

H (2326)83

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

APR 25 1983

EYVON MENDENHALL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.

CRATON LIDDELL, et al.,)
)
Plaintiffs,)
)
v.)
)
THE BOARD OF EDUCATION OF)
THE CITY OF ST. LOUIS,)
MISSOURI, et al.,)
)
Defendants.)

No. 72-100-C(4)

Exempt from pre-filing circulation.
See H(2288)83

**PLAINTIFFS LIDDELL, CALDWELL AND
CITY BOARD'S MEMORANDUM IN OPPOSITION
TO MOTION OF CITY OF ST. LOUIS TO SET ASIDE
ORDER (H(2276)83) APPROVING NOTICE TO CLASS
MEMBERS, TO ORDER SUPPLEMENTATION OF
SUCH NOTICE, AND TO RESET FAIRNESS HEARING**

In relevant part,¹ the City of St. Louis' motion challenges the Notice to Class Members of a Proposed Settlement in the St. Louis School Desegregation Case on the grounds that the language pertaining to the Settlement Agreement's funding provisions is ". . . misleading, inaccurate and does not fairly apprise the members of the classes of the terms of the proposed settlement agreement pertaining to funding of the proposed plan . . ." (Motion of City of St. Louis, etc., paragraph number 4). More specifically, the City of St. Louis contends that because the plan provides for funding "by such combination of additional State funding and a tax rate increase in the City of St. Louis as shall be ordered by the court" and the district court has not entered an order either

¹The City of St. Louis' motion to set aside Order H(2276)83, etc. references its informal attempts to obtain information from various parties, which efforts have no apparent relevance to its position vis a vis the subject Notice and are not treated further herein. See, motion of City of St. Louis numbered paragraphs 7 and 8 on pages 2 and 3 and the two attachments affixed thereto.

setting a tax rate or requiring funds to be paid by the State, there is no justification for the following language appearing in the challenged Notice:

The plan provides for funding from sources available to the State of Missouri and the Board of Education of the City of St. Louis.

According to the City of St. Louis, "The notice in this respect appears calculated to mislead." (Memorandum in Support of City of St. Louis' Motion to Set Aside, etc., page 2).

THE CHALLENGED NOTICE TO CLASS MEMBERS REASONABLY ADVISES THEM OF THE PROPOSED SETTLEMENT AND THEREFORE THE CITY OF ST. LOUIS' MOTION SHOULD BE DENIED

The content of a notice to class members of a proposed settlement is within the district court's discretion, subject only to the broad reasonableness standard imposed by due process. *Mendoza v. United States*, 623 F.2d 1338, 1350-51 (9th Cir.), cert. den'd., 450 U.S. 912 (1981) and *Grunin v. International House of Pancakes*, 513 F.2d 114, 121 (8th Cir.), cert. den'd., 423 U.S. 864 (1975).

The proposed settlement agreement in this instance covers 75 pages without regard to the 270 page appendix. The impracticality of complete publication is obvious. The City of St. Louis does not contend that the settlement agreement be published in its entirety. The law requires only that the Notice be reasonable. In the context of this case it is reasonable to summarize the terms of the proposed settlement agreement and to provide access to it for interested members of the classes. See, Mendoza, supra, 623 F.2d at 1351-52. The challenged Notice satisfies these requirements.

The Notice advises the class members that "the terms of the proposed settlement are contained in a document styled Settlement Agreement filed with the clerk of the United States District Court on March 30, 1983 bearing docket number H(2217)83" and states further that the Settlement Agreement and the Appendix ". . . are available for examination at the office of the clerk of the court." See also, Notice to Class Members

of a Proposed Settlement in the St. Louis School Desegregation Case, paragraph captioned "Examination of Pleadings and Papers."

Moreover, the challenged Notice specifically advises class members that the description of the Settlement Agreement's terms contained therein is a general description. The Notice wisely states, in relevant part, as follows:

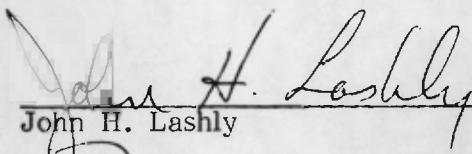
. . . The only complete and accurate statement of the agreement's terms is contained in the complete copy of the Proposed Settlement Agreement as submitted by the Special Master, H(2217)83 and the Appendix referred to in Section VI of that Agreement, which are available for examination at the office of the clerk of the court.

In this context, it is difficult to justify the City of St. Louis' assertion that "the Notice in this respect appears calculated to mislead" as asserted in its supportive memorandum on page 2.

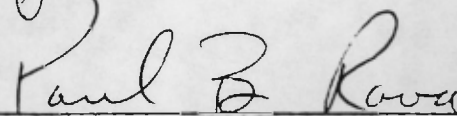
The City of St. Louis' focus on the single phrase "sources available" is equally unfair. The challenged Notice does not purport to advise class members of a Court approved settlement agreement. Rather, the Notice is addressed to ". . . a proposed settlement . . ." which, if accepted by the Court pursuant to Rule 23(e), F.R.Civ.P., will provide for, among other things, funding. With the Court's approval, funding will be "available." The City of St. Louis' focus on "sources available" ignores the prospective nature of the proposed Settlement Agreement and hardly constitutes a legitimate objection to the Notice.

Respectfully submitted,

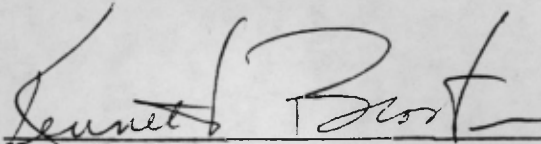
LASHLY, CARUTHERS, BAER & HAMEL
A Professional Corporation



John H. Lashly

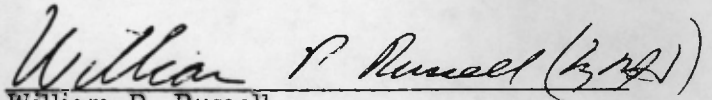


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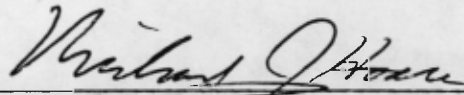
Attorneys for the Board of Education of the
City of St. Louis



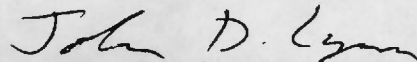
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CERTIFICATE OF SERVICE

On this 25 day of April, 1983, I certify that I will mail or personally deliver a copy of the foregoing document to all counsel of record, postage prepaid as soon as the document number is received from the United States District Clerk.

