

Get a Document - by Citation - 101 Ill. App. 3d 187

LexisNexis® Total Research System

Switch Client | Preferences | Sign Out | Help

My Lexis™ Search Research Tasks Get a Document Shepard's® Alerts Total Litigator Transactional A

FOCUS™ Terms

Search Within Original Results (1 - 1)



Advanced...

Service: Get by LEXSEE®

Citation: 101 Ill. App. 3d 187

*101 Ill. App. 3d 187, \*; 427 N.E.2d 1027, \*\*;  
1981 Ill. App. LEXIS 3487, \*\*\*; 56 Ill. Dec. 622*

CHRISTOPHER AMBROIGGIO, a Minor, by Diane Ambroiggio, his Mother and Next Friend, et al., Plaintiffs-Appellees, v. BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 44, DU PAGE COUNTY, Defendant-Appellant

No. 80-842

Appellate Court of Illinois, Second District

101 Ill. App. 3d 187; 427 N.E.2d 1027; 1981 Ill. App. LEXIS 3487; 56 Ill. Dec. 622

October 20, 1981, Filed

**PRIOR HISTORY:** [\*\*\*1] APPEAL from the Circuit Court of Du Page County; the Hon. ROBERT A. NOLAN, Judge, presiding.

**DISPOSITION:** Judgment reversed.

### CASE SUMMARY

**PROCEDURAL POSTURE:** Defendant school board appealed from a judgment of the Circuit Court of Du Page County (Illinois), which had found in favor of plaintiff students in their action to enjoin the collection of a lunchroom supervisory fee assessed each term who resided within a certain distance of the school and ate lunches in the school lunchroom, arguing that the fee had not been authorized by the School Code, Ill. Rev. Stat. ch. 122, para. 1-1 et seq. (1979).



**OVERVIEW:** The students argued that the school lunch supervisory fee violated the statute and the free education clause of Ill. Const. art. X, § 1 (1970). Children who resided outside the specified distance or were provided with bus transport to school could participate in the program without charge, but children within the area who did not travel by school bus were assessed the fee to eat lunch in the school. The court found that: (1) because the school district had the express power to operate the lunch program and to employ personnel to supervise the program, the school district had an implied authority to impose a fee to offset costs; (2) the school board's imposition of the fee did not violate the constitutional free education guarantee because the lunch program was not clearly part of the educational process; and (3) the students' equal protection challenge to the fee had not been raised in the trial court and was barred on review.


**OUTCOME:** The court reversed the trial court's judgment granting the injunction against the school board to the students.



**CORE TERMS:** lunch, lunchroom, public schools, eat, secondary, school district, supervision, supervised, tuition, supervisors, personnel, totally, mile, school board, free schools', educational purpose, educational, reside, atmosphere, youngsters, fee imposed, public education, educational process, educational services, parties agree, equal-protection, noneducational, instructional, non-teaching, tuition-free




## LEXISNEXIS® HEADNOTES



 **Hide**

[Education Law](#) > [Administration & Operation](#) > [Boards of Elementary & Secondary Schools](#) > [Authority](#)   
[Public Health & Welfare Law](#) > [Food & Nutrition](#) > [General Overview](#) 

