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"Many schools are like little islands set apart from the mainland of life by a deep moat of convention and tradition. Across the moat there is a drawbridge, which is lowered at certain periods during the day in order that the part-time inhabitants may cross over to the island in the morning and back to the mainland at night. Why do these young people go out to the island? They go there in order to learn how to live on the mainland.

After the last inhabitant of the island has left in the early afternoon, the drawbridge is raised. Janitors clean up the island, and the lights go out. . . ." [1]

Introduction

Community education is the movement which seeks to forge a stronger and more viable link between school and community. Maximizing the use of the school building, community education attempts to develop programs which serve the entire community, and through these programs to promote citizen involvement in the local arena. Trained community school directors and the school building itself act, ideally, as catalysts, coordinators of local institutions, and facilitators in clearing local communication channels. Today over 600 school districts across the country embrace the concept of community education in degrees ranging from simple use of the school building after 3:00 p.m. to a more complex reshuffling of local services with the school as a community center. But the movement is still in its infancy compared to the potential it carries.

The legal system alone cannot effectuate the metamorphosis of school to community center. That is for the policy-makers, educators, administrators, and citizens. It does, however, provide one of the frameworks within which they must work. For this reason, it is important to identify

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[1] W. CARR, COMMUNITY LIFE IN A DEMOCRACY 34 (1942), *as quoted in* C. LETARTE & J. MINZEY, COMMUNITY EDUCATION: FROM PROGRAM TO PROCESS 23 (1972) [hereinafter cited as LETARTE].

the legal constraints and dynamics (in their institutional and political settings) which operate on community education. How does community education fit into the structure of the more traditional public education law? How have the courts regarded community education? What relevant policies do state education codes and state constitutions reveal, what prohibitions do they contain? What new legislation is being proposed by states, and how does it compare with that of other states? In examining these questions, this study will make an exploratory inquiry into the field of "community education law," a unique amalgam made from three parts education law, three parts community education literature, one part each of constitutional law, administrative law, and local government law—seasoned with the hope that the community education idea can work, and that law can make a creative contribution toward this end.[2]

Authority

State Community Education Legislation

Community Education can ultimately represent a dramatic departure for American schools. Do local boards of education have the authority to back such an undertaking?

School districts, under the control of their governing boards, have no inherent powers. They are instrumentalities of the state,[3] created by the state, for state purposes. Although the judicial attitude toward experimentation by local boards has often been a liberal one in which the courts have broadly interpreted implied powers,[4] it is nevertheless clear that the most solid ground for authority for community education would be a state statute directly conferring on the local board the power to support and implement it.

Judging by the activity of state legislatures, perhaps community education is an idea whose time has come. Three states across the nation—Florida, Utah, and Minnesota—have passed community education acts[5]

[2] This research focuses primarily on 20 states. Some of these were picked because of their known involvement in community education. The rest were selected on a rough geographical basis. A second limitation on the research is its concentration more on the benefit to the community than to the students while in school. Community education is a two-way operation, and provides significant opportunities for extending curriculum by using the community resources that daily surround the student and touch on his basic life concerns outside of school. However, curriculum change has been left for further study.

[3] DeLevay v. Richmond Cty. Sch. Dist., 284 F.2d 340 (4th Cir. 1960); Nethercutt v. Pulaski Cty. Sch. Dist., 475 S.W.2d 517 (Ark. 1972).

[4] Appler v. Mountain Pine Sch. Dist., 342 F. Supp. 113 (Ark. 1972); Smith v. School Dist., 388 Pa. 301, 130 A.2d 661 (1957).

[5] *See* Appendix for citations and descriptions of all state legislation and proposed legislation on community education.

within the past three years. Two states—Michigan and Maryland—have expressly provided for its support in other legislation or in state guidelines. Of the 20 states researched, community education bills are pending before the 1973 legislatures in four states—Arizona, Illinois, Massachusetts, and Washington. Additionally, California had a 1972 bill. New Jersey and New York have legislation or proposed legislation which is tangential to community education.

Of the acts which have passed and are now in operation, none has apparently been through the judicial mill yet. This writer found no decisions interpreting the new community education acts. Either they are too recent, community education is simply not litigation-prone or controversial—or, what seems most likely, community education has not yet been implemented by more than a handful of schools in its fullest form of a school-based integration of social services, but has most often remained a non-threatening marriage of adult education with extracurricular and community recreation.

A comparison of the legislation and proposed legislation[6] will reveal the differing concepts of and commitments to community education in different states.

Structure. The legislation all clearly authorizes the local boards of education to operate community education programs. The Washington bill stops there. The other bills, laws, or guidelines all establish categorical grant programs, with the exception of Michigan, which provides funds for community education in its state aid act. The legislation, then, can all be characterized as permissive. There is, of course, no thought, thus far, of community education being mandatory. That still seems like a very "far out" idea. Perhaps community education is at that stage in its (possible) evolution at which it is encouraged by state policy but not yet thought of as an essential component of education.[7]

Three states have felt that community education is important enough to be represented at the state level. The legislation in Utah, Minnesota, and Michigan creates the position in the state department of education of state coordinator of community education. Additionally, the Minnesota law establishes a 25-member state community school advisory council, to be appointed by the Governor.

Scope. The legislation is generally inclusive of the entire community. Each measure specifies that some form of "educational" and "recreational" services are to be provided. Some states add the "cultural" dimension, and others include the word "social." Washington uses some potentially very expandable language when it speaks of "instructional, recreational and/or

[6] The Massachusetts bill and the Utah act were not available for direct comparison.

[7] See p. 9.

service programs," and "stimulating the full educational potential and *meeting the needs"* of the district's residents. Illinois also speaks of meeting "educational, recreational, *and other individual needs"* (emphasis added). To what extent the ejusdem generis principle of statutory construction will limit the acts to the "soft" social services of education and recreation, and exclude the "hard" services like health and welfare[8] could be an important question for the courts to decide.

Some states are implementing or planning more limited concepts of community education. The target population of Maryland's "School-Community Centers Program" is youth, and the services offered are purely educational-recreational. New York has a bill now before the legislature which is directed toward schoolchildren, and is primarily concerned with the "aesthetic education" which can be derived from closer school-community ties. Virginia is considering an extended adult education bill. New Jersey has a "Neighborhood Education Center Act" focusing on at-school educational, cultural, and social programs purely for the high school dropout.

Stated Purpose. The purpose statements manifest varying "depth perceptions"—varying degrees of express recognition of the potential of community education for a participative community *process* rather than just a conglomerate of add-on *programs.*[9] Common to all the legislation is the expressed aim of making fuller use of school resources and facilities. Perhaps this was promped by the current education finance "crisis" which caused an awareness of the high cost of education and consequent waste of utilizing the facilities less than half the time. Four states express the additional goal of involving the community in the planning and creating of community schools: Florida and California both find that the school is most effective when it "involves the people of the community," Arizona intends to "involve many persons," and Illinois wishes to develop programs "pursuant to community involvement."

The Arizona and California bills contain the most exhaustive purpose statements. Making no secret of the far-reaching ramifications of the community education idea, California's stated purpose is no less than to "provide an alternative to the way we operate our schools today," and the "ultimate purpose" is to "develop a sense of community." Arizona seeks to "promote democratic thinking and action," to "expand and diffuse leadership," and to "help to establish confidence in the minds of people that they can solve cooperatively most of their own community problems."

Whether to have an extensive purpose statement like California and

[8] This distinction is suggested by S. BAILLIE, L. DEWITT & L. S. O'LEARY, THE POTENTIAL ROLE OF THE SCHOOL AS A SITE FOR INTEGRATING SOCIAL SERVICES (1972) [hereinafter cited as BAILLIE].

[9] This distinction is emphasized by LETARTE.

Arizona or a few terse words on extending the use of school facilities like Minnesota is a drafting decision which must be made. Community education does not have the clear-cut goal of an air pollution law, measurable by meters, but rather shoots for the nebulous realm of "community self-actualization." [10] The extensive statements might be more inclusive, in a court challenge, of peripheral community education activities, and might have an educative function in spreading greater awareness of what community education is really all about. The opinion expressed by two writers on school law form[11] that such statements are "rarely justified" because most education law is self-explanatory would not seem to apply here.

