

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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 IN RE: APPEAL BY THE EAST PROVIDENCE \*  
 SCHOOL COMMITTEE REGARDING FUNDING \*  
 OF SCHOOLS FOR FISCAL YEAR 1994-1995 \*  
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Decision on Motion to Dismiss the Appeal  
of the East Providence School Committee

Held: The Motion to Dismiss is denied.

Date: September 5, 1995

### Travel of the Case

On May 15, 1995 the Chairperson of the East Providence School Committee, Maria E. Pinheiro filed an appeal with Commissioner Peter McWalters. The appeal sought assistance from the Commissioner in reconciling the 1994-1995 school budget which projected operating costs and expenses in excess of the appropriation of \$41,112,031.

The request for assistance was treated as an appeal under R.I.G.L. 16-39-1, and the undersigned was designated to hear the dispute on May 25, 1995. At the request of the parties a pre-hearing conference was scheduled for July 12, 1995 at which time a tentative hearing schedule was agreed upon. Also, pursuant to R.I.G.L. 16-39-8, subpoenas were issued, and as a result considerable documentary and other information was exchanged by the parties.

When the parties convened for hearing on July 26, 1995, counsel for the city of East Providence indicated his intent to raise preliminary issues relating to jurisdiction. At that time, hearing on the merits was deferred to give counsel opportunity to prepare and file a motion to dismiss on the basis of lack of jurisdiction, and to give counsel for the school committee opportunity to prepare and file his response to that motion. On August 4, 1995 the city of East Providence moved to dismiss the appeal of the school committee, and filed a memorandum supporting the motion. On August 9, 1995 the school committee filed its objection and a written memorandum in support of its position that the Commissioner does have jurisdiction to hear its appeal. Hearing on the motion to dismiss took place on August 17, 1995.

### Findings of Relevant Facts

- The East Providence School Committee and its school department have a fiscal year which begins November 1 and ends on October 31. Testimony of Dr. Patricia A. Daniel, Superintendent of Schools of East Providence.

- On May 11, 1995 the school committee determined that its appropriation from the city of East Providence for fiscal year 1994-1995 was insufficient to meet contractual requirements and educational mandates. Letter of appeal dated May 11, 1995. Prior informal attempts to reconcile the school budget with the amount appropriated for school operations were unsuccessful. Letter of appeal dated May 11, 1995. Testimony of Dr. Patricia Daniel.
- On July 3, 1995 Governor Lincoln Almond signed into law P.L. 95-173, amending Title 16 Chapter 2 to add Section 16-2-21.4 entitled "School Budget Compliance with certain Requirements".
- Despite the insufficiency of funds for this fiscal year, the East Providence School Committee has not submitted to the Auditor General a plan for corrective actions which would enable the school committee to operate schools in fiscal year 1994-1995 without incurring a deficit, as required by R.I.G.L. 16-2-9 (e) (Stipulation of counsel).
- Reports to the Department of Elementary and Secondary Education have been prepared pursuant to R.I.G.L. 16-2-21 (1), regarding estimates and recommendations of the amounts necessary to be appropriated for the support of public schools in East Providence. The report for the year ending June 30, 1994 was prepared and the report for the year ending June 30, 1995 was both prepared and filed with the Department of Elementary and Secondary Education. City of East Providence Exhibits 2 and 3; Testimony of Dr. Patricia Daniel.
- An annual report to the city of East Providence setting forth the school committee's doings, the state and conditions of the schools, and plans for their improvement, also required under R.I.G.L. 16-2-21(1)(C), was not made for the current fiscal year.
- The school committee of the city of East Providence did not conform its 1994-95 school budget to the amount appropriated by the city council within thirty (30) days of the making of the appropriation, as required by R.I.G.L. 16-2-21(2)<sup>1</sup>.
- According to the testimony of both Superintendent Daniel and Leah E. Foster, Director of the School Budget, the school committee will not be able to meet all of its contractual obligations and provide mandated programs and services

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<sup>1</sup>We would note that R.I.G.L. 16-2-9(d) requires a conformed school budget within thirty (30) days after the close of the first and second quarters of the state's fiscal year.

with its present appropriation from the city when school opens in September, 1995.

### Decision

The city of East Providence advances three grounds for dismissal of the school committee's appeal. The first is that in its response to information requested in subpoena duces tecum the school committee "conceded" that it is in compliance with all mandates even without any additional appropriation for the fiscal year ending October 31, 1995. In his memorandum, counsel for the city of East Providence argues that the school committee's appeal should be dismissed because the school department is "not entitled to ask for additional funds in order to exceed mandates required by law". Testimony at the hearing of August 17, 1995, although not an in-depth analysis of the nature and extent of any existing budgetary insufficiency,<sup>2</sup> established that there is a cash-flow shortage at the present time. In fact, the business manager, Leah E. Foster testified that a "hold" has been placed on school department funds by the city so that, at the very least, payroll and employer taxes can be paid when due. Ms. Foster testified that limited funds are therefore available for other expenses for the remainder of the fiscal year. Superintendent Daniel indicated that certain mandates will not be able to be met when schools open in September and that at the close of the fiscal year there will be bills that cannot be paid, if additional funds are not made available to the school department. Therefore, in the limited factual inquiry conducted in the hearing on its motion to dismiss, the city failed to establish that East Providence schools had received sufficient funds for its fiscal 1995 operations.

