

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

In Re:
FOSTER-GLOCESTER
REGIONAL SCHOOL
DISTRICT
FINANCIAL MEETING

DECISION

HELD: Moderator of Regional
School District Financial Meeting
failed to adhere to Procedural
Rules requiring that all persons
who wished to be heard on the
subject matter of a vote be given
opportunity to speak prior to the
taking of a vote.

June 8, 1992

Travel of the Case

In a prior decision issued on November 18, 1991 the Commissioner denied a Motion to Dismiss for Lack of Jurisdiction made by counsel for the Foster-Glocester Regional School District. Thereafter, the matter was heard on the merits on January 22, 1992. The record in this case closed on March 10, 1992, upon receipt of the transcript.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-1.

Finding of Relevant Facts

- o A special regional district financial meeting of the Foster-Glocester Regional School District was held on June 11, 1991.
- o The purpose of the meeting was to determine the overall budget for the Foster-Glocester Regional School District for school year 1991-1992.
- o The school committee of the Foster-Glocester Regional School District had previously (i.e. January 9, 1986) adopted Rules for Conduct of the Regional School District Financial Meeting. see Appellant's Ex. A.
- o At the outset of the June 11, 1991 meeting, the moderator read the Rules of Procedure (Exhibit A) and indicated that these rules would govern the conduct of the meeting. (Tr. Vol. II pp. 98 and 111-112)
- o At the June 11, 1991 meeting a motion was made to appropriate \$7,696,582.92 to operate the Regional School District. This motion was approved by an affirmative vote of four hundred and fifty-three (453) of the seven hundred and twenty (720) voters present at the meeting.

- o Prior to the vote approving the school budget for 1991-1992, several voters were not given opportunity to be heard, although they wished to speak on the subject matter of the vote. (Tr. Vol. II p. 127-128 testimony of John Lyman, moderator of the meeting. Several other witnesses testified that they were not recognized to speak on the subject of restoring funds to the school budget despite their desire to address those gathered at the special Regional School District Financial Meeting.)
- o At some point when the motion to appropriate \$7,696,582.92 was under discussion, the moderator perceived a "lull" (no hands raised by those in attendance) (Tr. Vol. II p. 117). Upon making the observation that "no one else wishes to be heard", and upon stating his intent to "move the question", he observed many hands raised by those who wished to speak. He called on a person whose hand was raised in order to continue public discussion, and that person (Mr. Howard) made a motion for a paper ballot, which was then seconded. (Tr. Vol. II pp. 117-119, 135).
- o Mr. Lyman ruled that the motion for a paper ballot had the effect of ending debate even though he was aware of the fact that many people still wished to be heard on the motion to approve a revised budget amount for the 1991-1992 school year. (Tr. Vol. II p. 127, 134).
- o A vote on the motion for a paper ballot was then taken by "standing vote" and approved. (Tr. Vol. II p. 119).
- o The vote on the paper ballot was followed by voting on the motion to approve the school budget. (Tr. Vol. II p. 121).

Decision

The appellants' claim is that their rights to be heard on the issue of approving the sum of \$7,696,582.92 for the regional school district budget were violated. Despite the fact that the subject of an overall budget for the 1991-92 school year had been debated at two prior regional district financial meetings, the appellants contend that compliance with the "Rules for Conduct of the Regional School District Financial Meeting" (Appellants' Ex. A.) required that at the June 11, 1991 special regional district financial meeting any and all voters wishing to exercise their right to speak should have had opportunity to do so. The testimony of the moderator of that meeting, John Lyman, as well as many other individuals who testified at the hearing in this matter, clearly indicate that several people desirous of speaking to the issue were precluded from doing so. The appellants are convinced that the moderator deliberately ignored their hands raised in their efforts to be recognized to speak, while the moderator testified that during a momentary "lull" in debate he observed no hands raised, and noted this to those in attendance at the meeting.

It is not necessary to reconcile the factual issue of whether or not a "lull" in debate actually did occur because the moderator testified that as soon as he voiced his observation that no one else present wished to be heard, several hands were then raised to signal to him that this was not the case. He then decided to continue debate, but according to his testimony was frustrated in his attempt to do so by a premature motion for a paper ballot, which was quickly seconded. Mr. Lyman's ruling that further

debate (on the budgetary issue) was out of order was not because of his conclusion that no other voters wished to speak, but rather his determination that the motion for a paper ballot preempted further discussion.

Factually, then, there is no dispute that all voters desirous of being heard were not given opportunity to speak at the June 11, 1991 regional district financial meeting. The legal issue of whether the meeting was conducted in conformity with applicable rules remains, and this requires us to examine and interpret the "Rules for Conduct of the Regional School District Financial Meeting" (Appellants' Ex. A.)

A review of the law establishing the Foster-Glocester Regional School District, Chapter 109 of the Public Laws of 1958¹, and R.I.G.L. 16-3-1 et seq.² indicates that there is no statutory requirement that all persons have opportunity to be heard at the Foster-Glocester Regional District Financial Meetings. The only statutory reference to such a right is contained in Chapter 109's reference to the Regional District School Committee's annual public hearing on its proposed budget (Sec. 10 of Ch. 109 of the Public Laws of 1958). This language (providing for the right of any citizen entitled to vote to be heard) is not repeated in those provisions of chapter 109 which pertain to the regional school district financial meeting, set forth, for the most part, in Section 8 of that act.