On the other hand, two community educators express the feeling that

> the combination of depth conceptualization and change in traditional belief makes it almost mandatory that community education be introduced at the rate at which it can be absorbed rather than overwhelming the listeners in an initial contact and subsequently making them *apprehensive about any commitment* (emphasis added).[12]

Although there were undoubtedly other factors involved, perhaps it is of some significance that the California bill was never brought to a vote, while the briefer Minnesota bill passed.[13]

Statutes Permitting Use of School Property

For the majority of states, there is no state community education act. In these states, the local board must fall back for legal support on statutory designations regarding the use of school property, often buttressed with other statutes specifically authorizing cooperative relationships between the school board and other local agencies.[14] Both literature and litigation in the area of school property use has been prolific,[15] and yields the following framework for community education.

State Ownership. School buildings and grounds, viewed by community educators as an ideal site for integrating social services, are the property of the state, not the local district.[16] Ironically, one reason often given for the selection of the school as a base for community services is that because the

[10] *Id.* at 33.

[11] M. REMMLEIN & M. WARE, AN EVALUATION OF EXISTING FORMS OF SCHOOL LAWS 97 (2d ed. 1963).

[12] LETARTE at 33.

[13] Other aspects of the community education legislation are examined at p. 16 and p. 21.

[14] *See* p. 23.

[15] *E.g.*, L. PETERSON, R. ROSSMILLER & M. VOLZ, THE LAW AND PUBLIC SCHOOL OPERATION 168–177 (1969); E. REUTTER & R. HAMILTON, THE LAW AND PUBLIC EDUCATION 239–273 (1970); J. Kirby, *Community Use of School Property,* COMMUNITY EDUC. J. May, 1971 at 14; 94 ALR 2d 1274.

[16] *E.g.*, Yreka Union High Sch. Dist. v. Siskiyou Union H. S. Dist., 39 Cal. Rptr. 112 (1964); People v. Deatherage, 81 N.E.2d 581 (Ill. 1948); State v. Oyen, 480 P.2d 766 (Wash. 1971).

school was paid for with local property tax money, citizens often feel it belongs to them. They may see it as "their" facility, financed from their own pockets. It thus has a certain public aspect which other local agencies may not have, and for this reason may gain community acceptance more easily. But public sentiment does not correspond to the great weight of legal authority, which holds:

> The "property of the school district" is a phrase which is misleading. The district owns no property, all school facilities, such as grounds, buildings, equipment, etc., being in fact and law the property of the state and subject to the legislative will.[17]

Statutory Delegation of Local Control. The state legislature delegates to the local school boards control over the use of school property through three kinds of statutes.

First, rarest, and best for community education are the "civic center acts" found in Arizona, California, New York and Utah.[18] Perhaps California has gone farther than any other state in providing by statute for wide non-school use of school buildings. It proclaims that "there is a civic center at each and every public school building and grounds within the State." Community groups may meet here and "engage in supervised recreational activities" or discuss questions of "educational, political, economic, artistic, and moral interest." Such use is subject to the rules and regulations of, and is under the "management, direction, and control" of the local board, and is not to interfere in any way with the use of the building for school purposes. The statutes for Utah and Arizona are closely patterned on California's statute. New York calls for a petition of at least 25 citizens to turn a school into a civic forum.

The civic center acts could be characterized as close to a mandatory requirement that the local boards open the schools, within reason, to community uses. In this respect, they seem stronger than a community education act, although they are, of course, without the legislative imprimatur on community school directors and programs per se, on school-based social service integration, and without financial support. While a number of decisions have held, under the California Civic Center Act, that the board must permit activities within the ambit of the statute,[19] the court has up-

[17] 81 N.E.2d at 586. State v. Oyen, 480 P.2d at 769 states: "While school properties are 'public' in the sense that they are endowed and operated with taxpayers' money, they are not 'public' in the sense that any member of the general public may, when and if he pleases, use such property for his own personal objectives. . . ."

[18] ARIZ. REV. STAT. ANN. § 15–451 (1956); CAL. ED. C.A. § 16556 (Deering 1959); N.Y. ED. LAW § 414(6) (McKinney 1969); UTAH CODE ANN. § 53-21-1 (1970).

[19] Danskin v. San Diego Unified Sch. Dist., 171 P.2d 885 (Cal. 1946); Goodman v. Board of Educ. of San Francisco, 48 Cal. App.2d 731, 120 P.2d 665 (1941) (holding that the board must open the school auditorium to the Socialist Party).

held the board in refusing use of facilities which the board feels might interfere with school purposes.[20]

The second, and most common type of statute is that providing for the use of school property for non-school purposes. Thirteen out of the 20 states studied had such permissive use statutes.[21] A composite statute employing the most typical provisions might read:

> Schoolhouses and school grounds shall be in the custody of and under the control of the board of education. The board may adopt reasonable rules and regulations for the use of such schoolhouses and grounds and may permit use for such educational, literary, cultural, civic, social, recreational, and community purposes as in their opinion do not interfere with the principal use of said schoolhouses and grounds.

Following this are often special clauses pertaining to religious and partisan political uses, usually a specification of whether a charge may be made for the use,[22] and sometimes a provision relating to liability.[23]

Third, giving complete and undirected discretion to the local board, are those statutes which merely assert that the school property is under the control of the board, and specify nothing about community use. Typical is Georgia, which declares:

> "The said boards are invested with the title, care, and custody of all schoolhouses or other property, with the power to control the same in such manner as they think will best serve the interests of the common schools." [24]

Another variation, used by Colorado,[25] is to briefly mention discretion as to use as one in a long list of powers conferred on the local board.

Judicial Attitude Toward Community Use. At the turn of the century, many courts took a restrictive view of community use of school property. First, they held strictly to the principle that money raised through taxation for the schools may be used only for a very narrowly defined educational/instructional purpose.[26] This, of course, would preclude community education were it adhered to today. Second, courts sometimes allowed use for non-school purposes only when the use was clearly temporary, casual, or incidental, and thus would not mean a total diversion of the property from

[20] Payroll Guarantee Association v. Board of Educ., 27 Cal.2d 197, 163 P.2d 433 (1945).

[21] CONN. GEN. STAT. ANN. 5A § 10-239 (1958); FLA. STAT. ANN. § 235.02 (1972) and § 230.43(7) (1960); ILL. STAT. ANN. 122 § 10-22.10 (1961); KAN. STAT. ANN. § 72-1033 (1972); ANN. CODE OF MD. 1969, art. 77, § 97; ANN. LAWS OF MASS. 2-B, § 71 (1971); MICH. STAT. ANN. § 15.3580 (1968); MINN. STAT. ANN. § 123.15(10) (1960); VERNON'S ANN. MO. STAT. § 177.031 (1965); N.J. STAT. ANN. § 18A: 20-34 (1968); VERNON'S CIV. STAT. OF TEX. ANN. art. 2738 (1965); CODE OF VA. § 22-164 (1973); REV. CODE OF WASH. § 28A.58.105 and 28A.60.190 (1970).

[22] See p. 17.

[23] See p. 27.

[24] GA. CODE ANN. § 32-909 (1969).

[25] COLO. REV. STAT. § 123-30-10(7) (1963).

[26] Bender v. Streabich, 182 Pa. 251, 37 A. 853 (1896); Lewis v. Bateman, 73 P. 509 (Utah 1903).

instructional purposes.[27] Such a holding today would prevent the hiring of a community school director, and the building up of momentum which is so essential to community support and involvement. Third, a more peripheral concern of some courts was damage to school property.[28] In light of many community educators' claim that "the school is less likely to be vandalized . . . when it is being used by community people," [29] to restrict the use of school property for fear of damage would result only in the perpetuation of a vicious cycle.

Today, however, a combination of broadly worded statutes on use of school property in many states and a liberalized judicial attitude means a generally secure legal footing for community education in this respect. A strong majority view holds that where a local board has been authorized to permit the use of school property for non-school purposes, it may allow any use which is not inconsistent with and which does not interfere with school purposes.

> So long as the proper maintenance and conduct of the school is not interfered with, or in any wise hampered . . . our law vests a generous amount of discretion in the school district . . . concerning what use shall be made of the school district property when it is not in actual service for formal school sessions.[30]

Interference with school, then, appears to be the only substantial concern of the present courts. Community schools have not been deterred by this judicial proviso. However, if future community schools begin to integrate more "hard"services, one ground that may be used by challengers to block this could be interference. It is not difficult, for example, to imagine a future court arguing that public welfare offices and drug treatment facilities interfere with the instruction of children.