**HN1**  The general powers and duties of a school board are set forth in §§ 10-20, 10-22 of the School Code, Ill. Rev. Stat. ch. 122, pars. 10-20, 10-22 (1979). It is well established that a broad spectrum of implied and incidental powers may be inferred from these express statutory grants. Section 10-20.5 of the School Code, Ill. Rev. Stat. ch. 122, para. 10-20.5 (1979), permits a board to adopt and enforce all necessary rules for the management of its schools, and § 10-22.26 of the School Code, Ill. Rev. Stat. ch. 122, para. 10-22.26 (1979), permits a school district to maintain and finance a school lunch program. Section 10-22.34 of the School Code, Ill. Rev. Stat. ch. 122, para. 10-22 (1979), provides that school boards may employ non-teaching personnel for non-teaching duties not requiring instructional judgment or evaluation of pupils and they may designate non-certificated persons to serve as supervisors, chaperones or sponsors, either on a voluntary or on a compensatory basis for school activities not connected with the academic program of the schools. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Education Law](#) > [Administration & Operation](#) > [Boards of Elementary & Secondary Schools](#) > [Authority](#)   
**HN2**  Because a school board has the express power to operate a lunch program and to employ personnel to supervise it, it has an implied authority to impose a fee to help offset the costs of the program. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Constitutional Law](#) > [State Constitutional Operation](#)   
[Education Law](#) > [Administration & Operation](#) > [Boards of Elementary & Secondary Schools](#) > [Authority](#)   
**HN3**  A lunchroom supervision fee does not violate the "free education" clause of the Illinois Constitution. Ill. Const. art. X, § 1 (1970). The reasoning of the Illinois cases as well as those from other jurisdictions which supports this determination distinguishes educational services, which must be provided to students tuition-free, from noneducational services and school supplies for which reasonable charges may properly be assessed. [More Like This Headnote](#)

[Civil Procedure](#) > [Appeals](#) > [Reviewability](#) > [Preservation for Review](#)   
**HN4**  It is a basic principle that the issues in a case are framed by the pleadings and a party may not prevail where the proof does not follow the allegations made therein. To have evidence without pleading an issue is as fatal as pleading an issue and not supporting it with evidence. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

**COUNSEL:** Everett Nicholas, of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., of Chicago, for appellant.

Barry H. Sherman, of Oakbrook Terrace, for appellees.

**JUDGES:** Mr. JUSTICE NASH delivered the opinion of the court. SEIDENFELD, P. J., concurs. Mr. JUSTICE UNVERZAGT, dissenting.

**OPINION BY:** NASH

## OPINION

**[\*187] [\*\*1028]** Defendant, Board of Education of School District No. 44, Du Page County, appeals from a judgment of the circuit court permanently enjoining it from the assessment of a fee against certain of its students who use the supervised lunchroom services provided by the school. We reverse.

Plaintiffs, Christopher Ambroiggio, Anna Elz and Susan Elz, by their parents and next friends, Diane Ambroiggio and Robert Elz, brought this action to enjoin collection of the lunchroom supervisory fee of \$ 15 assessed each term against all children who reside 0.7 of a mile or less from their school and eat their lunches in the school lunchroom. In their complaint plaintiffs alleged the fee was not authorized by the School **[\*188]** Code (Ill. Rev. Stat. **[\*\*\*2]** 1979, ch. 122, par. 1 -- 1 *et seq.*), and also violated the free education clause of the State Constitution (Ill. Const. 1970, art. X, § 1), which provides that "[e]ducation in public schools through the secondary level shall be free." The trial court reasoned that if the supervised lunchroom program, which may be used only by students paying the requisite fee, is for an educational purpose then article 10 of the constitution would bar assessment of the fee. The court also found that if the program was not for educational purposes the fee was unauthorized under the School Code. The trial court concluded defendant may not charge a fee for the use of its facilities, or the supervision of the children using the **[\*\*1029]** facilities, and issued the injunction from which defendant appeals.

Evidence was presented that defendant provides space in its school building for students to eat lunches brought by them and during that period they are supervised by noncertified school personnel. No student is required to participate in the lunch program, but those who do so are placed in two categories. If a child resides more than 0.7 of a mile from school or is provided bus **[\*\*\*3]** transportation to school he may participate in the program without charge. Those children, including plaintiffs, who reside 0.7 of a mile or less from school and are not transported by a school bus, however, are assessed the \$ 15 fee if they wish to eat their lunches in the school facilities. The parties agree that defendant has the authority under the School Code to provide a lunchroom supervision program but differ on the question of whether fees may be charged.

