

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RAYMOND DIAS,
Town Treasurer for the
Town of Tiverton

vs.

TIVERTON SCHOOL
COMMITTEE

D E C I S I O N

July 6, 1990

Travel of the Case

On June 5, 1989, the Treasurer for the Town of Tiverton notified the Commissioner of Education of the fact that as of that date, the Tiverton School Committee had not acted to reconcile its school budget with the amount appropriated for the operation of the schools at the May 3, 1989 financial town meeting. The letter of June 5 requested intervention by the Commissioner to insist that the School Committee adhere to the time provisions contained in the relevant statutes. On June 14, 1989 the Commissioner notified the Superintendent of Schools, John W. Edwards, that if this was the factual situation, the School Committee had not complied with R.I.G.L. §16-2-21 and §16-2-21.1 and further directed that he be kept informed of steps taken by the School Committee to comply with the requirements of the sections cited. On June 22, the Commissioner was notified that at its June 20 meeting the School Committee had adopted a revised budget which brought projected expenditures in line with total appropriations for school year 1989-90. In acknowledging receipt of this information on July 6 the Commissioner noted "While the matter of adopting a balanced 1989-1990 school budget is now closed, in the future we expect that the timelines prescribed in law will be followed". (S.C.Ex.I).

Also on June 5, 1989 the Town Treasurer, by separate written communication, notified the Commissioner of alleged improprieties in the use of school department funds, i.e. the use of the bulk mailing permit and account of the Tiverton School Department by the NEARI/Tiverton. Mr. Dias requested investigation of this matter by the Commissioner's office.

On June 15, Mr. Dias was notified that the Commissioner's office had received his June 5, 1989 letter and would refer this matter to a hearing officer for hearing.

Both matters or issues described above were heard by the undersigned Hearing Officer on October 2, 1989, and the record of the case closed on October 26, 1989.

Jurisdiction to hear both matters lies under R.I.G.L. §16-39-2.

Issue

1. Did the Tiverton School Committee violate the provisions of §16-2-21.1 when it did not bring its 1989-90 budget into conformity with the appropriation made by the Town within thirty (30) days of the financial town meeting?
2. Was there a misappropriation of school funds resulting from the Tiverton Teachers Union's use of the school department's bulk mailing account?

Findings of Relevant Facts

- Raymond Dias is the duly-elected Treasurer of the Town of Tiverton, Rhode Island.
- While the appropriation for public schools in Tiverton was made at a financial town meeting on May 3, 1989, it was not until June 20, 1989 that the School Committee approved a revised budget in which projected expenditures equalled the amount appropriated.
- In prior years the School Committee has consistently failed to adopt a revised budget within thirty (30) days of the financial town meeting

and final appropriation for schools.

- The Tiverton School Department maintains a postal bulk mailing permit at the Tiverton Post Office. (Tr.p.114).
- The bulk mailings of the School Department are charged to an account to which periodic deposits are made by the School Department. (Tr.p.114).
- On May 1, 1989, 360 pieces of mail were mailed through use of the School Department's permit by NEARI/Tiverton.
- This mailing was sent to parents of some students at Tiverton High School and members of NEARI/Tiverton who were also Tiverton residents. (Tr.p.185). The letter encouraged the recipients to attend the financial town meeting on May 3, 1989 and to vote on the school budget, i.e. the appropriation to be made for the operation of the Town's schools. (Pet. Ex.22).
- The form enabling NEARI/Tiverton to use the permit was signed by the Principal of the High School (Robert Poniatowski) (Pet.Ex.21) and its use was approved by the Superintendent of Schools, John W. Edwards (Tr.p.157).
- The mailing resulted in a charge of \$27.36 to the School Department's account.
- Upon receipt of a complaint by a parent, the Tiverton Postmaster notified Mr. Poniatowski that NEARI's use of the School Department's bulk rate permit violated postal regulations and that either the School Department or NEARI owed the difference between the bulk rate charge and the charge for the first class postage rate, i.e. \$62.64.

(Pet. Ex. 23 letter of May 3, 1989 from Postmaster Ramon E. Bladuell).

- On May 18, an official of NEARI, Henry Entwistle reimbursed the School Department for the \$27.36 charge for the mailing and paid the additional \$62.64 owed to the Postal Department.
- NEARI/Tiverton's use of the bulk mailing permit was pursuant to an agreement with Superintendent Edwards and Mr. Poniatowski that for the Union's convenience, it would be allowed use of the School Department's permit and then would reimburse the School Department account for the cost of this mailing. (Tr. pp. 191-193).
- This same procedure had been followed the previous year and NEARI had reimbursed the School Department for the cost of this mailing. (Tr. p. 193).

Decision

Issue of Standing of the Town Treasurer

The threshold question raised by the School Committee is whether the appellant, Mr. Dias, in his capacity as Town Treasurer has sufficient standing to bring these matters before the Commissioner of Education. While the position of Town Treasurer is for the most part ministerial in nature, this town officer does exercise general responsibility for town finances and plays a significant role in the determination of, and alerting of appropriate town and school committee officials to, the likelihood of "deficit spending" by a school committee (spending prohibited under § 16-9-1). While the Town Treasurer does not play a direct role in the school appropriation process in

Tiverton, he does have enough interest in the timely adoption of a school
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budget to raise the issue of non-compliance with the timelines imposed
on school committees by §16-2-21 and §16-2-21.1.