For the most part, though, local boards would seem to have a significant amount of freedom to experiment with the community education idea. Unless they abuse their discretion in some way, or act in an arbitrary or capricious fashion, the courts will not interfere with their decisions regarding the use of school property.[31] Moreover, generally, a school district, through its board, is regarded as possessing not only powers expressly granted by statute, but also powers "necessarily implied," and "essential to

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[27] Simmons v. Board of Educ., 237 N.W. 700 (N.D. 1931).

[28] Ellis v. Allen, 165 N.Y.S.2d 624 (1957). *But see* Royse Independent School Dist. v. Reinhardt, 159 S.W. 1010 (1913).

[29] W. Ellison, *School Vandalism: 100 Million Dollar Challenge,* COMMUNITY EDUC. J., Jan. 1973 at 33.

[30] Merryman v. School Dist., 43 Wyo. 376, 5 P.2d 267, 276 (1931).

[31] State v. Grand Rapids Bd. of Educ., 11 N.E.2d 294 (Ohio 1949); McKnight v. Board of Public Educ., 76 A.2d 207 (Pa. 1951). *See* Vance v. Board of Educ. of Pekin Community H.S. Dist., 277 N.E.2d 337 (Ill. App. 1972).

its purpose." [32] Courts have held that because of the importance of its mandate, the board should be allowed wide discretion, and any limitations on this discretion should be strictly construed.[33] Courts have even found an "implied power of experimentation." [34] As one education text puts it, "This judicial attitude has encouraged freedom and experimentation out of proportion to that suggested by the legal structure itself." [35]

In spite of all this judicial latitude, however, it is interesting to note that the only community education writer expressing any opinion on the legal use of school property feels that the issue may not be moot, and defenses should not be let down:

> Progression of legal opinion has brought us to the state where few questions regarding the legality of [the use of school property] are raised.... Nonetheless, the present attitude of many persons, including legislators and public officials, raises the possibility that legal challenges may reoccur. The climate which brings demands for strict accountability, curtailment of educational and social programs, and reductions in public expenditures should be recognized in educational planning. Community school educators should be prepared to face such challenges with logical and legal arguments.[36]

Community Education—Is It A Non-School Purpose?

An alternative route to arguing that community education activities are non-school purposes within the purview of the use of school property statutes—one that is far more radical and far less likely to succeed, at least for a number of years—would be to argue that community education is in fact an essential dimension of education.

This argument raises the immediate question: In the eyes of the law, exactly what is education? What are its judicial, constitutional and legislative parameters?

Constitutional and Legislative Limitations—Age. Many state constitutions provide for free public education "between the ages of six and twenty-one" (Arizona, Colorado, Mississippi), "between the ages of five and eighteen years" (New Jersey), "for all children" (Washington), or "for all children of school age." Others leave it for the legislature to specify the ages for free schooling. Courts have generally found that it was the constitutional intent to guarantee free elementary and secondary educa-

[32] Board of Educ. v. Cloudman, 185 Okla. 400, 92 P.2d 827 (1939); Reeves v. Orleans Parish School Bd., 264 So.2d 243 (La. 1972).

[33] *See* cases cited *supra* at note 4.

[34] Morton v. Board of Educ., 69 Ill. App.2d 38, 216 N.E.2d 305 (1966); Council of Supervisory Associations v. Board of Educ., 297 NY.S.2d 547 (Ct. App. 1969).

[35] E. REUTTER & R. HAMILTON, THE LAW AND PUBLIC EDUCATION *supra* note 15 at 107.

[36] J. Kirby, *Community Use of School Property supra* note 15 at 59.

tion;[37] and that the constitutional provisions are not self-executing, so that if the legislature has not established free kindergartens or junior colleges in spite of a five to twenty-one years of age constitutional stipulation, the court will refuse to compel such establishment.[38]

Community educators contend that this vision is too narrow:

> The schools are intended to serve the needs of the people and for too long our system has implied by its limited interpretation of that responsibility that those needs are characterized by the educational requirements of children between the ages of five and eighteen. We have ignored the needs of the rest of our citizenry. Our schools will truly become 'public schools' when we can focus upon them as centers for living—not only as a place attended as a child to gain knowledge, but when they also form a continuing part of and a meaningful force in the lives of people.[39]

In Missouri, for example, community educators are strongly supporting a bill which would put gratuitous education for persons over twenty years of age more on a par with education for those between five and twenty—although state foundation aid could still not be used for its support, adult education would no longer be completely relegated to "revenues which are not required" for education of schoolchildren.[40] The Arizona community education bill encourages school districts to "adopt [their] facilities, buildings and grounds . . . to persons of all ages." Community school programs, of course, seek to encompass and enhance the varying adult education services presently offered (for fees) by most states.

This "lifelong education" view must have received some boost, albeit indirectly, from the recent spate of education finance decisions. *Serrano v. Priest*[41] and its progeny in other state and U.S. district courts have declared education to be a fundamental right under the equal protection clause of the fourteenth amendment. The *Serrano* rationale emphasizes that: (a) Education, like voting, is crucial to participation in and thus the functioning of a democracy. Both are preservative of other basic civil rights. (b) There is a crucial interdependence between education and first amendment freedom of expression. (c) Education is a major determinant of an individual's chances for economic and social success in our competitive society; and is a molder of personality, source of behavior patterns, and of citizenship models.

If education is such a keystone of democracy and so important to the individual, should it stop at age eighteen? If education is a "fundamental

[37] State v. Regents of University, 11 N.W. 472 (Wis. 1882).

[38] State v. Board of Educ., 42 N.W.2d 168 (Neb. 1950).

[39] W. Talbot (Supt. of Public Instruction, Utah), *Public Education: A Foundation for Life,* COMMUNITY EDUC. J., 12 (Aug. 1972).

[40] H.B. 50, 77th Gen. Assembly (1973). The bill passed the House on February 5, 1973 and was to be heard by the Senate Education Committee in March.

[41] 5 Cal.3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971).

right," is it constitutional for it to stop at eighteen? Some might contend that age is not a "suspect classification" like race or wealth but a reasonable classification which accords with centuries of human tradition and with the animal kingdom itself—youth is the time for instruction and development. On the other hand, the complexity and rapidity of social change inherent in the emergent "communications era" would seem to make a continuing education an imperative. Such change, with its "future shock," increasingly erodes the reasonableness of the classification and makes it more arbitrary. If age came to be regarded as a "suspect classification," this in combination with the holding that education is a fundamental right would force states to search for compelling interests to justify a child-oriented school system.

However, the Supreme Court, in the recent case of *Rodriguez v. San Antonio Independent School District*,[42] temporarily toppled the structure of the "fundamental right" argument by holding:

> Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.[43]
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> * * * *
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> We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive.[44]

But the idea is surely not at an end, only facing its first real conflicts; and educators may still wonder how far it can extend. A future-oriented rallying cry could be: "Yesterday racial equality in *Brown,* today fiscal neutrality in *Serrano,* and tomorrow the right to a continuing education through community schools!"

Judicial Limitations—Developmental v. Remedial. The Texas Constitution provides: "[N]o law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever." [45] Other states echo this limitation. What is an "other purpose"? What kinds of activities does "education" encompass and just how broad is it?—broad enough to cover participating in competitive athletic events,[46] swimming in pools,[47] playing in the band,[48] and receiving diagnostic and

[42] 411 U.S. 1 (1973).

[43] *Id.* at 35.

[44] *Id.* at 37.

[45] TEX. CONST. art. 7, § 9.

[46] Board of Educ. of Louisville v. Williams, Ky., 256 S.W.2d 29 (Ky. 1953); Galloway v. School Dist., 331 Pa. 48, 200 A. 99 (1938).

[47] Petition of School Bd. No. U2-20, Multnomah Co., 232 Or. 593, 337 P.2d 4 (1962).

[48] Kay County Excise Bd. v. Atchison, Topeka, & Sante Fe R. R. Co., 185 Okl. 327, 91 P.2d 1087 (1939).

inspectorial health services.[49] Spending school money for these activities has been upheld by courts as an implied power of local boards stemming from express statutory powers to construct "school buildings" and to spend tax funds for "school purposes." The majority view seems to encompass a fairly broad range of "character and morale-building" as well as instructional and very minimal health activities.