**HN1** The general powers and duties of a school board are set forth in sections 10 -- 20 and 10 -- 22 of the School Code. It is well established that a broad spectrum of implied and incidental powers may be inferred from these express statutory grants. (*Beck v. Board of Education* (1975), 27 Ill. App. 3d 4, 8, 325 N.E.2d 640, 643, *aff'd* (1976), 63 Ill. 2d 10, 344 N.E.2d 440; see also *Wilson v. Board of Education* (1908), 233 Ill. 464, 84 N.E. 697; *Byerly v. Board of Education* (1978), 65 Ill. App. 3d 400, 382 N.E.2d 694.) Section 10 -- 20.5 of the School Code permits a board to adopt and enforce all necessary rules for the management of its schools, and section 10 -- 22.26 permits a school district to maintain **[\*\*\*4]** and finance a school lunch program. Section 10 -- 22.34 provides that "[s]chool boards may employ non-teaching personnel \* \* \* for non-teaching duties not requiring instructional judgment or evaluation of pupils" and they may "designate non-certificated persons \* \* \* to serve as supervisors, chaperones or sponsors, either on a voluntary or on a compensatory basis for school activities not connected with the academic program of the schools." Ill. Rev. Stat. 1979, ch. 122, par. 10 -- 22.34a.

**HN2** As defendant has the express power to operate a lunch program and to employ

personnel to supervise it, we conclude it has an implied authority [\*189] to impose a fee to help offset the costs of the program. See Beck v. Board of Education (1976), 63 Ill. 2d 10, 15, 344 N.E.2d 440, 442.

We next consider whether <sup>HN37</sup>the lunchroom supervision fee imposed by defendant violates the "free education" clause of the Illinois Constitution. (Ill. Const. 1970, art. X, § 1.) The parties agree the issue as formed by the facts of this case has not been directly considered by the reviewing courts of this State or other jurisdictions. (See Annot., 41 A.L.R.3d 752 (1972).) In Illinois, similar litigation [\*\*\*5] has centered on unsuccessful challenges of fees imposed by school boards for textbooks, towels, locker rental and school supplies. See Beck v. Board of Education (1976), 63 Ill. 2d 10, 344 N.E.2d 440.

In Hamer v. Board of Education (1973), 9 Ill. App. 3d 663, 292 N.E.2d 569, this court referred to the record of the Constitutional Convention:

"In discussing the proposed new constitutional article pertaining to 'free schools' we find the Educational Committee member stated at page 765:

*'\* \* \* The first part states that education in the public schools through the secondary level shall be free. This sentence picks up the 1870 Constitutional requirement of free schools. \* \* \* However, we recognize that schools are not totally free; through tradition and practice, this has been interpreted to mean tuition-free and not totally free public education, and this is the intent of this third paragraph.'*

In response to a query as to what the word 'free' included, the following colloquy took place, as set forth at page 767:

**[\*\*1030]** *'\* \* \* Is it your intention that the word "free" includes anything other than tuition for the elementary and secondary [\*\*\*6] schools?'*

Mr. FOGAL: You may recall earlier in our committee deliberations we voted tentatively to strike 'free', since most of us recognize that we don't have -- and as far as I know we never have had -- totally free public schools; and we considered that earlier position. *We felt that tradition will continue, probably, to interpret 'free public education' as we always have, and it's open to either provide totally free education, whether you are speaking of book fees, book rentals, or PE equipment, or we can continue as we are now, I don't think we have changed it.'* (Emphasis added.) (9 Ill. App. 3d 663, 666, 292 N.E.2d 569, 571-72.)

The reasoning of the Illinois cases as well as those from other jurisdictions distinguish educational services, which must be provided to students tuition-free, from noneducational services and school supplies for which reasonable charges may properly be assessed. See, e.g., Sneed v. Greensboro [\*\*190] City Board of Education (1980), 299 N.C. 609, 611 n.1, 264 S.E.2d 106, 109 n.1, and cases cited therein; see also Granger v. Cascade County School District No. 1 (1972), 159 Mont. 516, 499 P.2d 780.