In this regard, while his interest is sufficient to confer standing,
we note that the Town Treasurer is neither technically "aggrieved"
under §16-39-2 nor is he vested with the type of regulatory oversight
which usually vests a public official with standing based on the responsi-
bility to protect the public interest in matters under his/her regulatory
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authority. Rather we find that the failure to have an adopted school bud-
get in place could impede the Town Treasurer's ability to perform his re-
sponsibilities under §16-9-1. As delimited in Bailey v. Duffy, 45 R.I.
304, 121 A 129 (1923). The role of the Town Treasurer is such that we
think Mr. Dias as Town Treasurer also has standing to raise an issue
of misappropriation of school funds.

Issue of Failure to Adopt a Revised Budget Within Thirty (30) Days of the
Appropriation at the Financial Town Meeting.

In a non-adjudicative setting, the Commissioner has already res-
ponded to the School Committee's failure to reconcile its budget within
the thirty (30) days of the Town of Tiverton's appropriation at the financial
town meeting. Upon notice from the Town Treasurer of this fact, which
the School Committee did not then nor does now contest, the Commissioner
indicated that this situation violated §16-2-21 and §16-2-21.1. When advised
on June 22, 1989 that a revised budget had been adopted, the Commissioner

1] §16-2-21(3) identifies an adopted school budget as a school budget in which total
expenses are less than or equal to their appropriations and revenues.

2] See Renza v. Murray, 525 A.2d 53 (R.I. 1987) and Newman-Crosby Steel, Inc. v.
Albert Fascio, et al, 423 A.2d 1162 (R.I. 1980).

indicated that in the future it was expected that the Tiverton School Committee would follow the timelines prescribed by law. (See Ex.I, letter of Commissioner Earhart to John W. Edwards, Superintendent of Schools.)

Based on the record and arguments before us, we conclude that the thirty (30) day time limit specified for adoption of a revised school budget in §16-2-21.1 is mandatory and that the School Committee violated this provision by not acting until June 20, 1989 to "bring its budget into conformity with the appropriation" made by voters of the Town of Tiverton. We are convinced that the time limits specified for each of the steps set forth in §16-2-21 and §16-2-21.1 are there not just to "secure order, system and dispatch" or "regulate the flow of action". (See: Tiverton v. Fraternal Order of Police, 118 R.I. 160, 372 A.2d 1273 (1977). Rather, we believe the purpose of these time requirements is, as stated in the Commissioner's June 14, 1989 letter "early identification and elimination of potential budgetary problems". We might add here that if the budget reconciliation process provided for by statute does not in a given instance resolve a budgetary impasse, and the parties resort to the courts for a determination of the issue of required appropriations, conclusion of the process at an early point in the school year is preferable to later when the prospect of a deficit spending situation, and all that that entails, would present itself. For these reasons, we conclude that the thirty (30) day timeline on adoption of a revised budget is part of the essence of §16-2-21.1; it is a mandatory

3] Petitioner's Ex. V.

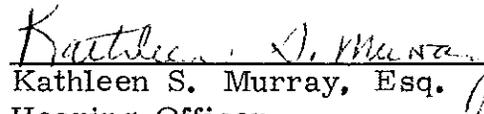
4] As identified in §16-2-11 (b) the goal of early notification and action on the prospect of a school budget deficit is "to provide for continuous regular public school operations consistent with the requirements of §16-2-2 without regard to financial conditions.

not directory, time constraint. The School Committee is ordered to comply with the applicable time provisions in the future.

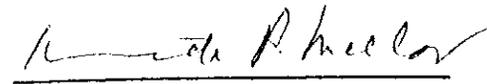
Issue of Misappropriation of School Department Funds

The NEARI/Tiverton's use of the Tiverton School Department's bulk mailing permit, and account, under the circumstances identified in this record ⁵ was ill-advised. It presented the type of situation in which the appearance of impropriety resulted. While we do not sanction such a procedure's use, even when a prior arrangement existed for reimbursement of School Department funds, it has not been shown that this procedure violates a law relating to schools or education over which the Commissioner exercises enforcement authority. Of course, should the Town Treasurer persist in his view that a misappropriation of school funds occurred in violation of §16-38-9, despite our findings as noted in footnote 5, he should report such violation to the appropriate criminal authorities since such conduct might constitute a misdemeanor under §16-38-9.

5] Our findings of fact indicate our acceptance of Mr. Entwistle's testimony that the Union's agreement to reimburse the School Department preceded the discovery of the Union's use of the permit/account by the Postmaster. This testimony along with Mr. Entwistle's statement that the prior year the School Department was reimbursed for the cost of a similar mailing, leads us to conclude it was not the intent of the Union and school officials to have the cost of the mailing borne by the Tiverton School Department.


Kathleen S. Murray, Esq.
Hearing Officer

Approved: July 6, 1990


J. Troy Earhart
Commissioner of Education