But this, according to some community educators, is not enough. The school should be a site for integrating a whole range of social services, many believe, and should cater more to the total needs of the total individual. It is at the point where the "soft" services like adult education, library, and recreation end and the "hard" services like welfare, health care and employment assistance begin that community education would probably have difficulty identifying itself with "education." This is because education has traditionally been regarded as a "developmental" service, a door to self-improvement for everyone, whereas the "hard" services are seen as "remedial"—"redistributive . . . services to 'poor' people . . . 'hand-outs' to people who have failed." [50] A developmental/remedial mix of services such as community education envisions might put a strain on the implied-power-finding tendencies of even the most liberal courts.

Thus, the route of community education qua school purpose in the strict legal sense might be only a partial and difficult answer in today's social setting, but it does provide another "piece of the puzzle" of the legal gestalt of community education, which can perhaps be saved for another time.

Racial Integration

Community schools have not escaped the bitter question of racial integration that has challenged the constitutionality and operating authority of so many of the nation's school systems since 1954. In Atlanta, Georgia, the NAACP filed suit to stop plans for the John F. Kennedy School and Community Center, contending that it would become a segregated, all-black school if it were built in the planned location. After a court battle of several years, the Atlanta School Board won, the school was built, and is now 99% black. In Prince Georges County, Maryland, an emergent community schools movement was at least temporarily quashed in 1971 when HEW made allegations of de facto segregation, causing an HUD Model Cities Board to withdraw the funding on which the movement depended. In Boston, Massachusetts, construction of the Quincy School Complex and the Madison Park High School, both large projects designed with the school as the site for service delivery, has been delayed by problems of racial imbalance.

[49] Hallett v. Post Printing & Pub. Co., 192 P. 658 (Colo. 1920).

[50] BAILLIE at 16.

An answer to such an intricate problem would be impossible to give, but a brief dialogue on racial integration and community education might point up various reciprocal impacts they could have:[51]

Statement: Community education is nothing but the old wine of the neighborhood schools concept in a new bottle. It would slow the progress toward a unified school system and enhance the pattern of racially-separate housing and informal associations which lead to de facto segregation. (One of the national bills introduced on community education, S. 3194, sponsored by Sen. Chiles (D-Florida) even states that the act is to "strengthen the concept of the neighborhood school" and defines "neighborhood school" as one in which not less than 75% of the children are assigned there "on the basis of residence in the area served by the school." Could such a bill possibly strengthen integration?) Isn't it just the ghost of separate but equal rising again?

Response: On the contrary, community education could be a viable means of reducing racial tensions. The schools could become, under skillful and trained community school directors, "centers of service for helping people overcome racial barriers." [52] Community education is grounded in the concept of community involvement and shared decision-making; and as citizens participate together in solving their problems, tolerance and understanding will grow.

Statement: But if the immediate neighborhoods are all-black or all-white, tolerance will not have a chance to grow, and racial separation will only be reinforced.

Response: Possibly, but not necessarily. It depends on the delineation of the community to be served. Community schools could be located in integrated areas or in areas between black and white communities.

Statement: Such zones between communities are often ugly, unsuitable areas. Also, such zones would reduce the accessibility to the services. The community school is supposed to be a central place, nearby, easily approachable for all. That is the reason for using or improving already-built elementary schools. Isn't busing contrary to the whole idea of community education?

Response: Busing is contrary, but it might be necessary in some cases to meet the far-reaching judicial demands expressed in *Swann v. Charlotte-Mecklenburg Board of Education*[53] and other recent holdings. Another approach might be to bus children during the day, but still establish community centers in nearby elementary schools. A child would not necessarily have to go to the same school he and his parents visit for recreational and other services.

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[51] Some of the ideas expressed in this dialogue were taken from BAILLE at 11.

[52] W. F. TOTTEN, THE POWER OF COMMUNITY EDUCATION 43 (1970).

[53] 402 U.S. 1 (1971).

Statement: True, but then the children would not benefit from the programs and services during the day. Furthermore, the child would not be as likely to build up positive feelings about school. The school-home link, so important to community education, would be broken.

Response: Another alternative might be to establish a community school in a lower-income black area and bus white children in. Although the services would not be as accessible to the white community, the black community is probably in greater immediate need of them. Also, knowledge of good facilities, programs and services might make the parents of the white children less reluctant to send them there.

Statement: On the other hand, knowledge of some of the "hard" services being offered might make the parents *more* reluctant....

Financial Support

Federal Aid

The most striking feature of the laws giving federal aid to community education is their diversity. One article listed as a start 17 federal acts which have provided funding for various aspects of community education, ranging from Title I and Title III of the Elementary and Secondary Education Act, the Adult Education Act of 1966 and the Vocational Education Act of 1963 to the Juvenile Delinquency and Youth Offenses Control Act of 1961, the Child Nutrition Act of 1966, the Manpower Development and Training Act of 1962, and HUD Model Cities programs.[54] (Thirty-three federal agencies are involved in adult education and training alone.)

None of these federal sources has a specific mandate to support community education or to encourage the integration of social services at schools. The Office of Economic Opportunity is apparently the only federal agency which has been active in integrating social services at all, without regard to school.[55]

This diversity and lack of coordination between so many assorted segments of the federal bureaucracy has caused problems for community educators: They must submit many separate proposals, each adapted to the particular aims of a particular agency; they must spend time awaiting federal approval; they must compete with all sorts of other programs, many of which might be more directly on-line for the mandate of any particular agency. Additionally, because these funding sources are not designed with community education in mind, miscellaneous legal obstructions are bound to crop up. For example, the planners of the Human Resources Center in

[54] For a full listing, *see* W. F. Totten, *Financing the New Dimensions of Community Education,* LIV PHI DELTA KAPPEN 3 (1972).

[55] BAILLIE at 29.

Pontiac, Michigan were faced with an HUD regulation preventing the awarding of a Neighborhood Facilities Grant for the construction of a school building. One report aptly described present federal aid to community educators as "a cafeteria of semi-digestible dollars which might or might not be useful for their purposes." [56]

In light of this, what *should* be the role of the federal government in aiding community education? An ad hoc Office of Education task force created to study community education[57] made a recommendation that legislation be passed to allow school districts interested in community education to apply for the myriad of categorical funds under a single proposal—"allied service legislation." They feel this would greatly simplify the process of obtaining federal aid.

Three other recommendations made by the task force were that the Federal Government should (a) support various model community schools in different parts of the country,[58] (b) provide state and local agencies with technical assistance in the development of community schools, and (c) provide for the training of community school directors.

These latter three recommendations would be greatly advanced if the major bill on community education now pending in Congress were to pass. The bill, sponsored by Senators Frank Church and Harrison Williams, along with its companion bill in the House, sponsored by Congressman Donald Reigle,[59] would (1) make grants to universities to develop programs in community education to train community school directors, (2) make a certain limited number of grants directly to local school districts for community schools, (3) provide for Office of Education assistance and dissemination of information on community schools, and (4) establish a Community Schools Advisory Council to be composed of seven members appointed by the President. There are two other notable sections of the bill. One explicitly provides for judicial review of actions on applications for grants to school districts. The other states that the Federal Government shall not "exercise any direction, supervision, or control" over any university or school system. This is to assure preservation of the local autonomy that is so important to school officials.

Perhaps the most crucial role for the Federal Government is an educative and policy-making one. It should set the stage for community education, make the nation more aware of its potential. The mish-mash of fund-

[56] *Id.* at 30.

[57] Created at the request of Mr. Duane J. Mattheis, and including a working group within Division of State Agency Cooperation/Bureau of Elementary and Secondary Education, 1972.

[58] *E.g.*, the well-known Williams School in Flint, Michigan, which received a Title III, ESEA grant.

[59] The House bill, H.R. 11709, was first introduced in November, 1971, and has since gained 24 cosponsors. Hearings were to be held in early 1973, but have been delayed. The administration opposes the bills.

ing legislation that now exists for community education does not do this. Passage of the pending bill might mean a beginning.

State Legislation

The State today is assuming an increasing portion of the burden of financing education. Three categories of state legislation bear on funding for community education:

State Community Education Acts. The fiscal structure of the community education acts (in the few states that have passed or proposed them) manifests two opposing tendencies—one that is healthy for community education and one that is not. One encourages integration and cooperation of services and agencies. The other seems only to add to existing in-fighting among educational programs, although perhaps at this (hopefully) early point in the life of community education, this cannot be avoided.

The healthy tendency is the incentives for program coordination that are built into many of the acts. The proposed Illinois act provides that in order to obtain a grant, the school district must show "evidence of intergovernmental cooperation." The Maryland Guidelines specify that the local education agency "shall join with the existing recreation and parks agency" in order to be eligible for aid. The Florida and Minnesota acts and the 1972 California bill all explicitly give priority in funding to those programs in which the school joins with other local, state or federal agencies.