Plaintiffs contend the lunch [\*\*\*7] program is a part of the educational process carried out by the school as it provides an opportunity for children to socialize, mature emotionally and engage in interpersonal relationships. We are not persuaded, however, that providing a secure place to eat lunch without interference from others can be so considered. The program in issue is not mandatory, although all the children have a lunch period, and it is supervised by nonteaching personnel. It would require strained reasoning to liken defendant's lunchroom supervisory fee to a tuition fee which might be improperly charged for required educational courses or programs. Compare Norton v. Board of Education (1976), 89 N.M. 470, 553 P.2d 1277 (fee may be imposed for elective school courses, but not for required academic program).

Plaintiffs' reliance on Elliot v. Board of Education (1978), 64 Ill. App. 3d 229, 380 N.E.2d 1137, is misplaced. There, the school board was required to pay the cost of a handicapped student's education in a private school when he was excluded from public school by his handicap. Elliot must be distinguished as it was directed to payment of tuition for educational purposes, not to an incidental, [\*\*\*8] noneducational program as in the present case.

We conclude that defendant had the implied power to impose the fee in question and in doing so did not violate the constitutional guarantee of a free education.

Plaintiffs also argue that if defendant was authorized to assess the fee in issue the classification scheme under which it is applied only against children living within 0.7 of a mile from school violates the equal-protection clause of the fourteenth amendment. Defendant points out, however, that this constitutional issue was not pleaded in plaintiffs' complaint nor was evidence relating to it offered by either party in the trial court.

<sup>HN4</sup>It is a basic principle that the issues in a case are framed by the pleadings and a party may not prevail where the proof does not follow the allegations made therein. ( Pioneer Trust & Savings Bank v. County of Cook (1978), 71 Ill. 2d 510, 518, 377 N.E.2d 21, 24; Tonchen v. All-Steel Equipment, Inc. (1973), 13 Ill. App. 3d 454, 467, 300 N.E.2d 616, 625.) "[T]o have evidence without pleading an issue is as fatal as pleading an issue and not supporting it with evidence." ( In re Walton (1979), 79 Ill. App. 3d 485, 487-88, 398 N.E.2d [\*\*\*9] 409, 411; see also Burke v. Burke (1957), 12 Ill. 2d 483, 147 N.E.2d 373.) From our examination of the pleadings and the record of the evidentiary hearing, it is apparent that plaintiffs' equal-protection [\*191] argument suffers from both infirmities in that it was neither proved nor pleaded, and we will not consider it further.

[\*\*1031] Accordingly, the judgment of the circuit court of Du Page County is reversed.

Reversed.

**DISSENT BY: UNVERZAGT**

**DISSENT**

Mr. JUSTICE UNVERZAGT, dissenting:

I respectfully dissent from the opinion of the majority. The majority's assertion that providing a secure place to eat lunch without interference from others cannot be considered an educational process is but an *ipse dixit*.

Leonard Roberts, superintendent of schools at School District No. 44, testified that two-thirds of the student body goes home for lunch and one-third of the student body remains in the schools; that students who stay at school for their lunch are supervised by persons employed

by the school district for that purpose. They are lay people, nonteachers or non-certified people, in most instances. These persons watch the lunchroom while the students are eating, [\*\*\*10] and then watch the playground or some other recreational area between the time the children are finished eating lunch and the time that class is taken up again after lunch. The duties of the lunch-time supervisors are to make sure that the youngsters are able to eat in an atmosphere where they aren't harassed and where the children can eat and have a reasonably wholesome type of lunchroom period. The supervisors discipline the children when necessary. When the children are on the playground the supervisors make sure that the youngsters play in an organized way; they make certain no one is injured and resolve any minor student disputes that arise in the process of playing the games. Mr. Roberts characterized this as a baby-sitting service for the youngsters who stay for lunch.

Harold C. Wright, regional superintendent of schools of Du Page County, testified that the District No. 44 lunchroom program provides for the further social maturation of students. It helps them to learn to get along with their peers; that is one of the results school administrators hope to accomplish.

