

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

POST OFFICE BOX 33

MONTGOMERY, ALABAMA 36101

FRANK M. JOHNSON, JR.

CHIEF JUDGE

April 13, 1967

Honorable Richard T. Rives  
United States Circuit Judge  
P. O. Box 1070  
Montgomery, Alabama

Honorable H. H. Grooms  
United States District Judge  
P. O. Box 34  
Birmingham, Alabama

Re: Lee, et al. v. Macon County Board of  
Education, et al. - CA No. 604-E

Dear Judge Rives and Judge Grooms:

With reference to my previous conversations with you concerning the problems several of the school boards listed in our order of March 22, 1967, seem to be having with HEW officials, I have (as we discussed and agreed) taken this matter up with John Doar, Assistant Attorney General of the United States, and upon my request, made on behalf of the Court, Mr. Doar has discussed this problem with the appropriate officials of HEW.

Mr. Doar reports to me by telephone on this date that it is his understanding that the course HEW is going to follow as to the school boards we listed in our order of March 22, 1967, that elect to come under the order, will be pursuant to the regulations approved by the President, cited by Mr. Doar as 80.4 subparagraph (c), to the effect that such school boards may qualify and be entitled to receive federal funds by filing the court order with HEW and giving that organization written assurance that the board will comply in good faith with the requirements of the court order.

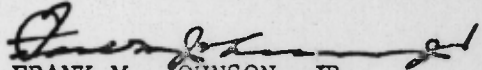
Mr. Doar says it is his understanding that the officials of HEW have no argument on the point that these school boards are not "under a court order" within the meaning of the applicable regulations, provided the school board follows the plan outlined in the order of this court, adopting the model desegregation plan attached to our decree, and commences the implementation of same in good faith. In other words, HEW, to the extent that this regulation may be pertinent, is going to operate on the theory that these school boards that do accept and comply in good faith with this court order are under a court order.

Mr. Doar emphasized, however, that HEW believes that it has a

continuing responsibility to audit the performance of all school boards, whether they are under this court order or other court orders. HEW has been doing a continuing audit in the discharge of this responsibility as to the performance of school boards under court orders other than this one, and intends to continue its audit performance. The audit will be not for the purpose of attempting to assist in the enforcement or implementation of this court order but for HEW's own program.

I am sending a copy of this letter to Dr. Ernest Stone, State Superintendent of Education, for his information and so that he may, if he desires, make this information known to any of the school boards listed in our order that may be interested.

Sincerely yours,

  
FRANK M. JOHNSON, JR.

cc: Dr. Ernest Stone  
State Superintendent of Education  
State Office Building  
Montgomery, Alabama

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
POST OFFICE BOX 35  
MONTGOMERY, ALABAMA 36101

FRANK M. JOHNSON, JR.  
CHIEF JUDGE

April 17, 1967

Honorable Richard T. Rives  
United States Circuit Judge  
P. O. Box 1070  
Montgomery, Alabama

Honorable H. H. Grooms  
United States District Judge  
P. O. Box 34  
Birmingham, Alabama

Re: Lee, et al. v. Macon County Board  
of Education, et al. - CA No. 604-E

Dear Judge Rives and Judge Grooms:

This will supplement my recent letter to you concerning what I understand will be the general policy of HEW with regard to the several school systems listed in the order of this Court of March 22, 1967.

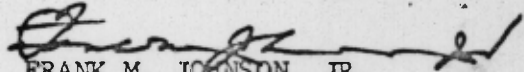
Mr. Doar advised me further, by telephone on April 14, 1967, concerning this policy as he understands it from his discussions with HEW officials. He stated that there are several school districts listed in the court order that have "gone out of compliance" after having had a hearing pursuant to HEW procedures. He stated specifically that there are fifteen school districts where funds have been terminated and fourteen where it has been determined that they are not in compliance. As to such districts, Mr. Doar stated that if these school districts were to adopt the court plan and give HEW assurance of compliance, HEW would not automatically reinstate federal funds, but would, for HEW's own purposes, audit the procedures of such school districts for the purpose of determining whether actual implementation of our court order has commenced in good faith and whether appropriate steps are being taken by the school authorities in any such district toward future complete implementation of our order.

Mr. Doar emphasized that HEW still wants to know what the "specifics" are that the school boards are doing for the purpose of putting into effect and implementing the court order. This means that the officials for HEW will, upon occasion, as I understand their intended procedures, audit the school boards affected by our order for the purpose of determining--for HEW's own program--the steps being taken toward desegregation of students and faculties and in all other respects the extent of the implementation of our order.



In order to further clarify the position of HEW concerning the school systems listed in our order of March 22 that have elected to comply with this order, I have requested the court reporter to transcribe Mr. St. John Barrett's oral remarks on this point made to the Court last Saturday, the 15th. I am attaching a verbatim transcription of those remarks as made by Mr. Barrett on this point.

Sincerely yours,

  
FRANK M. JOHNSON, JR.

Enc.

cc: Dr. Ernest Stone  
State Superintendent of Education  
State Office Building  
Montgomery, Alabama

Now, counsel has urged in this connection that the Department of Health, Education and Welfare should be made a party, and I would like to just comment briefly on his statements in that regard. Now, Congress has, it is true, laid upon the Department of Health, Education and Welfare, by virtue of Title VI of the 1964 Act, an obligation to see that Federal funds, Federal financial support, does not go to any state-supported program, or any program for that matter, in which there is discrimination. That, of course, includes school systems, and the Commissioner of Education is obliged to assure himself that there is no such discrimination. The Commissioner, as Mr. Madison has pointed out, advised the ninety-nine school districts, or substantially all of them, I believe, that are named in this Court's decree that if they adopt the plan that was appended to this Court's decree, and if they implement it in good faith, that will meet the requirements that the Commissioner of Education lays down for the receipt of Federal financial assistance. He has requested those districts, if they adopt the Court's model plan, to submit a copy to him, together with an assurance that they will comply with it. He has made it clear, I believe, that insofar as there may be differences between this Court's plan and the Commissioner's guidelines, he will accept compliance with this Court's plan as meeting the Title VI requirements. I don't think any of those-- there are some differences; I believe that they are relatively minor. The mechanics of the free choice system that is set forth in this Court's plan is essentially the same as that which the Commissioner has required in voluntary plans under Title VI. It is true that the Commissioner in exercising his independent and parallel responsibility under Title VI will,

604-E (From Mr. St. John Barrett's argument, April 15, 1967) --- Contd.

if there is no compliance with the plans submitted to this Court under the Court decree, have an obligation, if the school district is not brought back into compliance, either voluntarily or perhaps by this Court, to initiate proceedings, as he is required to do under the statute, to terminate Federal financial assistance; but he has made it clear that the standard that he will hold the districts to in that regard is the standard that this Court has adopted. The United States respectfully urges that the stay be denied.