The less healthy tendency is making community education a categorical grant program.[60] Community educators like to tout the statistic that if all the schools in an entire district were operated as community schools, the increased cost would be only six to eight percent greater. Whether this is true or not, perhaps it has influenced architects of school finance legislation to view community education as a frill which might merit a small pittance of a categorical grant, but no more. Community education must thus compete with special education programs, summer school programs, vocational education programs, career development, teacher training, etc., when it could be viewed instead as encompassing, coordinating and enhancing all these other programs.

At present, the money community education gets as a categorical grant in the few states which have enacted laws for it seems inadequate to alone provide substantial aid. The Washington engrossed bill, in fact, expressly stipulates that while local boards are authorized to provide community education, *no* state school funds are to be appropriated for it.

[60] Only Michigan includes funds for community education as parts of its foundation program. *See* Appendix.

Community education, then, is presently put in a defensive position, and is in the highly competitive ring with other educational programs for the scarce school dollar; whereas its ultimate aim is to become so thoroughly integrated into the education finance structure, so clearly identified with what school is supposed to be all about, that it is paid for from the state foundation program and from the local tax dollar, just as "instruction" is today. The Superintendent of Public Instruction in Utah concludes:

> I can see no future for community education if we do not move it out of its separate, categorical framework and into the realistic position of a concept upon which we build, the basis of all our other programs.[61]

Other State Grants. As on the federal level, a wide array of state legislation, while not aimed directly at community education, can, with imaginative proposals and cooperative ventures with other agencies, be made to serve its ends. These might include state grants for recreational, health, library, or urban development purposes. For example, a community school in New Haven was financed partly through Connecticut's Aid to Disadvantaged Children, and two New York projects utilized funds from the state's Urban Development Corporation. Colorado's "Public Education Incentive Program Act" [62] would seem to offer an ideal source for community education—the act is expressly interested in, among a whole list of other things, "formation of boards of cooperative services," and "programs to make more efficient use of facilities."

Use of School Property Statutes. A key item on the budget of any community school program is the cost of using space and equipment. Of course, the whole philosophy behind community education dictates that the local school board provide free use of school property; but, realistically, some boards may be hard pressed for money, and some, too, may want community education to "prove itself" before it gets anything free.

What is the legal side of this? Again, school property is state property, and the state is under no obligation to make it available for public meetings.[63] Of the 20 states examined, five[64]—California (Civic Center Act), Illinois, Missouri, Utah,[65] and Washington (2d and 3d class districts)—direct that the use is to be free. The tones range from California's mandatory provision that the use "shall be granted free" to Missouri's more permissive statement that the board "may allow free use." In conjunction

[61] W. Talbot, *Public Education: A Foundation for Life, supra* note 39 at 12.

[62] COLO. REV. STAT. § 123-40-1 (1969).

[63] Danskin v. San Diego, 171 P.2d 885 (Cal. 1946).

[64] Citations for use of school property statutes are at notes 18, 21, 24, and 25 *supra.*

[65] In Utah, a distinction is made between those activities "which the board itself may inaugurate and make provision for" and completely private activities not instituted or supported by the board. Beard v. Board of Educ., 16 P.2d 900 (1932).

with the free use, each of these states specifies that the "incidental costs" of lighting, heating, and janitor service will be picked up by the district.

Three states—Arizona, Florida, and New York—take a more neutral stance, indicating that the use must not cost the school anything. New York specifies that the local board may make the "civic center" "as self-supporting as practicable." Five states—Maryland, Massachusetts, Michigan, Minnesota, and Washington (first class districts)—indicate that the board may make "a reasonable charge." Minnesota goes farther than any state examined, directing that the board, within its discretion, may require "a cash or corporate surety bond . . . , payment of all rent and repair of all damage and may charge and collect . . . a reasonable compensation." Overall, then, school officials may exercise wide discretion as to charge for use of school facilities.

A related legal problem in use of school property/school financing stems from a recent practice of several school districts (for example, New York City): leasing and joint occupancy.[66] The school builds a huge multistoried structure, using the bottom for school purposes and renting out the rest. It has been suggested that this may be especially appropriate, in some urban cases, for community education because some of the building could house cooperating service agencies and private service groups. Furthermore, it would help to pay the way of the school/community center if the local board could not or would not afford it. However, most state education codes do not authorize the leasing of school property for commercial purposes, and some prohibit it. Although the decisions are in conflict, often courts have not permitted it,[67] because, as one early case put it, the school statutes "provide for the accomplishment of [their] object by taxation, not by negotiation with the business world." [68] The solution?

> This frequently is where ingenuity on the part of planners has been required. In some cases laws have been changed. In other cases, advocates for leasing and social service integration have had to do such things as creating new corporations solely for the purpose of "getting around" existing laws and regulations.[69]

Local Sources

The primary local source is increase of property tax by referendum. Community educators hope that in the future, community schools will be financed from the same tax structure that now supports "regular schools," because regular schools *will become* community schools. But in the mean-

[66] BAILLIE at 30–32.

[67] Board of Directors v. Fleak, 245 P. 150 (Ks. 1926); Presley v. Vernon Parish School Bd., 139 So. 692 (La. App. 1932).

[68] Herald v. Board of Educ., 65 S.E. 102 (W. Va. 1909).

[69] BAILLIE at 32.

time, even the "regular" school is faced with bond election defeats amounting to "taxpayer revolts" across the country. Several states—California, Colorado, Oregon—have even attempted, while searching for new revenue sources, to limit the local property tax by constitutional amendment. Community educators find hope in examples like Flint, Michigan, where ever since all the schools were converted into community schools, all the elections have been successful. When the community receives tangible returns for its tax dollars in the form of more accessible and more extensive services, the theory goes, it will be willing to pay more. California even has a special Community Service Tax[70] which districts can levy for community use of school facilities. A more pessimistic viewpoint, however, might question whether the public will be so enthusiastic about supporting a school which is fully integrated with "hard" as well as "soft" services.

A hidden local source might include coordination with other local governmental units. A county, township, city or special district may have allocated funds for activities and may be either spending them in a haphazard, unplanned way or not spending them at all because the amount is not large enough to provide the necessary personnel and facilities. Community education can reap the benefits of such stray funds by consolidating them. Additionally, it can arrange to share personnel and facilities with other agencies, either on an informal oral basis or by written contract.[71]

Finally, both teachers and custodial personnel can be assigned staggered schedules, so that their resources could be utilized both before and after the regular school day. Such scheduling would go to the heart of the question of use of school funds for community purposes, since salaries make up the bulk of school operating expenditures. The answer, again, would depend on the legal definition of education in each state.

Citizen Participation

The goal of community education is not for the community school director to hand over programs and services, ready-made, to the community. The goal, instead, is to initiate the process whereby the community learns to attack and solve its own problems—"community self-actualization." Because of this, citizen participation in making the decisions and in running the programs is the key to the success of the whole endeavor.

Community Education v. Community Control

Because they have often been used synonymously, the terms "decentralization," "community control" and "community education" can lead to

[70] CAL. GOV. C.A. § 20801.

[71] *See* p. 25.

confusion. From a legal standpoint, the concepts are distinguished by their varying degrees of delegation of the power of the local board of education.

Definitions. Decentralization, as some educators define it, involves an administrative transfer of control from the central board to various sectors of the city. It usually occurs where there is a large, highly bureaucratized city board in a large school district. It is almost as if the school board were opening up "branch offices." No real transfer of power to community members is involved.

Community control, by contrast, envisions the all-out transfer from the central board to a local body comprised of interested community members of the authority to hire and fire teachers and administrators, determine curriculum, write the budget, obtain outside financial support and take part in school construction decisions.[72]

Community education lies somewhere in between. It advocates the involvement of lay community members in the decision-making process of the school and of the services which would be associated with it. It does not advocate community members making decisions that professionals must carry out—community educators feel that this would alienate professionals, who have valuable resources to offer, and that it would only "substitute one special interest group for another, to the exclusion of other groups who need to be involved." [73]

Legal Basis. Community education rests on a much more solid legal basis than community control. The latter runs head-on into the traditional rule against redelegation—"delegatus non potest delegare." Once the legislature has granted power to an agency, that power cannot be transferred. Courts have, however, upheld such redelegation, mostly in other than school circumstances, on three different rationales:[74] (a) the redelegation is necessary for the agency to effectively carry out the powers granted, (b) the redelegation involves only ministerial and not discretionary decision-making power, and (c) the redelegation is seen as a legitimate contractual relationship. But in spite of these arguments, community control of education is clearly somewhat on the defensive legally. Its legitimacy may often be a matter of degree of control granted; and because there are no clear-cut lines, it may be vulnerable to the tactics of emotion-charged challengers.