It seems to me that supervision of children during the school day, and creating an atmosphere where they [\*\*\*11] are not harassed and where they have a reasonably wholesome atmosphere, and providing for discipline and play in an organized way, and making sure the children are not injured and minor student disputes are resolved, all in a manner which provides for further social maturation, are "instructional" matters, well within the [\*192] educational services and goals of the public school.

The Constitution of this State provides:

"\* \* \* Education in public schools through the secondary level shall be free. \* \* \*  
\*." Ill. Const. 1970, art. X, § 1.

In explaining this provision, the Education Committee of the Sixth Illinois Constitutional Convention submitted its proposal which was adopted by the committee as a whole. That proposal included the following:

"The third paragraph contains two parts:

(1) It requires that public schools through the secondary level shall be free. The Committee considers it necessary that the Constitution state, in explicit terms, the obligation of the State to provide free public schools for what has traditionally been considered common school education. \* \* \*.

\* \* \* It would, however, require that whatever educational programs are established [\*\*\*12] as part of the public school system through the secondary level be free of tuition charges for resident pupils." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 235.

Tuition is defined as "the price of or payment for instruction." (Webster's Third New International Dictionary 2461 (1966).) It seems to me that the fee charges here in issue can be considered "the price of or payment for instruction"; instruction in the art of civilized living during the noon hour. As such, these fees are prohibited by the constitutional mandate of "free" schools.

**[\*\*1032]** I agree with the trial judge that a school district undertaking to provide school lunch services may not charge for the use of the facilities or the supervision of the children making use of those facilities.

I would affirm the court below.

Service: **Get by LEXSEE®**

Citation: **101 Ill. App. 3d 187**


View: Full

Date/Time: Tuesday, December 16, 2008 - 6:54 PM EST

\* Signal Legend:

 - Warning: Negative treatment is indicated

 - Questioned: Validity questioned by citing refs

 - Caution: Possible negative treatment

 - Positive treatment is indicated

 - Citing Refs. With Analysis Available

 - Citation information available

\* Click on any *Shepard's* signal to *Shepardize®* that case.

[My Lexis™](#) | [Search](#) | [Research Tasks](#) | [Get a Document](#) | [Shepard's®](#) | [Alerts](#) | [Total Litigator](#) | [Transactional Advisor](#) | [Counsel Selector](#)  
[History](#) | [Delivery Manager](#) | [Dossier](#) | [Switch Client](#) | [Preferences](#) | [Sign Out](#) | [Help](#)



[About LexisNexis](#) | [Terms & Conditions](#) | [Contact Us](#)

Copyright © 2008 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

LexisNexis® Total Research System

Switch Client | Preferences | Sign Out | Help

My Lexis™

Search

Research Tasks

Get a Document

Shepard's®

Alerts

Total Litigator

Transactional A

FOCUS™ Terms

Search Within: Original Results (1 - 1)

Go

Advanced...

Service: Get by LEXSEE®

Citation: 63 Ill. 2d 10, 15

63 Ill. 2d 10, \*; 344 N.E.2d 440, \*\*;  
1976 Ill. LEXIS 280, \*\*\*

WILLIAM C. BECK, Appellant, v. THE BOARD OF EDUCATION OF HARLEM CONSOLIDATED  
SCHOOL DISTRICT NO. 122, Appellee

No. 47567

Supreme Court of Illinois

63 Ill. 2d 10; 344 N.E.2d 440; 1976 Ill. LEXIS 280

March 18, 1976, Filed

**PRIOR HISTORY:** [\*\*\*1] Appeal from the Appellate Court for the Second District; heard in that court on appeal from the Circuit Court of Winnebago County; the Hon. William R. Nash, Judge, presiding.

**DISPOSITION:** Judgment affirmed.

#### CASE SUMMARY

**PROCEDURAL POSTURE:** Plaintiff parent challenged a decision from the Appellate Court for the Second District (Illinois), which reversed the declaratory judgment entered by the circuit court. The circuit court had held defendant board of education was without authority to collect fees charged for school supplies and materials furnished to the children of the parent. The circuit court enjoined the collection of such fees.