The second ground for dismissal of this appeal was the school committee's failure to comply with certain provisions of R.I.G.L. 16-2-9 and 16-2-21. In particular, the school committee has failed to conform its budget within thirty (30)

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<sup>2</sup>Obviously such a presentation would be the focus of the school committee's case in any hearing on the merits of its appeal before the Commissioner.

days of the appropriation for fiscal 1995, failed to prepare a corrective action plan for submission to the city after approval by the Auditor General, and failed to submit an annual report of its doings to the city at the annual appropriations meeting of the city council. It is the city's position that the school committee's failure to comply with the provisions of law cited preclude it from seeking additional school funds.

While we agree with counsel for the city of East Providence that it is not in the public interest for school committees to ignore statutory requirements governing formation of school budgets or to by-pass requirements applicable in times of fiscal crisis, we do not believe the public interest would be served by depriving the East Providence School Committee of its opportunity to seek additional funds which may be necessary to allow city schools to continue operations in conformity with law for the remainder of the fiscal year, and to enable the committee to meet its contractual commitments.

School law does not condition a school committee's right of appeal on compliance with its obligation to file certain reports and plans, or to conform its budget. Even with the addition of R.I.G.L. 16-2-21.4, a legislative amendment effective July 3, 1995, state law does not condition a school committee's right to seek an additional appropriation on compliance with any other provisions of law. Despite counsel's argument that the newly enacted Section 16-2-21.4 does impose these precise, preconditions to an appeal, our review of P.L. 95-173 does not support such a conclusion. Although counsel argues that 16-2-21.4 constitutes a statutory declaration that "you (i.e., school committees) must adhere to the processes set forth in Title 16 Chapter 2", we find no such language. What is re-emphasized by R.I.G.L. 16-2-21.4 is that a school committee must adhere to its

appropriated budget or the provisions of 16-2-23<sup>3</sup>, even if it makes a determination that its budget (appropriation) is insufficient and follows the new processes for amending its budgetary requirements and seeking additional funds. Thus, while we certainly do not wish to encourage school committees to avoid applicable statutory provisions<sup>4</sup> relative to corrective action plans, conforming of school budgets, etc., we decline to dismiss this appeal because of the failure of the East Providence School Committee to do all that the law requires when it determined its appropriation was insufficient.

As a final ground, the city urges dismissal of this matter because of the legislature's passage of P.L. 95-173, which adds the previously referenced Section 16-2-21.4 to Title 16. This newly-enacted provision of law would, *inter alia*, provide for adjudication of school budgetary disputes in the Superior Court for Providence County, rather than in an administrative hearing before the Commissioner or his designee.

A review of the so-called Caruolo bill reveals other prominent features in addition to a change in the forum for adjudication of budgetary disputes. Major provisions of 16-2-21.4 include:

- the filing of a mandatory petition to the Commissioner to seek alternatives to compliance or waivers to compliance with state education regulations that would allow the school committee to operate with a balanced budget.
- the Commissioner's consideration of alternatives and/or waivers which do not affect the health and safety of students and staff or violate the provisions of Chapter 16-24.
- conditional request of the city or town council to decide whether to increase the appropriation for schools.

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<sup>3</sup>Which permits school committees to expend any unexpended balance from the expired fiscal year and an amount no more than one-twelfth (1/12) of the amount appropriated the preceding year in the interval between the close of the town fiscal year and the making of the annual appropriation.

<sup>4</sup>And stand ready to enforce such provisions upon appeal to the Commissioner.

- conditional right to bring a Superior Court action for additional appropriations.
- opportunity to obtain a court order to increase the appropriation (the order is to have force and effect only during the fiscal year for which the litigation is brought).
- a required financial and program audit upon the bringing of an action in Superior Court.

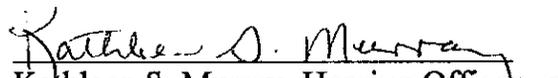
We view the provisions of 16-2-21.4 as a mixture of substantive and procedural elements, all of which our Legislature has clearly stated are to "take effect upon passage". There is no ambiguity or need to discern legislative intent when such a clear expression of intent accompanies a legislative enactment. Hydro Manufacturing, Inc. 640 A.2d 950 (R.I. 1994). It would be contrary to the clearly expressed intent of the Legislature in applying any of the provisions of 16-2-21.4 to the dispute regarding funding for East Providence schools for fiscal 1994-95.

Even if the Legislature has indicated 16-2-21.4 was to operate retroactively, it would be impossible for this legislation to operate as contemplated in terms of requiring or allowing the school budget to be reduced for this fiscal year by implementation of alternatives or waivers from applicable regulations. Only two and one half months of the fiscal year remain. For the entire school year which ended in June of 1995, the East Providence School Committee was under no statutory obligation to seek alternatives or waivers to applicable state regulations which may have decreased their budgetary requirements. Thus, they proceeded through most of the school year governed by different rules. It would be manifestly unfair to apply a new system of budgetary requirements retroactively in this case.

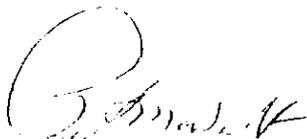
On both a practical, as well as a legal basis, we conclude that the provisions of 16-2-21.4 are inapplicable to this budgetary dispute. To give the act retroactive

application would be contrary to the express language used by our Legislature. To attempt to apply it to the East Providence School Committee at this point in its fiscal year/school year would be an exercise in futility.

For this foregoing reasons, the motion to dismiss is denied.

  
Kathleen S. Murray, Hearing Officer

Approved:

  
Peter McWalters, Commissioner

Date: September 5, 1995