topic

under consideration in this study from 1658 to the present day. The Century Digest cites those cases decided from 1658 through 1896, while the First Decennial Digest through the Seventh Decennial Digest cover ten-year periods from 1897 through 1966. The General Digest, Fourth Series, currently in 29 volumes, cites cases from 1966 through the current year.

Of the seven Main Divisions of the West Key Number classification system, number seven is "Government." Under this heading are six Subheadings, the third of which is "Legislative and Executive Powers and Functions." Of the 18 Digest Topics under this Subheading, the fourteenth is "Schools and School Districts." Section II under the fourteenth Subheading is entitled "Public Schools," while subsection A under section II is "Establishment, School Lands and Funds, and Regulations in General." Key Number 19 under the Digest Topic "Schools and School Districts" is entitled "Apportionment and disposition," with 19 (1) being headed "In general." All of the cases which have dealt with the issue under consideration should appear under this Topic and Key Number, "Schools and School Districts, 19 (1)."[15]

Each relevant case cited by this system, from the earliest reported through the latest, was analyzed to determine the role of the federal and state statutory language in affording protection (if any) to local educational agencies against a reduction of state aid funds as a

consequence of those agencies receiving federal assistance, and is included in this study. Each case cited as authority for its position on the issue of this study by a court referred to under the appropriate Topic and Key Number was read by the investigator, and, where such a cited case contributes to a resolution of the problem herein considered, an analysis of that cited case also is included in this study. Where either a principal case included under the appropriate Topic and Key Number or a case cited (as described above) by a principal case had been cited as authority in a subsequent decision dealing with the issue of this study, the subsequent decision was read by the investigator, and, where such a subsequent decision contributed to a resolution of the problem of this thesis, an analysis of that subsequent case also is included.

These case analyses are grouped according to significant similarities in the federal assistance being provided in each instance. In the initial series of cases, resources were provided to the inhabitants of local geographic areas for the use and support of their schools. The second group of cases dealt with instances in which federal funds were given to states for the benefit of designated schools therein. The final line of decisions involved federal payments directly to local educational agencies to assist those agencies in meeting their responsibilities. Within each such grouping the analyses of the individual cases are presented in chronological order,

from the earliest to the latest. Special emphasis was given to four possible controlling influences in the resolution of the issues presented by the cases:

1) the expressed intent of Congress;
2) the form of the federal assistance;
3) the payee of the federal assistance;
4) the source of the controlling law.

The cases relevant to this study have interpreted and analyzed specific pieces of federal legislation providing resources to local educational efforts in determining the expressed intent of Congress, the form and the payee of the federal assistance, and the source of the controlling law. It was necessary, therefore, to review in some detail the language of the federal statutory provisions of importance to these cases in order to recognize the bases of the courts' decisions, and to project the significance of these decisions to the issue of whether and to what extent protection is afforded local school districts against a reduction of state aid funds as a consequence of receiving federal revenue sharing funds. The analyses of past and current federal legislative enactments precedes the analyses of the cases in which the respective statutes were construed.

Finally, federal revenue sharing for education proposals currently before the Congress was analyzed to determine where they fall within the framework of congressional legislation, court decisions, and the protection afforded

local school districts. This study presented some indication of the local school districts' vulnerability to state reduction of state aid funds under the revenue sharing for education proposals before Congress. It is further anticipated that this study will help federal, state, and local legislative and administrative officials become aware of the critical importance of the specific language employed in any federal revenue sharing for education statute ultimately adopted by the Congress so that the effort to provide for effective and efficient use of resources in education may be advanced.

Specifically, the cases relevant to the topic of this study may be divided into three groups: those involving federal grants to inhabitants of townships for the use and support of their schools, those involving federal grants to states for the benefit of specified schools, and those involving federal payments to local educational agencies to assist them in carrying out their educational missions. The particular legislation enacted by Congress is presented first for each of these three groupings, and is followed immediately by an extensive examination of courts' responses under the respective statutes to reductions in state aid to local educational agencies as a consequence of receiving federal funds. Then, a brief history of federal revenue sharing for education proposals is presented, followed by an examination of the declaration of congressional intent and the designation of the form and the payees of

the federal funds of revenue sharing for education proposals currently before the United States Congress. The protection afforded local educational agencies against a reduction in state aid funds as a consequence of receiving federal revenue sharing funds under the current proposals is determined using past legislation and litigation as authority and precedent, and the study concludes with a statement summarizing the findings made and suggesting the conclusions to be drawn.

FOOTNOTES

[1]31 U.S.C. §§ 1221-1263 (Supp. II, 1972).

[2]*Revenue Sharing Bill Attaches Few Strings to Funds*, Engineering News-Record, June 29, 1972, at 47.

[3]31 U.S.C. § 1223 (a) (Supp. II, 1972).

[4]*Id.* § 1222.

[5]*See* J.W. Wyatt & M.B. Wyatt, Business Law Principles and Cases 9 (4th ed. 1971).

[6]31 U.S.C. § 1224 (b) (1) (Supp. II, 1972).

[7]Porras, *The Rodriguez Case - A Crossroad in Public School Financing*, 26 The Tax Lawyer 141.

[8]*See* Rodriguez v. San Antonio Independent School Dist., 337 F.Supp. 280 (W.D.Tex. 1971), *rev'd*, 93 S.Ct. 1278 (1973).

[9]Tulsa Daily World, March 22, 1973, § A, 1, col. 1.

[10]S. 1319, 93d Cong., 1st Sess. (1973).

[11]H.R. 5823, 93d Cong., 1st Sess. (1973).

[12]*See id.* § 20.

[13]*See* ch. 5 *infra*.

[14]"The great practical value of the Key Number System to the profession lies in the fact that a lawyer, once having located the Topic and Key Number, has ready access to all American cases that have litigated his question. . . . The advantage of the system is that he can mechanically extend his search to: . . . (4) all American cases from 1658 to the present date by examining the same Topic and Key Number in the American Digest." West's Law Finder 17-18 (1967).

[15]"Every time a case is decided on a certain point of law, the digest paragraph dealing with that point is placed in the box assigned to that point of law. Therefore,

every box will have in it digest paragraphs from all cases that have dealt with its assigned point of law." West's Law Finder 17 (1967).

CHAPTER II

THE CONGRESSIONAL TOWNSHIP GRANTS AND LITIGATION

The Creation of the Congressional Township Funds

Later to become the subject of extensive litigation, the first effort on the part of Congress to provide resources to aid local educational efforts was made in the early part of the nineteenth century. Recognizing the weakness of the then popular metes and bounds and monuments methods of real property description, the federal government adopted the rectangular survey April 26, 1785.[1] This system, based on meridians, or surveying lines running north and south, and base lines, or surveying lines running east and west, divided the area surveyed into quadrangles, twenty-four miles square. These quadrangles were subdivided into sixteen areas called townships, each measuring six miles square, or thirty-six square miles. Finally, these townships were again subdivided into thirty-six one mile square sections.

The sections in each township were numbered in a uniform manner, with the section (measuring one mile by one

mile) in the northeast corner of the township (measuring six miles by six miles) being designated number "one." The section west of section "one" was designated "two," and so through section "six." The section south of section "six" was numbered "seven," while the section east of section "seven" was numbered "eight," and so through section "twelve." The section south of section "twelve" was designated number "thirteen," and a similar pattern of numbering first six sections west and then six sections east was followed until all 36 sections of the township had been numbered.[2]

On May 20, 1785, a federal ordinance "to ascertain the mode of disposing of lands in the western territory" provided that "there should be reserved the lot number sixteen of every township, for the maintenance of public schools within the said township."[3] Further, the act of March 26, 1804, which provided for the disposal of the public lands in the Indiana territory, stated, "the section 'number sixteen' . . . shall be reserved in each township for the support of schools within the same."[4] While both of these provisions *reserved* lands for public education, it was not until 1816 that the beneficial interest in the lands was divested by the federal government.

The people of Indiana were authorized, on April 19, 1816, to form a state government and secure admission to the Union.[5] By section six of the enabling act, Congress

offered the convention of the territory of Indiana certain propositions, including,[6]

> *First.* That the section numbered sixteen, in every township, and when such section has been sold, granted, or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

This offer was accepted by the Indiana State Constitutional Convention, June 29, 1816, in its Acceptance of the Congressional Enabling Act.[7]

In 1828, Congress authorized the sale of the lands that had been reserved for public schools and granted to the inhabitants of the congressional townships.[8] The legislature of the State of Indiana was empowered to sell and convey such lands, and to invest the proceeds of the sale, which proceeds were to[9]

> be forever applied, under the direction of said legislature, for the use and support of schools, within the several townships and districts of the country for which they were originally reserved and set apart, and for no other use or purpose whatsoever . . . .

The congressional intent expressed in these statutes is rather broad. The reservation in the ordinance of May 20, 1785, is "for the maintenance of public schools within the said township,"[10] where the section is located. The purpose of the reservation as expressed in the 1804 act is "for the support of schools within the same."[11] The Indiana enabling act's grant not only named a purpose, but also included an indication of who the grantees were to be: "to the inhabitants of such township for the use

of schools."[12] Finally, the 1828 federal legislation providing for the sale of the lands reserved included the purpose to which the funds were to be applied: "for the use and support of schools, within the several townships and districts of the country for which they were originally set apart."[13]

Clearly the inhabitants and their schools were the objects of the congressional generosity. Just as clearly, in each of these congressional enactments, Congress was attempting to aid educational funding by providing resources directly to the local level. Each of the four statutes cited specifically mentioned the township, a geographical subdivision of the state, not the state itself, as the resting place for the aid provided. Indeed, in the Indiana enabling act, the grant is not even made to a local educational agency within the current definition of that term. Rather, the grant is made to the inhabitants who would be served by such an agency.

It should be noted also that the form of aid given in the first three statutes considered was land. The reservations made in the 1785 and 1804 legislation dealt with sections, and the initial grant made in 1816 also was in the form of land. In 1828, however, the state was authorized to convert the land into other property through sale. All subsequent legislation with which this paper will deal provided assistance in the form of moneys.

The Congressional Township Fund Litigation

Since the Indiana constitution of 1851 was considered, either directly or indirectly, in each of the five decisions to be discussed in this section, it is appropriate to examine certain of its provisions at this point. Section one, article eight of the Indiana constitution of 1851 called for the state's general assembly

> to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

The same article also provided, in the second section, "The common school fund shall consist of the congressional township fund, and the lands belonging thereto; [and other funds]," and, in the seventh section,

> All trust funds, held by the state, shall remain inviolate, and be faithfully and exclusively applied to the purpose for which the trust was created.

The Indiana school law of June 14, 1852, called for the consolidation in one general and common fund of all common school funds, from whatever source derived.[14] More specifically, the act of 1852 provided[15]

> *Sec.* 2. The funds heretofore known and designated as the congressional township fund, [and other funds] . . . and all funds heretofore appropriated to common schools, [and other funds] . . . shall be denominated the common school fund, the income of which, together with [certain property taxes] shall be applied to the support of the common schools.

The Indiana supreme court observed[16]

> In brief, the law diverts the proceeds of the sixteenth section from the use of schools in the congressional township where the land is situated, to the use of the school system of the state at large.

State v. Springfield Township (1854)

The complaint in *State v. Springfield Township*[17] questioned the validity of the state statutory provision, which, if enforced, would have diverted the income of the Springfield township fund (the proceeds of the sale of the sixteenth section in Springfield township), amounting to 7,423 dollars and 36 cents, from the use of the inhabitants of Springfield to the support of schools elsewhere in Indiana. In addressing the issue, "Was it competent for the state so to divert the township fund?,"[18] the court concerned itself with "the purpose for which the congressional township fund was created,"[19] and held that the term "inhabitants" in the act of April 19, 1816, was a term of exclusion.[20]

> Those living beyond the limits of the township are excluded from sharing the income of the sixteenth section or its proceeds. The word *inhabitants*, as there used, is of itself sufficiently potent to confine the expenditure of the fund for the use of schools within and for the township.

In relying on the federal statutory language of 1816 and 1828, the court concluded[21]

> The point of inquiry is the intention and purpose of the grant. . . . [I]t is dedicated to a particular use, for the benefit of particular persons. That use is the schools of the township; and the persons to be benefited,

> the inhabitants of the township in which the lands are situated.

The court was not concerned that, notwithstanding the above conclusions concerning the grant, the act of May 24, 1828, indicated that the proceeds were to be applied "under the direction of said [Indiana] legislature."[22] In treating the legislature as a trustee for purposes of the Indiana constitution, article eight, section seven, the court reasoned,[23]

> The supervision exercised by the legislature over the township fund is but an implied necessity sanctioned by congress. It extends only to protecting and administering, not diverting, the fund.

The court was thus able to conclude that the school law of 1852, by consolidating the congressional township fund with other state and local funds, did not "faithfully and exclusively apply that fund to the purposes for which it was created."[24] The court held,[24]

> The operation of the law is to distribute to the people of the state at large a school fund created for the exclusive use of the inhabitants of Springfield township.
>
> To that extent the law is in violation of the seventh section of article eight of the constitution, and therefore void.

It is significant in this case that the court's primary concern was whether the consequences of the state statute were a violation of the state constitution. While it may have been easy to strike down under the supremacy clause of the United States Constitution the state funding scheme as violative of congressional intent in making the

congressional township fund grants, the Supreme Court of Indiana held that the state scheme must fall because it violated the Indiana constitution.

In the view of the instant court, the intent of Congress as expressed in the federal statutes was secondary in importance in this case to the intent of the people of Indiana as expressed in their constitution. Thus, in this initial decision concerning federal aid to funding public education, the intent of Congress and the purpose of the congressional grants were significant only in ascertaining whether the state was following the dictates of its own constitution. The law which controlled the outcome of the case was found by the court to be in the Indiana constitution, the wording of which was held to require the faithful and exclusive use of trust funds, of which, the court held, the congressional township funds were one example, to the purpose for which the trust was created.

Quick v. White-Water Township (1856)

The Indiana constitution again played a significant role in the second in the series of cases relating to the congressional township funds of the state. In *Quick v. White-Water Township*,[26] however, the focal point of judicial consideration shifted from the seventh section of article eight to the first section of the same article, requiring the legislature[27]

> to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

While *State v. Springfield Township*[28] dealt with an attempt to divert funds, granted by Congress to inhabitants of a geographic area within a state, i.e., the township, away from those beneficiaries, *Quick v. White-Water Township*[29] was concerned with the first reported attempt by a state to reduce its aid commitment to a local educational agency because that agency had received funds from a federal source. That attempt was remarkably successful.

It should be pointed out here that apparently no legal significance need be attached to the distinction between inhabitants and townships as recipients of the congressional township fund grants. While the latter may constitute local educational agencies, certainly the former do not. Nevertheless, the Indiana supreme court, in *State v. Springfield Township*,[30] as authority for refusing to permit the state to divert the funds, quoted approvingly language of the United States Supreme Court.[31]

> 'The citizens within the township are the beneficiaries of the charity. The title to these lands has never been considered in the state; and it has no inherent right to appropriate them to any purpose other than for the benefit of schools. For the exercise of the charity under the laws, the title is in the township.' *Vincennes University v. Indiana*, 14 How. 268.

Therefore, there is considerable sanction, in both the United States Supreme Court and the Indiana supreme court, for treating the grant to the inhabitants as a grant to

a local educational agency, in this instance, the township.

The Indiana school law enacted March 5, 1855, required the state superintendent of public instruction annually to distribute the amount of the income of the common school fund in each county and the amount of taxes collected for school purposes to the state's several counties according to the number of students therein, without considering the congressional township fund.[32] After receiving the county's distribution from the state, the county treasurer of each county was directed to distribute the income to which his county was so entitled to the several townships and incorporated cities and towns of his county.[33] The county treasurer, however, was directed to ascertain the amount of the congressional township fund belonging to each city, town, and township, and to apportion the income of the common school fund as to equalize the per student amount available in each city, town, and township.[34] In analyzing the statutory provision, the Indiana supreme court explained,[35]

> [T]he legislature enacted that the sums of money arising annually from these latter sources [i.e., state funds and tax revenues], should be just as unequally distributed in the townships of the several counties, as was the interest on the congressional township fund, but in inverse order, so that the aggregate amount, from the two sources, viz., the congressional township fund and the appropriations on the part of the state, distributed in each township, should, relatively to the number of scholars therein, be equal.

The facts of *Quick v. White-Water Township*[36] outline the practice of reducing state aid. On May 3, 1855, there were 435 dollars and 17 cents in accrued interest on the congressional township fund in White-Water township.. At the same time, there were 608 children entitled to distribution of the school fund. Thus, the per capita distribution of the fund amounted to a fraction over 71 cents.

If the state appropriations had been made by the treasurer of Franklin county to each local educational agency without regard to the principle of equalization outlined above, each eligible child in White-Water township would have drawn, from that source, 72 cents, which, when combined with the 71 cents from the congressional township fund, would have amounted to 143 cents per student. The complaint in the case alleged, however, that if the equalization under the state statute were carried out, each child in White-Water township would have received, from both sources, only 109 cents. Since the congressional township fund was fixed at 71 cents per student, it is apparent that the state aid commitment to White-Water was to be reduced to 38 cents from 72 cents per student in an effort to equalize per student funds countywide, as required by the statute.

In deciding whether to grant the complainant a permanent injunction against the auditor and treasurer of Franklin county, prohibiting the distribution of the state appropriations according to the 1855 statute, the court

relied on the first section of article eight of the Indiana constitution.[37] The Indiana supreme court held in the instant case, consistent with its holding in *State v. Springfield Township*,[38] that the state constitution not only permitted, but required[39]

> 1. That the interest on the congressional township fund shall be distributed, or remain with the townships, alike unequally as the fund itself exists unequally in the townships.

In order to carry out the provisions of article eight, section one of the constitution, however, the court further held[40]

> 2. That the proceeds of the whole of the common school fund, of which, as we have seen, the congressional township fund is to be considered, in distribution, a part, are to be so distributed as to produce equality and uniformity in the school system throughout the state; and as a necessity, therefore,
>
> 3. That the proceeds of the said fund, other than the interest on the congressional township fund, must be unequally distributed, in order to produce the equality required by the constitution in the final result. Instead, therefore, of the prohibition of, we find a command for, an unequal distribution of the school fund, other than the congressional portion of it.

Quick v. White-Water Township thus represents the initial judicial sanction of a reduction of state aid to a local educational agency because of the agency's receipt of federal funds. It is significant that the court found the reduction required by the Indiana constitution's directive to the legislature to provide for a uniform system of common schools. After treating the Indiana constitution

as the law dispositive of the case, and after determining that the state statutory provision did not conflict with, but was, indeed, required by, the state constitution, however, the court did deal rather summarily with the notion of a possible conflict between the state statute and the federal legislation's intent.[41]

> The law does not conflict with any act of congress, as it does not assume to vary the distribution of the congressional township fund from the conditions of the grant.

Quick v. Laurel Township (1861)

In *Quick v. White-Water Township* the Indiana constitution was found not only not to protect the local educational agency against a reduction in state aid funds as a consequence of receiving federal assistance, but also to require such a reduction in its attempt to provide equality and uniformity in the schools of the state. The Indiana supreme court affirmed its position five years later in *Quick v. Laurel Township*,[42] where it was given the opportunity to reconsider its interpretation of the constitutional mandates, by reversing a judgment of the Franklin circuit court[43]

> for the reasons given in *Quick et al. v. White-Water Township*, 7 Ind. 570, the questions arising in the record of each case being similar.

Quick v. Springfield Township (1856)

The third case in the instant line, *Quick v.*

Springfield Township,[44] confirmed the holding of *Quick v. White-Water Township*[45] regarding the lack of a conflict between the federal and state statutes. While the court does not discuss the facts of the case in its opinion, it appears the plaintiff, Springfield township, sought a permanent injunction against the auditor and treasurer of Franklin county, claiming[46]

> the annual income arising from that [congressional township] fund shall not be taken into account, as said act [i.e., the act of March 5, 1855] requires, in making distribution of the revenues of the state derived from other trust funds and from taxation.

The plaintiff township's attack was two-fold. First, as had White-Water township's complaint in *Quick v. White-Water Township*,[47] the complaint in the instant case alleged that the state statute violated the state constitution. Second, and of major significance, the complaint in *Quick v. Springfield Township* raised again, as had the complaint in *White-Water Township*, the issue of whether the state statute violated the act of Congress making the congressional township grants.[48] Since the *White-Water Township* decision had been based on the provisions of the Indiana constitution primarily, with the potential conflict between the federal and state legislation considered only in passing, it may have been expected that this second case alleging a conflict between the state act of March 5, 1855, and the Congressional Act of April 19, 1816, would have

examined more closely the relationship between those legislative enactments.

Again the Supreme Court of Indiana, however, turned primarily to the Indiana constitution in its holding. The issue, as formulated by the court, was whether[49]

> the people of the state, while seeking by a constitution to devise a system which should convey the means of instruction equally to every child in the state, [had] the power, by virtue of her sovereignty, so to discriminate between those already provided with a fund, and those who had no such provision, as to place them upon an equality.

The argument of the plaintiff was that the school law of 1855 did indirectly what the school law of 1852 had attempted to do directly. The court adhered to its decision in *State v. Springfield Township*,[50] which had held that the legislative attempt to consolidate the congressional township fund with other funds of the state was void. The court, however, indicated that while the legislation dealt with in that case attempted to take away funds from the inhabitants of Springfield township, no such attempt was made in the act of March 5, 1855.[51]

> There is certainly a material difference between taking away what one has, and the refusal to give him more. So far as the constitution affects the question, the power to discriminate exists, unless it is prohibited, and the prohibition is neither pointed out, nor have we been able to find it in that instrument.

The court then directed its attention to the congressional enactment making the grants, as it had in *State v. Springfield Township*.[52] While in that case the search

for the purpose of the federal legislation was to determine whether that purpose was being adhered to faithfully, as the Indiana constitution required, the search in the instant case apparently was to determine whether there was a conflict between the state and federal legislation. The court held,[53]

> What we have said disposes of the other point. The act [of March 5, 1855] does not conflict with the act of congress making the grant, nor in any manner attempt to interfere with it.

Quick v. Springfield Township restated the two-major holdings of *Quick v. White-Water Township*.[54] First, the Indiana supreme court affirmed its position that although a potential conflict between the state and federal legislation was raised as an issue in both cases, the controlling law in cases of the kind of *Quick v. Springfield Township* and *Quick v. White-Water Township* was to be the Indiana constitution. In its decision in each case, the court turned first to the constitutional provision requiring a uniform statewide school system, and concluded that the federal effort could aid in achieving that goal.

Second, the court's language in describing the effect of the state statute on the federal aid in *Quick v. Springfield Township* appears to be to the same point, although expressed in broader terms, than the corresponding language in *Quick v. White-Water Township*. In each case, the court held that the Indiana school law of 1855 did not conflict with the Act of Congress making the grant in question.[55]

In *Quick v. White-Water Township* it was further observed that the reason for such a holding was that the state act "does not assume to vary the distribution of the congressional township fund from the conditions of the grant."[56] In *Quick v. Springfield Township*, however, the court offered no reason for its position, but expanded slightly its conclusion to include that the state legislation did not "in any manner attempt to interfere with"[57] the Act of Congress making the grant.

State v. Mathews (1898)

The facts of the final case in this sequence of Indiana supreme court decisions went beyond an attempted diversion of funds provided by Congress,[58] and a mere reduction in the amount of state aid to a local educational agency based on the presence of a source of funds provided by the federal government.[59] *State v. Mathews*[60] confronted the elimination of state aid to a local educational agency as a consequence of that agency having received federal funds.

The plaintiff in *State v. Mathews*[61] sought a writ of mandamus to compel the Monroe county auditor to distribute state school funds to Perry township. The funds in question were generated by a state tax on the real estate and personal property in Perry in 1895, and were to be distributed on the last Monday of January, 1897.[62] At that time, the interest on the congressional township fund

belonging to Perry township amounted to 525 dollars and 39 cents, or one dollar and 45 cents per student.