**OVERVIEW:** In his complaint for declaratory judgment and other relief, the parent alleged that he was the father of four children attending schools conducted by the board. The board had adopted a resolution requiring students to pay certain fees for services and materials. In 1938, the voters of the district had by referendum adopted the provisions of the Free Text Book Act, Ill. Rev. Stat. ch. 122, paras. 515-520 (1937). The parent alleged that the board was without authority to charge the pupils the flat rate mandatory fee imposed for workbooks, duplicating paper and masters, magazine subscriptions, dictionaries, paperback books, maps, and atlases. The parent argued the imposition of the fees was proscribed by Ill. Const. art. X, § 1. On appeal, the court affirmed, holding that: (1) the disputed items were not textbooks; (2) the board was authorized to purchase the necessary materials and supplies, apportion the cost among the pupils, and charge those parents who were financially able to pay pursuant to Ill. Rev. Stat. ch. 122, paras. 10-20.5, 10-20.8 (1973); and (3) the fact that some of the materials were used for more than one pupil did not convert the fee charged into a tuition charge.

**OUTCOME:** The court affirmed the decision of the appellate court in favor of the board.


**CORE TERMS:** textbook, pupil, dictionary, fees charged, financially, tuition, map, school district, collection, correctly, workbooks, magazine, teacher, school property, declaratory judgment, free schools, public schools, reference work, sheet of paper, required to provide, writing materials, personal use, administrator, subscriptions, duplicating, educational, mandatory, paperback, popularly, atlases


**LEXISNEXIS® HEADNOTES**


 **Hide**


[Education Law](#) > [Administration & Operation](#) > [Boards of Elementary & Secondary Schools](#) > [Authority](#) 


[Education Law](#) > [Instruction](#) > [General Overview](#) 


**HN1**  Ill. Rev. Stat. ch. 122, para. 28-15 (1973), in part, provides: Textbooks provided and loaned to pupils - Sale to pupils. The governing body of every school district having voted in favor of furnishing free textbooks shall provide, at the expense of the district, textbooks for use in the public schools and loan them free to the pupils. Textbooks so furnished shall remain the property of the school district. The governing body shall also provide for the sale of such textbooks at cost to pupils of the schools in the district wishing to purchase them for their own use. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Education Law](#) > [Administration & Operation](#) > [Boards of Elementary & Secondary Schools](#) > [Authority](#) 

[Education Law](#) > [Departments of Education](#) > [State Departments of Education](#) > [Authority](#) 

**HN2**  A system of schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools, and the fact that the parents of pupils financially able to do so are required to provide their children with text-books, writing materials and other supplies required for the personal use of such pupils does not change the character of the school. [More Like This Headnote](#)

[Education Law](#) > [Administration & Operation](#) > [Boards of Elementary & Secondary Schools](#) > [Authority](#) 

[Education Law](#) > [Departments of Education](#) > [State Departments of Education](#) > [Authority](#) 

**HN3**  Parents of pupils financially able to do so have been required to provide their children with textbooks, writing materials and other supplies prescribed by the school board and required for the personal use of the students. Ill. Rev. Stat. ch. 122, paras. 10-20.5, 10-20.8 (1973) respectively authorize the board of education to adopt and enforce all necessary rules for the management and government of the school, and to direct what branches of study shall be taught and what apparatus shall be used. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

**COUNSEL:** Baisley, Roper & Swanson, of Loves Park (William L. Baisley, of counsel), for appellant.

Williams, McCarthy, Kinley, Rudy & Picha, of Rockford (John R. Kinley and Russell D. Anderson, of counsel), for appellee.

