

Town of Avon

Massachusetts

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Board of Selectmen

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July 31, 1997

Town of Cambridge
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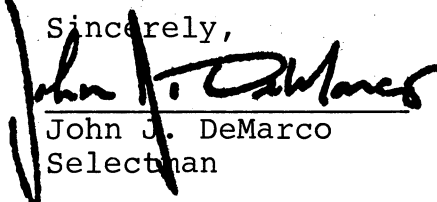
Dear Chairman,

I have prepared the enclosed article in the hope to spur action on the part of the Massachusetts Municipal Association and the Boards of Selectmen in towns unjustly impacted by the Education Reform Act. The article deals with a problem that has severe consequences in most towns of the Commonwealth. With the Education Reform Act mandating towns pay an inordinate amount of local school costs and Proposition 2 1/2 limiting the amount of money that towns can raise, we find ourselves in a "Catch 22" situation regarding the delivery of other equally essential services (i.e. police, fire, public works, general government).

I know you are aware of the seriousness of this problem and I would ask you to consider whether we should collectively call for the enforcement of the SJC decision (McDuffy vs. Secretary of Education, 1993). If you share these concerns, please write to me at the Avon Town Hall.

Thank you for your consideration in this matter.

Sincerely,


John J. DeMarco
Selectman

cc: Chairman, Boards of Selectmen of 103 towns paying more than 80 per cent of local school costs.

encl.

COMMUNITIES CAUGHT IN A FINANCIAL SQUEEZE BY THE STATE

JOHN J. DE MARCO

Selectman, Town of Avon

In towns throughout the Commonwealth, the state effort to improve public education through the Education Reform Act and the limitations imposed by proposition 2 1/2 have created an intolerable financial situation for many communities who want to maintain an adequate level of local governmental services. State aid to education in many communities is so woefully insufficient that communities are forced to rely on the property tax as the primary source of revenue to fund educational costs. This is all done at the expense of local police and fire protection, public works improvements and the effective operation of general government.

Although the state has committed millions of dollars in aid to under funded school systems in cities such as Lawrence, Brockton, Holyoke, New Bedford and Fall River; towns such as Avon, Canton, Milton, Natick, Needham and Medfield must rely on the property tax to fund up to ninety percent of the financial requirements for public school support. In fact there are 103 communities paying more than 80 percent of the educational cost. In Avon, public school costs represent over fifty-three percent of the town's operating budget. If one were to include non-discretionary expenses such as town insurance, medical and life insurance, Medicare and county retirement assessments the mandated financial burden would increase to sixty-five percent of the local operating budget. The resulting thirty-five percent is all that remains to fund everything else, including essential services such as police, fire, public works and general government expenditures.

The problem at the local level is exacerbated by Proposition 2 1/2 that limits the amount of money the town can raise through the property tax. Massachusetts communities are restricted by statute from increasing property tax receipts by more than two and one half percent of the previous years' levy and by whatever taxes may be derived from new growth that may occur in the community during the fiscal year. If new development in a community is predominantly

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residential, then the community can expect its school spending requirements to increase accordingly, making matters worse.

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So the state has, placed towns in a financial squeeze where they must make tough choices and have few options. The usual response is to chip away at local government expenditures in hopes of making up for the educational cost requirements. This is a tenuous catch twenty-two situation that will inevitably result in a severe deterioration of the essential local services whose financial requirements are being continually siphoned off by mandated school expenses.

The primacy and legal power over education have always resided with the States. It is the state that determines the length of the school day and the school year; sets the conditions for teacher tenure; the rules of collective bargaining; the way in which text books are selected and the depth and breadth of the curriculum used in the public school systems. These are all state prerogatives. But what about funding? I would think that if you are calling the tune then you should pay the piper. Indeed there has been some movement in that direction. Let us look at what has happened over the past nineteen years.

In 1978 the Courts considered the case of Webby versus Dukakis. The basis of Webby's argument was that children in poor communities were not receiving an adequate public education because of the inability of the community to provide sufficient funding. This triggered Chapter 70, a law enacted by the state to provide some financial assistance to the cities and towns of the Commonwealth. This stalled any action by the Court and the Webby versus Dukakis case became inactive for five years ostensibly to give Chapter 70 a chance to work.

In 1985 a single Justice revisited the Webby versus Dukakis case resulting in the state coming up with another proposition, Chapter 188, Section 12 that was codified into a new Chapter 70A. This play provided more funds than the previous Chapter 70 and continued to forestall a Court decision.

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In 1989 a Worcester group filed with the Courts a similar case as Webby versus Dukakis and because of the similarity of the argument, the Justice joined the Worcester group with the Webby case and renamed the case McDuffy (Worcester Group, Inc.) versus Robertson (the Secretary of Education).

In 1993 the Supreme Judicial Court for the Commonwealth heard the McDuffy case and within a week before the Courts ruling, the State came up with the "Educational Reform Act" in an attempt to further placate the Court.