Exclusive of the congressional township fund belonging to Perry, the entire common school fund available for distribution in Monroe county in January, 1897, was 8,328 dollars and 11 cents. The children of school age in the county, exclusive of those in Perry township, numbered 5,926; thus, the per capita fund available to the students in Monroe, outside of Perry township, amounted to just over one dollar and 40 cents. Since this amount was less than the per pupil fund available to the Perry students from the Perry congressional township fund, the county auditor had refused to distribute any of the common school fund, exclusive of its congressional township fund, to Perry.[63]

In affirming the Monroe circuit court's denial of the writ, and thereby permitting an exclusion of state aid to Perry township, the Indiana supreme court held[64]

> that said Perry township was not entitled to any of the school fund collected from the tax assessed under the general law, so long as the interest on her congressional fund alone amounts to more *per capita*, as appears by the facts found, than was left in the hands of the county auditor to apportion to the other townships.

The court did consider the purpose of the congressional enactment as controlling the issue of the use of the funds. In relying in part on *State v. Springfield Township*,[65] the court observed,[66]

> The only reason why in attempting to equalize the distribution of the school fund by the State a portion of this may not be taken away, is that the terms of the congressional grant by which it was made forbid it.

The instant court, however, extended its *Quick v. White-Water Township* and *Quick v. Springfield Township* decisions to the elimination of state aid, relying, in part, on those very decisions.[67]

> But it is settled law in this State that the common school fund derived from other sources may be validly and constitutionally unequally distributed by statutory authority, so as to make the whole, including the congressional township fund, when distributed, as nearly equal *per capita* to each school corporation as possible.

Summary of the Congressional Township Fund Cases

The acts of Congress first reserving and then granting sections numbered sixteen were rather vague in expressing the intent of Congress concerning the uses of the grants. The general philosophy that the sections, and the proceeds of the sales thereof after such sales were authorized by Congress, were to be used for the maintenance, support, and use of schools within the respective townships is found consistently in the four pieces of federal legislation analyzed. The fact remains, however, that Congress specified virtually nothing with respect to the administration of the reservations and grants made.

The reservations and the initial grants of the Congress took the form of land. By 1828, however, Congress had authorized the conversion of land into proceeds of a sale, and it should be noted that in none of the cases discussed was the fact that the original grant was in a form other than money crucial. Indeed, the first case discussed was not handed down until some 26 years after Congress authorized the sale of the sections in question, and dealt with the income from the proceeds of such a sale.

Under the provisions of the federal acts, it is very clear that the donees or payees of the grants were the inhabitants of the respective townships. While there is authority in both the United States Supreme Court and the Indiana supreme court for virtually equating "inhabitants" in such a context with the "local educational agency" of today, neither court was willing to consider the state as having any title or interest in the grant.

Since Congress had expressed only a general purpose and not an administrative formula for applying the grants, the courts in these decisions from 1854 to 1898 could look to no federal authority to resolve the primary issue raised by these cases. The Indiana supreme court consistently found the state constitution the controlling authority, with state statutory provisions merely filling in the specifics required by the constitution.

The language in *State v. Springfield Township*[68] indicates that when grants are made under conditions and circumstances as above described, those grants must be applied to the use specified by Congress, and for the benefit of those persons contemplated by the federal act. The court, however, did not reach such a conclusion based on federal authority. The requirements concerning the application of the grant were embodied in the state constitution, in that the constitution required the state to apply all trust funds to the purpose for which the trust was created. This requirement was read to prohibit, specifically, the diversion of funds provided one local educational agency for the support of common schools to another local educational agency.

Quick v. White-Water Township,[69] *Quick v. Springfield Township*,[70] and *Quick v. Laurel Township*[71] distinguish a reduction in state aid to a local educational agency as a consequence of that agency receiving federal funds under the congressional township fund legislation from a diversion of funds provided one local educational agency for the support of common schools to another local educational agency. In these cases the former state action was sanctioned, while *State v. Springfield Township's* repudiation of the latter was adhered to in *Quick v. Springfield Township*.[72] These cases establish the position that state aid can be reduced to a local educational agency as a consequence of it receiving federal funds, as required by state

law (in these instances, a constitutional provision), provided the specific funds granted by Congress are not tampered with by the state provision requiring or authorizing the reduction.

The holding in *State v. Mathews*[73] is the logical extension of the three "reduction" cases.[74] The Indiana supreme court merely extended its "reduction of state aid" rationale to an "elimination of state aid," and sanctioned the elimination of state aid to a local educational agency as a consequence of that agency receiving federal funds, while again upholding its *State v. Springfield Township* decision. Thus, it can be concluded that while a tampering with funds provided a local educational agency by a federal grant will not be upheld when such a tampering violates a state constitutional provision, where a companion state constitutional provision is found to require the reduction or elimination of state aid to a local educational agency as a consequence of that agency receiving federal funds, there is no prohibition against such a reduction or elimination available to such local educational agency striving to retain state aid to which it is otherwise entitled.

FOOTNOTES

[1]A. Ring, Real Estate Principles and Practices 97 (7th ed. 1972). The rectangular survey currently applies to 30 states. It does not apply to the original 13 states, the other New England and Atlantic Coast states (except Florida), or to Kentucky, Tennessee, Texas, or West Virginia.

[2]*Id.* 99.

[3]State v. Springfield Township, 6 Ind. 83, 88 (1854).

[4]Act of March 26, 1804, ch. 35, § 5, 2 Stat. 279.

[5]Act of April 19, 1816, ch. 57, 3 Stat. 289.

[6]*Id.* § 6 provides, in pertinent part, "*And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States." Then follows the language quoted in the text.

[7]Department of Public Instruction, State of Indiana, Bull. No. 154, School Law of Indiana 603 (1946).

[8]Act of May 24, 1828, ch. 91, 4 Stat. 298.

[9]*Id.* § 1.

[10]6 Ind. at 88.

[11]Act of March 26, 1804, ch. 35, § 5, 2 Stat. 279.

[12]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[13]Act of May 24, 1828, ch. 91, § 1, 4 Stat. 298.

[14]6 Ind. at 99 n.1 reads, in pertinent part, "The school law has been published in pamphlet form, with notes, &c., by the superintendent of public instruction. At page 26, the second section, embracing the consolidation feature, is thus introduced:

"'Sec. 2. By this section, all common school funds, from whatever source derived, are consolidated in one general and common fund, to be called the 'common school fund.' The county officers need therefore no longer keep on their books the several classes of public funds distinct.'"

[15]Law of June 14, 1852, § 2, as cited in 6 Ind. at 99 n.1.

[16]6 Ind. at 85.

[17]6 Ind. 83 (1854).

[18]*Id.* at 85.

[19]*Id.* at 87.

[20]*Id.* at 89.

[21]*Id.* at 91.

[22]Act of May 24, 1828, ch. 91, § 1, 4 Stat. 298.

[23]6 Ind. at 96.

[24]*Id.*

[25]*Id.*

[26]7 Ind. 570 (1856).

[27]Ind. Const., art. 8, § 1 (1851).

[28]6 Ind. 83 (1854)

[29]7 Ind. 570 (1856).

[30]6 Ind. 83 (1854).

[31]*Id.* at 95.

[32]Law of March 5, 1855, § 97, as cited in 7 Ind. at 572, provided, "The state superintendent shall annually, by the fourth *Monday* in *April*, in each year, make out a statement, showing the number of scholars in each county of the state, the amount of the income of the common school fund in each county for distribution, the amount of taxes collected for school purposes, and shall apportion the same to the several counties of the state, according to the enumeration of scholars therein, without taking into consideration the congressional township fund, in such distribution."

[33]Law of March 5, 1855, § 101, as cited in 7 Ind. at 572, provided, "The treasurer of the several counties shall annually, on the 3d *Monday* of *May*, make distribution of the income of the common school fund, to which his county is entitled, (upon the warrant of the county auditor,) to the several townships and incorporated cities and towns of the county, which payment shall be made to the treasurer of each township, and in making said distribution, the auditor shall ascertain the amount of the congressional township fund belonging to each city, town and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town and township, as near as may be, according to the number of scholars therein: provided, however, that in no case shall the income of the congressional township fund, . . . be diminished by such distribution, and diverted to any other township."

[34]*Id.*

[35]7 Ind. at 575.

[36]7 Ind. 570 (1856).

[37]Ind. Const., art. 8, § 1 (1851) provided, "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the general assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all."

[38]6 Ind. 83 (1854).

[39]7 Ind. at 577.

[40]*Id.*

[41]*Id.* at 578.

[42]17 Ind. 344 (1861).

[43]*Id.*

[44]7 Ind. 636 (1856). The decision in this case was handed down just five days after Quick v. White-Water Township, 7 Ind. 570 (1856), well before the holding of the latter case was confirmed in Quick v. Laurel Township, 17 Ind. 344 (1861).

[45]7 Ind. 570 (1856).

[46]7 Ind. at 636.

[47]7 Ind. 570 (1856).

[48]Act of April 19, 1816, ch. 57, 3 Stat. 289.

[49]7 Ind. at 639.

[50]6 Ind. 83 (1854).

[51]7 Ind. at 640.

[52]6 Ind. 83 (1854).

[53]7 Ind. at 641.

[54]7 Ind. 570 (1856).

[55]Act of April 19, 1816, ch. 57, 3 Stat. 289.

[56]7 Ind. at 578.

[57]7 Ind. at 641.

[58]State v. Springfield Township, 6 Ind. 83 (1854).

[59]Quick v. Laurel Township, 17 Ind. 344 (1861); Quick v. Springfield Township, 7 Ind. 636 (1856); Quick v. White-Water Township, 7 Ind. 570 (1856).

[60]150 Ind. 597, 50 N.E. 572 (1898).

[61]*Id.*

[62]Law of March 11, 1873, 4486 [Ind.]R.S. 1881, provided, "County auditor's apportionment.-118. The auditor of each county shall, semi-annually, on the second Monday of June and on the last Monday in January, make apportionment of the school revenue, to which his county is entitled, to the several townships and incorporated towns and cities of the county; which apportionment shall be paid to the school treasurer of each township and incorporated town and city by the county treasurer. In making the said apportionment and distribution thereof, the auditor shall ascertain the amount of the congressional township school revenue belonging to each city, town and township; and shall so apportion the other school revenue as to equalize the amount of available school revenue for tuition to each city, town and township, as near as may be, according to the enumeration of children therein, and report the amount apportioned to the superintendent of public instruction, verified by affidavit: *Provided, however,* That in no case shall the income of the congressional

township fund belonging to any congressional township, or part of such township, be diminished by such apportionment, or diverted or distributed to any other township."

[63]If the entire common school fund of Monroe county, including the congressional township fund, had been divided by the number of school age children of the entire county, the per capita fund available would have been only one dollar and 41 cents. 150 Ind. at 599.

[64]150 Ind. at 599.

[65]6 Ind. 83 (1856).

[66]150 Ind. at 600.

[67]*Id.*

[68]6 Ind. 83 (1854).

[69]7 Ind. 570 (1856).

[70]7 Ind. 636 (1856).

[71]17 Ind. 344 (1861).

[72]7 Ind. 636, 640 (1856).

[73]150 Ind. 597, 50 N.E. 572 (1898).

[74]*See* notes 70, 71, and 72 *supra*.

CHAPTER III

THE NATIONAL FOREST RESERVE AND FEDERAL FLOOD CONTROL AID AND LITIGATION

The Relevant Statutory Provisions

The second series of cases dealing with reductions in state aid to local educational agencies as a result of those agencies receiving federal aid funds began in the early 1920s. The most recent decision of the line was handed down July 27, 1972, by the Supreme Court of Washington. Involved in these decisions were funds provided by national forest reserve legislation[1] and federal flood control legislation.[2]

The initial litigation, *King County, Washingon, v. Seattle School District No. 1*,[3] interpreted the Act of Congress of May 23, 1908, providing,[4]

> Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood,

> and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

Significant differences are observable between the above-quoted statutory language and the language of the Act of Congress of April 19, 1816. The national forest legislation directs that the specific aid (moneys) under consideration "shall be paid . . . to the State,"[5] whereas the Indiana enabling act provided that the aid (land) "shall be granted to the inhabitants of such township."[6] Differences in both the type of aid and the donee of the payments are apparent. Furthermore, the purposes to which the funds were to be applied included a non-educational use ("for the benefit of the public schools and public roads of the county or counties in which such national forest is situated . . ."[7]) in the forest reserve legislation while the Act of 1816 required that the land be applied "for the use of schools."[8] Even when the Indiana legislature was authorized in 1828 to sell the land, the proceeds were to be used "for the use and support of schools."[9]

Grants similar to those provided in the national forest legislation[10] are found in the federal flood control legislation.[11] The latter statutory provision requires[12]

> 75 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for

> flood-control purposes shall be paid at the end of such year by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county, or counties, in which such property is situated: . . .

Like the national forest legislation, the above statutory language provides aid in the form of moneys, and designates the state as the payee of the aid funds. The non-educational use ("the benefit of . . . public roads"[13]) is also the same as in the national forest measure.

It is important to observe at this point that the sections of the federal statutes quoted hereto include all language in which Congress has expressed its intentions concerning the aid funds provided. In the national forest legislation[14] there is no clause which can be considered a "congressional will" clause, nor is there any intent of Congress provision. In 1960, the following language was enacted, but still no mention is made of the congressional intent concerning the funds provided for education:[15]

> It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. . . .

In the federal flood control legislation, two lengthy "declaration of policy"[16] sections have been included, but neither of them mentions the aid to education funds provided by the legislation.

It was the additional approved use of benefiting the public roads that gave rise to the controversy in *King County, Washington, v. Seattle School District No. 1.*[17] A Washington state statute directed the state treasurer to turn over to the county treasurers each county's share of aid provided by the national forest legislation, and further provided that "county commissioners of the respective counties to which the money is distributed are hereby authorized and directed to expend said money for the benefit of the public schools and public roads thereof, and not otherwise."[18]

Since part of the Snoqualmie Forest Reserve was located in King county, 20,106 dollars and 67 cents were turned over to the county treasurer from 1908 through 1918, inclusive, by the state treasurer from the proper amounts paid to the state by the Secretary of the Treasury. In 1908, 1916, 1917, and 1918, the county commissioners apportioned one-half of the year's allotment to the county school fund, and the other half of the year's allotment to the county's road and bridge fund. From 1909 through 1915, inclusive, however, the commissioners directed that all the funds provided by the national forest legislation be assigned to the road and bridge fund. The county treasurer made the distributions as directed.

Of the total amount distributed by the county treasurer from 1908 through 1918, 18,481 dollars and 43 cents were assigned to the road and bridge fund, while

1,624 dollars and 64 cents went to the common school fund. The latter amount is 8,428 dollars and 40 cents less than one-half the total received by the county.

Seattle School District No. 1, one of King county's school districts, claimed[19]

> to be entitled to such proportion of one-half the amount received in each year by the county as the annual school attendance in the district bore to the total attendance in all districts of the county. The amounts so claimed make a total of $6,789.22.

In overturning the federal district court's decree declaring the county and its treasurer to be trustees, requiring them to account, and allowing the school district to recover the sum claimed, the Court addressed the issue[20]

> whether the act [16 U.S.C. § 500 (1970)] permits the money so received by the county to be expended by the commissioners as directed by the state legislature, or requires an equal distribution annually for the benefit of public schools and public roads of the county.

The Court seemed to place considerable emphasis on who the payee of the aid funds was, and refused to find that a trust had been created by Congress in favor of the school district.[21]

> When turned over to the State, the money belongs to it absolutely. There is no limitation upon the power of the legislature to prescribe how the expenditures shall be made for the purposes stated . . . . No trust for the benefit of appellee [school district] is created by the grant.

The Court held the funds provided by the federal legislation to be "assets in the hands of the State to be used for the specified purposes as it deems best."[22]

It is apparent that the only limitations on state discretion with respect to the application of the funds provided by the federal government to the states are to be found in the language of the federal legislation granting those funds. This rationale has been followed consistently in all of the cases dealing with the national forest reserve funds[23] and the federal flood control rentals[24] relevant to this study. From the language in *King County*, however, state discretion may be concluded to rest on the fact that the state was named as the payee of the funds provided by the federal statute under consideration. It should be recalled that where the inhabitants of townships (and, by court recognition, local educational agencies) were the payees of the grant, the state could not divert the federal aid funds provided,[25] but could exercise wide discretion only with respect to other funds available to it for the support of public schools.[26]

The Forest Reserve and Flood Control Litigation

The initial litigation concerning a state's reduction of school aid funds under either the forest reserve or flood control statutes resulted in a decision favorable to the local educational agency involved. The principle observed in *King County*, however, of discretion being vested in the state as payee of the federal funds was upheld. While *King County* did not involve a reduction of state aid

funds because a local school district received federal aid, it did establish the right of the state to determine the use of the federal funds, provided the use was not inconsistent with the federal grant.

State ex rel. Board of Education of Independent School Dist. No. 19 of Wagoner County v. State Board of Education (1953)

In *State* ex rel. *Board of Education of Independent School Dist. No. 19 of Wagoner County v. State Board of Education*,[27] the federal aid funds in question were provided by the flood control legislation.[28] The Oklahoma legislature provided for a distribution of these federal funds as follows:[29]

> The State Treasurer of Oklahoma is hereby authorized to distribute moneys now in his hands, or hereafter received by him under the provisions of Section 7 of the Flood Control Act of Congress, approved August 18, 1941, in the following manner:
>
> Such moneys shall be distributed by the State Treasurer at the end of each fiscal year to counties wherein is located a federal flood control project, and one-half (½) of such moneys shall be distributed to the County Treasurer of such county to be by the County Treasurer apportioned to the public schools of the county upon an enumeration basis; . . .

The legislature of Oklahoma had provided a system of state aid to local school districts, the amount of such aid to be determined by subtracting the amount of a school district's "Minimum Program Income" from the costs of its

"Minimum Program." The legislature had directed that a district's "Minimum Program Income" was to include[30]

> a. Income from a levy of fifteen (15) mills actually made by a school district, and as to separate schools a levy of two and twenty-five hundreths (2.25) mills actually made in any county, on the assessed valuation. A ten per cent (10%) deduction shall be allowed for delinquent taxes.
>
> b. State Apportionment.
>
> c. County Apportionment.
>
> d. Gross Production Tax.
>
> e. Intangible Tax.
>
> Each of the above-mentioned items of Minimum Program Income from (b) to (e) inclusive, shall be ninety per cent (90%) of the amount actually collected from such source during the next preceding fiscal year calculated on per capita basis on the unit provided by law for the distribution of each such revenue.
>
> f. Basic aid actual amount allocated by State Board of Education.
>
> g. Auto License and Farm Truck actual collections during the previous year computed on a per capita average daily attendance basis.
>
> h. Transfer fees, as are now or shall hereafter be provided by law, in an amount equal to the amount which has been or should have been so appropriated, in the budgets of the sending districts for the use and benefit of the receiving districts.
>
> i. And all other revenue which can legally be estimated by the county excise board, as now provided by law or which shall hereafter be provided by law, *except* surplus cash and taxes in process of collection, tuition fees from pupils or their parents or guardians, state assistance and reimbursements for special programs, *Federal grants of aid and reimbursements.*

In *Wagoner County,*[31]

> [i]t was shown that the said school districts each, for the fiscal year here involved, were apportioned 'State Aid' in an amount, respectively, as was determined by the subtraction of its 'Minimum Program Income' from the cost of its 'Minimum Program' with its respective estimated revenues from 'Flood Control Rentals' included in the computation as an item of its minimum program income.

The issue, as formulated by the Supreme Court of Oklahoma, was[32]

> whether or not an item of estimated revenue from 'Flood Control Rentals' may properly be considered as an item of 'Minimum Program Income' in the calculation of a school district's apportionment of state aid.

In deciding the issue in the negative, and in allowing the plaintiff school districts an apportionment of additional state aid, the court relied solely on the language of the state statute.[33]

> The phrase 'Federal grants of aid and reimbursement' as used in the statute in a reference to the income of a school district clearly means all federal grants of money provided by law as income to a school district and whether the purpose of such grants is to extend aid or help or to serve as a reimbursement in the sense of a refunding or restoration. Accordingly, revenues from 'Flood Control Rentals' received or to be received by a school district pursuant to the Act of Congress and § 204, supra, which provides for a transfer of federal funds to the benefit of public schools, and ultimately to a school district, are under the statute, § 18-4, excepted from the definition of 'Minimum Program Income' and under said § 18-4 such revenues are not to be considered in the calculation of state aid.

The court, in the above holding, relied on no federal statute, nor congressional intent found therein, nor on any federal or state constitutional provision. By virtue

of the state statutory language, said the court in *Wagoner County*, the state itself had precluded the possibility of the state reducing state aid because of the receipt of federal flood control funds by school districts.

It should be observed that the statutory provisions interpreted in *Wagoner County* were found in the Oklahoma Statutes Supplement of 1949. In 1951, however, the state legislature amended what the *Wagoner County* court had found to be the controlling language,[34] and subsequent state aid to local educational agencies reductions were soon tested under the new provision.[35]

State ex rel. Boards of Education of Independent School Districts No. 1-2 and No. 1-3 of Marshall County v. State Board of Education (1955)

In *State* ex rel. *Boards of Education of Independent School Districts No. 1-2 and No. 1-3 of Marshall County v. State Board of Education*,[36] apportionment of state aid to the plaintiffs under the "Minimum School Program" was reduced by the exact amount of the flood control rentals included by the defendants in "Minimum Program Income" of the fiscal years ending June 30, 1952, and June 30, 1953. The plaintiff boards of education brought suit for a peremptory writ of mandamus in an effort to obtain a reapportionment of state aids funds for those years, contending that the flood control rentals under both state and federal

statutory provisions were excepted from "Minimum Program Income."

After noting its decision in *Wagoner County*, the Oklahoma supreme court further observed that the statutory language of its previous decision had been changed by the Oklahoma legislature. The pertinent paragraph for the years in question in *Marshall County* indicated that to be included in "Minimum Program Income" was[37]

> i. And all other revenue, including the amounts required by law to be charged and collected for tuition or nonresident and nontransferred pupils, which can legally be estimated by the county excise board, as now provided by law, or which shall hereafter be provided by law, *except* surplus cash and taxes in the process of collection, State Aid for Special Educational Program and *Federal reimbursements for approved vocational programs*.

The prohibition against including federal grants of aid and general reimbursements in "Minimum Program Income" had been changed by the legislature to a prohibition against including only federal reimbursements for approved vocational programs in such income. Because of the change in statutory language, the court had no trouble allowing the flood control rentals to be included in "Minimum Program Income" in *Marshall County*, thus affecting a reduction in state aid due to an infusion of federal funds under a program in which Congress had not declared its intent with respect to the use of those funds.

The plaintiffs in *Marshall County* did make an attempt to have the Oklahoma supreme court read into the federal

legislation a favorable statement of policy.[38]

> It is argued by plaintiffs that to reduce State Aid to these districts by the amount of Flood Control Rentals they receive is a violation of the Flood Control Act of Congress because it has the effect of depriving these school districts of the benefits thereof. In other words, they point out that if the school districts are to lose an amount of State Aid equal to the receipts from 'Flood Control Rentals' they gain nothing by receiving Flood Control Rentals.

The court reasoned, however, that such a construction of the federal statute as requested by the plaintiffs would amount to federal dictation as to how state funds were to be distributed.[39]

> . . . But we do not construe the Federal Statute as attempting to control the method by which this State apportions its own funds appropriated for Equalization Aid to its schools. There is, therefore, no violation of the Federal Statute.

