

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

STUDENT N. L. DOE

V.

BEST AND BRIGHTEST  
SCHOLARSHIP AWARD

DECISION

Held: While method of granting  
scholarships may not have been  
the best method imaginable, it was  
not contrary to law.

July 7, 1995

The student in this case compiled an exemplary record as a scholar in the public schools of Warwick. She contends that she should have received a scholarship through the "Best and Brightest Scholarship Fund." (G.L. 16-37-1) for the reasons which follows. We are unable to agree with this student and so must dismiss her petition.

In 1987 the Rhode Island General Assembly established the "Best and Brightest Scholarship Fund." (G.L. 16-37-1, et seq.) The purpose of this scholarship fund was " ...to, attract the best and the brightest of the states high school graduates, as hereinafter defined, into public school teaching within the State" G.L. 16-37-2. In order to be considered eligible for a scholarship a student had to:

- (a) be a graduating senior at a public, parochial, or private high school in Rhode Island;
- (b) be accepted for admission at an accredited college or university in the United States or Canada;
- (c) achieve one or more of the following distinctions:
  - (1) be in the top ten percent (10%) of the applicant's graduating class as of the end of the second quarter of the senior year;
  - (2) have a score in the ninetieth percentile or above on either the mathematics or verbal section of the scholastic aptitude test (S.A.T.);
  - (3) have a combined mathematics and verbal S.A.T. score in the eighty-fifth percentile or above.

The act established a nine member scholarship committee as follows:

16-37-3. Scholarship committee -- Members -- Meetings-- Officers. -- There is hereby established the best and brightest scholarship committee, consisting of nine (9) members: one shall be the commissioner of elementary and secondary education, or the commissioner's designee; one shall be the commissioner of higher education , or the commissioner's designee; one shall be the president of the Rhode Island federation of teachers, or the

president's designee; one shall be the president of the Rhode Island association of school committees, or the president's designee; one shall be the president of the Rhode Island association of superintendents of schools, or the president's designee; one shall be the executive director of the Rhode Island higher education assistance authority, or the directors designee; and two (2) shall be the parents of public or private school students, to be appointed by the governor for a two(2) year term commencing on September 1, 1987. The commissioner of elementary and secondary education shall call an organizational meeting of the committee on or before September 1, 1987. The committee shall thereafter elect a chairman, vice chairman, secretary, and treasurer for one year term, the first term commencing September 1, 1987.

This scholarship committee was granted certain powers:

- 16-37-4. Scholarship committee -- Powers.--The committee is authorized and empowered:
- (a) To adopt rules and regulations designed to implement the provisions of this chapter;
  - (b) To adopt selection criteria, consistent with this chapter, for best and brightest scholars;
  - (c) To select annually the best and brightest scholars;
  - (d) To grant appropriate extensions pursuant to §16-37-8;
  - (e) To supervise the disbursement of the best and brightest scholarship fund;
  - (f) To work in cooperation with the Rhode Island higher education assistance authority which is directed to provide the committee with staff assistance necessary to carry out the purposes of this chapter;
  - ((g) To receive donations and grants from sources including, but not limited to, the federal government, governmental and private foundation, and corporate and individual donors; these donations and grants to be deposited in the scholarship fund. (Emphasis added)

The Committee does not ever appear to have used its authority to promulgate rules and regulations in accordance with the Administrative Procedures

Act, G.L. 42-35-1, et seq. Therefore the only type of rules which it could have issued would be "interpretive rules" rather than "legislative rules." The distinction between "legislative rules" and "interpretive rules" was discussed by our Supreme Court in a case entitled Lerner v. Gill, 463 A.2d 1352, at 1358, the Court stated:

A legislative rule is the product of an exercise of delegated legislative power to make laws through rules whereas an interpretive rule is any rule an agency issues without exercising the delegated legislative power to make law through rules. The validity of a legislative rule depends upon whether it is within the power granted by the Legislature, issued pursuant to proper procedure, and reasonable as a matter of due process. Once the validity of such a rule is established, it is as binding on a court as a valid statute. Interpretive rules, on the other hand, do not have the force of law. Courts may substitute their judgment for that of the administrative agency in deciding whether or not to enforce an interpretive rule. Although a court may choose to defer to an agency's judgment, it is not required to do so. See Niles v. Boston Rent Control Administrator, 6 Mass. App. Ct. 135, 374 N.E.2d 296 (1978); General Electric Credit Corp. v. Smail, 584 S.W.2d 690 (Tex. 1979).

Instead of directly exercising its legislative delegation authority under G.L. 16-37-4(c) "(t)o select annually the Best and Brightest Scholars" the scholarship committee elected to sub-delegate this authority to a selection panel made-up of staff members of the Rhode Island Higher Education Assistance Authority. We see this decision as an exercise of the committees authority to make interpretive rules. The appellant challenges this "sub-delegation." The test for determining whether a sub delegation is valid is primarily a question of statutory interpretation." In Re Advisory Opinion to the Governor, 627 A.2d 1246 (1995). We find statutory authority for this sub-delegation in G.L. 16-37-4(a) which empowers the scholarship committee to make rules and regulations and in G.L. 16-37-4(f) which empowered the committee "(t)o work in cooperation with the Rhode

Island Higher Education Assistance Authority which is directed to provide the committee with staff assistance necessary to carry out the purposes of this chapter." If the committee felt that staff assistance was needed in making scholarship decision it was entitled to use staff for the purpose.

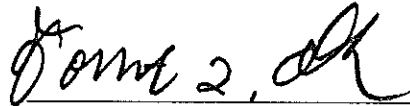
The petitioner also challenges the selection criteria used. She points out that one of the statutory criteria for entrance into the scholarship competition is being "in the top ten percent(10%) of the applicant's graduating class." In practice this standard was interpreted to include any student above the 89th percentile. As a matter of formal mathematics it might well be said that a mistake has been made here. Still the committee was faced with a situation where different school districts had used slightly different methods of calculating class rank and of rounding off figures. We think it was permissible for the selection committee to adopt a very slightly relaxed definition of "top 10%" so as to include students who might have met the strict criteria if class rank had been determined in a more uniform way. Moreover in this particular case it is hard to see how including one or two more students in the scholarship pool worked any real harm on the petitioner.

The petitioner also objects to the way in which the final selection of the candidates was made. In essence all candidates who had met the minimum selection criteria set out on the statute were placed in a common pool. An interview process was used as the final screening measure. While some attention was paid to the student academic standing during the interview this occurred only when interview results were seen as to close to call. Petitioner argues that any scholarship program the goal of which is to find the "best and brightest" should not be quick to use a five minute interview as a main ranking device. While the case is arguable here we do not think that the interview process and selection method used by the committee was arbitrary, capricious, or unreasonable. It was not

perhaps the best method which could have been chosen but we are confident that it was legally permissible.

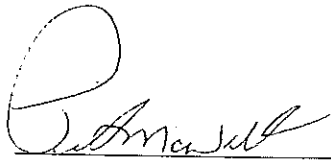
Conclusion

For the reasons stated in this decision petitioner claim must be denied and dismissed.



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

7/7/95

Date