1 and the various amendments thereto

2 This chapter is made applicable to the operation of all regional school districts organized prior to January 1, 1959 by R.I.G.L. 16-3-25

Thus, any requirement that all voters have opportunity to be heard at the annual regional district financial meeting(s) springs exclusively from the Rules of Procedure adopted by the Regional District School Committee on January 9, 1986. We would note that, again with reference to Chapter 109 of the Public Laws of 1958 and applicable provisions of the General Laws which discuss the powers and duties of school committees generally and those of regional school districts in particular, the Foster-Glocester Regional District School Committee was not empowered by statute to establish rules of conduct for the regional school district financial meeting.³

Section 8 of Chapter 109 provides some basic provisions for the conduct of the regional school district financial meeting. Our focus is on that part of section 8 which establishes the chairman of the regional district school committee as the moderator of the regional school district financial meeting. The moderator has the inherent authority to manage and regulate the business of the meeting over which he presides.⁴ In exercising his authority as moderator of the Regional District Financial Meeting, John Lyman voluntarily adopted the Rules previously promulgated by the school committee, relying on them as well as

³ A fact implicitly recognized by school committee counsel when he characterized the Rules of Conduct (Ex. A) as non-mandatory guidelines, supplementary to the provisions of the statute (Ch. 109) He argued the only legally-required procedural rules for these meetings are those contained in Ch. 109 of the Public Laws of 1958. see argument of counsel Vol. II p. 140 of the transcript.

⁴ A power made explicit in the discussion of the powers of the moderator of town financial meetings. see R.I.G.L. 45-3-18. Section 20 of Chapter 3 Title 45 also confers a right to be heard upon each elector prior to the taking of any vote on a question.

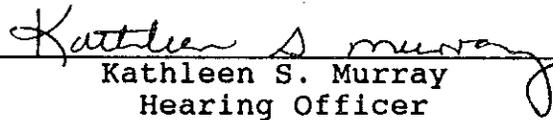
what he characterized as a "modified" version of Roberts Rules (Tr. Vol II p. 130). Testimony indicated that he read the Rules of Conduct (Ex A.) at the beginning of each regional district financial meeting and considered himself bound by those Rules. His own interpretation of section 4(a)⁵ of the Rules was that he was required to rule "out of order" a motion made early-on in the meeting to "move the question" because hands were still in view and persons in attendance wished to speak. Yet, when a motion for a paper ballot was made later in the meeting at a time when Mr. Lyman was aware others still wished to speak, he did not rule that motion "out of order" or continue debate even after the vote on the motion for a paper ballot was taken. We find this action inconsistent with section 4(a) of the Rules governing the meeting. Those rules do not indicate that a motion for a paper ballot is tantamount to a motion to "move the question" nor do the rules clearly indicate that a motion to "move the question" is a motion which can be acted on prior to the voters in attendance desiring to be heard being given the opportunity to do so. To the extent a conflict exists between section 4(a) of the rules and section 5(e) (providing that a motion to move the question is appropriate "at any time"), this conflict was resolved in Mr. Lyman's own testimony as to how he treated a motion to move the question made early in the meeting. He ruled such a motion "out of order" because other voters still wished to speak, i.e. section 4(a) takes precedence. Stated another way, under the Rules read by the

⁵ Which states: any voter shall have the right to be heard and no vote shall be taken until all persons who desire to be heard on the subject of the vote have been heard.

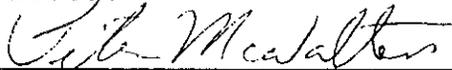
moderator at the outset of the meeting,⁶ the voters' right to be heard on the subject matter of a vote is absolute.

The appellants have requested that the moderator of the regional district financial meeting be instructed not to violate Rule 4(a) again. To the extent that the moderator makes the Rules of Conduct of the Regional School District Financial Meeting (Ex. A) controlling at such future meetings, he or she must conduct the meeting consistent with Rule 4(a) and permit every voter desirous of being heard the opportunity to speak prior to the taking of a vote.

The appeal is sustained.


Kathleen S. Murray
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: 4-8-92

⁶ We would note that the moderator exercised discretion as to the rules of parliamentary procedure he would utilize, as he was not legally constrained to follow those adopted by the Regional District School Committee. In the absence of statutorily-required rules of procedure or the Moderator's adoption of other rules, generally-accepted rules of parliamentary procedure govern. see Lecht v. Stewart, 483 A2d 1079 (R.I. 1984). Although Mr. Lyman testified that in addition to the Rules of Procedure adopted by the school committee he utilized a "sort of modified Roberts Rules of Procedure" (Tr. Vol. II p. 130) he never demonstrated what provisions of these other rules, if any, would countermand the "right to be heard" clearly enunciated in Rule 4(a).