State ex rel. Board of Education of Independent School District No. 17 (Coweta) of Wagoner County v. State Board of Education (1955)

The decision in *Marshall County* was handed down October 11, 1955. Two weeks later, on October 25, the court was given an opportunity to reverse its position in *State* ex rel. *Board of Education of Independent School District No. 17 (Coweta) of Wagoner County v. State Board of Education.*[40] The facts of the two cases were virtually the same, with the state's action for the fiscal year

ending June 30, 1953, questioned in *Coweta*. In denying the plaintiffs' request for reapportionment and further distribution of state equalization aid, the court, citing *Marshall County*, concluded[41]

> that 'Flood Control Rentals' are proper items of revenue to be included in 'Minimum Program Income' under provisions of 70 O.S.1951 § 18-4, subdivision 2, par. i.

The impact of *Wagoner County*, *Marshall County*, and *Coweta* is clear. Where there is no declaration of congressional intent with respect to funds provided under federal legislation for local school district use, courts are free to interpret state statutory provisions affecting the use of those funds without the danger of violating federal law. In *Wagoner County*, where the result of the suit challenging a reduction in state aid as a consequence of a local educational agency receiving federal assistance was favorable to the local district, such result was due to the wording of the state statutory provision involved. The statute itself provided for no reduction in state aid to the local school districts receiving federal assistance under the program involved.

In *Marshall County* and *Coweta*, an opposite result, unfavorable to the local districts involved, was also predicated on the language employed in the governing state statutory provision. It is apparent that no "loss of the benefits intended by the Congress" theory is available to local school districts striving to retain state aid

unreduced by federal assistance. Where Congress fails to direct this result, the cases discussed in this study to this point indicate that language sympathetic to the local educational agency's cause will have to be found in either the state constitution[42] or the state statutes[43] if that agency is to be afforded the protection it desires.

State ex rel. Board of Education of Independent School District No. 16 (Le Flore) of Le Flore County v. State Board of Education (1956)

It should not be assumed that the rationale of *Wagoner County*, *Marshall County*, and *Coweta* applies only to federal funds which the *Wagoner County* court called "Flood Control Rentals."[44] In *State* ex rel. *Board of Education of Independent School District No. 16 (Le Flore) of Le Flore County v. State Board of Education*,[45] the plaintiffs were school districts of Le Flore county, in which was located a national forest reserve contiguous to the districts. These districts had been receiving federal assistance under the same federal statutory provisions[46] discussed in *King County*.[47]

The funds provided by the forest reserve legislation were distributed by the Oklahoma legislature according to the following statute, which has remained unchanged since 1941:[48]

> Rental from forest reserves - Disposition and apportionment. - From and after the passage of this Act, each County Treasurer of this State shall, out of any funds hereinafter received by him from the United States Government as said County's share of the rentals from Forest Reserves located therein, immediately apportion same as follows:
>
> 1st. Twenty-five per centum of all money now on hand and hereinafter received to be prorated and apportioned among the various school districts of said counties situated and located contiguous to such Forest Reserves, according to the scholastic population thereof;
>
> 2nd. Seventy-five per cent (75%) of all such money now on hand and hereinafter received, shall be deposited in a special road fund to be expended on county highways leading into and away from such Forest Reserves, under the direction and supervision of the Board of County Commissioners of such County.

For the same fiscal years involved in *Marshall County*, the defendants in *Le Flore County* included as income an estimate of the amount of the federal forest reserve rentals in computing "Minimum Program Income" of the various districts under 70 O.S.1951 § 18-4, subd. 2, par. i, thus reducing, by the amount of such income, the apportionment of state aid to the respective districts under the Minimum School Program.

The court in *Le Flore County* found no practical difference in the national forest reserve and federal flood control legislation with respect to the educational funds provided and their application under the Oklahoma statutes. In denying the plaintiffs' request for a writ of mandamus to compel a reapportionment and further distribution of state equalization aid, the Oklahoma supreme court held,[49]

> It is our opinion that for the same reasons set forth in said case [i.e., *Marshall County*], it is proper to include in 'Minimum Program Income' that revenue which is received from Forest reserve rentals, there being nothing in the applicable statutes to justify a different rule as between the two sources of income.

Carroll v. Bruno (1972)

The final case in the instant line of authority demonstrates that judicial thinking concerning reductions in state aid to local educational agencies who receive federal funds under the national forest reserve and federal flood control programs has not changed. In *Carroll v. Bruno*,[50] the Supreme Court of Washington was faced with an attack by local school districts against the state superintendent of public instruction for the way in which state equalization aid was being distributed.

After recognizing that the United States owned a number of national forests which were not subject to state or local taxation, the court explained the purpose of the provision of funds under the national forest legislation.[51]

> As a contribution in lieu of taxes, the federal government pays to the state each year 25 per cent of all moneys received from national forest services. 16 U.S.C. § 500 (1960). The national forest funds are by law earmarked for the benefit of the public schools and public roads of the counties in which the national forests are situated.

It must be pointed out that the *Carroll* court was the first to mention the reason for the federal payments under

the national forest legislation. In being the first court in this line of decisions to observe that such payments were made "[a]s a contribution in lieu of taxes,"[52] the question must be raised whether the court had been influenced by the federal decisions of the mid-1960s involving "impact areas aid."[53] It has already been noted that the federal legislation itself is completely silent concerning the purpose of the payments,[54] and to suggest the source of the court's impression in *Carroll* would be speculation.

A Washington state statute provided for the state superintendent of public instruction to include 85 per cent of the national forest funds allocable to the schools in distributing state equalization aid funds to school districts in which all the projected revenues available to the district fell below a state per-student minimum.[55] Outlining the controversy of the case, the court said,[56]

> Appellants [school districts] contend that the superintendent should not credit the school districts with receipt of the funds before determining the state contribution, but rather that the district should be entitled to the state contribution and then, in addition, the federal forest moneys.

Here the school districts took the position that since the federal legislation provided funds for distribution by the state only to those districts in which national forests were located,[57]

> to include federal forest funds in the general statewide equalization formula spreads the benefits to the entire state and thus deprives the districts designated by federal law from the very benefits intended to be granted them.

The logic of this contention is somewhat compelling in light of the court's observation that the funds were provided, to some extent, at least, in lieu of local taxes. The districts argued that they were being deprived of the equal protection of the laws under the Fourteenth Amendment, and that the method of distribution contravened the statute which made the money available.

The *Carroll* court, in affirming the trial court's conclusion that the state superintendent's distribution was both constitutional and within the federal and state statutory schemes, relied heavily on the Oklahoma supreme court's decisions in *Le Flore County*[58] and *Marshall County*.[59,60]

> [*Le Flore County*] discussed the same question as we have before us, *i. e.*, whether Congress, in making federal forest funds available to the schools, intended to preclude the state from taking these funds into consideration when allocating state school equalization moneys to all of the state's districts. In that case, the court affirmed and adhered to the rationale of its earlier decision in State ex rel. Bds. of Ed., etc. v. State Board of Education, 289 P.2d 653 (Okl. 1955), holding it proper to reduce state aid to the school districts by the amount of federal flood control rentals paid by the United States to certain districts. 33 U.S.C. § 701c-3. The court said [289 P.2d, at 655]: [W]e do not construe the Federal Statute as attempting to control the method by which this State apportions its own funds appropriated for Equalization Aid to its schools. There is, therefore, no violation of the Federal Statute.

Carroll v. Bruno[61] serves to bring all of the cases discussed involving forest reserve and flood control educational aid funds up to date. By citing *Le Flore County*,

which had dealt with national forest reserve funds, and quoting *Marshall County*, which had dealt with federal flood control funds, the Washington supreme court left no doubt that it would permit a state reduction in aid funds based on local educational agencies receiving federal moneys under either program analyzed in this chapter.

Summary of the Forest Reserve and Flood Control Cases

Like the congressional township fund legislation reserving and granting land and money for the maintenance, support, and use of schools, the national forest reserve and federal flood control legislation lacks a specific statement by the Congress concerning its intent with respect to the funds provided by these enactments. In the national forest legislation there was no declaration of policy included by the Congress until 1960, well after the majority of cases in this section had been decided. When such a declaration was enacted, it made no mention of the funds provided for educational purposes. The federal flood control legislation contains two lengthy declarations of policy, neither of which have reference to the educational funds provided by the legislation.

While the congressional township fund legislation appears to have provided funds for the maintenance, support, and use of schools, the general philosophy of the grants of the national forest reserve and federal flood control

legislation appears even more broad. In both instances, funds are provided for the "benefit of" public schools and public roads of specified geographic areas, i.e., the counties in which the forest reserves or flood control lands are located. It should be noted that the sections making the grants contemplate a non-educational benefit (i.e., that of the public roads) in these instances as well. Further, as the schools of particular townships were specified in the congressional township legislation, schools and roads of specified counties were named in the national forest reserve and federal flood control measures.

It will be recalled that the initial reservations of the congressional township legislation was in terms of land, with Congress subsequently authorizing a conversion of that land into money. In the case of the instant statutes, money is the type or form of benefit Congress has attempted to bestow.

The major difference between the congressional township fund legislation on the one hand, and the national forest reserve and the federal flood control legislation on the other, is the donees or grantees named by Congress. In the former, the inhabitants of townships, and, by interpretation, then, local educational agencies, were named as payees or grantees. In the latter two federal statutes, however, Congress named the states as payees of the grants.

In the cases involving the national forest reserve and federal flood control grants, the courts early recognized the lack of federal directions concerning the application of the funds granted by Congress. Consistently the courts looked to statutory provisions enacted in the states as controlling the disposition of the funds granted. While no state constitutional issues were raised in these cases, as were raised in the congressional township fund cases, each of the decisions discussed in this chapter held the state law to be controlling with respect to the application of the grants.

An indication of the wide latitude to be accorded the states in the disposition of the funds paid to them under the national forest reserve legislation came early in the instant line of decisions. In *King County, Washington, v. Seattle School District No.1*,[62] the Court held that the funds granted to the states belonged to them absolutely, to use in any way not inconsistent with the congressional grant. The Court did not read the language of the federal statute providing funds for the benefit of the public schools and public roads of specific counties to mean that both must share in that benefit each year (the frequency of the grants). Thus, a state statute which permitted all of the benefit to go to public roads, pursuant to the actions of a board of county commissioners, was upheld.

State ex rel. *Board of Education of Independent School Dist. No. 19 of Wagoner County v. State Board of Education*[63] provided the only victory in the instant line

of cases for a local educational agency in its effort to prevent a reduction of state aid to that agency because that agency had received federal funds. It was a hollow victory, however. The principle of state discretion with respect to the proceeds of the grant from the flood control legislation was established, as it had been with respect to the national forest reserve legislation in *King County*. Indeed, in finding the protection against a loss of state aid the local agencies wanted, the court looked to a state statute which the court found prohibited such a reduction.

By the time *State* ex rel. *Boards of Education of Independent School Districts No. 1-2 and No. 1-3 of Marshall County* v. *State Board of Education*[64] and *State* ex rel. *Board of Education of Independent School District No. 17 (Coweta) of Wagoner County* v. *State Board of Education*[65] were handed down, the state statute which had afforded the local educational agencies protection against a loss of state aid as a consequence of receiving federal funds under the federal flood control legislation had been amended. Nevertheless, the Oklahoma supreme court in these cases found that the state statutory language still controlled the issue of whether such a reduction was lawful, and since such a reduction was no longer prohibited by the state statutes, the local educational agencies were no longer protected from such a loss. *State* ex rel. *Board of Education of Independent School District No. 16 (Le*

Flore) of Le Flore County v. State Board of Education[66] applied the same rationale to funds provided by the national forest reserve legislation that *Marshall County* and *Coweta* applied to funds received under the federal flood control legislation.

Carroll v. Bruno[67] served to update the holdings of the United States Supreme Court and the Oklahoma supreme court discussed in this chapter. Insofar as the lack of evidence of specific congressional intent and the controlling nature of state authority is analogous, *Carroll* also updated the holdings of the Indiana supreme court in the congressional township fund cases. The *Carroll* court was the only one to read into the national forest reserve legislation a declaration of congressional intent; nevertheless, the intent it supposed to be there was not sufficient to override what it found to be the compelling logic of *Le Flore County* and *Marshall County*. By citing approvingly both of these cases, the *Carroll* court served notice that there is today, nearly 20 years after *Le Flore County*, still no protection afforded local educational agencies against a loss of state aid funds as a consequence of those agencies receiving funds, through the state, provided by Congress in the national forest reserve and federal flood control acts.

FOOTNOTES

[1]16 U.S.C. § 471 et seq. (1970).

[2]33 U.S.C. § 701 et seq. (1970).

[3]263 U.S. 361 (1923).

[4]16 U.S.C. § 500 (1970).

[5]*Id.*

[6]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[7]16 U.S.C. § 500 (1970).

[8]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[9]Act of May 24, 1828, ch. 91, § 1, 4 Stat. 298.

[10]16 U.S.C. § 500 (1970).

[11]33 U.S.C. § 701c-3 (1970).

[12]*Id.*

[13]*Id.*

[14]16 U.S.C. §§ 471-538 (1970).

[15]16 U.S.C. § 528 (1970).

[16]33 U.S.C. § 701-1 (1970) provides, "In connection with the exercise of jurisdiction over the rivers of the Nation through the construction of works of improvement, for navigation of flood control, as herein authorized, it is declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible extent established and potential uses, for all purposes, of the waters of the Nation's rivers; to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation

works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such rivers by other users."

33 U.S.C. § 701a (1970) provides, "It is recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected."

[17]263 U.S. 361 (1923).

[18]Laws of 1907, c. 185, p. 406, Washington, as cited in 263 U.S. at 362.

[19]263 U.S. at 363.

[20]263 U.S. at 363-4.

[21]263 U.S. at 364.

[22]*Id.* at 365.

[23]16 U.S.C. § 500 (1970).

[24]33 U.S.C. § 701c-3 (1970).

[25]State v. Springfield Township, 6 Ind. 83 (1854).

[26]*E.g.*, State v. Mathews, 150 Ind. 597, 50 N.E. 572 (1898); Quick v. Springfield Township, 7 Ind. 636 (1856); and Quick v. White-Water Township, 7 Ind. 570 (1856).

[27]256 P.2d 446 (Okl. 1953).

[28]33 U.S.C. § 701c-3 (1970).

[29]62 O.S.Supp.1949 § 204, as cited in 256 P.2d at 447. The current statute, 62 O.S.1971 § 204, provides for one-fourth (¼) of these funds to be placed in a county sinking fund, one-fourth (¼) to go to the school districts, and one-half (½) to go to the general fund of the county.

[30]Tit. 70, ch. 1A, art. 18, § 4, [1949] Okl.Laws 595, 596-7 (emphasis added).

[31]256 P.2d at 448.

[32]*Id.*

[33]*Id.* at 449.

[34]Tit. 70, ch. 1A, art. 18, § 4, [1949] Okl.Laws 595, 597.

[35]Tit. 70, ch. 1A, § 28, [1951] Okl.Laws 229, 233.

[36]289 P.2d 653 (Okl. 1955).

[37]Tit. 70, ch. 1A, § 28, [1951] Okl.Laws 229, 233. (emphasis added).

[38]289 P.2d at 655.

[39]*Id.*

[40]295 P.2d 279 (Okl. 1955).

[41]295 P.2d at 279.

[42]*E.g.*, State v. Springfield Township, 6 Ind. 83 (1854), although that case dealt with a diversion rather than a reduction of the federal funds provided to the local educational agency.

[43]*E.g.*, State ex rel. Board of Education of Independent School Dist. No. 19 of Wagoner County v. State Board of Education, 256 P.2d 446 (Okl. 1953).

[44]256 P.2d at 448.

[45]293 P.2d 583 (Okl. 1956).

[46]16 U.S.C. § 500 (1970).

[47]263 U.S. 361 (1923).

[48]62 O.S.1971 § 326.

[49]293 P.2d at 584.

[50]81 Wash.2d 82, 499 P.2d 876 (1972).

[51]*Id.*

[52]*Id.*

[53]*See* ch. 4 *infra*. The court did take notice of three federal decisions, Douglas Independent School Dist. No. 3 v. Jorgenson, 293 F.Supp. 849 (D.S.D. 1968), Hergenreter v. Hayden, 295 F.Supp. 251 (D.Kan. 1968), and Shepheard v. Godwin, 280 F.Supp. 869 (E.D. Va. 1968), but apparently felt they hinged on the increase in school enrollment because of federal activity rather than on the fact of federal activity itself. The court also observed that under the impact areas aid program the federal government made its payments directly to the local school districts.

[54]*See* text referenced by notes 14, 15 *supra*.

[55]RCW 28A.41.130, as cited in 499 P.2d at 878, provided, "From those funds made available by the legislature for the current use of the common schools, other than the proceeds of the state property tax, the state superintendent of public instruction shall distribute annually as provided in RCW 28A.48.010 to each school district of the state operating a program approved by the state board of education, *an amount which when combined with the following revenues, will constitute an equal guarantee* in dollars for each weighted student enrolled, based upon one full school year of one hundred eighty days: . . . . (5) Eighty-five percent of the receipts from federal forest revenues distributed to school districts pursuant to RCW 36.33.110; . . ."

[56]499 P.2d at 876-7.

[57]*Id.* at 877.

[58]293 P.2d 583 (Okl. 1956).

[59]289 P.2d 653 (Okl. 1955).

[60]499 P.2d at 878-9.

[61]81 Wash.2d 82, 499 P.2d 876 (1972).

[62]263 U.S. 361 (1923).

[63]256 P.2d 446 (Okl. 1953).

[64]289 P.2d 653 (Okl. 1955).

[65]295 P.2d 279 (Okl. 1955).

[66]293 P.2d 583 (Okl. 1956).

[67]81 Wash.2d 82, 499 P.2d 876 (1972).

CHAPTER IV

THE ECONOMIC OPPORTUNITY ACT, THE ELEMENTARY AND SECONDARY EDUCATION ACT, AND THE IMPACT AREAS AID LEGISLATION

A 1967 court opinion analyzed briefly three major statutory programs designed to provide financial aid to education, the last of which has served as a major focal point for late 1960s cases dealing with a reduction in state aid to local educational agencies as a consequence of those agencies receiving federal funds. *Hobson v. Hansen*[1] was primarily a desegregation case, but the language employed in its opinion by the federal District Court for the District of Columbia foreshadowed subsequent decisions by more than a handful of other federal courts.

The issue in *Hobson* was[2]

> whether the defendants, the Superintendent of Schools and the members of the Board of Education, in the operation of the public school system here, unconstitutionally deprive the District's Negro and poor public school children of their right to equal educational opportunity with the District's white and more affluent public school children.

Among the findings of the court was,[3]

> The median annual per pupil expenditure ($292) in the predominantly (85-100%) Negro elementary

> schools in the District of Columbia has been a flat $100 below the median annual per pupil expenditure for its predominantly (85-100%) white schools ($392).

Additionally, the court found, "Only recently, through the use of impact aid and other federal funds, have the Negro slum schools had sufficient textbooks for the children's use."[4]

In deciding that the Negro and poor children were being denied their right to equal educational opportunity unconstitutionally, the court held,[5]

> The predominantly Negro schools, thus, are at comparative disadvantage in major respects. True, large dosages of federal financial assistance are infused into the slum schools and those alone under the Economic Opportunity Act, the Elementary and Secondary Education Act, and the impact aid legislation. None of these, however, requires more than nominal local contributions, and so they have all but nil effect on how the Board disburses its own assets. Furthermore, these statutes are manifestly intended to provide extraordinary services at slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they cannot be regarded as curing any inequalities for which the Board is otherwise responsible.

The significant aspect of this language for purposes of this study is the recognition by the court of the purpose for which the federal funds cited had been granted, to wit: "to provide extraordinary services at the slum schools."[6] It is appropriate now to analyze the pertinent sections of the federal statutes construed to determine the bases of the *Hobson* decision and of those cases which

were to follow. The federal acts will be discussed in the order suggested by the *Hobson* court.

The Economic Opportunity Act of 1964

The portion of the Economic Opportunity Act cited in the footnote in *Hobson* was Title II, "Urban and Rural Community Action Programs."[7] In its "Findings and Declaration of Purpose"[8] for the entire Act, Congress had declared its objective "to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, . . ." Specifically, the "Statement of Purpose" of Part A, "General Community Action Programs," of Title II provided,[9]

> The purpose of this part is to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs.

What were to be included in the category of community action programs was spelled out rather specifically in the Act.[10]

That the type of aid to be provided by the Act was money, rather than some other form of property, is evident from the congressional reference to "sums appropriated to carry out this title."[11] Furthermore, the funds appropriated under the provisions of the act for the development[12] and the carrying out[13] of the community action programs were available to "public or private nonprofit agencies"[14] as well as to states and state agencies.[15] In the latter

instances, the emphasis remained on the local level, however, since the payments to state agencies were authorized "for payment of the expenses of such agencies in providing technical assistance to communities in developing, conducting, and administering community action programs."[16]

The Congress left no doubt in Title II of the Economic Opportunity Act of 1964 that the funds available to local public agencies were not to be used as general educational appropriations. The funds were to be available for programs "focused upon the needs of low-income individuals and families and shall provide expanded and improved services, assistance, and other activities, and facilities necessary in connection therewith."[17] Specific language followed.[18]

> No grant or contract authorized under this part may provide for general aid to elementary or secondary education in any school or school system.

While it is clear that federal dollars were made available under the Act to both local and state agencies for the purpose of providing expanded or improved services primarily to low-income individuals and families, it is equally clear that Congress was not attempting to assume financing responsibilities otherwise left to local educational agencies. While there is no prohibition in the Act against local educational agencies receiving a portion of the appropriated funds, it is clear from the language of subsection 205 (b) that Congress did not attempt to provide

funds to such agencies to use totally at their own discretion. The specific prohibition of subsection 205 (b) is probably the cause of the lack of litigation concerning the issue of whether a state can reduce its aid to a local educational agency because that agency has received funds under Part A, Title II, of the Economic Opportunity Act of 1964. Aside from *Hobson*, only *Rodriguez v. San Antonio Independent School District*,[19] *infra*, has raised a similar issue, and in that case the court cited *Hobson* as authority for answering the issue in the negative.

The Elementary and Secondary Education Act of 1965

The *Hobson* court applied the rationale it used in discussing the Economic Opportunity Act of 1964 to the provisions of the Elementary and Secondary Education Act of 1965,[20] as well. Indeed, there are striking similarities between the two acts in the type of aid provided, the purpose for which the aid was given, and the ultimate beneficiaries of such aid, even though the payees of the assistance may be different.

The Elementary and Secondary Education Act of 1965 comprises all but the final subsection of Subchapter II, Assistance to Local Educational Agencies for the Education of Children of Low-income Families, of Chapter 13, Financial Assistance to Local Educational Agencies, of Title 20, Education, of the United States Code. Having remained

substantially unchanged since the *Hobson* decision, the congressional declaration of purpose of the Act states,[21]

> In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this subchapter) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.

Perhaps the most significant language in the statement of purpose is "to provide financial assistance . . . to local educational agencies . . . to expand and improve their educational programs." As in the case of the Economic Opportunity Act, there is no evidence that Congress wished to assume the primary burden of financing public education. Rather, the intent was clearly to aid or assist in expansion and improvement of the base on which local educational agencies could build.

Again in this legislation, the Congress was providing aid in the form of money.[22] While the states were authorized to participate to a limited extent as beneficiaries in the federal distribution of such aid,[23] it was anticipated that local educational agencies would be the primary beneficiaries of the funds appropriated under the Elementary and Secondary Education Act.[24] In implementing its

assistance plan, however, Congress provided for payments to go to the respective states, rather than to the local educational agencies,[25] with the direction that the states distribute the appropriate amounts to the local educational agencies for which the latter qualify.[26]

Congress again made clear its intent to avoid assuming the role as the primary sponsor of public education. Included in the language of the initial Act was a prohibition concerning the availability of aid funds under the Act similar to that found in subsection 205 (b) of the Economic Opportunity Act. The prohibition read,[27]

> No payments shall be made under this subchapter for any fiscal year to a State which has taken into consideration payments under this subchapter in determining the eligibility of any local educational agency in that State for State aid, or the amount of that aid, with respect to the free public education of children during that year or the preceding fiscal year.

