

# TOWNS SUE OVER EDUCATION FUNDING

Late last month, the towns of Dorset, Killington, Ludlow, Manchester, West Windsor, Williston, Wilmington, and Winhall filed a lawsuit against the State of Vermont to prevent education tax dollars from being spent to support uses they believe are not appropriate under Vermont's education funding laws, Acts 60 and 68.

This lawsuit, and the issues it raises, are important to all towns because this case will determine whether moneys that have been raised by towns through the property tax and deposited in the Vermont Education Fund can be used for any purpose other than those authorized under Act 60. (Editor's Note: This lawsuit was filed in Rutland Superior Court, whose decision will be limited in scope to its jurisdiction. Should the case be appealed to the Vermont Supreme Court, the *VLCT News* will report on its outcome, and the resulting implications for the entire state.)

When first enacted in 1997, Act 60 limited the uses to which moneys in the Education Fund could be put, which included:

- 1) payments to school districts and supervisory unions for the support of education;
- 2) short-term borrowing costs to meet Education Fund cash flow requirements; and
- 3) payments required by the income sensitivity provisions of the Education Funding Law. 16 V.S.A. § 4025(b).

That same statute also provides that if moneys are withdrawn from the Education Fund for any purpose other than those authorized by the education funding law, the entire state education property tax would be repealed. Last year, the Legislature's appropriations act (Act 122) appropriated \$499,999 directly from the Education Fund for adult education and literacy services; these funds will not be paid to school districts and supervisory unions.

The plaintiff towns in this case argue that the Legislature's act of appropriating money to a source other than school districts and supervisory unions should cause the state education property tax to be repealed in its entirety. They base their argument on the fact that the law itself states that this would be the case if education fund moneys were used for any reason other than what was incorporated in the law at its inception. While it is unlikely that a court would declare the entire education funding law invalid because of this appropriation, the lawsuit shines a light on the Legislature's decision to spend education tax dollars on something that is technically not permitted by law.

This is a practice that began last year with the withdrawal that prompted this suit, and is continuing this year with proposals in the Governor's FY06 budget to withdraw over one million dollars of education fund monies for uses other than those outlined in Act 60. (For more information, see the *VLCT Weekly Legislative Reports 2, 3, and 4.*)

This complicated issue will continue to play out in the judicial, legislative and political arenas. VLCT will continue to monitor it and keep you informed.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center, and Katherine Roe, VLCT Communications Coordinator

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