



State of Rhode Island and Providence Plantations  
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION  
255 Westminster Street  
Providence, Rhode Island 02903-3400

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Deborah A. Gist  
Commissioner

August 5, 2009

Mr. Thomas Mezzanotte  
Executive Director  
Rhode Island Interscholastic League  
Bldg. 36 R.I. College Campus  
600 Mt. Pleasant Avenue  
Providence, Rhode Island  
02908-1991

Dear Mr. Mezzanotte:

Thank you for your letter of July 21, 2009 in which you request on behalf of the Rhode Island Interscholastic League, "an opinion on each school district's right to charge families fees to participate in a high school sport (pay-to-play)." In response to this question we observe that in *Susan Sullivan v. Cumberland School Committee*, January 10, 2001, a case heard under our jurisdiction to decide questions "arising under any law relating to schools or education" (R.I.G.L.16-39-1 and R.I.G.L.16-39-2) we had occasion to both discuss and to rule on the general question of whether school fees may be charged in Rhode Island. We concluded that:

As far back as 1917 the Rhode Island Board of Education, the predecessor of the Board of Regents, dealt with a situation concerning school districts that were charging evening school students a registration fee. (At the time, evening schools were a method of extending education to young students who worked in the mills.) The Board of Education wrote:

[S]uch [a] registration fee violates a fundamental principle of Rhode Island School law. Tuition charges were abolished in 1868, and free textbooks were ordered in 1893, with the object of making the schools absolutely free. Such a registration fee also violates a fundamental principle of Rhode Island school administration by interposing an obstacle against free attendance and by discriminating against the boy or girl who have not a dollar, and the boy and girl who cannot afford to risk a dollar. It amounts to a retroaction to conditions prevailing forty years ago, and introduces anew one of the greatest evils of the public school system.<sup>1</sup>

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<sup>1</sup> Rhode Island School Reports, 1917, page 21, Report of the State Board of Education.

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Of course the evil the Board of Education was referring to was the tendency to treat the public schools as if they were a species of charity school where the poor, by an act of kindness, are admitted free if they can not afford to pay the price. However Rhode Island public schools are not charity schools—they are, by virtue of the decision of the General Assembly in 1868 to abolish tuition rate bills, free common schools. In a free school system it does not suffice to waive a fee when a student cannot afford to pay it.<sup>2</sup>

We discussed this issue in broader detail, and in specific reference to athletics, in a formal opinion letter (R.I.G.L.16-60-4(9) (viii)) requested by the Burrillville school district which had sought "a waiver of the Department of Education's policy [as set forth in a Commissioner's Opinion Letter dated October 26, 1999] prohibiting Public School Districts from the utilization of a fee for participation in athletics or extracurricular activities." Our reply, dated July 15, 2005, stated as follows:

In response to your letter we must point out that it is a fundamental principal of law that School Committees have only that authority that is granted them by the General Assembly. The Rhode Island Supreme Court has said:

The power of school committees is coextensive with the authority conferred upon them by the General Assembly to foster education as agents of the state. [Citations omitted] School committees do not enjoy a residual font of power beyond the dimensions of this authority over matters which incidentally have an impact upon school operations. The extent of their control over school affairs is fixed by their specifically enumerated powers and duties as set out in title 16 of the General Laws and elsewhere. The General Assembly, through its plenary power to apportion authority over public school interests, may either extend or narrow the scope of these provisions if it so chooses.<sup>3</sup>

A reading of the General Laws shows that, except in a few very special cases, the General Assembly has not granted school committees the authority to charge fees for school services.<sup>4</sup> It is because of this lack of statutory authority, and not because of any ruling or policy from the Commissioner's office, that Rhode Island school committees cannot charge school fees. I am therefore unable to grant the "waiver" that you have requested.

Let me point out that the statutory authority to charge school fees has not always been absent in Rhode Island. In 1839 The General Assembly revised the school laws, and allowed school committees to send *rate bills* (i.e. a bill for school fees) to parents having children in the public schools.

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<sup>2</sup> SEE: Opinion Letter of the Commissioner to Supt. DiLuglio, June 26, 1981.

<sup>3</sup> *Greenhalg v. City Council*, 603 A.2d 1090 (R.I. 1992)

<sup>4</sup> e.g. R.I.G.L.16-38-6, purchases of articles made in industrial arts class.