No litigation has been found which has challenged directly the validity or effectiveness of the above-quoted provision. The language employed is clear, and lends itself to support the conclusion of the *Hobson* court that the statute is "manifestly intended to provide extraordinary services as slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they [this Act and the other acts cited] cannot be regarded as curing any inequalities for which the Board is otherwise responsible."[28]

The Impact Areas Aid Legislation

Since neither the Economic Opportunity Act nor the Elementary and Secondary Education Act has been the subject of litigation (except, as noted, in *Rodriguez v. San Antonio Independent School District,*[29] *infra*) in which a reduction in state aid to local educational agencies resulted from agencies receiving federal assistance under the respective acts, it is the last reference given by the *Hobson* court which proves most significant for purposes of this study. The impact aid legislation cited in the appropriate footnote in *Hobson*[30] is Subchapter I, Assistance for Local Educational Agencies in Areas Affected by Federal Activity, of Chapter 13, Financial Assistance to Local Educational Agencies, of Title 20, Education, of the United States Code.

In its declaration of policy for Subchapter I, Congress stated that the nature of the funds provided by the impact aid legislation was that of assistance. Further, it recognized four sources of financial burden on local educational agencies which it felt should be addressed.[31]

> In recognition of the responsibility of the United States for the impact which certain Federal activities have on the local educational agencies in the areas in which such activities are carried on, the Congress declares it to be the policy of the United States to provide financial assistance (as set forth in this subchapter) for those local educational agencies upon which the United States has placed financial burdens by reason of the fact that-

> (1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or
> (2) such agencies provide education for children residing on Federal property; or
> (3) such agencies provide education for children whose parents are employed on Federal property; or
> (4) there has been a sudden and substantial increase in school attendance as the result of Federal activities.

Again, the language "to provide financial assistance"[32] appears, as it did in the Elementary and Secondary Education Act.[33] It can be assumed that by such language Congress intended the aid to take the form of money payments, but, perhaps more importantly, the use of the word "assistance" indicates that, as in the two federal statutes considered previously, Congress was not attempting to assume primary responsibility for funding public education.

There are two major distinctions, however, between the impact aid legislation, on the one hand, and the Economic Opportunity Act and the Elementary and Secondary Education Act, on the other. First, under the Economic Opportunity Act, the director of the Office of Economic Opportunity was authorized to make grants to or to contract with both local agencies and states to pay part or all of the costs of community action programs.[34] Under the provisions of the Elementary and Secondary Education Act, the Commissioner of Education was directed to make payments due under the Act to the states.[35] Congress,

however, directed that amounts due under Subchapter I, Assistance for Local Educational Agencies in Areas Affected by Federal Activity, were to be paid by the Commissioner of Education directly to the local educational agency affected by the federal activity.[36]

> The Commissioner shall, subject to the provisions of subsection (c) [Adjustments where necessitated by appropriations] of this section, from time to time pay to each local educational agency, in advance or otherwise, the amount which he estimates such agency is entitled to receive under this subchapter. . . .

The second major distinction of the impact areas aid as interpreted by the *Hobson* court in 1967 is the lack of a specific statement prohibiting the use of impact aid funds as "general aid" to the local educational agencies involved. It will be recalled that subsection 205 (b) of the Economic Opportunity Act provided, "No grant or contract authorized under this part may provide for general aid to elementary or secondary education in any school or school system." Further, Congress made it clear in the Elementary and Secondary Education Act that state aid should in no way be reduced by reference to the aid provided in the Act.[37]

When the *Hobson* court read the impact aid legislation, and included it along with the other two statutory assistance schemes in its opinion, however, there was no similar prohibitory clause in the impact aid statute. It is significant, therefore, that by judicial interpretation alone (recognizing the similarity in the congressional

declarations of purpose), and not by specific statutory prohibition, impact aid funds as early as 1967 were held to be "manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools."[38] When the special role of the local school board (the provision of public education in the District of Columbia) considered by the *Hobson* court is recalled, perhaps it becomes justifiable to substitute "states" into the above language in place of "local school boards." Even if such an interpretation extends the meaning of the *Hobson* language beyond that intended by the court, the fact that the court was willing to join the impact aid legislation with the Economic Opportunity Act and the Elementary and Secondary Education Act for purposes of construing the use to which the federal funds provided could be put is significant in light of the absence in the impact areas aid legislation of the prohibitory clause found in the latter two programs.

Subsequent to the *Hobson* decision, a stream of litigation was heard in federal courts challenging the interpretation that impact areas aid could not be used to provide general assistance to public education. For a period of time, the courts had to interpret the same statutory language as faced the *Hobson* court in 1967. It was not until the last quarter of 1968 that Congress amended Subchapter I to include a prohibition against funds

being provided local educational agencies in states reducing state aid to local educational agencies because those agencies had received Subchapter I funds.[39]

Attention must now be directed to the litigation subsequent to *Hobson*, both before and after the 1968 amendment, to determine the judicial response to reductions in state aid to local educational agencies as a consequence of those agencies receiving federal impact areas aid funds. The final series of cases of significance to this study all involve Subchapter I, Chapter 13, Title 20 (impact aid) funds. The legislation is often referred to by the courts by its Public Law number, 874.

FOOTNOTES

[1]269 F.Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson 408 F.2d 175 (D.C. Cir. 1969).

[2]*Id.* at 406.

[3]*Id.*

[4]*Id.*

[5]*Id.* at 496.

[6]*Id.*

[7]*Id.* n.161 reads, "42 U.S.C. §§ 2781-2791 (1964), as amended."

[8]Act of August 20, 1964, Pub. L. No. 88-452, § 2, 78 Stat. 508, reads, "Although the economic well-being and prosperity of the United States have progressed to a level surpassing any achieved in world history, and although these benefits are widely shared throughout the Nation, poverty continues to be the lot of a substantial number of our people. The United States can achieve its full economic and social potential as a nation only if every individual has the opportunity to contribute to the full extent of his capabilities and to participate in the workings of our society. It is, therefore, the policy of the United States to eliminate the paradox of poverty in the midst of plenty in the Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity. It is the purpose of this Act to strengthen, supplement, and coordinate efforts in furtherance of that policy."

[9]*Id.* § 201.

[10]*Id.* § 202 (a).

[11]*Id.* § 203.

[12]*Id.* § 204.

[13]*Id.* § 205 (a).

[14] *Id.* §§ 204, 205 (a).

[15] *Id.* § 209.

[16] *Id.* § 209 (b).

[17] *Id.* § 205 (a).

[18] *Id.* § 205 (b).

[19] 337 F.Supp. 280 (W.D.Tex. 1971), *rev'd*, 93 S.Ct. 1278 (1973).

[20] 269 F.Supp. at 496 n.162 reads, "20 U.S.C. §§ 241a-241ℓ (Supp. I, 1965)."

[21] 20 U.S.C. § 241a (1970).

[22] 20 U.S.C. § 241g (a) (1970).

[23] 20 U.S.C. § 241c (a) (1) (A) (Supp. II, 1972).

[24] 20 U.S.C. § 241c (1970).

[25] 20 U.S.C. § 241g (a) (1) (1970).

[26] 20 U.S.C. § 241g (a) (2) (1970).

[27] 20 U.S.C. § 241g (c) (1) (1970).

[28] 269 F.Supp. at 496.

[29] 337 F.Supp. 280 (W.D.Tex. 1971), *rev'd*, 93 S.Ct. 1278 (1973).

[30] 269 F.Supp. at 496 n.163 reads, "20 U.S.C. §§ 236-244 (1964), as amended, 20 U.S.C. § 244(8) (Supp. I 1965)."

[31] 20 U.S.C. § 236 (1970).

[32] *Id.*

[33] 20 U.S.C. § 241a (1970).

[34] Act of August 20, 1964, Pub. L. No. 88-452, §§ 205, 209, 78 Stat. 508.

[35] 20 U.S.C. § 241g (a) (1) (1970).

[36] 20 U.S.C. § 240 (b) (1970).

[37] 20 U.S.C. § 241g (c) (1) (1970).

[38]269 F.Supp. at 496.

[39]Act of October 16, 1968, Pub. L. No. 90-576, § 305 (a), 82 Stat. 1097.

CHAPTER V

THE IMPACT AREAS AID CASES

The initial decision concerning the inclusion of Subchapter I (impact areas aid) funds in a state scheme of educational financing, with a resultant reduction in state aid to local educational agencies, set the tone for all of the subsequent decisions in this area. Since it is cited at length by subsequent courts, and presents a number of the arguments advanced by both sides in these controversies, it is appropriate to examine this case in some detail.

Shepheard v. Godwin (1968)

The plaintiffs in *Shepheard v. Godwin*[1] were real estate owners and taxpayers of the City of Norfolk, and were later joined in the suit by those of the County of Fairfax. The defendants were state officials charged with the responsibility and duty of distributing the public moneys appropriated for schools by the Virginia legislature. Under attack in the case was the state's formula for providing state assistance to local school districts.

At the beginning of the 1948-49 school term, Virginia had established its Minimum Education Program.[2] A Basic

State School Aid Fund was established to take care of the program's costs. The minimum program cost, a minimum amount which each subdivision had to spend each year for its schools, was computed by adding 1) the amount of institutional salaries when reckoned by a state formula for each teacher position, and 2) "the average daily attendance (ADA) multiplied by $100 in 1966-68 ($80 in 1964-66) per pupil."[3]

The state contribution for each subdivision consisted of two items: (1) a basic State share and (2) a supplementary State share. The basic State share amounted to 60 per cent of the instructional salaries. The supplementary State share was computed by subtracting from the minimum program cost[4]

> (1) the basic State share;
> (2) an amount equivalent to a uniform tax levy of 60 cents per $100 of true values of local taxable real estate and public service corporation property in the subdivision; and
> (3) 50% (in 1966-68) of the impact funds receivable by the subdivision from the Federal government for operating costs.

The plaintiffs in the case were attacking the deduction described in (3) above from the supplementary State share of the state's contribution to the local school district "as violative of the purpose and intent of Congress and as transgressing the Fourteenth Amendment."[5]

The *Shepheard* court directed its attention immediately to the purpose of Congress' providing the aid funds.[6]

> The act makes these propositions clear: (1) the Federal funds are exclusively for supplementation of the local sources of revenues for school purposes; and (2) the act was not intended to lessen the efforts of the State.

For support for these conclusions the court drew on two statutory provisions,[7]

> . . . that the Federal contribution be paid directly to the local school agency on reports of the local school agency, and that the computation be computed by reference to the expenditures 'made from revenues derived from local sources' in comparable school districts.[8]

It is significant to note that the court did not examine the declaration of purpose of 20 U.S.C. § 236, but turned directly to a consideration of the payees of the aid and the method of computation of the amount of the aid to draw its conclusions.

The court then turned to a consideration of the legislative history of the impact aid legislation. Noting estimates that Virginia's annual payments toward supplementary aid would be increased by approximately ten million dollars if the federal impact area aid funds were not deducted in the computation of the supplementary State aid share, the court refused to read the federal legislation as permitting such a windfall to the state as the then current state formula provided.[9]

> In Report No. 2287, . . . of the Committee on Education and Labor, dated June 20, 1950, 81st Congress, 2d Session, the legislation which became P.L. 874 is explained in detail. The exposition underscores the Congressional mandate that the impact payments are for local use and are not to be applied to compensate the State in any respect. Thus, at p. 13, it

> is stated: 'The effect of the payments provided for in this section is to compensate the local educational agency for loss in its *local* revenues. *There is no compensation for any loss in State revenues.* * * *' (Accent added.)

The fact that the payees of the aid funds were the local educational agencies themselves, rather than the states, permitted the court to reject a major contention of the defendants. Subchapter II, Assistance to Local Educational Agencies for the Education of Children of Low-Income Families, was initially enacted in 1965.[10] It will be recalled that Subchapter II contained a specific restriction on payments to states, and, through the states, to local educational agencies, which had[11]

> taken into consideration payments under this subchapter in determining the eligibility of any local educational agency in that State for State aid, or the amount of that aid, with respect to the free public education of children during that year or the preceding fiscal year.

Since Public Law 874, the impact areas aid legislation, was reenacted in 1965[12] as Subchapter I, Assistance for Local Educational Agencies in Areas Affected by Federal Activity, in the same legislation that enacted Subchapter II, but without a provision similar to the restriction on payments contained in Subchapter II,[13]

> the defendants conclude that Congress did not intend to foreclose a State from taking into consideration Federal impact payments to a locality in determining State aid to a local school agency.

The *Shepheard* court rejected this contention, however, by observing the difference in payees under the two

subchapters. The court urged a look[14]

> to the apparent reason the proviso was included in Title [Subchapter] II. There the Federal moneys are paid directly to the State, and consequently there was need for a direct admonition against its use by the State. Under Title [Subchapter] I, as we have already noted, the moneys are paid to the locality and not to the State, and there was no apparent reason to include any restriction upon the State. Moreover, the omission from P.L. 874 originally, or as reenacted, would seem to imply that no touch, direct or indirect, of the money by the State was even remotely possible.

The *Shepheard* court appeared to be painting its decision with a rather broad brush. Nowhere in its opinion did the court refer to the congressional declaration of policy of Subchapter I, found in 20 U.S.C. § 236, in which is found the language, ". . . the Congress declares it to be the policy of the United States to provide financial assistance for those local educational agencies . . ." Rather, the court looked primarily to the question, "Who were the payees of the aids funds?" (and, in passing, to the method of computation of the amount of the aid) to conclude that the state may not touch the funds provided.

In 1966, Congress adopted what is currently 20 U.S.C. § 240 (d) (1), an amendment to Subchapter I.[15]

> The amount which a local educational agency in any State is otherwise entitled to receive under section 237, 238, or 239 of this title for any fiscal year shall be reduced in the same proportion (if any) that the State has reduced for that year its aggregate expenditures (from non-Federal sources) per pupil for current expenditure purposes for free public education (as determined pursuant to regulations of the Commissioner) below the level of such expenditures per pupil in the second preceding fiscal year.

> The Commissioner may waive or reduce this reduction whenever in his judgment exceptional circumstances exist which would make its application inequitable and would defeat the purpose of this subchapter.

The *Shepheard* court quoted the above amendment, as well as a House of Representatives committee report on the amendment, as evidence of congressional intent.[16]

> The House of Representatives Committee Report No. 1814, dated August 5, 1966, in proposing an amendment to P.L. 874 stated:
>
> 'Fifteen States offset the amount of Public Law 874 funds received by their school districts by reducing part of their State aid to those districts. *This is in direct contravention to congressional intent.* Impact aid funds are intended to compensate districts for loss of tax revenues due to Federal connection, not to substitute for State funds the districts would otherwise receive.
>
> 'The committee understands that it is administratively unfeasible, if not impossible, to determine adjusted allotments to those States already following this practice. However, to prevent its occurrence in the future, we propose an amendment which would reduce Public Law 874 eligibility in proportion to any State reduction in aggregate per pupil expenditures.' (Accent added.)

The holding striking down the reductions in state aid as provided by the supplementary State share scheme of Virginia followed. Since the congressional intent was found from the language of the statute and congressional committee reports to be to provide assistance to local school districts and to by-pass, for purposes of Subchapter I, the states, the court's conclusion was inescapable. It is important to note, however, that the court was not concerned with stated declaration of purpose of Congress; rather, it was concerned with the evidence of that purpose

as expressed in statutory language designating payees and providing methods of computation of the federal aid to which each local educational agency was entitled, and in congressional committee reports. Apparently, this court would have reached the same conclusion had there been no 20 U.S.C. § 236 declaration of purpose in force, since the court did not rely on that section at all. Nevertheless, where and when the court did find congressional intent, it was held to control and supersede a state school financing plan in conflict therewith.

It can be argued, therefore, that the *Shepheard* court took the long way around the case to reach its decision. Nevertheless, the court's order was inescapable in light of its approach to the attempted reduction in state aid to local school districts as a consequence of those districts receiving Subchapter I funds.[17]

> . . . [T]he court for the reasons stated in its opinion filed herewith finds, and adjudges and orders as follows: . . .
> 4. That the defendants and their successors in office be, and each of them is hereby, restrained and enjoined from hereafter in any manner enforcing or effectuating [the specific Virginia statutory provisions under consideration] insofar as this legislation directs or requires a deduction to be made in the computation of State aid to local public schools of Virginia based on, or in consideration of, any part of the moneys payable to, or for the benefit of, such local schools by the United States of America under and by virtue of Public Law 874, 81 Cong., 2d Session, approved September 30, 1950, 64 Stat. 1100, 20 U.S.C. § 236 et. seq., as amended, (Supp. II 1965-1966), . . .

Thus was the tone set for a series of decision challenging reductions in state aid under circumstances similar to those found in *Shepheard*. Other decisions followed quickly. On September 30, 1968, a federal district court spoke again on this topic, not unmindful of the precedent established in *Shepheard v. Godwin*.[18]

Hergenreter v. Hayden (1968)

The doctrine of *Shepheard v. Godwin*[19] was not successfully challenged in the second of the Subchapter I cases; on the other hand, it was rather significantly expanded. The extension of the developing law to be found in *Hergenreter v. Hayden*[20] must be construed as being of both degree and substance.

The plaintiffs in *Hergenreter* were residents and taxpayers of Kansas School District No. 437, an impact area adjacent to Forbes Air Force Base, Topeka. These plaintiffs challenged the legality of action taken by defendant state school officials in establishing a formula and allocating state aid to be given Kansas school districts under the Kansas School Foundation Act.[21] Specifically, certain provisions of the statute required "that twenty-five percent of the total amount of federal impact funds received by an eligible district be deducted from the amount of state aid to such impacted district."[22] It will be observed that the deduction of twenty-five percent of the Subchapter I funds in the instant case is less than the

fifty percent deduction required by the Virginia legislation overturned in *Shepheard*. Thus, Kansas School District No. 437 here complained of a lesser loss than did the plaintiffs in *Shepheard*.

The court in *Hergenreter* was faced with the same issue as the *Shepheard* court, but phrased its concern more succintly. While the *Shepheard* court talked around the supremacy clause, but ultimately used a conflict between congressional intent and state statutory language as the basis of its holding, the *Hergenreter* court formulated its issue in such a way as to deal with the primary issue directly.[23]

> Does the State School Foundation Act as found in K.S.A.1967 Supp. 72-7001, et seq., specifically sections 72-7005 and 72-7010, conflict, in such a way as to make the state act unconstitutional under the Supremacy Clause of the United States Constitution, with United States P.L. 874, as found in 20 U.S.C.A. 236, et seq., specifically section 238(c) (1) because of the fact that the state Foundation Act takes into account the federal funds received by a school district under section 238(c) (1) of 20 U.S.C.A. in determining the amount of state aid such district is to receive?

Where *Shepheard* had discussed conflicts between congressional intent and the Virginia statutory provisions, *Hergenreter* left no doubt that, should a conflict between the congressional act and the Kansas statutory provision be found, the latter would fall under the supremacy clause.

In order to understand what is apparently a significant change in judicial philosophy from that expressed in previous cases discussed, it would be worth recalling the

holding of the court in *Quick v. Springfield Township.*[24] There the court was faced with state legislation requiring the congressional township fund to be taken into account when distribution was made of state aid to local school districts. The court did not find that such a consideration of federal funds amounted to a state's use of those funds, such a use being prohibited under the holding of *State v. Springfield Township.*[25] The *Quick v. Springfield Township* court observed,[26]

> There is certainly a material difference between taking away what one has, and the refusal to give him more.

The point of the opinion was that the funds provided to the local inhabitants of a township for the support of their schools were not being touched; the state aid funds were to be considered separate and distinct from the congressional township fund, even though the amount of the former was predicated on the amount of the latter.

The *Hergenreter* court refused to make such a distinction, and went right to the point of the supremacy clause.[27]

> We think it is clear upon the law and the evidence that the State of Kansas is tampering with the distribution of federal funds contrary to Congressional intent expressed in P.L. 874, and hence is in violation of the Supremacy Clause of the United States Constitution, Article VI, Clause 2. . . . The admitted purpose of the Kansas legislature, no matter how laudable its end in aiding education in federal impact areas, was to substitute state judgment for federal judgment, as reflected in the state statutes considered here. No matter how salutory the state legislation, it must give way under the Supremacy Clause.

The court in the instant case observed that by application of the state formula, federal aid moneys were being distributed state-wide.[28]

> [W]e do not have to speculate under the evidence that a portion of the federal money given to School District No. 437 was indirectly taken away, withheld and distributed elsewhere among the school districts of Kansas. In the light of Stipulation of Fact No. 8, a very substantial sum was redistributed by bookkeeping credits for each of the last two fiscal years. Defendants' Exhibit C confirms that statewide diminution of federal funds in every impact district.

It is apparent from the above language that any amount saved by the State of Kansas by reducing its aid to an impact area district because of the presence of Subchapter I funds was subsequently being redistributed to other local educational agencies around the state. First, it will be recalled that the Virginia scheme overturned in *Shepheard v. Godwin*[29] provided for the state moneys so saved to be returned to the state's general treasury. Thus, an extension of the *Shepheard* holding was made by the *Hergenreter* court. Second, the overturning of the state-wide redistribution scheme in *Hergenreter* comports with the holding of *State v. Springfield Township,*[30] which refused to allow funds granted to inhabitants of a congressional township to be used by the school system of the State of Indiana at large.

The *Hergenreter* court, while extending in both degree and substance the *Shepheard* decision, relied heavily on what it termed[31]

> the excellent reasoning and holding in Shepheard v. Godwin, 280 F.Supp. 869, . . . where similar - but not identical - Virginia school fund legislation was held unconstitutional on the basis of violation of both the Supremacy Clause and the Fourteenth Amendment.

Particularly did the instant court look to *Shepheard* for guidance regarding the congressional intent of the Subchapter I funds.[32]

> As stated in Shepheard v. Godwin, supra, the federal statute was intended by Congress to supplement local funds, not substitute for them. . . . We have made independent research . . . and believe, with the Virginia Federal Court in Shepheard v. Godwin, supra, that the House of Representatives Committee Report No. 1814, dated August 5, 1966, in proposing an amendment to P.L. 874, makes it abundantly clear that state manipulation of these impact area funds is prohibited.

The significance in this language is that this court found state manipulation in the form of a reduction in state aid because of the receipt of federal funds, whereas the Indiana supreme court in *Quick v. Springfield Township*[33] had not.

Finally, the court enjoined the defendants from enforcing the state legislation[34]

> insofar as this legislation directs or requires a deduction to be made in the computation of state aid to local public schools of Kansas based on, or in consideration of, any part of the moneys payable to, or for the benefit of, such local schools by the United States of America under and by virtue of [Subchapter I, Chapter 13, Title 20, United States Code].

The effect of the language employed in the court's order is potentially broader than that generated by the order in *Shepheard*. It will be recalled that the order in

Shepheard also concerned itself with "moneys payable to, or for the benefit of, such local schools . . ."[35] The *Shepheard* court, however, had consistently emphasized that payments under Subchapter I were to be made by the federal government directly to the local educational agencies; the states were to be by-passed.

Hergenreter did not dwell on this federal statutory provision or point at all. To be sure, Subchapter I was the same as interpreted in both cases, but the instant court did not emphasize the identity of the payees as did the *Shepheard* court. Therefore, when *Hergenreter* employs language such as "moneys payable to, or for the benefit of, such local schools,"[36] perhaps it was less concerned with whether the state or the local educational agency was the payee than was *Shepheard*. There is no clear and convincing language that such is the case in the *Hergenreter* opinion, but such a notion may serve to crack the door in any subsequent case where the local educational agency is not the payee of the federal aid funds.