**JUDGES:** Mr. Justice GOLDENHERSH delivered the opinion of the court.

**OPINION BY:** GOLDENHERSH

**OPINION**

**[\*12] [\*\*440]** Defendant, Board of Education of Harlem Consolidated School District No. 122, appealed from the declaratory judgment and **[\*\*441]** decree of the circuit court of Winnebago County holding that defendant was without authority to collect fees charged for school supplies and materials furnished to the children of plaintiff, William C. Beck, and enjoining the collection of such fees. The appellate court reversed (27 Ill. App. 3d 4), and we allowed plaintiff's petition for leave to appeal.

In his complaint for declaratory judgment and other relief plaintiff alleged that he was the father of four children attending schools conducted by defendant; that defendant **[\*\*\*2]** had adopted a resolution requiring students to pay certain fees for services and materials; that in 1938 the voters of the district had by referendum adopted the provisions of the free text book act (see Ill. Rev. Stat. **[\*13]** 1937, ch. 122, pars. 515 through 520 (now ch. 122, pars. 28 -- 14 through 28 -- 19)), and that the defendant was without authority to charge the pupils the flat rate mandatory fee imposed for workbooks, duplicating paper and masters, magazine subscriptions, dictionaries, paperback books, maps and atlases. Plaintiff also alleged that the imposition of the fees was proscribed by section 1 of article X of the Illinois Constitution, which, *inter alia*, provides that "Education in public schools through the secondary level shall be free."

The case was submitted to the circuit court on a stipulation of facts and several exhibits. The materials and supplies for which the fees were charged are described in the appellate court opinion (27 Ill. App. 3d 4, 6-7), and the description need not be repeated here.

Section 28 -- 15 of the Illinois School Code (Ill. Rev. Stat. 1973, ch. 122, par. 28 -- 15) in pertinent part <sup>HN1</sup> provided:

"Sec. 28 -- 15. Textbooks provided **[\*\*\*3]** and loaned to pupils -- Sale to pupils. The governing body of every school district having voted in favor of furnishing free textbooks \* \* \* shall provide, at the expense of the district, textbooks for use in the public schools and loan them free to the pupils. Textbooks so furnished shall remain the property of the school district. The governing body shall also provide for the sale of such textbooks at cost to pupils of the schools in the district wishing to purchase them for their own use."

Plaintiff contends that workbooks, duplicating papers, magazine subscriptions, dictionaries, paperback books, maps and atlases were textbooks within the meaning of the statute. He argues that the circuit court correctly held that the printed materials are "useful and beneficial study tools in the educational process" and when "chosen by defendant to be used for that purpose they become textbooks."

Defendant contends that the appellate court correctly held "that in the absence of a contrary statutory definition, a word used in a statute is to have its popularly **[\*14]** understood meaning ( *Bowman v. Armour & Co.*, (1959), 17 Ill.2d 43, 52), or commonly accepted dictionary interpretation. **[\*\*\*4]** ( *Husser v. Fouth* (1944), 386 Ill. 188, 194.) Webster's New International Dictionary (2d ed. 1934) defines a textbook as 'a book containing a presentation of the principles of a subject, intended to be studied by the pupil and used as a basis of instruction by the teacher.' The word is popularly understood to describe a *book*, rather than anything of lesser substantiality or permanence, which *expounds* the principles of a field of knowledge, rather than merely presenting exercises or questions, and which is used as the *basis* of a course of study, and not as a general reference work or a reference work on a subsidiary topic.

"A map, we believe is not ordinarily considered to be a textbook, nor is a collection of maps in an atlas, nor is a dictionary, nor is a 'Weekly Reader' magazine, nor is a sheet of paper or a collection of loose sheets of paper. The workbooks containing problems and exercises and

the pamphlet on **[\*\*442]** selected subjects are also ordinarily considered, we believe, to be not textbooks but just supplementary materials, or teaching aids; it was stipulated that they were used to supplement books which were the standard work or basis for instruction **[\*\*\*5]** in the particular area. We cannot find that any of the disputed items are 'textbooks,' the cost of which could not be included in the fee charged to the plaintiff's children." (27 Ill. App. 3d 4, 9.) We agree and would note that when the General Assembly has chosen to give the word "textbook" a meaning other than its commonly accepted one, it has done so. See, e.g., Ill. Rev. Stat. 1973, ch. 122, par. 34 -- 58.