Community education, on the other hand, avoids the redelegation problem almost entirely. When community educators speak of "citizen involve-

[72] 57 GEO. L. J. 992 (1969) (uses the term "decentralization" to include community control).

The term "community school district" is often used to refer to arrangements which vary from administrative decentralization to actual local control, but should not be confused with "community school" as a community center concerned with local delivery of services extending beyond just education.

[73] LETARTE at 10.

[74] 57 GEO. L. J. 992 *supra* note 72.

ment," they may be referring to a combination of two different means for achieving this. Both are essentially "extra-legal." One is a citizen advisory council. Because citizen decision-making here is in an advisory capacity only, no legal power is transferred. No one is compelled to do anything, but the citizens may have, in a genuine community education effort, a certain amount of inherent social authority by virtue of the fact that the success of the effort depends on them. In fact, it has been suggested[75] that one defense for community control would be to argue that the community board is advisory only, and that the central board makes its own final decisions. Inversely, an opponent of community education might argue that the board is *consistently* following the recommendations of a strong advisory council, and that this constitutes a constructive redelegation.[76]

The second—and more nebulous—kind of citizen involvement is simply that which derives from participation in school-connected activities. Frank J. Manley, one of the originators of the community education concept, had a maxim about getting people *in* the schools, getting them *interested,* and getting them *involved*—one built on another. A person who benefits from an activity may feel he has some stake in the community education program, and that it provides him with a channel in which to make an effective contribution—a parent may become a paraprofessional after gaining more familiarity with the school and the teachers; a businessman may donate money or equipment, or may teach in the area of his specialty. Community education multiplies the number of contacts in a community, and this provides a "penumbra" of involvement which really goes to the heart of the concept. This kind of involvement takes place entirely outside the bounds of the legal system. It is a psychological, social, and political force.

Statutory Encouragement of Participation

Community Education Legislation. Most of the existing and proposed community education legislation incorporates, to varying degrees, the

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[75] *Id.* at 997.

[76] Some projects appear to contemplate a kind of hybrid arrangement, taking elements from both community control and community education. A legal framework for the Fort Lincoln Project in Washington, D. C. for example, called for an "Education and Service Agency,"—a tax-exempt nonprofit corporation made up of citizens—which would contract with the Washington, D. C. Board of Education for the construction and operation of the schools. It would also operate, by contract, other public services such as recreation, libraries, parks, streets, sewers, transportation, day care, and employment services. Thus, there would be an integration of social services which would be to some extent school-based, as in community education; but there would be a real transfer of power amounting to community control. "The relationship [between the Agency and the Board] would differ substantially from that between boards of education and existing 'advisory' community school boards because the Agency would have legally defined planning and operational rights and responsibilities." J. C. Cahn, E. Cahn, L. Oberdorfer *et al., A Legal Framework For The Fort Lincoln New Town,* Dec. 19, 1968 (unpublished legal memorandum at Wilmer, Cutler & Pickering Law Firm).

principle of citizen participation. Minnesota and Maryland are the only states presently appropriating community education funds which expressly require citizen participation. Minnesota's act mandates that "each board [which operates a community school program] *shall* provide for a citizen's advisory council" (emphasis added).[77] It encourages the representative nature of this council by listing groups from which membership might be derived—"the various service organizations, churches, private schools, local government, and any other groups participating in the community school program." Maryland's "Guidelines for School-Community Centers Program" specify that "Youth representation *must* be involved in the planning.... A youth council is encouraged."

Utah's "Community School Guidelines," while apparently not conditioning funds on participation, do describe a "community school advisory committee," naming a slightly different organizational mix than Minnesota: "citizen groups; federal and state agencies; business and industry; service organizations; school administrators; staff and students." Illinois' proposed act would condition grants on "lay participation in serving community needs." The 1972 California bill presents an interesting anomaly—in the definitions section it carefully defines "community council," but then never mentions it again!

Federal Legislation. Some of the federal programs which contribute to the funding of community education include citizen involvement components. For example, HUD-assisted projects in urban renewal areas may come under the requirements of the Workable Program for Community Improvement.[78] The Workable Program, like community education, seeks to mobilize the full potential of community resources. To do this, it "requires clear evidence that the community provides opportunities for citizens, including those who are poor and members of minority groups, to participate...." [79] It requires, further, continuing efforts by the community to expand these opportunities.

Title I of the Elementary and Secondary Education Act, also a primary federal funding source for community education, includes requirements for parental involvement.[80] The Title I Guidelines state that "the applicant should demonstrate that adequate provision has been made ... for the participation of parents." [81] An Office of Education memorandum to chief state school officers directs that Title I applications include assurance that a parent council is involved in the planning and development of the

[77] *See* Appendix for citations of community education legislation.

[78] A "workable program" is a requirement of the National Housing Act of 1949, 42 U.S.C. § 1451(c) (1970).

[79] U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT HANDBOOK, RHA 7100.1 (Oct. 1968).

[80] 20 U.S.C. 241e(a)(1) (1969).

[81] *Title I ESEA Program Guides* 44, 45-A, at 16 (1969).

project, that it has had an opportunity to present its views on the application, and how its complaints have been handled.[82]

Paraprofessionals

Community education means citizen involvement in the operation of programs and services as well as in policy decisions. While elaborate educational and experience criteria for such participation would be disfunctional, states might allay the fears of many critics and legitimatize these activities by broadly defining requirements for teachers of non-credit courses, for leaders of enrichment activities, and for paraprofessionals helping the teacher in the classroom.

A recent study[83] reported that 20 of the 50 states in 1972 had adopted paraprofessional or "teacher aide" legislation. The other 30 dealt with the question of the legitimacy of aides in five different ways: (1) state guidelines, (2) use of opinions of legal advisors in state departments of education, (3) lumping aides in with other non-certified personnel, (4) considering the position of aide as one that does not legally exist, and (5) using certification requirements for teacher aides.

The study ends by drafting a model state act for employment of teacher aides. The act would authorize the local boards to employ them; allow the boards to establish minimum health and character qualifications; provide for their supervision and their contracts; and assure their salary, benefits, and other rights.[84] Such legislation, incorporating flexible performance standards and uniform rights and duties for paraprofessionals—perhaps accompanied by broad guidelines for volunteer enrichment leaders—would seem to stimulate the kind of lay activity on which community education depends.

Intralocal Cooperation

Statutory Authority to Contract

Power to contract is fundamental to—although not necessarily the only means of—school-based intralocal cooperation. One of the corollaries of the theorem that the school district is legally regarded as an instrumentality of the state, created by the state, for state purposes, is that the school district has no inherent power to contract.[85] Thus, it must look to the legislature for the extent of its contractual authority. Most of the community

[82] Office of Education Memorandum to Chief State School Officers, ESEA Title I, DCE/OD, Oct. 30, 1970.

[83] J. Sawin, *Legal Aspects of the Use of Teacher Aides,* EMERGING PROBLEMS IN SCHOOL LAW 73 (1972).

[84] *Id.* at 78–81.

[85] Wichita Public Schools Employees v. Smith, 397 P. 2d 357 (Ks. 1964).

education acts and proposed acts provide such authority and even give incentives for exercising it.[86] In the absence of this, two categories of statutes expressly permit school districts to contract with other governmental units.

Statutes Giving Specific Contractual Authority. Of the 20 states researched, at least nine[87] gave express authority to school districts to contract with other public units, usually cities, towns, and counties, to provide joint library services and facilities to area residents. The Texas statute, for example, would fit in especially smoothly with community education. The county board of library trustees delivers the library itself, and the school district conveys the land, on or adjacent to school grounds. Construction plans for a combined library building and assembly hall are then approved by both parties. The finished library is managed by the library board as a free public library, but other parts of the building are set aside for educational and civic organizations.