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The decision by the Supreme Judicial Court for the Commonwealth in the case No. SJC-6128, Jami McDuffy and others vs. the Secretary of the Executive Office of Education and others dated June 15, 1993 ordered... "that the provisions of Part II, c. 5, s.2, of the **Massachusetts Constitution impose an enforceable duty on the magistrates and Legislatures of this Commonwealth to provide education** in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the community or district in which such children live. **It shall be declared also that the constitutional duty is not being currently fulfilled by the Commonwealth.** Additionally, while local governments may be required, in part, to support public schools, **it is the responsibility of the Commonwealth to take such steps as may be required in each instance effectively to devise a plan and sources of funds sufficient to meet the constitutional mandate.**" While there is the statement that **"local governments may be required, in part, to support public schools"**, it surely does not mean supporting these educational costs on the order of ninety percent of the public educational expenses. As of this writing, this decision has not been enforced.

I am suggesting that the Commonwealth is not living up to its responsibilities in funding its fair share of the public educational cost. According to information developed by the National Education Association on education spending and published in the 1997 Spring/Summer edition of Commonwealth; in 1993 Massachusetts state government funding provided 30 percent of the cost of education. By 1995-96, the state contribution increased to 35 percent. That placed

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Massachusetts near the bottom (45th out of the fifty states) in the amount of funds the state allocates for public education. This forces cities and towns in Massachusetts to make up the balance of the total net school funding requirements. By not living up to its constitutional mandate, the Commonwealth has put the squeeze on local government to make painful decisions about cutting local services that should not have to be made.

Experience has continually demonstrated that investment in education yields tremendous economic and social benefits. There are historians that consider the GI. Bill of Rights of 1944 as one of the most momentous legislation of the twentieth century. It triggered a social revolution of immense consequences. The federal government paid for education tuition, books and supplies and housing for millions of veterans; men and women returning home after having served in the armed forces during World War II. It created an educated and skilled middle class that was elevated as a result to a higher income status enabling them to repay the federal government's investment many times over in income tax revenue. It further trained generations of Americans into a labor force that has taken us from the industrial revolution to the computer and communications revolution. There must be a lesson in this!

Having seen the rewards of investing in education on a national scale, why is it that the elected officials of the Commonwealth of Massachusetts cannot see the benefit of investing in our young people? Isn't it ironic that the first state in the nation to pass laws requiring public education and which had the first public school is so reluctant to value education for what it can do to advance the state's fortunes. Massachusetts prides itself on being at the cutting edge of all sorts of research disciplines; having the largest concentration of colleges, universities and medical institutions found anywhere. Shouldn't we be appalled that the state of Massachusetts ranks 45th among all the states in the amount of money that is provided for education?

I propose that the current five percent sales tax be dedicated to the funding of public school education in the Commonwealth in addition to the Chapter 70 funding. If this was done in the current fiscal year, it would mean that the state would pay 86 percent of the cost while the cities

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and towns would contribute 14 percent through the property tax levy. Contrast this with the present situation where the state/local funding is 40 percent and 60 percent respectively. This would bring the state more in line with the intent of the Massachusetts State Constitution. This is not an unreasonable suggestion. For example, the states of Wisconsin and Michigan recently have taken the burden of public education off the backs of the property owner entirely. After all the advent of the five percent sales tax was originally enacted for the support of public education.

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It should be clear that my quarrel in the main is the shameful avoidance of responsibility by the state in not paying for a fair share of the public educational cost in all communities. But there is also a serious flaw in the Educational Reform Act formula that now has some communities paying 90 percent or more of the local school budget. Perhaps, some baseline of state financial assistance should be established in the formula so that no city or town pays more than 50 percent of the school cost in their community. In any event, the distribution formula must be reviewed for equity and fairness.

The shortfall caused by the dedication of the sales tax can surely be met by the transfer of other funds in the state budget. After all, what portion of a **18.3 billion** dollar state budget, represents **"an enforceable duty on the magistrates and legislature of the Commonwealth "** as declared by the Supreme Judicial Court of Massachusetts regarding the provision of public education? This problem needs to be addressed and needs to be addressed soon by the State Administration and by the State Legislature.

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

AT BOSTON.

JUNE 15, 1993.

IN THE CASE NO. SJC-6128

JAMI McDUFFY & others

vs.

SECRETARY OF THE EXECUTIVE OFFICE OF EDUCATION & others
(and a companion case)

pending in the Supreme Judicial

Court for the County of Suffolk Nos. 90-128, 90-128A

ORDERED, that the following entry be made in the docket; viz., -

These cases are remanded to the county court for entry of a judgment declaring that the provisions of Part II, c. 5, § 2, of the Massachusetts Constitution impose an enforceable duty on the magistrates and Legislatures of this Commonwealth to provide education in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the community or district in which such children live. It shall be declared also that the constitutional duty is not being currently fulfilled by the Commonwealth. Additionally, while local governments may be required, in part, to support public schools, it is the responsibility of the Commonwealth to take such steps as may be required in each instance effectively to devise a plan and sources of funds sufficient to meet the constitutional mandate. No present statutory enactment is to be declared unconstitutional, but the single justice may, in his or her discretion, retain jurisdiction to determine whether, within a reasonable time, appropriate legislative action has been taken.

BY THE COURT,

Jean M. Kennet CLERK.

June 15, 1993
SEE OPINION ON FILE.

Consent Communication #4

S-517

Communication was received from John J. DeMarco, Selectman, Town of Avon, transmitting information regarding the Education Reform Act.

In City Council September 8, 1997

PLACED ON FILE