Rate bills were an English practice that had been brought over to the colonies. In the New England states and western states settled by New Englanders they were used to supplement revenues from taxes and other sources.<sup>5</sup>

Rhode Island soon learned what the other New England states had already found out. Such fees made it difficult for farmers and workers to send their children to school, even when school committees had the power "to remit the assessment in cases where they deemed the parties unable to pay it."<sup>6</sup> In essence it was realized in Rhode Island that public school fees were inconsistent with the basic premise of universal system of tax supported public education that was to be made available to all students on an equal and non-discriminatory basis. Given this realization Rhode Island repealed the authority to impose rate bills in 1868.<sup>7</sup> Because of this repeal Rhode Island public schools may not charge fees for school services or programs.<sup>8</sup> In fact this prohibition is so clear that it has recently been made explicit in the case of charter public schools.<sup>9</sup>

Furthermore, as you know, a school-based program of extra-curricular activities is a required part of the Rhode Island's Basic Education Plan (BEP).<sup>10</sup> The BEP is meant to ensure that all Rhode Island students receive at least a quality education.<sup>11</sup> Thus it is not legally permissible to charge fees for these educational activities that the Board of Regents has found to be essential to the provision of a quality education.

Finally it may be observed that research has shown that school fees discourage participation in school activities, adversely affect school attendance, and put stress on students and their parents and siblings.<sup>12</sup> A school fee set at a high enough level to make a serious contribution to a school budget is a fee that will be too high for many parents to pay. Even a complete waiver of a fee in the case of poor family puts that family in the distressing position of having to ask for charity to obtain a public service. Slightly better off families who would not qualify for a complete or partial fee waiver will be forced to choose between needed

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<sup>5</sup> Financing Public Schools in the United States, Revised Edition, 1857, Arvid J. Burke, page 239.

<sup>6</sup> Commissioner's Report, 1894, page 235.

<sup>7</sup> January Session 1868, Chapter 762, SEC.3.

<sup>8</sup> *Charging Fees for Participation in Extracurricular Activities*, Opinion Letter of Commissioner, October 26, 1999. This 1999 letter cites the 1917 Report of the Rhode Island Board of Education which at page 21 states: "Tuition charges were abolished in 1868, and free textbooks were ordered in 1893, with the object of making the schools absolutely free." The Board also wrote that the imposition of school fees would amount to "a retroaction to conditions prevailing forty years ago, and introduces a new one of the greatest evils of the public school system [the charging of fees]."

<sup>9</sup> R.I.G.L. 16-77-9

<sup>10</sup> BEP SEC. 29 Student Activities Program

<sup>11</sup> See: R.I.G.L. 16-7-15, R.I.G.L. 16-7-24 and the Introduction to the BEP.

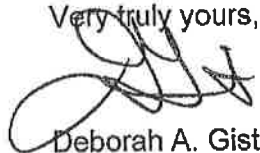
<sup>12</sup> *Expanding Their Universe, Reshaping the Future – A Report on the Impact of School Fees and Fundraising on Social Inclusion*, Community Services Council Newfoundland and Labrador, November 2003.

family expenditures and the payment of school fees. In fact a child may well decide not to ask for opportunity to play a sport if the child knows that the cost involved will be an imposition on family finances.

We continue to adhere to the legal principles we have set forth above. These principles compel us to the conclusion that public education in Rhode Island is not a means-tested welfare program. The upshot is that students and their families who have limited means do not have to request a charitable waiver to earn the right to participate in school-sponsored athletic programs in this state. This opinion has been long held and maintained by the Commissioner's Office and the Board of Regents. The General Assembly has never acted to overturn this position and this legislative acquiescence is an indication that the Assembly does not disagree with the interpretation we have given to the laws governing this issue. *Trice v. City of Cranston*, 297 A.2d 649, 110 R.I. 724 (R.I.1972) Of course, the General Assembly and the Rhode Island Supreme Court have the authority to decree that school fees are allowable in Rhode Island. Until the General Assembly or the Supreme Court direct otherwise we expect to adhere to the position stated in this opinion letter.

Nevertheless, we are cognizant of the increasing budgetary strain faced by almost all school districts in Rhode Island. We hope that recently passed General Assembly Legislation (R.I.G.L.16-88-1, et seq.) (copy enclosed), which allows school districts to receive private gifts, grants and donations, may provide an avenue for those who recognize the vital element that athletics contributes to public education to validate this recognition through the provision an appropriate financial or in kind gift in support of public school athletics. The General Assembly has also provided school districts with an enhanced ability to conduct fund raising activities. (R.I.G.L.16-38-6). Perhaps this funding mechanism could be employed to greater effect to secure additional support for school sports. Finally, in these very difficult economic times, it may be appropriate for those who coach, supervise, administer, or regulate school athletics, to consider what means they have at hand to reduce the financial impact that school athletics has on school budgets.

Very truly yours,



Deborah A. Gist  
Commissioner of Education

Enclosures

cc: David V. Abbott

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