Of the 20 states researched, at least nine[88] gave express authority to contract to provide joint parks, playgrounds, recreational services and facilities. Perhaps California's "Community Recreation Act" is most extensive, authorizing cities, counties, and school districts to jointly establish systems of recreation, defined broadly to include cultural, athletic, and informal play dimensions. The act is buttressed by another act, passed in 1971, which instructs school districts to plan new schools cooperatively with the municipal recreation agency.[89]

Far less common are statutes expressly allowing for school district contractual cooperation with agencies which provide "hard" services (health, welfare, employment assistance, etc.); and with industry and private service-oriented groups. But some do exist. For example, Texas has introduced a bill into its 1973 legislature which would specifically coordinate the efforts of school district guidance personnel, local police departments, probation officers and parents in the operation of "school-community guidance

[86] *See* p. 16 (The acts encourage the school to "join" with other agencies—power to contract could easily be implied).

[87] Arizona, California, Georgia, Kansas, Massachusetts, Minnesota, Texas, Washington, and Colorado. The citations are: ARIZ. REV. STAT. ANN. § 15-450 (1956); CAL. ED. C.A. § 16652(e) (Supp. 1972); COLO. REV. STAT. §§ 84-1-1,-2,-8 (1969); GA. CODE ANN. § 32-2706 (1969); KAN. STAT. ANN. § 72-1033(a) (1972); ANN. LAWS OF MASS. 2-B § 19 (1971); MINN. STAT. ANN. § 134.06 (1960); VERNON'S CIV. STAT. OF TEX. ANN. § 21.351 (1965); REV. CODE OF WASH. § 27.04.070 (1970). (Michigan, New York, Connecticut, and Utah were not examined in this respect.)

[88] Arizona, California, Colorado, Georgia, Kansas, Minnesota, New Jersey, Texas, and Washington. The citations are: ARIZ. REV. STAT. ANN. § 15-452, 15-1171 (1965); CAL. ED. C.A. §§ 16651 to 16664 (Deering 1959); COLO. REV. STAT. § 114-1-3 (1969); GA. CODE ANN. § 69-605 (1972); KAN. STAT. ANN. §§ 12-1911, 72-1625 (1972); MINN. STAT. ANN. § 471.15 (1960); N.J. STAT. ANN. §§ 18A: 20-22, 40:12-9 (1968); VERNON'S CIV. STAT. OF TEX. ANN. art. 6081t (1965); REV. CODE OF WASH. § 67.20.020 (1970). (Michigan, New York, Connecticut, and Utah were not examined in this respect.)

[89] CAL. ED. C.A. § 1046 (Deering Supp. 1972).

centers." [90] While the target population is less than community-wide—"children with problems which interfere with their education"—the program might well enhance the efforts of community education to clear the school-home communication channels.

Statutes Giving General Contractual Authority. Some state codes include a broad provision—usually not under "education" but in the section which deals with local governmental powers—authorizing public agencies (including school districts) to contract with each other generally. An example is California's "Joint Exercise of Power Act," [91] which explicitly spells out required contents of interagency agreements, especially clarifying financial angles ("repayment of surplus money," "designation of treasurer as depository," etc.).

Washington's "Multi-Purpose Community Centers Act," [92] passed in 1967, is an act which provides community education room within which to freely grow. It authorizes municipalities and agencies to join in the construction and operation of "multi-purpose community centers," defined to include governmental offices, health and safety facilities, adult and juvenile detention facilities, fire and police stations, public halls, libraries, museums, playgrounds, parks, and educational, cultural, and recreational facilities.

The act would overlap significantly with Washington's proposed community education act. A main difference is that the latter represents the view that the *school* is the most effective site for the integration of services. A second difference is that community education acts usually stress (although Washington's does not) the special training of a community school director, which many community educators feel lends a real impetus to synergistic interagency cooperation—a locality may have all the pieces necessary for community education, but without the leadership of a community school director trained for this very situation, each "will go its own way. Leadership is the key." [93]

Local Contractual Arrangements

The Need. The first question about written intra-local contracts is: should there be any? Some community educators feel that to solidify in writing informal working relations between the school and the city recreation department, or the school and the local YMCA would be an unnecessary burden of red tape. They fear that it would somehow minimize the

[90] H.B. No. 695, 63rd Leg. (1973).

[91] CAL. Gov. C.A. §§ 6500–6513 (Deering 1959). For another example *see* MINN. STAT. ANN. § 471.16 (1960).

[92] REV. CODE OF WASH. §§ 35.59.010–35.59.900 (1970).

[93] Telephone conversation with Mr. Nick Pappadakis, Coordinator of Inservice & Leadership Dev. Prog. of Mott Foundation and Flint, Mich. Bd. of Ed., Feb. 1973.

humanistic factor and invite the very kind of useless bureaucratization they are trying to escape. Some school district officials, indeed, testify to close and flexible working relationships between the school and recreation department wholly outside of any formalized legal arena. Two random examples exist in Fairfax County, Virginia[94] and Boise, Idaho.[95]

The opposing viewpoint is that while informal ties can be a powerful integrative force, a written contract can, in some instances, avoid potential friction points and misunderstandings. Realistically, a certain minimal "clash factor" seems inherent in service integration/community education concepts because: (a) The heads of participating social service agencies may fear that their jurisdiction is being invaded. They may feel that community education will take away some of their revenue, and they may not be inclined to share resources and power with "foreign" groups. (b) Community education simply multiplies the number of human contacts. (c) Boundary problems may easily exist. These could include both problems as to title and priority of use of different parts of a multi-purpose building housing several agencies; and problems as to differing boundaries of service areas. The Supervisor for Community Programs in New Haven, Connecticut wrote:

> During the past ten years we have had close working relationships with the New Haven Parks Department, other city departments, and public as well as private agencies. These relationships have all been on a verbal basis.... In retrospect, it would have been far better to have had written agreements with the various departments and agencies to avoid the occasional misunderstandings which do occur.[96]

Thus, while not imperative or even desirable in every case, a written agreement may enhance smooth functioning and be an important precautionary measure to take. The Minnesota "Guidelines for Community Schools" suggests a workable compromise: "While relationships may be informal for other purposes, they should be formalized or contractual where any fiscal concerns are involved." [97] One Minnesota judicial opinion asserted that an agreement between a city and a school district for a joint recreational program "should not be a mere informal gentleman's agreement, but should be an agreement in writing, executed pursuant to a resolution of the governing body of each contracting party." [98] Additionally,

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[94] Telephone conversation with Mr. Kenneth Plum, Coordinator of Adult Services, Fairfax County, Va., April, 1973.

[95] Telephone conversation with Ms. Marilyn Henderson, Community Schools Program, Boise, Idaho, March, 1973.

[96] Letter from Mr. Jack Chasin, Supervisor, Community Programs, New Haven Public Schools, March 14, 1973, on file with author.

[97] MINNESOTA GUIDELINES FOR COMMUNITY SCHOOLS 14 (1970).

[98] OP. ATT'Y GEN. 159-B-1 (June 19, 1947).

some statutes may require that school district contracts be reduced to written form. Courts have consistently held that a school district contract which violates the statutory requirements as to mode and method of contracting are invalid.[99] Both the California "Joint Exercise of Powers Act" and the Washington recreational contracts provision specify written contracts. California's "Community Recreation" provision, while not actually mandating a written contract, goes so far as to print a "suggested form" for agreements as part of the Code.[100]

The Provisions. If a school board opts for a written agreement, what should it include? An examination of the California form agreement mentioned above, a simple agreement in the "Florida Community School Guidelines," and two actual local agreements—one from Willingboro, New Jersey[101] and one from Provo, Utah[102]—suggests the following categories, at least for school-recreation department relationships:

(a) Any *fiscal responsibilities* should be set out clearly. Examples: "The Township shall purchase and install appropriate playground equipment at its own expense and with no cost to the Board." "The fees for recreation supervisors shall be in accordance with the schedule attached hereto."

(b) The *facilities used* should be specified: Example: "The District's facilities shall include __ school and playground. The City's facilities shall include __ Park, including the gymnasium and pool." Provision should also be made for ownership of facilities jointly purchased.

(c) The *personnel arrangements* should be definitely defined. Example: "The principal shall have the right to approve or disapprove recreational personnel and shall have the power to terminate the employment of such personnel."

(d) *Priority of use* should be clear. Example: "It is agreed that whenever a school-sponsored function is scheduled at the same time and place as that contained in a recreation department request, the school function shall be accorded the priority." A more integrative approach would be: "The recreation program shall be recognized as school-sponsored and an integral part of the District's instruction program and shall be under the supervision of a proper school authority."

