



School Technology Issue Brief

NCSBA Position

Since a North Carolina Supreme Court decision almost twenty years ago, NCSBA and local school boards have tried to work with the legislature to find an amicable resolution for recovering approximately \$730 million dollars owed to North Carolina school districts for funding school technology. As the need for technology in classrooms continues to grow, NCSBA remains fully committed to working with the General Assembly to find a reasonable solution for securing the withheld monies – even if that’s a payment plan.

Regarding the recovery of school technology funds, Judge Howard Manning stated in his 2008 ruling: “Satisfaction will depend on the manner in which the General Assembly elects to carry out its constitutional duty.”¹ More than a decade later, it is long past time for the State to fulfill its constitutional duty and obligation to North Carolina’s public-school students.

Issue Background

Fines and Forfeitures

Article IX, Section 7(a) of the North Carolina Constitution, entitled "County School Fund," provides:

“ . . . all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.”

In a 1993 court case – *State ex rel. Thornburg v. 532 B Street* – the North Carolina Supreme Court interpreted the meaning of Article IX, Section 7 of the North Carolina Constitution and the scope of its coverage.² The Court said: "We interpret the provisions of Section 7 relating to the clear proceeds from penalties, forfeitures and fines as identifying two distinct funds for the public schools. These are: (1) the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the State; and (2) the clear proceeds of all fines collected for any breach of the criminal laws.

In a 1996 court case – *Craven County Bd. of Educ. v. Boyles* – the Craven County Board of Education filed a lawsuit against State officers seeking proceeds from a civil penalty.³ Relying upon the Court’s analysis in *Thornburg*, the Court concluded by explicitly stating: ". . . ‘the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the State,’ should be paid to the local school district.”

¹ *North Carolina School Boards Association, et al., v. Richard H. Moore, State Treasurer, et al*

² *State ex rel. Thornburg v. 532 B Street*, 334 N.C. 290, 432 S.E.2d 684 (1993)

³ *Craven County Bd. of Educ. v. Boyles*, 343 N.C. 87, 468 S.E.2d 50 (1996)

In response to *Boyles*, in 1997, the General Assembly created the “Civil Penalty and Forfeiture Fund.”⁴ The Fund consists of the clear proceeds of all civil penalties, civil forfeitures, and civil fines collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution. Article IX, Section 7(b) of the Constitution states:

“The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies, and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.”

In addition, the Fund and all interest accruing to the Fund shall be faithfully used exclusively for maintaining free public schools. The General Assembly directed the Office of State Budget and Management, in the same year, to transfer funds accruing to the Civil Penalty and Forfeiture Fund to the State School Technology Fund.⁵ The use of funds allocated to local school administrative units from the School Technology Fund is limited to implementation of local school technology plans.

In 1998, NCSBA and several individual school boards (Plaintiffs) filed suit against the State to recover monetary payments being retained by State agencies in violation of Article IX, Section 7(a) of the North Carolina Constitution.⁶

In December 2001, a trial court ruled that all payments to State agencies, referenced in Plaintiffs' complaint, must be distributed to the public schools. The court, however, stayed operation and enforcement of the order pending appeal by the State.

In 2003, the North Carolina Court of Appeals upheld the constitutionality of the Civil Penalty and Forfeiture Fund.⁷ In addition, the court found the “school technology” mandate consistent with the intent and purpose of N.C. Const. art. IX, § 7. Finally, regarding the trial court's ruling that all the payments to State agencies, referenced in Plaintiffs' complaint, must be distributed to the public schools – the court affirmed the trial court's ruling with respect to a number of payments which the court highlighted in its opinion.

In 2005, the North Carolina Supreme Court affirmed the decision of the Court of Appeals in part; holding that monies received from civil penalties paid by public schools must be deposited into the Civil Penalty and Forfeiture Fund, after which the monies will be distributed to all local public-school systems statewide as mandated by statute. The Court remanded the case to Superior Court to determine how much the State agencies owe in withheld civil fines – collected since 1998.

⁴ G.S. § 115C-457.1(a)

⁵ S.L. 1997-443

⁶ *N.C. Sch. Bds. Ass'n v. Moore*, 359 N.C. 474, 614 S.E.2d 504, 2005

⁷ *N.C. Sch. Bds. Ass'n v. Moore*, 160 N.C. App. 253, 585 S.E.2d 418, 2003

In 2008, the Superior Court held that the civil penalties collected by State agencies between January 1, 1996, and June 30, 2005, were diverted to other purposes in violation of the North Carolina Constitution.⁸ In addition, the court determined the amount of money owed to public schools totaled \$747,833,074. The court did not give the State a deadline to make the payment.

NCSBA proposed legislation to address the court judgment in 2009-10⁹, 2011-12¹⁰, 2013-14¹¹, 2015-16¹², 2017-18¹³, and 2021-22.¹⁴ One of those bills passed out of one chamber, but none became law.

In 2009, Plaintiffs received only \$18.1 million in parking fines held in escrow by the UNC system (approximately 2.5% of the court judgment), leaving almost \$730 billion unpaid. NCSBA and twenty local boards of education proceeded to file a lawsuit in Wake County Superior Court against the state agencies named in the 2008 decision seeking to extend the enforceability of the existing unpaid judgment. The judgment would otherwise have expired on August 8, 2018.

In 2019, a consent order was entered to extend the enforceability of the existing \$729.7 million unpaid 2008 court judgment to prevent it from expiring. Both sides agreed to the amount still owed.

⁸ *North Carolina School Boards Association, et al., v. Richard H. Moore, State Treasurer, et al*

⁹ SB 269 (2009): Work/School Zones – Speed Camera Pilot Program

¹⁰ HB 145 (2011): Phoebe’s Law

¹¹ HB 992 (2013): Phoebe’s Law

¹² HB 682 (2015): Civil Fines and Forfeitures Study

¹³ HB 554 (2017): Fines and Forfeitures/Payment to Schools

¹⁴ HB 591 (2021): Fines and Forfeitures/Payment to Schools