

T. 8/26/66

John Doar
Assistant Attorney General
Civil Rights Division

Frank M. Dunbaugh, Acting Chief
Southeastern Section

Registered, 1966

FMD:BKL:TJG:vtt
DJ 144-100-2-1
#14,032

Complaint in Intervention,
Lee, et al., v. Macon County Board
of Education, Civil Action No. 604-E
M.D., Ala.

We are prepared to file the attached Motion
For Leave To Intervene And To File A Supplemental
Complaint And Complaint In Intervention in Lee v.
Macon County, pursuant to Section 902 of the Civil
Rights Act of 1964 and the July 13, 1964 Order in
this case.

A. HISTORY OF THE CASE

This case began on January 28, 1963 as a suit
by Negro parents to desegregate the public schools of
Macon County. On July 16, 1963, the Court added the
United States as a party in order that "the public
interest in the administration of justice and in pre-
serving law and order, and in protecting the authority
and integrity" of the United States courts would be
represented. Following interference with the Court's
desegregation order by the Governor, Superintendent of
Education, and State Board of Education, the plaintiffs
filed a supplemental complaint naming them as defend-
ants, 1/ and on July 13, 1964, the Court, which had by
then been expanded to three judges, entered an opinion
and the following Order enjoining the defendants from:
(a) Interfering with, preventing or obstructing by
any means, the elimination of racial discrimination
by local school officials in any school district in
the State of Alabama; (b) approving, authorizing or
paying any tuition grant or grant-in-aid under the
provisions of Chapter 43 [Section 61 (13) through
61 (21)] of Title 52 of the Alabama Code for the

1/ The Governor was named in his capacity of President
of the Alabama State Board of Education.

cc: Records
Chrono
Barrett

Dunbaugh
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attendance of any person in a school in which enrollment or attendance is limited or restricted upon the basis of race or color; and (c) failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

B. TUITION GRANT LEGISLATION SINCE JULY 1964

Following the Court's decision of July 13, 1964, The Alabama Legislature passed a new tuition grant act which did not have the specific features which the Court had found objectionable in the old act. The new act provided for the payment of tuition grants by the State Department of Education to children who were unable to transfer from a public school which their parents felt was detrimental to their welfare. The legislature appropriated \$1,750,000 for 1965-1966 and \$2,000,000 for 1966-1967. The newspapers report that school boards unwilling to lose pupils to private schools were granting transfer requests, so that their students were ineligible for tuition grants. As a result, only 173 students received only \$21,830 of the money that had been appropriated. The unspent money has been reappropriated and will be added to the \$2 million available for the coming school year. In addition, the legislature has passed an amendment to the tuition grant law allowing students to qualify for grants by applying for and being denied transfer to schools outside their school districts.

All 173 students receiving tuition grants last year attended segregated white private schools founded after the desegregation of public schools (Birmingham, Dallas County, Perry County). The creation of such schools has also followed public school desegregation in Lowndes County, Macon County, Hale County, Marengo County, and Greene County.

C. GOVERNOR'S SUPPORT FOR PRIVATE SCHOOLS

On July 26, 1966, the Governor addressed the 1966 Special Session of the Alabama Legislature. The speech appeared on State-wide television, the cost of

which was paid from State funds. The Governor announced his support for private schools in areas where the public schools are desegregated. He urged Alabamians "to make contributions to the people in this State who are being forced to build private schools because of the destruction of the public schools." These contributions were to be primarily for the benefit of the private school founded in Lowndes County after federal court ordered desegregation.

D. CONCLUSION

Lee v. Macon County is the most appropriate vehicle for attaining the payment of tuition grants to students attending segregated schools. This three-judge court has already enjoined the payments of tuition grants for the benefit of segregated schools pursuant to the Act which was amended by the present legislation.

We recommend filing the intervention motion in order to clarify the rights of the United States as a party. In addition, we recommend that the attached motion for preliminary injunction be filed, to stop at the threshold any attempt to use the tuition grant statute to support private segregated schools. A delay in enjoining the illegal distribution of tuition grants could lead to an early massive infusion of state aid to private schools.