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JACKSONVILLE, FLORIDA

December 6, 1939

Mr. Thurgood Marshall  
Special Counsel NAACP  
69 Fifth Avenue  
New York, N.Y.

16233

Dear Sir;

Replying to your letters of November 21st and of the 4th inst., in regards to Chapter 18134 #428 of the Laws of Florida 1937, was ever passed on by the Supreme Court will state that this question was presented to the trial court. Judge Smith in his order June 1938 (Tr. 12) specifically states: "I do not find any law which requires the Board to establish salary schedules."

From this order a writ of error was taken to the Supreme Court of Florida. The opinion will be found in the transcript herewith sent you; it does not deal with the chapter in question. In spite of the fact that in our petition for the writ it was alleged that it was a statutory duty of the School Board to fix such salary schedules without discrimination. The court took the view that mandamus will not lie to compel anything but a clear duty and that there was no duty to establish salary schedules. The substance of this suit is the denial of the Board to pay petitioner and others of his race equal salaries. In our petition it was distinctly alleged, among other things, that it was and is the duty of the Board of Public Instruction to adopt salary schedules for teachers in the public schools of Brevard County without discrimination. We think this was not only the statutory duty of these officers to establish a schedule without discrimination but it is a constitutional duty for it to do so. The statute quoted above authorizing the Board to fix salary schedules does not provide that such schedules shall be made so as to pay negro teachers less than whites and the Board of Public Instruction in making such schedules violates the 14th Amendment to the Constitution of the United States.

As stated in my brief, the Board of Public Instruction of Brevard County is an agency of the State in employing and paying teachers in the county public school system. It is the duty of the Board irrespective of any statute to pay such salaries without discrimination. The schedule used by the school board giving negro school teachers less salary than whites is as much a violation of the 14th Amendment as if the salary schedule attached to my petition was a statutory provision.

I note from your letter that you have already begun preparation of the petition and the memorandum brief which should go with the transcript, certified copy of which I am herewith sending you and for that reason I will not proceed any further with the petition and memorandum brief that I have been working on unless I receive a telegram from you or other information that I should go further. The petition will be short; the memorandum brief of authorities will likewise be short. The legal point in question will be, I am sure, one of first impression to the court. I have examined the authorities at length and I am frank to state that nowhere is a case like this one which was ever decided by the Supreme Court.

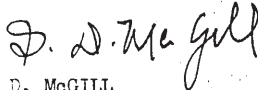
Mr. Thurgood Marshall #2

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Do not forget that in this case you will find that the allegations set forth in the petition are admitted to be true. A prima facie case is all that should be necessary to be shown by the petitioner in order to authorize the issuance of an alternative writ. The court, as you will observe, refused the writ and dismissed our petition. To justify any such order by the trial court in this case it was necessary to admit the truth of the allegations set forth in our petition.

I am keeping a copy of the certified transcript and you may look it over and if you decide for me to complete the petition or memorandum brief, I can do so and forward them to our associate in Washington in time to be filed in the Supreme Court not later than Monday, Tuesday being the last day on which the petition may be filed. Let me hear from you.

Respectfully yours,



S. D. MCGILL

sdm/w  
inc