Douglas Independent School District No. 3 v. Jorgenson (1968)

Douglas Independent School District No. 3 v. Jorgenson,[37] decided less than two months after the *Hergenreter* decision was handed down, presented a cross between the fact situations of *Shepheard* and *Hergenreter*. The plaintiffs in the instant case were an impacted area school

district and a patron of the schools therein and a resident thereof, while the defendants again were state officials charged with the responsibility and duty of distributing the public moneys appropriated for schools by the South Dakota legislature. Under attack was the constitutionality of a state scheme providing state aid funds to local educational agencies.

Like the corresponding Virginia statute construed in *Shepheard*, the South Dakota legislation[38] challenged in *Douglas Independent*[39]

> dictated that the computation of the Foundation Formula Funds under SDC 1960 Supp. 15.2246 must consider fifty percent (50%) of the funds received by a school district under the provisions of Public Law 874, subsection 3(c) (1) as part of the income of the foundation program of the school district.

In 1968 the South Dakota legislature increased to seventy-five percent [75%] the amount of Subchapter I funds to be offset against the amount of state aid to which an impact area school district would otherwise have been entitled.[40] Like the corresponding Kansas statute construed in *Hergenreter*, the South Dakota legislation provided funds saved by the state by application of the statute were to be disbursed to all school districts of the state. It will be recalled that under the Virginia plan the moneys saved by the state were returned to the state's general fund.

The instant court rejected the notion that the above difference in the use to which the moneys saved by the state were to be put was sufficient to distinguish the two

fact situations.[41]

> This court feels that the finding of the *Shepheard* court that 874 funds are a supplement for local revenues and not a substitute is correct, and also that the *Shepheard* case is directly in point with the present case.

The court rejected also the defendants' contention that Virginia's use of the funds saved by application of the state statute was more offensive to the rights of impact area school districts than was the use outlined in the South Dakota statutory provisions.[42]

> It is the finding of this Court that what the State of South Dakota does with funds unconstitutionally withheld from impacted area districts is immaterial and the fact that the money is withheld is sufficient to substantiate the plaintiffs' claim that their rights have been violated.

The *Douglas Independent* court returned to the pattern begun in *Shepheard*, and emphasized that local educational agencies were the payees of the funds provided by Subchapter I.[43]

> It should be pointed out that the moneys given for Federal aid are given to the local districts and are meant to be distributed by the local districts and are not meant in any way to be in lieu of State aid.

The instant court found support for this position in a statement by the *Shepheard* court, "Federal children are to a large extent paying their own way so far as the State is concerned,"[44] and Congressional Committee Report No. 2287[45] outlining the reasons for the states not being permitted to participate in the distribution of Subchapter I aid funds. That no state should reduce state aid in

light of Subchapter I aid funds from the federal government to local districts, the court found, was evidenced by the House of Representatives Committee Report No. 1814, dated August 5, 1966, in proposing the 1966 amendment to Subchapter I, which amendment is now 20 U.S.C. § 240 (d) (1). This report was the same one quoted on the same point by the court in *Shepheard*.

The final order of the *Douglas Independent* court substantially paralleled the orders of *Shepheard* and *Hergenreter*, invalidating state legislation[46]

> insofar as this legislation directs or requires a deduction to be made in the computation of State aid to local public schools based on, or in consideration of, any part of the moneys payable to, or for the benefit of such local schools by the United States of America under and by virtue of [Subchapter I, Chapter 13, Title 20, United States Code].

While the instant case does not expand to a great degree the holdings of *Shepheard* and *Hergenreter*, it does return to a consideration of the designated payees of Subchapter I aid funds, and affirmatively holds that there is no legal difference in the two previously construed alternatives concerning the use of the moneys saved by the states under their respective statutes. Finally, the court did agree, along with the Virginia and Kansas federal district courts, that Subchapter I aid funds were a supplement to local revenues rather than a substitute for state aid to which the local school districts may otherwise be entitled.

Carlsbad Union School District of San Diego County v. Rafferty (1969, 1970)

No new ground was tilled in the fourth decided case dealing with Subchapter I federal aid funds. *Carlsbad Union School District of San Diego County v. Rafferty*[47] was complicated to a minor extent by the amendment of Subchapter I to include what is currently 20 U.S.C. § 240 (d) (2).

The case's plaintiffs were impacted school districts which qualified for Subchapter I funds and resident taxpayers thereof, while the defendants included, among others, the Honorable Max Rafferty, California Superintendent of Public Instruction. The court was faced with determining the validity under the federal supremacy clause of the California scheme of school aid called the Foundation Program.[48]

> This program consists of 'Basic Aid,' 'District Aid,' and 'Equalization Aid.' Basic aid is required by the state constitution. It is computed according to the average daily attendance (ADA) of students within the various districts. District Aid is based upon the assessed valuation of property within the districts. Equalization Aid is an additional form of aid payable to the districts if the amount of Basic Aid and District Aid for any district is less than the amount of the Foundation Program computed for that district. It is the Equalization Aid that concerns us here.

Certain statutory provisions in force in California provided for a reduction by approximately twenty-five

percent of state Equalization Aid going to a school district receiving Subchapter I funds.[49] It was the contention of the plaintiffs[50]

> (1) that the state statutes are repugnant to federal law and, therefore, must fall in the face of the Supremacy Clause, Art. 6, Cl. 2; and
> (2) that the statutes violate the Equal Protection clause of the Fourteenth Amendment and are, therefore, unconstitutional.

The plaintiffs' Equal Protection claim was dismissed by a three-judge federal panel, and the case as appealed was decided on the basis of the plaintiffs' first contention, i.e., a violation of the supremacy clause resulted in the state statutes being invalid.[51]

It is necessary at this point to digress in time, and to examine the 1968 amendment to Subchapter I. On October 16, 1968 (after the *Shepheard* and *Hergenreter* decisions had been rendered, and little more than a month before the *Douglas Independent* decision was handed down), Congress enacted what is currently 20 U.S.C. § 240 (d)(2).[52]

> No payments may be made during any fiscal year to any local educational agency in any State which has taken into consideration payments under this subchapter in determining the eligibility of any local educational agency in that State for State aid (as defined by regulation), or the amount of that aid, with respect to free public education during that year or the preceding fiscal year, or which makes such aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for payments under this subchapter than such local educational agency would receive if it were not so eligible.

At the time of the *Carlsbad* decision, the California legislature was in session,[53] and the defendants asked the court to read the late 1968 amendment as sanctioning the reduction in Equalization Aid to impact area school districts as a consequence of those districts receiving Subchapter I funds for all years prior to the effective time of the amendment. The undisbursed sum being held under the court's restraining order for the 1968-69 fiscal year amounted to 16 million dollars.[54] The defendants did concede that the 1968 amendment[55]

> prohibits the State from taking into account during the 1969-70 fiscal year (beginning after July 1969) or thereafter, funds received by local school districts pursuant to Pub.L. No. 81-874 for the purpose of computing or apportioning state aid to public schools. They also acknowledge the validity of the holdings in the three district court cases preceding this one.[56]

It is interesting to note that the California officials conceded the validity of the holding in *Douglas Independent*, which prohibited the kind of deduction for which they were arguing, even though the *Douglas Independent* decision was handed down November 26, 1968, and the amendment behind which they sought protection for their reduction in state aid was approved October 16, 1968. The instant court did not report how the defendants argued that their reduction in state aid should have been permitted, whereas South Dakota's was prohibited in a concededly correct decision, when both the *Carlsbad*

and *Douglas Independent* decisions were rendered subsequent to the enactment of 20 U.S.C. § 240 (d) (2).

Quoting the 1966 House of Representatives Committee Report Number 1814 of August 5, 1966, as had all three previous federal district courts, the instant court rejected the[57]

> novel theory that a stay or legal vacuum was intended by Congress because it fixed the deadline for prohibition of all federal aid to impacted areas at a determinable future date. . .
>
> While Pub.L. No. 90-576 does set the outer limit by which time reductions in state aid must stop, it does not say, or imply, that Congress intended to foreclose the states from initiating earlier reforms or the courts from enjoining further reductions.

The *Carlsbad* court then adopted the holdings of *Shepheard*, *Hergenreter*, and *Douglas Independent* as its own.[58]

> As to the Supremacy Clause claim, this court concurs with and adopts the legal reasoning and holdings of the three district courts that have stricken down similar state legislation.

The federal district court granted a permanent injunction to the plaintiffs prohibiting the state officials from implementing the state statutes which caused a reduction in the state's Equalization Aid to the impacted school districts because of the availability to any such district of Subchapter I federal aid.

Probably because of the passage of the 1968 amendment to Subchapter I referred to above, *Carlsbad* was the only one of the four cases discussed to this point that was

appealed to a United States Court of Appeals.[59] On appeal, however, the appellants, the California state officials, made a number of concessions which serve to summarize the development of this line of cases. In handing down its decision on July 28, 29, 1970, the United States Court of Appeals for the Ninth Circuit observed,[60]

> The sole question presented to us on this appeal is a narrow one. The appellants do not now argue that the judge was wrong in finding a conflict between the state statutes and Public Law 874. On the contrary, they concede that the statutes do conflict, and that the decisions to that effect in Shepheard v. Godwin, E.D.Va., 1968, 280 F.Supp. 869, Douglas Independent School District No. 3 v. Jorgenson, D.S.D.1968, 293 F.Supp. 849 and Hergenreter v. Hayden, D.Kan. 1968, 295 F.Supp. 251, are correct. They do not claim that this is not a proper class action. They do not claim legal inability to comply with the judgment. They do not claim that the question should have been decided by a three-judge court rather than by a single judge. Their sole contention is that, by enacting Title III, section 305 of Public Law 90-576, the Congress relieved them of the liability here asserted, which is limited to aid that should have been paid during the fiscal year 1968-69. . . .
>
> It is apparent, and the appellants concede, that one purpose of section 305 of Public Law 90-576 was to put teeth into what was already the law, that a state could not reduce its aid to impacted districts because they were receiving aid under Public Law 81-874. The teeth are big ones. One obvious purpose of subsection (b) of section 305 is to hold back the bite of those teeth until the state legislatures could have a chance to change their laws so as to eliminate their unlawful features.

The appellate court refused to read the prohibition against Subchapter I aid being given to districts in states described in the 1968 amendment as sanctioning a reduction in state aid prior to the effective date of the

amendment. In affirming the decision of the district court granting an injunction against the California state officials implementing the state legislation for the 1968-69 fiscal year, the court noted,[61]

> If Congress had wished to do more than postpone the effective date of the penalty imposed by subsection (a), and to wipe out the State's liability to the Districts, it could, and we think it would, have chosen much more apt language to do so. Congress was well aware of the decision in Shepheard v. Godwin, *supra*. See S.Rep. No. 1386, 90th Cong., 2d Sess. 129 (1968). Nowhere in the legislative history is any disapproval of that decision expressed.

It will be recalled that the parties in *Carlsbad* agreed at the district court level that the 1968 amendment was effective to prohibit a reduction in state aid to local school districts because of the availability of Subchapter I funds for years beginning with the 1969-70 fiscal year in California. The validity of the 1968 amendment has not been challenged in the reported cases, and the existence of the amendment is, no doubt, the reason for the Ninth Circuit's decision in *Carlsbad* being the final decision, in point of time, to examine at length the issue under consideration.[62] *Shepheard*, *Hergenreter*, *Douglas Independent*, and the district court in *Carlsbad* had all found a conflict between Subchapter I and the respective state statutes, and each court had held the supremacy clause to require invalidation of the state provision in favor of implementing the intent of the federal

legislation. These cases made an attack on the 1968 amendment to Subchapter I useless litigation.

To the same effect as the four district court decisions already discussed was a final case, *infra*, handed down after the *Carlsbad* district court decision but before the Ninth Circuit's affirmance of that decision. The language employed in the final case in this line is in some respects the broadest of any of the five cases herein discussed, and, therefore, is perhaps the most significant to any future litigation in this area.

Triplett v. Tiemann (1969)

Triplett v. Tiemann[63] involved a challenge by Nebraska school districts to the constitutionality of the Nebraska scheme for providing state aid to local educational agencies. Specifically, the statute provided for aid by the state to all of its public schools in order to supplement local revenues, and then required that credit or deduction be made as to this general supplementation of payments received by any school district under Subchapter I.[64] The plaintiffs alleged that this scheme violated the supremacy clause of the United States Constitution.

At the outset, the court noted the various consequences of the state funding program on Subchapter I funds.[65]

> This constituted in effect an absorption of the federal funds into the scheme of state aid; made these funds have the status or equivalence of the general aid payments which were being provided to all school districts; and hence

> deprived the funds of their federal purpose and significance as special local assistance payments for federal impact.

It is rather ironic that all five federal district courts which heard similar challenges to state statutes requiring a reduction in state aid to local school districts receiving Subchapter I funds declared those statutes invalid under the supremacy clause because they did not comport to the intent Congress had for the Subchapter I moneys, but only the *Triplett* court, the last of the five to hear such a challenge, cited the section of Subchapter I entitled "Congressional declaration of policy" as its authority.[66] The instant court found "magic language" in the words of the federal statute itself.[67]

> The object of Congress had been, as 20 U.S.C. § 236 declared, 'to provide financial assistance * * * for those local educational agencies upon which the United States has placed financial burdens by reason of [etc.] * * *'. In undertaking to make this special assistance have a different financial significance to a local school district than that for which Congress had provided, the Nebraska statute must be held to constitute an interference with the operation and object of the federal statute and so to be violative of the Supremacy Clause.

While not ignoring the language of the House of Representatives Committee Report No. 1814 (1966) on the proposed 1966 amendment[68] to Subchapter I and the language of the 1968 amendment[69] to Subchapter I, both of which had been cited by a number of the four previous decisions in this line of cases, *Triplett* emphasized the role of the federal statutory language itself in determining

congressional intent.[70]

> Here, as indicated, the purpose and nature of the federal payments involved were made clear on the face of the federal statute. They were intended to provide special assistance to 'local educational agencies' for federal impact.

Accordingly, this court joined the *Shepheard, Hergenreter, Douglas Independent,* and *Carlsbad* courts in enjoining the defendant state board of education and state officials[71]

> from using or giving effect to the federal payments which have been or will be made to the plaintiff school districts and to other Nebraska school districts under [Subchapter I], as a credit or basis for reduction in the amount of the state-aid funds under Neb.R.S.Supp.1967, §§ 79-1330 to 79-1344 to which such school districts would otherwise be entitled.

The Subchapter I cases thus ended where they probably should have begun in the attempt to determine congressional intent: in the language of the federal statute itself.[72] That is where the Indiana supreme court looked in the congressional township fund litigation, but the art had been lost in the national forest reserve and federal flood control litigation, no doubt, in part, due to the fact that congressional intent concerning the federal funds had not been expressed in the federal statutes.

In the instant line of cases, all of the courts which considered the issue arrived at the same conclusion. It is suggested, however, that those courts which failed to look to the expressed intent of Congress as it appeared in the federal legislation took the long way in arriving at

the decision which a reading of the "Congressional declaration of purpose" allowed the *Triplett* court to reach directly.[73] It is to be hoped that in subsequent state aid to local educational agency cases involving federal legislation, the modus operandi of *Triplett* will be followed.

One Final Decision

It is perhaps appropriate to bring this chapter to a close with a case similar to that which opened the discussion of Subchapter I funds. *Hobson v. Hansen*[74] was primarily a desegregation case which grouped together the Economic Opportunity Act, the Elementary and Secondary Education Act, and the impact areas aid legislation for purposes of determining the appropriate role of federal moneys provided by these three programs. Before any of the purely impact areas aid cases from *Shepheard* through *Triplett* had been decided, *Hobson* had held,[75]

> [T]hese statutes are manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they cannot be regarded as curing any inequalities for which the Board is otherwise responsible.

The *Hobson* rationale was reaffirmed specifically in *Rodriguez v. San Antonio Independent School District*.[76] There suit was filed on behalf of Mexican-American school children and their parents who lived in the Edgewood Independent School District, and on behalf of all other

children throughout Texas who lived in school districts with low property valuations. Each district in the state was dependent upon federal, state, and local sources of financing. Since the federal government contributed only about ten percent of the overall public school expenditures, however, most revenue was derived from local sources and the two state programs - the Available School Fund and the Minimum Foundation Program. On a statewide basis, twenty percent of the Minimum Foundation Program funds were derived from the local school districts through the levy of an ad valorem tax, but the percentage contribution borne by the local districts varied considerably from district to district. In addition, the local property tax generated the revenue for payment of the bonded indebtedness for capital improvements as well as for all expenditures above the statutory state minimum.[77]

The plaintiffs contended that this system violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it discriminated on the basis of wealth. The market value of property per student in the seven San Antonio school districts varied from a low of 5,429 dollars in the Edgewood School District to a high of 45,095 dollars in the Alamo Heights School District. Although the local property taxes as a percent of the property's market value were highest in the Edgewood district and lowest in the Alamo Heights district (among the seven districts), Edgewood produced only 21

dollars per pupil from ad valorem taxes while Alamo Heights generated 307 dollars per pupil from the same source. State educational assistance programs were found to aggravate the problem rather than to tend to equalize available per pupil funds.[78]

Among the defenses raised in the district court by the San Antonio Independent School District and the other defendants was that the state could discriminate as it desired so long as federal financing equalized the differences. In denying this contention, the court noted that "plaintiffs have successfully controverted the contention that federal funds do in fact compensate for state discrimination."[79]

The court then directed its attention to the 1967 decision of the United States District Court for the District of Columbia.[80]

> More importantly, defendants have not adequately explained why the acts of other governmental units should excuse them from the discriminatory consequences of state law. Hobson v. Hansen, 269 F.Supp. 401 at 496, countered defendants' view by finding that the federal aid to education statutes '. . . are manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they cannot be regarded as curing any inequalities for which the Board is otherwise responsible.' Since they were designed primarily to meet special needs in disadvantaged schools, these funds cannot be employed as a substitute for state aid without violating the Congressional will. Further support for this view is offered by a series of decisions prohibiting deductions from state aid for districts receiving 'impacted areas' aid.[81]

The district court determined that the then current method of financing public education in Texas discriminated on the basis of wealth, and concluded, as a matter of law, that the plaintiffs were denied equal protection of the laws under the Fourteenth Amendment to the United States Constitution.[82] Subsequently, the decision of the district court was reversed.[83] The Supreme Court, however, did not have the opportunity to rule on the validity of the district court's determination concerning the role of federal funds provided to local school districts.[84]

> While federal assistance has an ameliorating effect on the difference in school budgets between wealthy and poor districts, the District Court rejected an argument made by the State in that court that it should consider the effect of the federal grant in assessing the discrimination claim. 337 F.Supp. at 284. The State has not renewed that contention here.

That the *Hobson* and *Rodriguez* district courts' conclusion that federal moneys are not to be construed as justifying otherwise unconstitutional discrimination is correct, however, was lent strong support in a footnote to the dissenting opinion of Mr. Justice Marshall, in which Mr. Justice Douglas joined, in *Rodriguez*.[85]

> Appellants made such a contention [i.e., that federal funds were used in such a way as to ameliorate significantly the widely varying consequences for Texas school districts and school children of the local property tax element of the state financing scheme] before the District Court but apparently have abandoned it in this Court. Indeed, data introduced in the District Court simply belies the argument that federal funds have a significant equalizing effect. . . . And, as the District Court observed, it does not follow that remedial

> action by the Federal Government would excuse any unconstitutional discrimination effected by the state financing scheme. 377 F.Supp. 280, 284.

One Final Amendment

It would be inappropriate to conclude the discussion of the litigation involving Subchapter I funds without noting the most recent congressional amendment to the program. While this last amendment has not yet been the subject of reported litigation, it directly affects 20 U.S.C. § 240 (d) (2), the clause prohibiting Subchapter I funds from being paid to local educational agencies in states taking into consideration such payments in determining the eligibility of any local educational agency for state aid.

In November, 1973, Congress amended Subchapter I to eliminate the application of 20 U.S.C. § 240 (d) (2) in certain circumstances.[86]

> Section 5(d) (2) of the Act of September 30, 1950 (public Law 874, 81st Congress) [i.e., 20 U.S.C. § 240 (d) (2)], shall not operate to deprive any local educational agency of payments under such Act during the fiscal year ending June 30, 1974, if such local educational agency is in a State which after June 30, 1972, has adopted a program of State aid for free public education which is designed to equalize expenditures for education among local educational agencies in that State. This section shall be effective on and after July 1, 1973, and shall be deemed to have been enacted on June 30, 1973.

By its own terms the 1973 amendment applied only to fiscal years ending June 30, 1974. Should its provisions be extended by Congress to include subsequent fiscal

years, however, it is apparent that pursuant to a state plan to equalize expenditures for education among local educational agencies, such agencies will not be deprived of Subchapter I funds on account of those funds having been considered in formulating the plan.

The 1973 amendment does not, of itself, alter the law of the holdings of the Subchapter I cases discussed in this chapter. *Shepheard* and *Hergenreter* were decided prior to the adoption of 20 U.S.C. § 240 (d) (2), and *Douglas Independent* did not consider the subsection in its opinion. *Carlsbad* made it clear that the subsection, while affecting the authority of the federal government to make Subchapter I payments in certain cases, did not affect the right (or lack thereof) of a state to reduce its aid commitment to a local educational agency because the latter had received Subchapter I funds. The 1973 amendment appears merely to open the door for continued Subchapter I payments in cases where, prior to the adoption of the amendment, such payments would have been prohibited, provided the necessary state plan has been implemented. It does not appear, in light of the *Carlsbad* decision, to permit states to reduce state aid to local educational agencies receiving Subchapter I funds, even if the requisite state plan were adopted after June 30, 1972.

When Congress enacted the 1973 amendment limiting the application of the 1968 amendment to Subchapter I, it is presumed to have known the effect of the pre-1968 amendment

case law. That the pre-1968 amendment case law (i.e., *Shepheard* and *Hergenreter*), prohibiting a reduction in state aid to a local educational agency as a consequence of that agency receiving Subchapter I funds, is the law currently applicable to Subchapter I because of congressional awareness of that case law at the time the 1973 amendment was adopted is supported by the language of the *Carlsbad* circuit court of appeals. That court indicated that since Congress had not overruled the *Shepheard* decision in or by the 1968 amendment, that case, i.e., *Shepheard*, could still serve as authority for prohibiting such a reduction in state aid.[87]

Summary of Impact Aid Cases

In dealing with Subchapter I, Assistance for Local Educational Agencies in Areas Affected by Federal Activity, of Chapter 13, Financial Assistance to Local Educational Agencies, of Title 20, Education, of the United States Code, courts have interpreted a statutory program containing a definite statement of congressional intent and policy concerning the moneys provided. Unlike the vague expressions of intent of the congressional township fund legislation and the absence of evidence of congressional intent concerning the education funds of the national forest reserve and federal flood control legislation, Congress, in 20 U.S.C. § 236, has expressed its intent to provide financial assistance to local educational

agencies upon which the United States has placed special financial burdens.

The form of assistance provided by Subchapter I was found to be funds, as were ultimately provided in each of the other three federal programs previously discussed. Under Subchapter I, these funds were to be paid directly to the local educational agencies responsible for providing public education in the impacted areas. This feature corresponds somewhat to the congressional township fund legislation's grant to inhabitants of townships (with the fee interest, by court interpretation, in the township itself), and is in marked contrast to the national forest reserve and federal flood control provisions naming the states, as opposed to the local educational agencies, as the payees.

Since the Subchapter I litigation dealt with alleged conflicts between federal and state statutory provisions, the source of the controlling law was found consistently to be federal and statutory, under the United States Constitution's supremacy clause. These cases consistently found state statutes giving way to the conflicting, and overriding, federal provisions.

