

H(2290)E3

UNITED STATES DISTRICT COURT **FILED**
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

APR 18 1983

CRATON LIDDELL, et al.,)	
)	EYVON MENDENHALL, CLERK
Plaintiffs,)	U. S. DISTRICT COURT
)	E. DISTRICT OF MO.
vs.)	No. 72-100C(4)
)	
THE BOARD OF EDUCATION OF)	
THE CITY OF ST. LOUIS,)	
STATE OF MISSOURI, et al.,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE ORDER (H(2276)83
APPROVING NOTICE TO CLASS MEMBERS AND TO ORDER
SUPPLEMENTATION OF SUCH NOTICE, AND TO RESET FAIRNESS HEARING

The City of St. Louis has moved that the Court set aside its Order, H(2276)83, insofar as that Order approved the Notice to Class Members of a Proposed Settlement.

The City's objection to the Notice is that it gravely misleads the classes about the funding provisions of the proposed settlement. According to the notice: "The plan provides for funding from sources available to the State of Missouri and the Board of Education of the City of St. Louis." In fact, the plan provides for funding of the plan "by such combination of additional State funding . . . and a tax rate increase in the City of St. Louis as shall be ordered by the court." H(2217)83, X-2.

The notice does not advise the classes that the plan provides for Court orders to the State to pay new money for some or all of the plan's costs. The notice does not advise the classes that the plan contemplates a possible Court order raising tax rates in the City of St. Louis. The notice suggests no new

funding sources are mentioned in the plan. In fact, there has never been an order in this case for a tax increase. Such an order would provide a new funding source. So would an order requiring "additional State funding."

These defects in the notice are serious. It is possible that the classes include property taxpayers in the City who would respond to a notice if it told them the plan contemplated a court-ordered increase in their taxes. It is possible the classes include state taxpayers in the City and County who would express concern if notified that the plan contemplates Court orders that the State pay additional amounts to fund the plan.

The notice in this respect appears calculated to mislead. It states that funds "from sources available" will fund the plan. That suggests that money already designated or intended for such a use will be used. That is not so. Of course, if lawful, final orders could be entered, the State and the taxpayers would have no choice but to make their funds available. Perhaps the drafter of the notice views the City's taxpayers as an open-ended "source available" to the Board of Education and a court-ordered tax increase a foregone conclusion. Most readers of the notice, however, would not so assume. If it is proposed that state constitutional and statutory provisions, including the Hancock Amendment, concerning taxation and school district funding be circumvented, fundamental fairness considerations suggest that straightforward notice of that fact should be given.

The City has also moved the Court to reschedule the fairness hearing. The defective original notice is one reason for doing so. There is another reason. The financing provisions of the plan and sketchy. The City has requested from the City Board and Suburban districts data needed to assess the fairness of those provisions. The City has received only a limited response. Resetting of the fairness hearing to May 15 should provide adequate time for preparation.

The City respectfully suggests that the Notice should be ordered rewritten so as accurately to state the nature of the funding provisions of the proposed settlement plan.

Respectfully submitted,

JAMES J. WILSON, CITY COUNSELOR

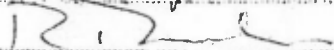


Robert H. Dierker, Jr.
Associate City Counselor

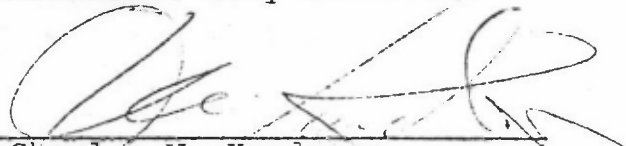
CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing letter was filed with the attorneys of record of all parties to the case and that a copy of the same was placed in an envelope addressed to each of the attorneys of record at their business address as disclosed by the pleadings and that the envelope was prepaid and by depositing same in the United States Post Office at St. Louis, Missouri on the

15th day of April A. D. 1983



Francis M. Oates
Associate City Counselor



Charles W. Kunderer
Assistant City Counselor
314 City Hall
St. Louis, Mo. 63103
622-3361
Attorneys for City of St. Louis