(e) *Liability and insurance* should be expressly covered. Originally, school districts were immune from tort liability on the ground of sovereign immunity. While some courts in some states still hold to the immunity doctrine, several states—for instance, California and Washington—have

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[99] Miller v. McKinnon, 124 P. 2d 34 (Cal. 1942).

[100] *See* CAL. GOV. C.A. & CAL. ED. C.A. *supra* at notes 87 and 89 respectively.

[101] *Recreation Agreement* between the Board of Education of the Township of Willingboro and The Township of Willingboro, 1971.

[102] *Memorandum Agreement* between Provo City Board of Education and Provo City Corporation, 1969.

enacted legislation abrogating the common law doctrine. In other states, as Illinois and Minnesota, judicial decisions have imposed liability.[103] Still other jurisdictions have enacted "safe place" statutes, requiring safe construction and maintenance of school playgrounds, which could impose limited liability on school districts. Finally, a number of states, such as Connecticut and New Jersey, have passed "save-harmless" statutes, either requiring or permitting the school district to pay money damages awarded against a school employee.[104]

Due to these breaks in the dam of sovereign immunity, some school districts may be wary of allowing such all-day/all-year use of school grounds and facilities as is envisioned by community education.[105] Because it is such a potentially litigious area, and because some school districts may be reluctant to contract without provision for it, the issue of who is liable and who is to carry insurance should be decisively dealt with. The California Code's suggested form provides: "Each party hereto shall carry public liability insurance in amounts not less than __, with an endorsement covering the program herein provided for." The Willingboro, New Jersey contract stipulates that in addition to the Board of Education's own insurance, "the Township shall maintain, at its own expense, a comprehensive public liability insurance policy on which the Board is named as an additional party insured." It further covers the Board by adding that if the Board's own insurance rates are increased as a result of the Recreation Department activities, "the Township shall reimburse the Board for any increased costs so incurred."

(f) A *procedure for change* of the agreement is a valuable clause to include. Florida's sample agreement states that if either party desires to change the existing arrangement, it shall express this in writing, and "after appropriate discussion and by mutual consent, a new agreement or such modification as agreed to, may be drawn." If the party wants termination, it is to give 90 days notice. The Community Schools Coordinator for Dade County, Florida asserts[106] that these two provisions together provide such flexibility and impetus for productive discussion that in the several years of the County's community school program, the school district has thereby avoided any serious rifts with its cosponsoring parties. Finally, the Florida agreement ends with the catch-all declaration that both parties recognize that success depends on mutual cooperation and coordination.

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[103] Molitor v. Kaneland Community Unit Dist., 163 N.E.2d 89 (Ill. 1959); Spanel v. Mounds View Sch. Dist., 264 Minn. 279, 118 N.W.2d 795 (1962).

[104] *See generally* NATIONAL EDUCATION ASSOCIATION, WHO IS LIABLE FOR PUPIL INJURIES? (1963).

[105] This was an important issue in Florida, according to Nick Pappadakis, note 93 *supra*.

[106] Telephone conversation with Mr. Louis Tasse, Coordinator, Community Schools, Dade County, Florida, April, 1973.

CONCLUSION

The points of contact between the legal world and the emergent world of community education have been both positive and negative. On the one hand, the past four years have seen the legislative birth of community education; and judicial opinions allowing the use of school property have generally been liberal. On the other, "school" and "student" are still narrowly defined by most state constitutions and codes; and community education is relegated to an add-on categorical program, regarded as an extra frill rather than as a fundamental redefinition of education. Federal legislation provides multiple sources of funding, but they are uncoordinated. Some state laws exist which authorize and encourage intralocal cooperation, but they are too few and often too exclusive of "hard" services. All this is against a setting of the tangential legal problems of racial integration, education finance, and community control.

One earlier study[107] characterized the legal problems of community education as "hurdles rather than outright barriers." Indeed, the law will probably not halt community education, and in fact begins to show signs of creatively encouraging it. Community education, conversely, possesses the potential for creating a whole new dimension of public education law, one which will bind the school closer to the community.

APPENDIX

Descriptions of State Community Education Legislation

Arizona: S.B. 1049, 31st Leg., 1st Reg. Sess. (1973). Would authorize local boards of education to establish community school programs and employ community school directors. Would set up a continuing revolving community school fund. The bill specifies that for purposes of computation of average daily attendance, only those community school pupils who are taking accredited high school completion courses, "without regard to age," shall be included. The bill would establish a community school grant program, applications to include a "comprehensive plan," a statement of the estimated number of people to be served, a copy of the local board's resolution to support the program and provide the total cost in excess of the state grant and other anticipated sources, and provide a community school director for each school. The bill passed the Senate Education Committee, and was to be considered by the Senate Appropriations Committee in early April, 1973.

[107] Baillie at 37.

California: A.B. 176 (1972). Would establish a community school grant program similar to that described in Arizona, the applications to additionally include a statement of how the schools will coordinate with other public agencies and an evaluation design. The grant would be one-half the salary of the community school director but not to exceed $6,000 per year, plus $3,000 per year for programs. The State Board of Education, in developing guidelines, would include input from the State Parks and Recreation Department. Priority would be given to programs coordinated with other agencies. The bill provided for technical assistance by the State Department of Education. The bill was never brought to a vote.

Florida: Fla. Stat. Ann. § 228.071 (Supp. 1972). Established a community schools grant program similar to that described in Arizona. It provides one-half the salary of the community school director but not to exceed $6,000 per year, plus $3,000 per year for programs. The bill provides for technical assistance by the State Department of Education to local school boards. The bill passed in 1970 and is now in operation.

Illinois: S.B. 293, 78th Assembly (1973). Would make grants available to designated centers at state universities for training of community school directors. It would also establish a community school grant program, applications to include "a detailed plan," with evidence of intergovernmental cooperation, local financial commitment and lay participation. The grants would be $20,000 or less the first year, $15,000 or less the second year, and $10,000 or less for any additional years.

Maryland: "Guidelines for School-Community Centers Program," Maryland State Department of Education, Division of Instruction, June, 1972. The program uses funds made available by the Governor in the budget of the State Department of Education for a grant program for school-based recreation for youth. The local board is to submit proposals in conjunction with local recreation agencies. The allocation is based on the percent of students enrolled in the local school system in relation to the total enrollment of the state, but is not to be less than $20,000. The program is in operation.

Massachusetts: H. 2811 (1972), (Daly-Liederman Bill). Would provide for state support of community school programs in the form of salaries for community school directors. The bill became H. 6124, and in June, 1972 was put "on file" for further study.

Michigan: Pub. Act No. 258, § 96 (1972) ("The State School Aid Act of 1972"). Appropriates funds to be used by districts conducting community school programs approved by the State Board of Education. Pub. Act No. 246, § 1 (1972). Appropriates funds for the State Department of Education for FY 1972, including $20,000 for one position for administration and evaluation of the community school program. Both acts are now in operation.

Minnesota: Minn. Stat. Ann. § 121.85 (Supp. 1972). Creates the position of State Director of Community Education in the State Department of Education. Creates a 25-member State Community School Advisory Council, members to be appointed by the Governor. It authorizes local community school programs, with partial reimbursement for salaries upon compliance with the State rules and regulations, and mandates that each local program have a citizen advisory council. The act is now in operation.

New York: A.B. 6674, 1973–1974 Reg. Sess. Would authorize school districts to appoint a community coordinating council, which would develop a program for schoolchildren utilizing the arts resources of the community. It would establish a humanities and arts grant program with the purpose of spurring interaction between the classroom and the cultural resources of the community. The bill was introduced in March, 1973 and referred to the Committee on Ways and Means.

Utah: The Utah Legislature in 1970 amended the state's extended year program to add a community school program. In 1971, it changed the law so that no legal connection was maintained between the community education and the extended year program. The "Utah Community Education Guidelines and Procedures" includes a distribution formula, and specifies community school director training, maintenance of fiscal records, and evaluation. Utah provides for a State Community Schools Coordinator. The Utah program is now in operation in every Utah school district. (copy of legislation was unavailable)

Washington: H.B. 359, 43rd Reg. Sess. (1973). Would authorize local districts to provide community education programs, consistent with rules and regulations and approval of the State Superintendent. It provides that no state funds shall be appropriated for this purpose. It has passed both the Senate and the House, and at the date of this writing was awaiting the Governor's signature, and was expected to become law 90 days thereafter.