

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE:	:
	:
FOSTER-GLOCESTER	:
	:
REGIONAL SCHOOL	:
	:
DISTRICT	:
	:
FINANCIAL MEETING	:
	:

DECISION ON PRELIMINARY

MOTION TO DISMISS

for

LACK OF JURISDICTION

November 18, 1991

Held: The Commissioner has jurisdiction to review claim that annual regional school district financial meeting was not conducted in accordance with Rules of Procedure adopted by the Foster-Glocester Regional School Committee

Travel

This matter was heard on July 26, 1991 at which time counsel for the School Committee advanced a preliminary motion to dismiss the appeal for lack of jurisdiction. After initially deciding to consolidate the ruling on the motion to dismiss with the ruling on the merits of the appeal, the Hearing Officer agreed to rule on the School Committee's preliminary motion to dismiss prior to reconvening the hearing to conclude the taking of evidence on the merits of the case. This was done by agreement of the parties.

Arguments of the Parties

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The appellants allege certain improprieties in the conduct of the June 11, 1991 Regional School District Financial Meeting. Specifically they allege (1) that the meeting was not held in conformance with requirements that such meetings be accessible to the handicapped and (2) did not strictly follow the procedures adopted by the Foster-Glocester Regional School Committee on January 9, 1986 (See Appellant's Ex. A). The letter of appeal of Mr. and Mrs. Peter Glanz alleges that contrary to the Rules adopted by the Regional School Committee, not every voter who desired to be heard was in fact allowed to speak prior to the vote taken at this special Regional District financial meeting.

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In support of the motion to dismiss, the Regional School Committee points out that neither claim presents an issue of school law over which the Commissioner has jurisdiction. The issue of accessibility of public

1] Richard J. Nadeau, Peter Glanz and Nancy Glanz.

2] The vote effectively increased the appropriation for regional district schools from \$7,396,582.92 to \$7,696,582.92. The appropriation of the lesser amount had been approved at the March 26, 1991 school district financial meeting.

meetings to handicapped persons is within the purview of the Office of the Attorney General, the Committee argues, noting that referral of such complaints to that Office is provided for under R.I.G.L. §42-46-8. The second allegation is that the procedures followed in not permitting all voters present opportunity to comment prior to taking of the vote to restore funds to the school budget violated procedural rules governing the meeting. Counsel for the School Committee takes the position that any issues as to improprieties at such a meeting are not issues of education law. The Committee argues that resolution of this issue draws upon no special expertise of the Commissioner. In addition, he argues that the Commissioner is without power to provide for an appropriate remedy if the appellants prevail on the merits.

Decision

The claim that the Thirty-third Annual District Financial Meeting of the taxpayers of the Foster-Glocester School District was a public meeting not accessible to handicapped persons is not a matter over which the Commissioner of Education has jurisdiction. The state law requirement that meetings of public bodies be accessible to the handicapped is found in R.I.G.L. §42-46-13. Violations of Chapter 46 are to be reported by written complaint to the Attorney General (§42-46-8), who is required to investigate and, in his discretion, file a complaint against the public body in Superior

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Court. In filing his complaint in this regard with the Office of the Attorney

3] The General Assembly in 1991 passed a new Section 42-87-5 which empowers the State Building Code Standards Committee to hear all complaints "relating to violations of this Chapter concerning the physical inaccessibility of buildings and structures." This law does not take effect until January 1, 1992, to the extent it may provide an alternate route for such grievances.

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General, we believe that appellant Nadeau has proceeded to the proper forum to litigate his claim. It is dismissed before us for lack of jurisdiction.

As to the second claim of procedural impropriety by virtue of alleged noncompliance with "Rules for Conduct of the Regional School District Financial Meeting" the jurisdictional analysis is more complex. As the Regional School Committee points out, the appeal does not call for the resolution of a "traditional" educational issue, i.e., residency of students, teacher dismissal, adequacy of educational programs, etc. Certainly we would agree that the conduct of town financial meetings generally is not regulated by the Commissioner of Education simply because one of the items (or in some instances the only item) put before the voters for approval is determination of the school budget.

Counsel also correctly points out that Chapter 109 of the Public Laws
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of 1958 (establishing the Foster-Glocester Regional School District) contains no provision setting forth the requirement that all voters be heard prior to a
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vote on the budget. Nonetheless, we feel constrained to rule that this dispute "arises under" a law relating to schools or education and is within the purview of the Commissioner.

4] See Ex. 6 of the School Committee, letter of Richard J. Nadeau to Kara Fay of the R.I. Department of the Attorney General.

5] And the numerous amendments thereto.

6] The fact that the subject matter of the claim is not directly discussed in a statute pertaining to school law was raised unsuccessfully as a bar to the Commissioner's jurisdiction in the case of School Committee of the City of Providence v. Board of Regents for Education 429 A.2d 1297 (R.I.1981).

The appellants, appearing pro se, have not directed us to the statute on which they premise jurisdiction, but we believe it must be R. I. G. L. §16-39-1. That statute states:

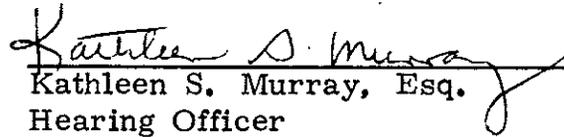
Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the Commissioner of Elementary and Secondary Education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties involved.

Chapter 109 of the Public Laws of 1958 established the Foster-Glocester Regional School District, created the Regional School Committee and conferred on it certain rights and duties with regard to management and operation of district schools. That same statute also provides for the annual regional school district financial meeting, setting forth when and where such meeting shall be convened, the matters to be considered and who is entitled to vote at such meeting. It would appear, at this preliminary juncture in the case before us, that construction and application of this statute will be necessary to resolve the claim of procedural improprieties at the June 11, 1991 meeting. Specifically our determinations are likely to include whether the statute empowered the Regional School Committee to adopt the rules on which the appellant's claim is based, whether these rules are binding on the Moderator of the District Financial Meeting, and what legal effect a violation of these rules may have if the facts subsequently show that they were not complied with. Thus, the dispute is essentially a controversy which will require construction and application of that portion of Chapter 109 which deals with the powers of the

Regional School Committee - - in this case, the legal effect of rules it has adopted for the conduct of the Regional School District Financial Meeting. (Appellants Ex.A). Since the appellants' claim springs from the procedural rules adopted by a regional school committee in 1986, we find sufficient nexus to school law and rule that there is jurisdiction over this appeal.

For the foregoing reasons, the motion to dismiss is denied as to the claim that the meeting was not conducted in compliance with applicable procedural rules enacted by the Regional District School Committee.

The matter will be scheduled forthwith for continued hearing on the merits.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:


Janice M. Baker
Interim Commissioner