Each of the cases discussed in this chapter reached the conclusion that a state could not reduce its state aid to a local educational agency below that to which it was otherwise entitled because that agency had received or was to receive Subchapter I federal funds. In reaching

this conclusion, *Shepheard v. Godwin*[88] relied heavily on the fact that the local educational agency was the designated payee, and on language of a House of Representatives committee report indicating those states reducing their aid because of the availability of Subchapter I funds were violating congressional intent. *Hergenreter v. Hayden*[89] reached its conclusion primarily by relying on *Shepheard*, while emphasizing the conflict between the federal and state statutory provisions involved. *Douglas Independent School District No. 3 v. Jorgenson*[90] returned to a consideration of the local educational agency as the payee of Subchapter I funds, again finding a conflict between the federal and state statutes construed.

Carlsbad Union School District of San Diego County v. Rafferty[91] distinguished the state's responsibility not to consider Subchapter I funds in its public education funding program and the authority of the federal government to withhold Subchapter I payments under the 1968 amendment. The amendment was held not to have affected a local educational agency's right to have its state aid computed without regard to Subchapter I funds.

Like the other four cases, *Triplett v. Tiemann*[92] found a conflict between the intent of Congress in providing funds under Subchapter I and a state program reducing aid to local educational agencies receiving Subchapter I funds. *Triplett* was the only one of the decisions, however, which went directly to the congressional

declaration of policy of Subchapter I to determine congressional intent. To that extent, *Triplett* may serve as a model in future litigation involving federal aid to local educational agencies.

Two other decisions, *Hobson v. Hansen*,[93] decided before *Shepheard*, and *Rodriguez v. San Antonio Independent School District*,[94] decided after *Triplett*, appeared to treat funds provided by the Economic Opportunity Act and the Elementary and Secondary Education Act as having the same purpose as those provided by Subchapter I. Neither case, however, dealt directly with the issue of whether a state could reduce its aid to a local educational agency as a consequence of that agency receiving funds under any or all of the three programs.

FOOTNOTES

[1]280 F.Supp. 869 (E.D.Va. 1968).

[2]*Id.* at 872.

[3]*Id.*

[4]*Id.* at 873.

[5]*Id.* at 872.

[6]*Id.* at 874.

[7]*Id.*

[8]The method of computing the amount to which each eligible school district is entitled is specified in 20 U.S.C. § 238 (1970).

[9]280 F.Supp. at 874.

[10]Act of April 11, 1965, Pub. L. No. 89-10, Title I, § 2, 79 Stat. 27.

[11]20 U.S.C. § 241g (c) (1) (1970).

[12]280 F.Supp. at 874.

[13]*Id.* at 875.

[14]*Id.*

[15]Act of November 3, 1966, Pub. L. No. 89-750, Title II, § 203, 80 Stat. 1212.

[16]280 F.Supp. at 875.

[17]*Id.* at 876.

[18]280 F.Supp. 869 (E.D.Va. 1968).

[19]*Id.*

[20]295 F.Supp. 251 (D.Kan. 1968).

[21]K.S.A. § 72-7001 et seq., as cited in 295 F.Supp. at 252.

[22]295 F.Supp. at 252.

[23]*Id.* at 252, 253.

[24]7 Ind. 636 (1856).

[25]6 Ind. 83 (1854).

[26]7 Ind. at 640.

[27]295 F.Supp. at 255.

[28]*Id.*

[29]280 F.Supp. 869 (E.D.Va. 1968).

[30]6 Ind. 83 (1854).

[31]295 F.Supp. at 255.

[32]*Id.* at 255, 256.

[33]7 Ind. 636 (1856).

[34]295 F.Supp. at 256.

[35]280 F.Supp. at 876.

[36]295 F.Supp. at 256.

[37]293 F.Supp. 849 (D.S.D. 1968).

[38]Ch. 53, [1967] S. Dak. Laws, as cited in 293 F.Supp. at 851.

[39]293 F.Supp. at 851.

[40]Ch. 44, § 3(6) (b) (2) (e), [1968] S. Dak. Laws, as cited in 293 F.Supp. at 851.

[41]293 F.Supp. at 851.

[42]*Id.* at 852.

[43]*Id.*

[44]280 F.Supp. at 873, as cited in 293 F.Supp. at 852.

[45]H.R. Rep. No. 2287, 81st Cong., 2d Sess. (1950), cited in 293 F.Supp. at 852.

[46]293 F.Supp. at 854.

[47]300 F.Supp. 434 (S.D.Cal. 1969), *aff'd*, 429 F.2d 337 (9th Cir. 1970).

[48]300 F. Supp. at 435.

[49]Cal.Ed.Code, §§ 17602, 17602.5, 17603, 17603.5, and 17605, as cited in 300 F.Supp. at 435.

[50]300 F.Supp. at 438.

[51]300 F.Supp. 434, at 440 et seq. (S.D.Cal. 1969).

[52]Act of October 16, 1968, Pub. L. No. 90-576, Title III, § 305 (a), 82 Stat. 1097. It should be observed that the language of subsection (a) of section 305 prohibits payments by the federal government in certain circumstances, as does the corresponding provision in the Elementary and Secondary Education Act, 20 U.S.C. § 241g (c) (1) (1970). Subsection (a) does not say anything about a state's liability for state aid funds withheld because a local educational agency had received Subchapter I funds. Subsection (b) of section 305 indicated a determinable future time for implementation of subsection (a) in the various states, "The amendments made by subsection (a) shall become effective with respect to each State on the first day of the first fiscal year which begins after the adjournment of the first complete legislative session (at which State aid may be considered) of such State's legislature held after the date of enactment of the Act." The *Carlsbad* district court made clear the distinction between state reduction of state aid and federal payments, holding that the former was not permitted even before the enactment of Public Law No. 90-576, and that the latter were to be withheld only after the respective state legislatures had had the opportunity to eliminate the unlawful features of their respective state statutes. *See* n.60, *infra*.

[53]300 F.Supp. at 440.

[54]*Id.*

[55]*Id.* at 439-40.

[56]The three cases to which the court had reference were Shepheard v. Godwin, 280 F.Supp. 869 (E.D.Va. 1968); Hergenreter v. Hayden, 295 F.Supp. 251 (D.Kan. 1968); and Douglas Independent School District No. 3 v. Jorgenson, 293 F.Supp. 849 (D.S.D. 1968).

[57]300 F.Supp. at 440.

[58] *Id.*

[59] 429 F.2d 337 (9th Cir. 1970).

[60] *Id.* at 338-39.

[61] *Id.* at 340.

[62] 20 U.S.C. § 240 (d) (2) (1970).

[63] 302 F.Supp. 1244 (D.Neb. 1969).

[64] N.R.S.Supp.1967 §§ 79-1330 to 79-1344, as cited in 302 F.Supp. at 1245.

[65] 302 F.Supp. at 1245

[66] 20 U.S.C. § 236 (1970).

[67] 302 F.Supp. at 1245.

[68] 20 U.S.C. § 240 (d) (1) (1970).

[69] 20 U.S.C. § 240 (d) (2) (1970).

[70] 302 F.Supp. at 1246.

[71] *Id.* at 1246-47.

[72] 20 U.S.C. § 236 (1970).

[73] *Id.*

[74] 269 F.Supp. 401 (D.D.C. 1967).

[75] *Id.* at 496.

[76] 337 F.Supp. 280 (W.D.Tex. 1971), *rev'd on other grounds*, 93 S.Ct. 1278 (1973).

[77] Porras, *The Rodriguez Case - A Crossroad in Public School Finance*, 26 The Tax Lawyer 141 (1972), at 142.

[78] *Id.* at 143.

[79] 337 F.Supp. at 284.

[80] *Id.* at 284-85.

[81] In a footnote the court cited the five cases previously analyzed in this chapter. *See* 337 F.Supp. at 285, n.10.

[82]337 F.Supp. at 285.

[83]San Antonio Independent School Dist. v. Rodriguez, 93 S.Ct. 1278 (1973).

[84]*Id.* at 1285, n.32.

[85]*Id.* at 1319, n.15.

[86]Act of November 7, 1973, Pub. L. No. 93-150, § 11, 87 Stat. 560.

[87]429 F.2d at 340.

[88]280 F.Supp. 869 (E.D.Va. 1968).

[89]295 F.Supp. 251 (D.Kan. 1968).

[90]293 F.Supp. 849 (D.S.D. 1968).

[91]300 F.Supp. 434 (S.D.Cal. 1969), *aff'd*, 429 F.2d 337 (9th Cir. 1970).

[92]302 F.Supp. 1244 (D.Neb. 1969).

[93]269 F.Supp. 401 (D.D.C. 1967).

[94]337 F.Supp. 280 (W.D.Tex. 1971), *rev'd on other grounds*, 93 S.Ct. 1278 (1973).

CHAPTER VI

EDUCATION REVENUE SHARING

History of Education Revenue Sharing Proposals

Education revenue sharing was proposed formally by President Richard M. Nixon on April 6, 1971. On that date he addressed a special message to Congress outlining his views concerning the federal government's role in financing public education, and proposing education revenue sharing as the program to accomplish the federal government's objectives in this area.[1] President Nixon's April 6 proposal was the last of six special revenue sharing measures (the others being in the fields of urban community development, rural community development, transportation, manpower training, and law enforcement assistance) submitted over a two month period[2] and designed to supplement general revenue sharing.[3]

The President saw a federal responsibility in financing elementary and secondary education in three areas.[4]

> This Federal role is threefold: (1) the allocation of financial resources on a broad and continuing basis to help States and local school districts meet their responsibilities, (2) the provision of national leadership to help reform and renew our schools to improve performance,

> and (3) the concentration of resources to meet urgent national problems during the period when they are most intense.

The President emphasized in his message that the federal government's responsibility was not the primary responsibility in public education funding, however, and that his program was designed only to provide assistance to those with the primary responsibility.[5]

> Primary responsibility, of course, rests with State and local governments, as it should. The Federal Government can help provide resources to meet rising needs, but State and local education authorities must make the hard decisions about how to apply these resources in ways that best serve the educational needs of our children. To enable State and local authorities to do this more effectively, I am proposing today a new system of special revenue sharing as a means of providing Federal financial assistance for elementary and secondary education.

The funds to be provided by President Nixon's proposal were to have been directed to areas of "strong national interests."[6]

> These funds would provide support for educational activities in broad areas where there are strong national interests in strengthening school programs. The national priority areas included are compensatory education for the disadvantaged, education of children afflicted by handicapping conditions, vocational education, assistance to schools in areas affected by Federal activities, and the provision of supporting services.

Three weeks after the President's message had been sent to the Congress, legislation embodying his education revenue sharing plan was introduced in the House of Representatives by Congressman A. Quie (R-Minn.)[7] and in the Senate by Senator W. Prouty (R-Vt.).[8] The House

Committee on Education and Labor heard one day of testimony on Congressman Quie's bill and the Senate Subcommittee on Education conducted three days of hearings on Senator Prouty's bill, but no further action was taken in either House during the 92nd Congress.[9]

When the first session of the 93d Congress convened in 1973, President Nixon renewed his efforts to see education revenue sharing enacted. On January 29, 1973, the President submitted his annual budget message[10] to Congress in which he again called for passage of an education revenue sharing program while restating his view of the federal government's role in the field of public education finance.[11]

> Outlays in the 1974 budget for education and manpower, including those for veterans, will be $12 billion. The 1974 program is based upon a reevaluation of the Federal Government's role in these areas. The primary responsibility for most of these activities, other than those for veterans, rests with State and local governments. The proper Federal role is primarily that of helping State and local governments finance their own activities, while conducting directly those few programs that can be done efficiently and effectively only by the Federal Government.
>
> The 1974 budget supports such a role for the Federal Government. It provides for:
>
> --creation of education and manpower revenue sharing programs to give State and local governments greater power in allocating resources within these vital areas; . . . .

Just over a month later, on March 1, 1973, President Nixon submitted to Congress a report on Human Resources,[12] which he characterized as the "fourth section of my 1973 State of the Union Message."[13] In it he voiced a strong

plea for the enactment of education revenue sharing in 1973, the third year that such a proposal had been before Congress.[14]

> 1973 must be a year of decisive action to restructure Federal aid programs for education. Our goal is to provide continued Federal financial support for our schools while expanding State and local control over basic educational decisions.
>
> I shall again ask the Congress to establish a new program of Education Revenue Sharing. This program would replace the complex and inefficient tangle of approximately 30 separate programs for elementary and secondary education with a single flexible authority for use in a few broad areas such as compensatory education for the disadvantaged, education for the handicapped, vocational education, needed assistance in federally affected areas, and supporting services.
>
> Education Revenue Sharing would enlarge the opportunities for State and local decision-makers to tailor programs and resources to meet the specific educational needs of their own localities. It would mean less red tape, less paper work, and greater freedom for those at the local level to do what they think is best for their schools--not what someone in Washington tells them is best.
>
> It would help to strengthen the principle of diversity and freedom in education that is as old as America itself, and would give educators a chance to create fresher, more individual approaches to the educational challenges of the Seventies. At the same time, it would affirm and further the national interest in promoting equal educational opportunities for economically disadvantaged children.
>
> If there is any one area of human activity where decisions are best made at the local level by the people who know local conditions and local needs, it is in the field of primary and secondary education. I urge the Congress to join me in making this year, the third in which Education Revenue Sharing has been on the legislative agenda, the year when this much-needed reform becomes law.

On March 20, 1973, the administration's education revenue sharing bill was introduced in the House of Representatives by Congressman A. Bell (R-Cal.) at the request of the President.[15] Known as the Better Schools Act of 1973, the bill was also introduced two days later in the Senate by Senator P. Dominick (R-Colo.), also by request.[16] It is this bill which will be analyzed in greater detail *infra*.

The introduction of the Better Schools Act of 1973 was not received warmly in Congress. Representative A. Quie (R-Minn.), who in 1971 had himself introduced the President's first education revenue sharing program, commented on March 23, 1973, just three days after H.R. 5823 had been introduced, that the bill "doesn't stand a snowball's chance in the warm place" of getting through Congress.[17] Congressman W. Ford (D-Mich.) replied to Representative Quie, "It was worth coming down here to hear you say that," as House Education and Labor Committee Chairman C. Perkins (D-Ky.) conducted the Committee's session in Louisville.[18] Congressman Perkins indicated at that time that he felt the administration would have been able to muster only 125 to 130 votes on the House floor for the Better Schools Act of 1973.[19]

For 1973, at least, Congressman Quie's prediction proved correct. As early as June 9, 1973, the Nixon administration admitted defeat in its efforts to push education revenue sharing through Congress in time for the

1973-74 school year. On that date, John Ottina, then the United States Commissioner of Education-designate, sent a letter to state school superintendents assuring them they would continue to receive federal aid grants in 1973-74 despite Congress' failure to approve the Better Schools Act of 1973.[20]

The President had relied heavily on the passage of the Better Schools Act. Federal statutory authority for the over 30 categorical grants for school aid, including the Elementary and Secondary Education Act and the impact areas aid legislation, expired on June 30, 1973.[21] Prior to June 9, the administration had been telling school officials that it had no reserve plan for providing school aid if the revenue sharing bill failed to pass.[22] Instead of adopting the President's proposal, however, Congress chose to extend the existing federal aid to education programs through fiscal 1974.[23]

Early in 1974 President Nixon renewed his drive for the enactment of education revenue sharing. In January the President revealed his 1974 school aid plan, designed to "give more flexibility and authority to local communities."[24] The President indicated his proposals were[25]

> framed to achieve the maximum possible consolidation of funding authorities so that state and local agencies can use federal funds to meet national priorities in their own ways.

By March, 1974, however, the President was in a mood for compromise. Speaking on a radio broadcast from Camp

David, Maryland, on March 23,[26] President Nixon endorsed a bill[27] extending federal education aid for three years[28] and providing some consolidation of existing programs.[29] The President was quick to indicate, however, that H.R. 69 was not his ultimate goal. He described the bill as "an important first step"[30] in meeting his education goals; it did not, however, incorporate all the revisions in federal funding for public elementary and secondary education he had suggested.[31] President Nixon left plenty of room for the introduction of education revenue sharing in the 94th Congress.

The Better Schools Act of 1973

President Richard M. Nixon has presented his most serious challenge to Congress to enact an education revenue sharing program in the form of the Better Schools Act of 1973.[32] In the particulars analyzed, it does not differ significantly from the President's 1971 proposal. Further, aside from the 1971 proposal, the Act is the only such program to have been introduced in Congress, and is the only such proposal currently before the 93d Congress. Therefore, it is this proposal, the Better Schools Act of 1973, which served as the revenue sharing for education model for this study.

The Better Schools Act will now be analyzed, as has the other federal legislation considered in this study, to ascertain the expressed intent of Congress, and the form

and payees or donees of the federal resources. Only after such an analysis has been undertaken can the Act be compared with the other federal programs discussed herein, and the degree of protection afforded local school districts against a reduction in state aid funds as a consequence of receiving federal revenue sharing funds be determined.

The Better Schools Act begins with certain findings of fact concerning the role of the federal government in the funding of public education. The Act restates the position taken by President Nixon on numerous occasions[33] that public education is primarily the responsibility of the states and local communities.[34] The federal government, however, is found to have a role to play.[35]

> . . . [T]he Federal Government has a responsibility to assist them [states and local communities] in meeting the costs of education in areas of special national concern. The Congress finds, however, that prior programs of Federal financial assistance for elementary or secondary education are too narrow in scope to meet the needs of State and local school systems.

The role the federal government is to assume under the Act is made clear when the stated purposes of the Act are examined. In the "purpose of this Act" paragraph,[36] federal revenue sharing for education is called upon "to assist" in no less than five endeavors, "to encourage" in one, and "to assure" in one.[37]

> It is therefore the purpose of this Act to consolidate certain current programs of Federal assistance to elementary or secondary

> Education into a system of Federal revenue sharing for education designed to assist in meeting such needs, to assist in encouraging innovation and development of new educational programs and practices, to assist in providing compensatory education for educationally deprived children, to assist in providing special educational services needed by the physically or mentally handicapped, to encourage greater attention to the vital field of vocational education, to assure to children whose parents live on Federal property an education comparable to that given to other children, and to assist in providing State and local educational officials with the flexibility and responsibility they need to make meaningful decisions in response to the needs of their students.

The Congress' intent and purpose is clearly to leave primary responsibility at the state and local level, while providing federal assistance to states and local educational efforts to meet the needs of programs and students.

A reading of section 4 of the Better Schools Act leaves no doubt that the resources which are the subject of the Act are moneys. Indeed, the bill is designed to provide a "share of the revenues of the United States to the States and to local educational agencies. . . ."[38]

The funds provided by the Better Schools Act would be extended by the federal government for basically five purposes. These purposes include (1) the education of children whose parents live on federal property,[39] (2) the education of the educationally disadvantaged,[40] (3) the education of the handicapped,[41] (4) vocational education,[42] and (5) the provision of supporting materials and services.[43] (As would be expected of a bill designed to

consolidate federal funding efforts, a number of statutory provisions would be repealed by the Act, including that portion of the Elementary and Secondary Education Act[44] and the impact areas aid legislation[45] discussed in Chapters IV and V, *supra*.) Each of these purposes must be examined in succession to determine the payees and authorized uses of the revenue to be shared.

It should be noted at the outset that the Act itself provides that all payments to be made by the federal government under the Better Schools Act are to be made to the states. Therefore, while the states are not always to be the ultimate beneficiaries of the shared revenues, the states are the payees of the federal payments under the Act.[46]

> The amounts appropriated and allotted pursuant to this Act shall be paid to the States at such intervals and in such installments as the Secretary may determine. Such amounts paid for any purpose under this Act shall also be available for construction to carry out such purpose.

The Replacement of Impact Areas Aid Funds

Subsection 4 (a) of the Better Schools Act provides,

> From the sums appropriated for carrying out this Act for any fiscal year the Secretary shall allot to each State an amount equal to 60 per centum of the average per pupil expenditure in such State multiplied by the number of children in average daily attendance in the public elementary or secondary schools of such State during such year who resided

> on Federal property. The amount so allotted shall be available for any educational purpose.

It will be recalled that the impact areas aid legislation, which subsection 4 (a) of the Act is designed to supplant, provided that the federal payments made pursuant thereto were to be made directly to the impacted local educational agencies.[47] In the Better Schools Act, Congress would direct the state to pay to such local educational agencies their "impact areas aid."[48]

> Each State shall pay to each of its local educational agencies for a fiscal year an amount equal to the sums allotted to such State under section 4(a) for such year on account of the number of children in average daily attendance who resided on Federal property in the school district of such agency.

The pass-through of funds provided for by subsection 5 (a) is consistent with the corresponding provision of President Nixon's proposed Education Revenue Sharing Act of 1971[49] and his interpretation of that Act.[50]

> To offset the loss of local school taxes, Education Revenue Sharing would provide a direct pass-through to local school districts enrolling such children [i.e., those children who live on federal property].

Conspicuous by its absence in the Better Schools Act's sections designed to replace Subchapter I, Chapter 13, Title 20 of the United States Code (impact areas aid) funds is any provision comparable to 20 U.S.C. § 240 (d) (2). That section, it will be recalled, provided that no Subchapter I payments could be made to states which took Subchapter I payments into account when calculating the

eligibility of local educational agencies for state aid or the amount thereof.

The Replacement of Elementary and Secondary Education Act Funds

The Better Schools Act's replacement for the funds provided by the Elementary and Secondary Education Act is found in subsection 4 (c).[51]

> The amount allotted to a State under this subsection shall be available only for programs and projects designed to meet the special educational needs, at the preschool or any other educational level, of educationally deprived children, and at least 75 per centum of such amount shall be available only for instruction in basic language or mathematics skills.

The total amount allotted under subsection 4 (c) would be 60 per cent of the remaining funds appropriated under the Act after the appropriate amount has been allotted under subsection 4 (a) and up through three per cent of the remainder has been allotted to Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, and to the Secretary of the Interior, for Indian students served by schools operated by the Department of the Interior, under subsection 4 (b).

The funds paid to the states under subsection 4 (c) would not all be passed through to local educational agencies.[52]

> . . . [The] State shall retain such amounts as it deems necessary for meeting the special educational needs of neglected or delinquent children and migratory children of migratory

> agricultural workers, except that the amount retained by such State under this paragraph for any fiscal year shall not exceed an amount equal to the expenditure index for such State for such year multiplied by the number of such children in such State during such year.

The remaining funds under subsection 4 (c) are to be distributed to the state's local educational agencies.[53]

> From the remainder of the sums allotted to such State under section 4(c) for a fiscal year and not . . . retained under paragraph (2), such State shall pay to each of its local educational agencies which has more than five thousand children aged five to seventeen, inclusive, from families with incomes below the poverty level, or has more than 15 per centum of the total enrollment of its schools consisting of such children, an amount equal the product of--
>
> (A) the expenditure index for such State for such year multiplied by
>
> (B) the number of such children from such families in the school district of such agency, ...

(The "expenditure index" is "the higher of (A) .35 multiplied by the average per pupil expenditure for such State, and (B) .35 multiplied by two-thirds of the average per pupil expenditure in the United States."[54])

The pass-through provision contained in subsection 5 (b) (3), relating to subsection 4 (c) funds, i.e., those funds designed to take the place of Elementary and Secondary Education Act funds, is similar to that which requires the states to distribute appropriate amounts under the Elementary and Secondary Education Act to their local educational agencies.[55] It is to the same effect as the corresponding provision in the Education Revenue Sharing

Act of 1971,[56] and is consistent with the President's original intent.[57]

> These funds would be passed through directly to local school districts which enroll large concentrations of these children [i.e., children of poor families].

