

2000 WL 1015839

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United States District Court, N.D. Mississippi,
Greenville Division.

Jake AYERS, Jr.; Bennie G. Thompson; Virginia
Hill; B. Leon Johnson; Pamela Gipson,
Individually and on behalf of all others similarly
situated; et al., Plaintiffs,
United States of America, Plaintiff/Intervenor,
v.

Kirk FORDICE, Governor, State of Mississippi,
Board of Trustees of State Institutions of Higher
Learning, et al., Defendants.

No. 4:75CV009-B-D.

|
July 6, 2000.

ORDER

BIGGERS

*1 This cause comes before the court on the Board's submission of the proposed allocation of FY 2001 funding for JSU, ASU and MVSU *Ayers* programs for court approval prior to the expenditure of such funds. The submission includes a document entitled *Ayers Implementation Priorities, FY 2001 for Increasing Other Race Presence at Alcorn State University* and a document entitled *Mississippi Valley State University Budget Justifications for Existing Programs Academic Year 2000-2001*. The 2000 Legislature has appropriated \$16.7 million for *Ayers* expenditures at the request of the Board. Of these funds, \$7.2 million was for operating funds for FY 2001 and \$9.5 million in capital funds was for construction of a facility in Natchez for the ASU MBA program. The question before the court is whether the funds requested by the Board under the *Ayers* case were for programs or expenditures ordered by this court in the Remedial Decree of March 7, 1995, or later ordered by this court subsequent to the Remedial Decree.¹

Of the \$16.7 million the Legislature appropriated, a total of \$3,550,000 was for JSU.² The court finds that the

itemization of the amounts and the programs to be funded is in compliance with the *Ayers* Remedial Decree and subsequent orders. All of the appropriations for JSU will be allocated to specific programs ordered or approved by the court. Therefore, the proposed FY 2001 expenditure for JSU should be approved.

The Board requested and the Legislature appropriated a total of \$1,775,000 in operating funds for ASU. The court finds that none of the six allocations proposed for ASU operating funds have been ordered in the Remedial Decree. The proposed \$400,000 allocation for diversity recruitment and image building is independent of and in addition to the court-ordered use of diversity trust funds³ already in place and in use by all three universities that requested such funds at the trial hereof. The remaining allocations are proposed for five programs⁴ not ordered in the Remedial Decree. The court notes that the Board has requested and received funds from the Legislature this year and in past years, citing *Ayers* funding, for programs not mentioned in the Remedial Decree. The court finds that only one proposed allocation for ASU, i.e., the \$9.5 million capital appropriation for the construction of a facility to house the MBA program in Natchez, complies with the Remedial Decree.⁵ The proposed allocations of the \$1,775,000 appropriation in operating funds for ASU should not be approved at this time.

The Board requested and the Legislature appropriated \$1,775,000 in operating funds for MVSU. On remand the court issued an order on June 4, 1998 directing the Board to conduct a study of programs for implementation at MVSU for the purpose of attracting other-race students, as an alternative to the merger of DSU and MVSU, in accordance with the Fifth Circuit mandate.⁶ The Board submitted to the court a June 30, 1998 report entitled *Further Desegregation of Higher Education in the Mississippi Delta*. In a meeting with Board staff on April 10, 2000, the court-appointed Monitor was advised that the Board anticipated submitting a supplement to the report, pertaining to proposals for new academic programs, academic program enhancements and possibly program elimination/transfer, by the end of Spring 2000.⁷ In a letter dated May 5, 2000 the Monitor directed the Board to submit all of its proposals for desegregating the Delta universities as a single plan. The Board has not done so. The Board proposes six allocations some of which are designated for recommendations or proposals set forth in the Board's June 1998 report. The proposed \$215,200 allocation for admissions and recruitment of white students is independent of and in addition to the *Ayers* \$5 million diversity trust fund for MVSU already in place. In addition, the court finds that the Board has put the cart before the horse in obtaining appropriations for

program and library enhancements which have not been ordered as part of the *Ayers* Decree but requested of the Legislature under *Ayers* funding. For the foregoing reasons, none of the proposed allocations for MVSU totaling \$1,775,000 should be approved at this time.

*2 The court observes that the *Ayers* operating appropriations for ASU and MVSU are exactly equal and that the *Ayers* appropriation for JSU is exactly twice the amount appropriated for both ASU and MVSU.⁸ The appearance of these symmetrical amounts is that the Board first determined the amounts to be requested from the Legislature and then determined the programs to fund. Such an approach would wrongly suggest that the court ordered such funding. The obvious approach is to look at the programs and facilities ordered by the court in the Remedial Decree and let the implementation of the Remedial Decree determine the appropriation needed for each university.

It is therefore ORDERED:

That all proposed *Ayers* allocations for FY 2001 at JSU in the sum of \$3,550,000 are part of the *Ayers* Remedial Decree herein and APPROVED;

That the \$9.5 million capital allocation for the construction of the ASU facility for the court-ordered MBA program in Natchez is part of the *Ayers* Remedial Decree and APPROVED;

That the proposed allocations of operating funds for ASU in the sum of \$1,775,000 and MVSU in the sum of

\$1,775,000 are not part of the *Ayers* Remedial Decree and SHALL BE WITHHELD FROM EXPENDITURES IN FY 2001; and

That the proposed \$100,000 allocation for system administration SHALL BE WITHHELD FROM EXPENDITURES IN FY 2001.⁹

The court is not holding that the Board cannot implement the programs for which allocations are not approved as part of the *Ayers* Remedial Decree. However, the Board should not request from the Legislature appropriations as *Ayers* funding unless the funds requested will be used to comply with the Remedial Decree. The court leaves it to the Board and the appropriate officials of the Legislature to determine whether the funds requested for the *Ayers* case for programs not having been ordered as part of the remedial phase of this case shall be retained in the account of the Board for future use consistent with the remedies ordered by the court or returned to the State treasury.

THIS, the __ day of July, 2000.

All Citations

Not Reported in F.Supp.2d, 2000 WL 1015839

Footnotes

- 1 Any reference to the *Ayers* Remedial Decree hereinafter encompasses all subsequent orders amending the Decree.
- 2 Any reference to appropriations and expenditures herein pertains to FY 2001, i.e., July 1, 2000-June 30, 2001.
- 3 See ¶ 9 of the Remedial Decree.  *Ayers v. Fordice*, 879 F.Supp. 1419, 1495 (N.D.Miss.1995).
- 4 See *Ayers Implementation Priorities, FY 2001 for Increasing Other Race Presence at Alcorn State University* at 2-8.
- 5 See Remedial Decree at ¶ 10.  879 F.Supp. at 1495.
- 6 *Ayers v. Fordice*, 111 F.3d 1183, 1228 at ¶ 3 (5th Cir.1997).
- 7 The Board represented in its June 1998 report entitled *Further Desegregation of Higher Education in the Mississippi Delta* that the report would be supplemented in December, 1998.
- 8 The court finds it quite interesting that the data submitted by the Board states that two universities' expenditures for equipment were of the exact amount budgeted for that item. See Monitor's Report on Equipment Funding at 17.

- 9 Neither the Remedial Decree nor any subsequent order has authorized the funding of “system administration” expenditures and the Board has failed to explain the purpose of the proposed system administration allocation, with respect to *Ayers* remedies.