Plaintiff contends that defendant possessed only those powers conferred upon it by statute and that it was without power, express or implied, to collect the fees for the materials and supplies furnished his children. He argues that the only provision in the School Code (Ill. Rev. Stat. **[\*15]** 1973, ch. 122, par. 1 -- 1 *et seq.*) specifically empowering a board of education to charge any type of fee to its pupils was section 10 -- 22.25 (ch. 122, par. 10 -- 22.25), which authorized it to purchase textbooks and rent them to pupils, and, he concludes, the proper construction of its provisions would require us to hold that this charge for textbook rental was the only fee authorized by the School Code. He contends further that the circuit court correctly held that **[\*\*\*6]** because some of the supplies were used "for more than one year and \* \* \* by different pupils in varying degrees," because some of the materials were "used by teachers and administrators," although on behalf of each individual student, and because some of the materials and supplies were "retained as school property," the mandatory fees "cannot be differentiated from a tuition charge." We do not agree.

In *Segar v. Board of Education* (1925), 317 Ill. 418, 421, the court said: **HN2\*** "A system of schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools, and the fact that the parents of pupils financially able to do so are required to provide their children with text-books, writing materials and other supplies required for the personal use of such pupils does not change the character of the school." In *Hamer v. Board of Education* (1970), 47 Ill.2d 480, we traced the development of the concept of "free schools" in Illinois from statehood in 1818 to 1970 and found that the statement quoted from *Segar* properly reflected the intent of the Constitution and the **[\*\*\*7]** relevant statutes.

As we observed in *Hamer*, **HN3\*** parents of pupils financially able to do so have been required to provide their children with textbooks, writing materials and other supplies prescribed by the school board and required for the personal use of the students. (47 Ill.2d 480, 486-90.) Sections 10 -- 20.5 and 10 -- 20.8 of the School Code (Ill. **[\*16]** Rev. Stat. 1973, ch. 122, pars. 10 -- 20.5 and 10 -- 20.8) respectively authorize the board to adopt and enforce all necessary rules for the management and government of the school, and to direct what branches of study shall be taught and what apparatus shall be used. Under these sections defendant was authorized to require parents financially able to do so to provide their children with educational materials and supplies for use by them or on their behalf. We are of the opinion that defendant was authorized to accomplish the same result by purchasing the necessary materials and supplies, apportioning the cost among the pupils, and charging those parents who were financially able to pay, and we so hold. We also hold that because some of the materials were used by more than one pupil or by a teacher or administrator, **[\*\*\*8]** or that they might be retained as school property and used for more than one school year did not serve to convert the fee charged into a tuition charge. Tuition is defined as "the price of or payment for instruction" (Webster's Third New International Dictionary (1961)), and, clearly, **[\*\*443]** the fee charged plaintiff's children was not part of the price of, or payment for, instruction.

For the reasons stated the judgment of the appellate court is affirmed.

*Judgment affirmed.*







Service: **Get by LEXSEE®**

Citation: **63 Ill. 2d 10, 15**

View: Full

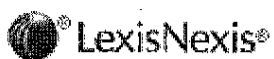
Date/Time: Tuesday, December 16, 2008 - 7:00 PM EST

\* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
-  - Citation information available

\* Click on any *Shepard's* signal to *Shepardize®* that case.

[My Lexis™](#) | [Search](#) | [Research Tasks](#) | [Get a Document](#) | [Shepard's®](#) | [Alerts](#) | [Total Litigator](#) | [Transactional Advisor](#) | [Counsel Selector](#)  
[History](#) | [Delivery Manager](#) | [Dossier](#) | [Switch Client](#) | [Preferences](#) | [Sign Out](#) | [Help](#)



[About LexisNexis](#) | [Terms & Conditions](#) | [Contact Us](#)  
Copyright © 2008 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