It will again be recalled that the Elementary and Secondary Education Act contained a prohibition against Subchapter II payments being made to a state which took into consideration Subchapter II payments in determining the eligibility of a local educational agency for state aid funds, or the amount thereof.[58] No similar prohibitory clause is found in those sections of the Better Schools Act designed to replace Subchapter II funds.

Aid for the Education of the Handicapped, Vocational Education, and Supplementary Services

The Better Schools Act's provision of funds for the education of the handicapped, vocational education, and supplementary services is found in subsection 4 (d). The funds allotted to the states for these services would be apportioned on a school-age population basis.[59]

> After application of the provisions of subsections (a), (b), and (c) [the provisions supplying replacement funds for Subchapter I funds, revenue sharing funds for the outlying areas and Indian students in Department of the Interior schools, and replacement funds for Subchapter II funds, respectively] for a fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the remainder of the sums appropriated for

> carrying out this Act for such year as the number of children aged five to seventeen, inclusive, in such State bears to the number of such children in all of the States

Subsection 4 (d) (2) provides for the division of the available funds among the various uses.[60]

> Except as provided in section 7--
> (A) 16 per centum of the amount allotted to a State under paragraph (1) shall be available only for programs and projects at the preschool or any other educational level designed to meet the special educational needs of handicapped children;
> (B) 43 per centum of such amount shall be available only for vocational education activities; and
> (C) 41 per centum of such amount shall be available only for supporting materials and services.[61]

Unlike the funds provided by subsections 4 (a) and 4 (c), the funds to be distributed to the states under the Better Schools Act for the education of the handicapped, vocational education, and supplementary services need not be further distributed to local educational agencies.[62]

> The State would be entitled to use funds allotted under these provisions for the purposes prescribed, in accordance with a State plan developed under section 9 of the Act. It could retain the funds or distribute them among the local educational agencies of the State on a basis reflecting the relative needs of those agencies for the various types of program. However, in determining these relative needs, the State could not take into account assistance received by the local agencies under the provisions of this Act allotting funds for special programs for disadvantaged children.

That states, rather than local educational agencies, should have discretion with respect to the funds provided for these three purposes is consistent with President

Nixon's original design for education revenue sharing. In early 1971, the President said concerning his plan for funds for education of the handicapped, "Funds would be allocated directly to the States and procedures for obtaining these funds would be simplified."[63] Concerning his plan for vocational education funds, he said, ". . . States and local educational authorities would be authorized to determine how best to use Federal funds for vocational education in order to meet the needs of particular communities and individual workers,"[64] although local educational authorities were not to have been required to receive such funds under either the Education Revenue Sharing Act of 1971[65] or the Better Schools Act of 1973.[66] With respect to the funds to be provided for supplementary services, the President has said,[67]

> Education Revenue Sharing would continue this aid but would pull together programs from at least fourteen separate statutory provisions into one flexible allocation under which the States can decide how best to meet local education needs.

With these facets of the education revenue sharing plan currently before the Congress, i.e., the Better Schools Act of 1973, in mind, the protection afforded a local school district against a loss of state aid funds as a consequence of receiving federal revenue sharing funds can be determined. The protection accorded local school districts by courts against a loss of state aid funds, as a consequence of receiving funds under the

congressional township fund legislation, the national forest reserve and federal flood control legislation, and the impact areas aid legislation has hinged, to a major extent, on the available evidence concerning the intent of Congress in providing the respective funds and the designation of the payee of such funds. The Better Schools Act can now be analyzed in light of previous legislation and litigation to determine the degree (if any) of protection local educational agencies can expect under the currently-proposed education revenue sharing plan.

FOOTNOTES

[1]117 Cong. Rec. 9751 (1971) (message of President Nixon).

[2]*Id.* at 9752.

[3]*See* 31 U.S.C. § 1221-1263 (Supp. II, 1972)

[4]117 Cong. Rec., at 9753 (1971) (message of President Nixon).

[5]*Id.* at 9751.

[6]*Id.* at 9752.

[7]H.R. 7796, 92d Cong., 1st Sess. (1971).

[8]S. 1669, 92d Cong., 1st Sess. (1971).

[9]*Analysis of the Better Schools Act of 1973 - H.R. 5823; S. 1319,* 1, accompanying letter from Congressman C. W. (Bill) Young (R-Fla.) to Henry E. Mallue, Jr., May 21, 1973.

[10]119 Cong. Rec. H. 513 (daily ed. Jan. 29, 1973) (message of President Nixon).

[11]*Id.* at H. 517.

[12]119 Cong. Rec. H. 1269 (daily ed. March 1, 1973) (message of President Nixon).

[13]*Id.* at H. 1270.

[14]*Id.* at H. 1271.

[15]H.R. 5823, 93d Cong., 1st Sess. (1973).

[16]S. 1319, 93d Cong., 1st Sess. (1973).

[17]Education Daily, March 29, 1973, at 1.

[18]*Id.*

[19]*Id.*

[20]St. Petersburg Times, June 10, 1973, § A, at 2, col. 5.

[21]*Id.*

[22]*Id.*

[23]Act of July 1, 1973, Pub. L. No. 93-52, § 101, 87 Stat. 130.

[24]St. Louis Post-Dispatch, Jan. 24, 1974, at 1., col. 5.

[25]*Id.*

[26]Tulsa Daily World, March 24, 1974, § A, at 8, col. 8.

[27]H.R. 69, 93d Cong., 1st Sess. (1973).

[28]Tulsa Daily World, March 24, 1974, § A, at 8, col. 8.

[29]The Sunday Oklahoman (Oklahoma City), March 24, 1974, § A, at 1, col. 1.

[30]*Id.*

[31]Tulsa Daily World, March 24, 1974, § A, at 8, col. 8.

[32]H.R. 5823, 93d Cong., 1st Sess. (1973).

[33]*E.g.*, 119 Cong. Rec. H. 1270 (1973) (message of President Nixon; 117 Cong. Rec. 9751 (1971) (message of President Nixon.

[34]H.R. 5823, § 2 (a), 93d Cong., 1st Sess. (1973).

[35]*Id.*

[36]*Id.* § 2 (b).

[37]*Id.*

[38]*Id.* at introduction.

[39]*Id.* § 4 (a).

[40]*Id.* § 4 (c).

[41]*Id.* § 4 (d) (2) (A).

[42]*Id.* § 4 (d) (2) (B).

[43]*Id.* § 4 (d) (2) (C).

[44]*See Id.* § 20 (a) (1).

[45]*See Id.* § 20 (a) (7).

[46]*Id.* § 4 (f).

[47]20 U.S.C. § 240 (b) (1970).

[48]H.R. 5823, § 5 (a), 93d Cong., 1st Sess. (1973).

[49]H.R. 7796, § 5 (a), 92d Cong., 1st Sess. (1971).

[50]117 Cong. Rec. at 9753 (1971) (message of President Nixon).

[51]H.R. 5823, § 4 (c) (4), 93d Cong., 1st Sess. (1973).

[52]*Id.* § 5 (b) (2).

[53]*Id.* § 5 (b) (3).

[54]*Id.* § 19 (7).

[55]20 U.S.C. § 241g (a) (2) (1970).

[56]H.R. 7796, § 5 (b) (1), 92d Cong., 1st Sess. (1971).

[57]117 Cong. Rec. at 9752 (1971) (message of President Nixon).

[58]20 U.S.C. § 241g (c) (1) (1970).

[59]H.R. 5823, § 4 (d) (1), 93d Cong., 1st Sess. (1973).

[60]*Id.* § 4 (d) (2).

[61]*Id.* § 7 provides, "(a) Thirty per centum of that portion of each State's allotment which is available for the purposes described in clause (A) or (B) of section 4 (d) (2) may be made available for any of the other purposes described in subsection (c) or (d) of section 4.

"(b) The 30 per centum limitations in subsection (a) may be exceeded if the State demonstrates to the satisfaction of the Secretary that such action will achieve more effectively the purposes of this Act."

[62]*Analysis of the Better Schools Act of 1973 - H.R. 5823; S. 1319*, 11, accompanying letter from Congressman C. W. (Bill) Young (R-Fla.) to Henry E. Mallue, Jr., May 21, 1973.

[63]117 Cong. Rec. at 9752 (1971) (message of President Nixon).

[64]*Id.*

[65]H.R. 7796, § 5 (c), 92d Cong., 1st Sess. (1971).

[66]H.R. 5823, § 5 (c), 93d Cong., 1st Sess. (1973).

[67]117 Cong. Rec. at 9753 (1971) (message of President Nixon).

CHAPTER VII

THE PROTECTION AFFORDED LOCAL SCHOOL DISTRICTS AGAINST A REDUCTION IN STATE AID FUNDS AS A CONSEQUENCE OF RECEIVING FEDERAL REVENUE SHARING FUNDS

Each of the three lines of decisions (i.e., those involving the congressional township funds, the national forest reserve and federal flood control funds, and the impact areas aid funds, respectively) analyzed in this study helps to determine the protection afforded local school districts against a reduction in state aid funds as a consequence of receiving federal revenue sharing funds. The form of resources provided by the federal government consisted of moneys in each of the major pieces of legislation considered, and is to consist of moneys under the education revenue sharing proposal, the Better Schools Act of 1973, currently before the Congress. Although the original reservations and grants of the congressional township fund legislation took the form of land, the sale of such land had been authorized and the conversion of that land into the proceeds of a sale had been accomplished before each of the respective grants became the subject of

litigation. Thus, the form of resources under consideration has been the same in both the legislation and litigation analyzed and the currently-proposed education revenue sharing plan.

While the form of resources provided in the past and currently proposed to be provided has been and is consistent, however, the expressed intent of Congress (and, therefore, the source of the controlling law in the litigation) and the payees of the funds provided have not been consistent. Consequently, the protection afforded local school districts against a loss of state aid funds as a consequence of receiving federal funds under the congressional township fund legislation, the national forest reserve and federal flood control measures, and the impact areas aid legislation has not been consistent, either. The Better Schools Act can now be compared with the earlier pieces of federal legislation and the results of the litigation stemming therefrom to determine the protection afforded local school districts against a loss of state aid funds as a consequence of receiving federal revenue sharing funds under the Act.

The Protection Afforded Under Alternative Formulations of Congressional Intent

The intent of Congress regarding the resources provided for educational purposes as expressed in the federal

legislation granting lands to inhabitants of townships and authorizing the sale of such lands in the first half of the nineteenth century can perhaps best be described as unspecific. The Indiana enabling act's grant of lands indicated that the grant was intended "for the use of schools."[1] When the sale of the lands granted was authorized in 1828, Congress again stated its intent and the purpose of the proceeds of the sales in broad terms: "for the use and support of schools, within the several townships and districts of the country for which they were originally set apart."[2]

With no more than these two formulations of congressional intent to guide it, the Indiana supreme court, in the line of decisions beginning with *State v. Springfield Township*,[3] directed its attention, in the challenges alleging the state's misapplication of the funds, to specific questions of state law. In *State v. Springfield Township*,[4] where the state was found to have attempted "to distribute to the people of the state at large a school fund created for the exclusive use of the inhabitants of Springfield township,"[5] the court invalidated the state action not because the intent of Congress had been violated, but because the state's own constitution was violated by such state action.[6] The intent of Congress was examined in that case only to determine whether the Indiana constitution was being followed, not to find the degree of protection afforded local educational agencies

against a loss even of the congressionally granted funds (although the result of the court's examination offered the local agency's requested protection under the constitution, and, under the language of *State v. Mathews*,[7] would have offered the same protection had the court sought to find it under the congressional enactment itself).

The Indiana decisions[8] subsequent to *State v. Springfield Township*, the decisions which dealt with reductions in state aid (not diversions of the federal funds themselves) to local educational agencies as a consequence of those agencies receiving the congressional township funds, dealt with the intent of Congress only briefly. In each case the court found that the funds which Congress had directed to go to specific local educational agencies were indeed going to those agencies, and as long as the congressional enactment was not being violated to that extent, the state was at liberty to reduce[9] or even eliminate[10] state aid as a consequence of the local agency receiving the federal funds. The Indiana supreme court read no protection for local educational agencies into the formulations of congressional intent with which it was dealing.

If there is no protection afforded local educational agencies against a reduction in state aid funds as a consequence of receiving federal funds when Congress indicates those funds are "for the use of schools"[11] and "for

the use and support of schools, within the several townships and districts [i.e., the local educational agencies' jurisdictions] of the country for which they were originally set apart,"[12] it is not surprising that no such protection is afforded, either, where the Congress provides federal funds to local educational agencies under legislation devoid of any declaration of intent concerning those funds, other than that they "benefit" certain schools. In the national forest reserve and federal flood control legislation, Congress only stated that the moneys provided were to be[13]

> expended as the State legislature may prescribe for the benefit of [the] public schools and public roads

of the county or counties in which the forest reserve or flood control property was located.

In the initial decision analyzed dealing with funds provided under the national forest reserve legislation, the United States Supreme Court allowed a state to expend all the federal funds on public roads, to the exclusion of the public schools.[14] Thus, the principle was established that where Congress names two beneficiaries, a local educational agency, should it be one of those beneficiaries, is not even afforded protection against receiving none of the funds provided by Congress. While *State v. Springfield Township* refused to sanction a diversion of the federal funds provided where only one beneficiary was named, *King County, Washington, v. Seattle School*

District No. 1[15] permitted such a diversion of even the federal funds in question when two beneficiaries were named. While not citing the United States Supreme Court decision,[16] the Oklahoma supreme court in its 1950s decisions had no trouble allowing a reduction in state aid to a local educational agency as a consequence of that agency being the beneficiary of federal forest reserve or federal flood control funds under the applicable declaration of intent,[17] provided such a reduction did not violate state law. The discretion of the state in using such funds, limited only by the requirement that the use conform to the specific congressional language employed, was permitted in each of the Oklahoma decisions.[19]

> There is no limitation upon the power of the legislature to prescribe how the expenditures shall be made for the purposes stated. . . . No trust for the benefit of appellee [school district] is created by the grant.

Some slight problems are caused by *Carroll v. Bruno*,[20] in that it is the only decision which purports to find a purpose for the funds provided by the national forest reserve legislation broader than the "benefit" of public schools and public roads. The *Carroll* court, it will be recalled, found that the funds provided were "a contribution in lieu of taxes."[21] The problems caused by such an interpretation of congressional intent, however, should be slight, since the interpretation did not impede the Washington supreme court from relying on the earlier Oklahoma decisions, and reaffirming the position that where

Congress provides for federal funds to benefit public schools within the jurisdiction of certain local educational agencies under the prescription of the state legislature, such agencies are afforded no protection against a loss of state aid as a consequence of receiving those federal funds.

The decisions reviewed to this point have been consistent: there is no protection afforded a local educational agency against a reduction of state aid as a consequence of receiving federal aid funds because such funds are "for the use of schools,"[22] "for the use and support of schools, within the several townships and districts [i.e., local educational agencies' jurisdictions] of the country for which they were originally set apart,"[23] or to be "expended as the State legislature may prescribe for the benefit of [the] public schools and public roads"[24] in a certain county or in certain counties. Equally consistent, although reaching opposite results, have been the cases in which the intent of Congress has been expressed in more specific terms.

In the impact areas aid legislation, Congress declared its policy[25]

> to provide financial assistance (as set forth in this subchapter) for those local educational agencies upon which the United States has placed financial burdens by reason of the fact that--
>
> (1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or

> (2) such agencies provide education for children residing on Federal property; or
> (3) such agencies provide education for children whose parents are employed on Federal property; or
> (4) there has been a sudden and substantial increase in school attendance as the result of Federal activities.

When interpreting this legislation, the courts in each of the five cases[26] considered in the primary line of the Chapter V, *supra*, decisions refused to permit a reduction in state aid to local educational agencies as a consequence of those agencies receiving impact areas aid. Only the last impact areas aid case, however, *Triplett v. Tiemann*,[27] adopted its position relying primarily on the above statutory declaration of intent. The other cases relied heavily on the fact that the local educational agency was the designated payee (See *infra*.) and on a congressional committee report.[28] Nevertheless, *Triplett* does provide authority for concluding that state aid to a local educational agency cannot be reduced as a consequence of that agency receiving federal funds where the purpose of the funds is similar to that stated in the impact aid legislation.[29]

> Here, as indicated, the purpose and nature of the federal payments involved were made clear on the face of the federal statute. They were intended to provide special assistance to 'local educational agencies' for federal impact.

The proposed intent of Congress as expressed in the Better Schools Act of 1973 does not match exactly, of course, any of the corresponding declarations of policy

or intent previously considered. More specific language than that found in the congressional township fund legislation, the national forest reserve legislation, and the federal flood control legislation is used in the Act. In its efforts "to assist," "to encourage," and "to assure"[30] specific programs and results, the Better Schools Act comes closer than legislation providing funds "for the use," "for the use and support," or "for the benefit of"[31] public schools to naming its objectives.

The intent of Congress provision of the Better Schools Act may not be nearly so helpful to local educational agencies as *Triplett* found the corresponding provision of the impact aid legislation, however. Where the impact aid legislation sought "to provide financial assistance . . . for . . . local educational agencies,"[32] the proposed system of federal revenue sharing is designed "to assist" primarily programs, not agencies.[33] Where the level of institutions conducting such programs is named, both the state and local levels are included.[34]

> It is therefore the purpose of this Act to consolidate certain current programs of Federal assistance to elementary and secondary education into a system of Federal revenue sharing for education designed to assist in meeting such needs [presumably, 'the needs of State and local school systems' referred to in section 2 (a)], . . . and to assist in providing State and local educational officials with the flexibility and responsibility they need to make meaningful decisions in response to the needs of their students.

Therefore, while the *Triplett* court could conclude that

the impact areas aid was "intended to provide special assistance to 'local educational agencies' for federal impact,"[35] a court interpreting the Better Schools Act would have to conclude that the states also are to receive assistance under the Act.

It will be recalled that the Better Schools Act sections designed to replace the impact areas aid contain no provision comparable to 20 U.S.C. § 240 (d) (2), providing that no Subchapter I (impact areas aid) payments could be made to states which took Subchapter I payments into account when calculating the eligibility of local educational agencies for state aid or the amount thereof. It will be recalled further, however, that the district court in *Carlsbad Union School District of San Diego County v. Rafferty*[36] rejected the argument that language such as 20 U.S.C. § 240 (d) (2) was necessary to prohibit a reduction in state aid to local educational agencies as a consequence of those agencies receiving Subchapter I funds. It appears, therefore, that the issue "whether the appropriate federal officials are authorized to make certain payments under state actions reducing or eliminating state aid to local educational agencies as a consequence of those agencies receiving federal payments" is not determinative of the issue of whether a state can reduce its aid to local educational agencies as a consequence of those agencies receiving federal funds. Thus, the exclusion of a clause similar to 20 U.S.C. § 240 (d) (2) in the

Better Schools Act would not, under the authority of the *Carlsbad* case, be dispositive of the issue of whether a reduction of state aid to local educational agencies as a consequence of those agencies receiving federal revenue sharing funds is authorized. Courts would be free to examine the language expressing congressional intent, as did the *Triplett* court.

It appears that the intent of Congress provision of the Better Schools Act of 1973 affords no protection to a local school district against a reduction of state aid funds as a consequence of that district receiving federal revenue sharing funds under the Act. The differences between the intent provisions of the congressional township fund, national forest reserve, and federal flood control legislation, on the one hand, and the Better Schools Act, on the other, are differences in degree. In none of these acts has Congress attempted to underwrite completely public school financing, and the President has recently reiterated that primary responsibility in this area remains at the state and local level.[37] While the earlier legislation provides funds for "use," "support," and "benefit," the Better Schools Act would provide funds "to assist," "to encourage," and "to assure." While the earlier legislation names local schools as beneficiaries, the Act is perhaps more specific, and names programs.

The message of the decisions examined in this study, however, is clear. From *State v. Springfield Township*[38]

through *Carroll v. Bruno*,[39] each case which analyzed the congressional township fund, the national forest reserve, or federal flood control legislation arrived at the same conclusion: there is no protection afforded a local educational agency against a reduction in state aid as a consequence of receiving those federal funds. The discretion concerning the use of state aid funds remained with the states.

On the other hand, the difference between the intent provision of the impact areas aid legislation and the Better Schools Act is a difference in kind, not degree. In the intent section of the former enactment the Congress named certain local educational agencies as beneficiaries of the aid funds, not mentioning states. The intent provision of the Better Schools Act, however, indicates no specific agencies (e.g., local educational agencies) which are to be benefited to the exclusion of others (e.g., the states) by the aid (although the Act does provide for the state to distribute some of the funds allotted to it to its local educational agencies pursuant to a congressionally provided formula[40]), but rather suggests that the needs Congress would attempt to address in the Act are those of both "State and local school systems."[41] Therefore, the decisions from *Shepheard v. Godwin*[42] through *Triplett v. Tiemann*,[43] providing protection to local educational agencies against a reduction in state aid funds as a consequence of receiving impact areas aid funds would

be of no help to local districts under the Better Schools Act, since those cases interpreted a significantly different intent of Congress.

It should be recalled that only *Triplett* of the impact areas aid cases went directly to the intent of Congress clause of Subchapter I to reach its decisions. Each of the cases in that line examined a congressional committee report concerning the 1966 amendment to Subchapter I. Of course, as yet no congressional committee report exists concerning the Better Schools Act, so there is no corresponding source under the Act to aid in the determination of congressional intent.

Finally, although the point was not emphasized in *Hergenreter v. Hayden*[44] nor in *Carlsbad Union School District of San Diego County v. Rafferty*,[45] two of the cases, *Shepheard v. Godwin*[46] and *Douglas Independent School District No. 3 v. Jorgenson*,[47] afforded protection to local school districts against a reduction of state aid funds as a consequence of receiving Subchapter I funds largely for the reason that the local educational agencies had been named by Congress as the payees of the federal aid funds. It is appropriate, therefore, to examine this final aspect of the federal legislation discussed in this study to determine whether it may provide such protection to local educational agencies under the Better Schools Act.

The Protection Afforded Under Alternative Designations of Payees of Federal Funds

In determining the protection afforded local school districts against a reduction in state aid funds as a consequence of receiving federal funds by the respective designations of payees under past and proposed federal legislation, it is appropriate to examine, in this instance, the proposed legislation first. For all funds to be paid by the federal government under the Better Schools Act, the states would serve as the payees.[48]

> The amounts appropriated and allotted pursuant to this Act shall be paid to the States at such intervals and in such installments as the Secretary [of Health, Education, and Welfare] may determine.

Complicating the above neat designation of the states as the payees of the proposed federal revenue sharing funds are two provisions directing the states to "pay to each of its local educational agencies" that portion of the funds designed to replace impact areas aid[49] and that portion (except for the funds the state is authorized to retain for delinquent and migratory children[50]) of the funds designed to replace the Elementary and Secondary Education Act funds.[51] These provisions in the Better Schools Act are consistent with President Richard M. Nixon's initial revenue sharing proposals.[52] It is a matter of speculation whether courts would treat local

educational agencies under these provisions as "payees" of the federal funds under the Better Schools Act, but it is unlikely that that issue alone would determine whether the agencies are afforded protection against a reduction in state aid funds.

In the initial litigation considered in this study, the federal resources, in that case, lands, were granted to inhabitants of local geographic areas. In the Indiana enabling act, Congress provided[53]

> *First.* That the section numbered sixteen, in every township, and when such section has been sold, granted, or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

The initial decision of the congressional township fund series, *State v. Springfield Township*,[54] quoted approvingly language of the United States Supreme Court emphasizing the local nature of the payees named.[55]

> 'The citizens within the township are the beneficiaries of the charity. The title to these lands has never been considered in the state; and it has no inherent right to appropriate them to any purpose other than for the benefit of schools. For the exercise of the charity under the laws, the title is in the township.' *Vincennes University v. Indiana*, 14 How. 268.

The same court which used the above quoted authority to justify refusing to permit the state to divert the federal funds provided from the township-beneficiary in *State v. Springfield Township*, however, consistently held, in *Quick v. White-Water Township*[56] and the cases which

followed, that the state could reduce or even eliminate its aid commitment to its townships because of the townships' receiving the congressional grant and the proceeds of the sale thereof. Thus, it is apparent that the fact that local educational agencies are the designated payees in the congressional enactment will not of itself prohibit a reduction in state aid to local educational agencies as a consequence of those agencies receiving federal funds.

In both the national forest reserve and federal flood control legislation the states, and not the local educational agencies, were named as the payees of the federal funds provided for education. The national forest reserve measure provides that the funds[57]

> shall be paid . . . by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated . . .

A similar provision is found in the federal flood control legislation.[58]

The principle was adopted early that since the state was the named payee, the state had discretion concerning the use of the funds.[59]

> When turned over to the State, the money belongs to it absolutely. There is no limitation upon the power of the legislature to prescribe how the expenditures shall be made for the purposes stated. . . . No trust for the benefit of the appellee [school district] is created by the grant.

The fact that the state legislatures were given the power to prescribe how the expenditures should have been made for education in the national forest reserve and federal flood control statutes, while under the Better Schools Act the legislatures are directed to pass the revenue sharing funds designed to replace the impact areas aid and the major portion of those funds designed to replace the Elementary and Secondary Education Act funds through to their local educational agencies, will not necessarily result in protection to local school districts against a reduction in state aid funds under the Better Schools Act while such protection was denied under the national forest reserve and federal flood control measures. First, in the Better Schools Act provision allotting funds to replace the impact areas aid, the language, "The amount so allotted shall be available for any educational purpose,"[60] appears, but there is no statement concerning whether the states or the local educational agencies are to make the final determination of which purposes will be served. In the Act's provision allotting funds to replace the Elementary and Secondary Education Act's aid, it would be required that "at least 75 per centum of such amount shall be available only for instruction in basic language or mathematics skills,"[61] but the Act is devoid of language indicating who will have the final authority over the specifics of such 75 per cent of the allotment and how and under whose authority the remaining 25 per cent of such

allotment will be spent. The provisions granting aid restricted to the uses of handicapped children's education, vocational education, and supporting services[62] would result in the funds provided going directly to the state, with no pass-through to the local educational agencies required. Therefore, there appear to be no restrictions on the states' discretion concerning the funds to be provided under the Better Schools Act which would require the states to relinquish final authority to local educational agencies over the programs to be assisted.

Second, in neither the national forest reserve and federal flood control legislation nor the Better Schools Act has Congress attempted to restrict the way in which the state distributes its own funds. The reasoning of the Oklahoma supreme court in *State* ex rel. *Boards of Education of Independent School Districts No. 1-2 and No. 1-3 of Marshall County v. State Board of Education*,[63] allowing a reduction in state aid to local educational agencies as a consequence of receiving federal funds under the flood control legislation, made clear the distinction between state legislative discretion over federal moneys and such discretion over state funds, and was worded in sufficiently broad language to apply to the federal revenue sharing funds to be provided by the Better Schools Act.[64]

> . . . But we do not construe the Federal Statute as attempting to control the method by which this State apportions its own funds

> appropriated for Equalization Aid to its schools. There is, therefore, no violation of the Federal Statute.

Third, and finally, the states would not be wholly without a role in distributing the Better Schools Act's funds designed to replace the impact aid and Elementary and Secondary Education Act's funds. In addition to naming specifically the states as the payees of all funds to be provided, the Better Schools Act charges a state officer with the responsibility of administering the Act's programs.[65]

> The chief executive officer of a State shall be the State agency responsible for administration (or supervision of the administration) of the program under this Act in such State, except that a specified single State agency shall be responsible for such administration (or supervision of administration) if such officer determines that the law of such State so provides. . . .

This language is clearly different from the impact areas aid provision by-passing the states. It appears to leave considerable room for state discretion concerning the ultimate effect of the programs to be administered under the Act.

In these first two lines of decisions, involving the congressional township fund legislation and the national forest reserve and federal flood control legislation, Congress named, in the first instance, what can be termed local educational agencies as the payees of the resources provided, and, in the second instance, the states as the payees of the federal funds. Both lines of cases permitted

states to reduce state aid to local educational agencies as a consequence of those agencies being the beneficiaries of the federal payments under the respective intent of Congress clauses, indicating that the designation of the payee is not determinative of the issue of whether such reductions are permitted under the federal laws.

The only series of cases which has not yet been analyzed in this section considering the significance of the designated payees of the federal moneys is that involving Subchapter I (impact areas) aid. The Subchapter I enactment provided for the federal payments to be made directly to the local educational agencies involved.[66]

> The Commissioner shall, subject to the provisions of subsection (c) [Adjustments where necessitated by appropriations] of this section, from time to time pay to each local educational agency, in advance or otherwise, the amount which he estimates such agency is entitled to receive under this subchapter. . . .

While each of the cases analyzed dealing primarily with Subchapter I refused to permit a state to reduce its aid to a local educational agency as a consequence of receiving Subchapter I funds, it is significant that no case hinged such a refusal solely on the ground that the local educational agency was the designated payee of the funds. Even the *Shepheard v. Godwin*[67] court, the first leading proponent of examining the congressional designation of the payees, examined also the intent of Congress, not as found in the legislation perhaps, but as found in the legislative history of the Subchapter.[68] Additionally, that

court also considered the method of computation of the aid to the local educational agency as supportive of its decision.[69] *Douglas Independent School District No. 3 v. Jorgenson*,[70] the other leading proponent of examining the designation of the payees of the federal funds, also quoted the same congressional committee report as *Shepheard* to determine congressional intent, and to further justify its holding.

The point of the Subchapter I cases in this context is that no court has yet prohibited a reduction of state aid to a local educational agency as a consequence of receiving federal moneys solely on the basis that the local educational agency was the designated payee of the aid funds. Both *Shepheard* and *Douglas Independent* examined at length, and admittedly held significant, the fact that the local educational agencies were the named payees. Nevertheless, both courts also relied heavily on what they found to be the congressional intent. Of course, the other case of some significance in the line, *Triplett v. Tiemann*,[71] relied in its opinion on congressional intent as enacted in the statute.

It appears, therefore, that the designation of the payees in the revenue sharing proposal, the Better Schools Act, will not alone prohibit a reduction in state aid to local educational agencies as a consequence of receiving federal revenue sharing moneys under the Act. The Better Schools Act names the states as the payees of all federal

revenues to be shared under the Act, although those funds designed to replace Subchapter I (impact areas aid) and Subchapter II (Elementary and Secondary Education Act) funds are to be passed through the states to the local educational agencies. Consequently, even if the Subchapter I cases would serve as analogous cases for cases under the Better Schools Act, the authority would only extend to cases involving revenue sharing funds designed to replace Subchapter I and Subchapter II funds.

Even in instances involving Subchapter I and Subchapter II replacement funds, however, the Subchapter I cases would not appear to prohibit a reduction in state aid to local educational agencies as a consequence of receiving the federal revenue sharing funds. First, the local educational agencies are not technically the payees of the federal payments under the Better Schools Act, as they were under Subchapter I.[72] Even more important, however, is the consideration that each major Subchapter I case also relied on congressional intent in reaching its decision. It was pointed out in the previous section of this chapter, *supra*, that the declaration of congressional intent of the Better Schools Act differs substantially, and in kind, from that with which the courts worked in Subchapter I.

Finally, the congressional township fund cases and the national forest reserve and federal flood control cases make clear that the issue of whether the state or

local educational agencies are the designated payees is of no consequence where the congressional intent does not support a prohibition of the reduction of state aid to local educational agencies as a consequence of receiving federal funds. The similarities of the declarations of intent concerning the funds provided for education between the Better Schools Act and the congressional township fund, the national forest reserve, and the federal flood control legislation have been examined and found to be substantial; differences are differences of degree.

The primary conclusion to be drawn from these federal enactments and the state and federal cases arising thereunder is clear. There is no protection afforded a local school district against a loss of state aid funds as a consequence of receiving federal revenue sharing funds under the Better Schools Act of 1973, the only education revenue sharing proposal currently before the United States Congress.

FOOTNOTES

[1]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[2]Act of May 24, 1828, ch. 91, § 1, 4 Stat. 298.

[3]6 Ind. 83 (1854).

[4]*Id.*

[5]*Id.* at 96.

[6]*Id.*

[7]150 Ind. 597, 50 N.E. 572 (1898).

[8]State v. Mathews, 150 Ind. 597, 50 N.E. 572 (1898); Quick v. Laurel Township, 17 Ind. 344 (1861); Quick v. Springfield Township, 7 Ind. 636 (1956); and Quick v. White-Water Township, 7 Ind. 570 (1856).

[9]Quick v. Laurel Township, 17 Ind. 344 (1861); Quick v. Springfield Township, 7 Ind. 636 (1856); and Quick v. White-Water Township, 7 Ind. 570 (1856).

[10]State v. Mathews, 150 Ind. 597, 50 N.E. 572 (1898).

[11]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[12]Act of May 24, 1828, ch. 91, § 1, 4 Stat. 298.

[13]33 U.S.C. § 701c-3 (1970) [16 U.S.C. § 500 (1970)].

[14]King County, Wash., v. Seattle School Dist. No. 1, 263 U.S. 361 (1923).

[15]*Id.*

[16]*Id.*

[17]State ex rel. Bd. of Educ. of Independent School Dist. No. 16 (Le Flore) of Le Flore County v. State Bd. of Educ., 293 P.2d 583 (Okl. 1956); State ex rel. Bd. of Educ. of Independent School Dist. No. 17 (Coweta) of Wagoner County v. State Bd. of Educ., 295 P.2d 279 (Okl. 1955);

and State ex rel. Bds. of Educ. of Independent School Dists. No. 1-2 and No. 1-3 of Marshall County v. State Bd. of Educ., 289 P.2d 653 (Okl. 1955).

[18]State ex rel. Bd. of Educ. of Independent School Dist. No. 19 of Wagoner County v. State Bd. of Educ., 256 P.2d 446 (Okl. 1953).

[19]263 U.S. at 364.

[20]81 Wash.2d 82, 499 P.2d 876 (1972).

[21]*Id.*

[22]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[23]Act of May 24, 1828, ch. 91, § 1, 4 Stat. 298.

[24]33 U.S.C. § 701c-3 (1970) [16 U.S.C. § 500 (1970)].

[25]20 U.S.C. § 236 (1970).

[26]Triplett v. Tiemann, 302 F.Supp. 1244 (D.Neb. 1969); Carlsbad Union School Dist. of San Diego County v. Rafferty, 300 F.Supp. 434 (S.D.Cal. 1969), *aff'd*, 429 F.2d 337 (9th Cir. 1970); Douglas Independent School Dist. No. 3 v. Jorgenson, 293 F.Supp. 849 (D.S.D. 1968); Hergenreter v. Hayden, 295 F.Supp. 251 (D.Kan. 1968); and Shepheard v. Godwin, 280 F.Supp. 869 (E.D.Va. 1968).

[27]302 F.Supp. 1244 (D.Neb. 1969).

[28]*See, e.g.*, ch. V, note 16 *supra*.

[29]302 F.Supp. at 1246.

[30]H.R. 5823, § 2 (b), 93d Cong., 1st Sess. (1973).

[31]*See* notes 22-24 *supra*.

[32]20 U.S.C. § 236 (1970).

[33]H.R. 5823, § 2 (b), 93d Cong., 1st Sess. (1973).

[34]*Id.*

[35]302 F.Supp. at 1246.

[36]300 F.Supp. 434 (S.D.Cal. 1969), *aff'd*, 429 F.2d 337 (9th Cir. 1970).

[37]119 Cong. Rec. H. 513 (daily ed. Jan. 29, 1973) (message of President Nixon).

[38]6 Ind. 83 (1854).

[39]81 Wash.2d 82, 499 P.2d 876 (1972).

[40]H.R. 5823, § 5, 93d Cong., 1st Sess. (1973).

[41]*Id.* § 2 (b).

[42]280 F.Supp. 869 (E.D.Va. 1968).

[43]302 F.Supp. 1244 (D.Neb. 1969).

[44]295 F.Supp. 251 (D.Kan. 1968).

[45]429 F.2d 337 (9th Cir. 1970), *aff'g*, 300 F.Supp. 434 (S.D.Cal. 1969).

[46]280 F.Supp. 869 (E.D.Va. 1968).

[47]293 F.Supp. 849 (D.S.D. 1968).

[48]H.R. 5823, § 4 (f), 93d Cong., 1st Sess. (1973).

[49]*Id.* § 5 (a).

[50]*Id.* § 5 (b) (2).

[51]*Id.* § 5 (b) (3).

[52]117 Cong. Rec. 9751, at 9752-53 (1971) (message of President Nixon).

[53]Act of April 19, 1816, ch. 57, § 6, 3 Stat. 289.

[54]6 Ind. 83 (1854).

[55]*Id.* at 95.

[56]7 Ind. 570 (1856).

[57]16 U.S.C. § 500 (1970).

[58]33 U.S.C. § 701c-3 (1970).

[59]King County, Wash., v. Seattle School Dist. No. 1, 263 U.S. 361, at 363-64 (1923).

[60]H.R. 5823, § 4 (a), 93d Cong., 1st Sess. (1973).

[61]*Id.* § 4 (c) (4).

[62]*Id.* § 4 (d) (2).

[63]289 P.2d 653 (Okl. 1955).

[64]*Id.* at 655.

[65]H.R. 5823, § 9 (a), 93d Cong., 1st Sess. (1973).

[66]20 U.S.C. § 240 (b) (1970).

[67]280 F.Supp. 869 (E.D.Va. 1968).

[68]*Id.* at 875.

[69]*Id.* at 874.

[70]293 F.Supp. 849 (D.S.D. 1968).

[71]302 F.Supp. 1244 (D.Neb. 1969).

[72]Some argument could be made that since the local educational agencies would receive funds paid by the federal government to the states, with the stipulation that those funds be passed through to local school districts, under the Better Schools Act, those local educational agencies should be treated as payees of the federal funds, and protected to the same extent as have been the designated payees of Subchapter I funds. This reasoning would find support in the language of the Hobson v. Hansen, 269 F.Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969), and Rodriguez v. San Antonio Independent School Dist., 337 F.Supp. 280 (W.D.Tex. 1971), *rev'd*, 93 S.Ct. 1278 (1973), decisions, which joined the Elementary and Secondary Education Act, of which 20 U.S.C. § 241g (a) (2) (1970) provides for a pass-through of federal funds similar to those found in the Better Schools Act, with Subchapter I for purposes of determining the appropriate uses of the federal funds. It must be remembered, however, that the issue of whether the state or the local educational agency was the payee of either the Subchapter I or Subchapter II funds was not before the court in either instance, nor was either case primarily concerned with the issue of this study when Subchapter I and Subchapter II were treated as similar, Hobson being a desegregation case, Rodriguez being an Equal Protection case.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

Summary

As early as the last quarter of the 18th century, the United States government initiated a federal role in the funding of public education. In 1785 Congress reserved certain lands included in the rectangular survey "for the maintenance of schools." In the first quarter of the following century, these lands were granted to the inhabitants of the townships in which the lands were located. Later, Congress authorized the sale of the lands reserved, with the stipulation that the proceeds were to be forever applied "for the use and support of schools" of the respective townships.

The language of the above described congressional township fund legislation used rather broad terms to characterize the purposes to which the resources provided by the federal government could be put. Congress merely indicated its intent that the funds be applied to the maintenance, use, and support of certain schools. In addition, resources provided by Congress were granted to the inhabitants of geographic subdivisions of the states, or to what

would be characterized today as local educational agencies.

Under the combination of these broad declarations of intent and direct grants to local educational agencies, the Indiana supreme court, in the only reported decisions on the issue, consistently permitted the State of Indiana to reduce its aid to its local educational agencies as a consequence of those agencies receiving congressional township funds. In other words, because local educational agencies had received funds pursuant to the congressional township fund legislation, they received less state aid than they would have received had they not received the congressional township funds.

Under the provisions of the current national forest reserve and federal flood control legislation, Congress provides funds "for the benefit of the public schools and public roads" of those counties in which national forests and lands acquired by the United States for flood-control purposes are located. The phrase, "for the benefit of the public schools and public roads," is the only evidence of congressional intent concerning the uses which are to be made of the funds provided in the respective acts. While this language of intent is not significantly different from that employed in the congressional township fund legislation, a significant difference between the national forest reserve and federal flood control legislation, on the one hand, and the congressional township fund

legislation, on the other, does appear. Where the congressional township fund legislation named the inhabitants of townships as the payees of the resources, the national forest reserve and federal flood control measures provide for the payment of the federal funds to the states, to be expanded as the state legislatures may prescribe.

Two courts of last resort have considered directly the issue of whether a state can reduce its aid to local educational agencies as a consequence of the schools of those agencies being the beneficiaries of national forest reserve and federal flood control funds. Consistently, the Supreme Courts of Oklahoma and Washington have answered the issue in the affirmative, and have permitted the respective states to reduce their aid to such local educational agencies from the amount to which such agencies would have been entitled had those federal funds not been available.

The resolution of the issue of whether a state can reduce its aid to local school districts as a consequence of those districts receiving federal funds has been different from the aforementioned decisions only in cases involving what is known as "impact areas" aid. In the impact areas aid legislation, Congress has stated its policy "to provide financial assistance . . . for those local educational agencies upon which the United States has placed financial burdens" by virtue of described federal activity. The aid funds provided by this legislation are

paid directly to the local educational agencies involved by the United States Commissioner of Education.

Citing what they perceived to be the intent of Congress to aid specifically certain local school districts, and placing considerable significance on what institutions they found to be the designated payees of the impact areas aid, five United States district courts and one federal circuit court of appeals have held that states cannot reduce aid to local educational agencies as a consequence of those agencies receiving federal impact aid funds. While designated payees of the impact aid funds and of the congressional township funds were, for purposes of legal significance, the same, the result of the litigation involving reductions in state aid under the two series of federal enactments was markedly different.

Consistency in the decisions analyzed in this study is found when the respective pieces of legislation construed are grouped according to the declarations of congressional intent. When congressional intent is broadly stated in terms of aiding educational institutions as in the congressional township fund, the national forest reserve, and the federal flood control legislation, the courts have sanctioned the states' reduction of state aid to the beneficiaries of the federal funds as a consequence of the respective local educational agencies receiving the federal funds. Where the congressional intent is more specifically defined to aid agencies charged with the

responsibility to administer such schools and their programs, however, courts have consistently invalidated reductions in state aid to local educational agencies as a consequence of those agencies receiving the federal funds.

Conclusions

The three lines of decisions involving the congressional township fund legislation, the national forest reserve and federal flood control legislation, and the impact areas aid legislation include all the reported cases in which courts have had to decide whether a state can reduce its aid to a local school district as a consequence of that district receiving federal funds. It is apparent, therefore, that the expressed intent of Congress plays a critical role in the resolution of that issue with respect to funds provided by Congress to local school districts under any federal legislation, including special revenue sharing for education.

The special revenue sharing for education proposal currently before the United States Congress, the Better Schools Act of 1973, as well as the initial revenue sharing for education proposal introduced in 1971, follows the pattern of the congressional township fund, the national forest reserve, and the federal flood control legislation concerning the intended use of the funds provided. While the latter three measures were concerned with maintaining, supporting, and benefiting schools, the

revenue sharing measures have been designed to assist, encourage, and assure programs. These differences appear to be differences of degree, the programs being merely facets of the schools' operations.

A contrast must be made, however, between the revenue sharing proposals and the impact areas aid legislation. In the former it is educational programs which are the object of the congressional largess, while in the latter specific agencies conducting such schools and programs are the beneficiaries of the aid. This difference is a difference in kind. In the revenue sharing proposals Congress has not specifically indicated which level of educational authority, the state or the local school district, is to have the final authority concerning the use of the revenue sharing funds. While some such funds would be "passed-through" to local educational agencies, the states are to be the payees of the funds. Even if by a broad interpretation the local school districts could be considered the payees of the funds passed-through to them, the congressional township fund cases demonstrate that such a designation of the payee is of less significance than the declaration of congressional intent.

Where Congress has designated broad educational programs (i.e., schools and public schools) as the object of the federal bounty, courts have permitted states to reduce their aid to local educational agencies as a consequence of those agencies receiving the federal funds in question.

Where, on the other hand, Congress has designated local authorities charged with the responsibility of carrying on educational programs as the objects of the federal aid, courts have not permitted states to reduce their aid to local educational agencies as a consequence of those agencies receiving the federal funds in question. Since the special revenue sharing for education proposals presented to date have sought to provide aid to programs (e.g., encouraging innovation and development of new educational programs and practices), but have been silent as to the agency which is to have the authority to make the decisions concerning such programs, it can be concluded that, should special revenue sharing for education be enacted in its currently proposed form, states would be permitted to reduce state aid to their local educational agencies as a consequence of those agencies receiving the federal revenue sharing funds.

In 1968 Congress amended the impact areas aid legislation to prohibit such payments being made to any local educational agency in any state which takes into consideration such payments in determining the eligibility of any local educational agency in that state for state aid, or the amount of state aid. Thus, Congress enacted into statutory law the results which two federal district courts had reached independently of the amendment's language. (If the federal payments are prohibited if the state reduces its aid to local educational agencies

because of them, there will be no such payments for the state to consider in reducing its aid. Thus, there can be no reduction of state aid because of such payments.) The revenue sharing for education proposals introduced in Congress thus far have not included such prohibitory language. Thus, courts considering the issue of whether a state may reduce its aid to local educational agencies as a consequence of those agencies receiving federal revenue sharing funds would be thrust back to a consideration of the declaration of congressional intent, and, under the three lines of decisions discussed in this study, probably answer the question in the affirmative.

The contradictory implications of the 1968 amendment to the impact areas aid legislation and the special revenue sharing for education proposals heretofore introduced in Congress leave room for speculation concerning the true intent of Congress. Additional questions can be raised in light of the 1973 amendment to the impact areas aid legislation, eliminating the application of the 1968 amendment to states where a post-June 30, 1972, attempt has been made to equalize expenditures for education among local educational agencies of the state. If Congress enacts special revenue sharing for education, and if Congress intends that states not take into consideration funds required to be passed-through to local educational agencies in determining the eligibility of any local educational agency in that state for state aid, or the amount

of such aid, the proposal currently before the Congress, the Better Schools Act of 1973, will have to amended to effectuate the real congressional intent. An amendment similar to the 1968 impact areas aid amendment would serve the congressional purpose, and could be added as subsection 5 (d) of the Act:

> No payments may be made during any fiscal year to any state which has taken into consideration payments required to be paid by such state to its local educational agencies pursuant to subsections (a) or (b) of this section in determining the eligibility of any such local educational agency in that state for state aid, or the amount of that aid, with respect to free public education during that year or the preceding fiscal year, or which makes such aid available to local educational agencies in such a manner as to result in less aid to any local educational agency which is eligible for funds required to be paid by such state pursuant to subsections (a) or (b) of this section than such local educational agency would receive if it were not so eligible.

If, however, it is the true intent of Congress that states be permitted to reduce state aid to local educational agencies as a consequence of those agencies receiving federal revenue sharing funds, no amendment to the Better Schools Act of 1973 is needed. The language of the proposed declaration of congressional intent would, under the authority of the cases analyzed in this study, permit such a reduction.

Under the authority of the cases cited in this study, the declaration of congressional intent contained in any special revenue sharing for education legislation ultimately enacted by Congress will be of critical importance

to state and local education officials and everyone interested in the area of public school finance. Under this authority, there would be no protection afforded local school districts against a reduction in state aid funds as a consequence of receiving federal revenue sharing funds should either of the two revenue sharing for education bills introduced in Congress to this date be enacted without amendment.

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