



## Introduction

The Town of Portsmouth is seeking the dismissal of an appeal filed by the Portsmouth School Committee regarding the sufficiency of the Town's appropriation for the 1995-96 fiscal year.

For the reasons set forth below, we deny the Town's motion to dismiss.

## Background

By letter dated May 25, 1995, Superintendent of Schools Mario Mancieri notified the Commissioner of Education of the School Committee's decision to institute proceedings to resolve a dispute concerning the sufficiency of the school budget approved by the Town Council for the 1995-96 school year. The undersigned was designated to hear and decide the dispute, and a pre-hearing conference was conducted on June 29, 1995. A statement of Mr. Mancieri's background and qualifications was submitted at the pre-hearing conference, and the parties agreed to several hearing dates.

On July 3, 1995, Public Law 95-173 was enacted. This law added 16-2-21.4 to Title 16 of the Rhode Island General Laws. It requires, inter alia, that school budget disputes be adjudicated in the Superior Court for Providence County.<sup>1</sup>

Prior to the first hearing date, the Town indicated its intent to request the dismissal of the School Committee's action for lack of jurisdiction. The Town formally presented its motion to dismiss at the initial hearing date of July 28, 1995, at which time the parties

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1 Prior to the enactment of 16-2-21.4, school budget disputes were resolved in administrative hearings before the Commissioner of Education or his designee.

argued their respective positions. Both parties submitted additional argument in memoranda received on September 13, 1995.

### Positions of the Parties

The Town's motion to dismiss is based on the following arguments: (1) the Commissioner's jurisdiction to hear this dispute has been eliminated by the enactment of R.I.G.L. 16-2-21.4; (2) the Superintendent's May 25, 1995 request was premature because the school budget was based on estimated, not actual, state aid at that time; and (3) the School Committee failed to comply with its "Balanced Budget Plan" policy which states that the Committee shall "follow the procedure outlined in the Town Charter and try to call for a special financial town meeting to ask for additional funds" when estimated expenses exceed total available appropriations.<sup>2</sup>

The School Committee contends that the newly-enacted R.I.G.L. 16-2-21.4 imposes additional expenditures on the school district which, according to R.I.G.L. 43-2-25(b),<sup>3</sup> mandates an effective date of July 1, 1996. The Committee argues that R.I.G.L. 16-2-21.4 is substantive in nature and therefore should be applied prospectively.

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2 The Town attached the School Committee's policy and an excerpt from the Town Charter to its memorandum. The Town Charter provision states that "[w]ithin two (2) weeks of the final Town Budget, a Town Meeting of the duly qualified electors of the Town may be called, by petition of not less than ten percent (10%) of said duly qualified electors presented to the Town Clerk; the purpose of said Town Meeting shall be limited to a reconsideration of the final budget of the Town as adopted by the Town Council and said Town Meeting may increase or decrease the total amount of either the School Department Budget, or the Town Budget, or both."

3 R.I.G.L. 43-3-25(b) states that "[a]ny statute enacted which requires any new expenditure of money or any increased expenditure of money by a city or town which states that it shall take effect upon passage, such effective date shall be deemed to mean July 1st of the calendar year following the year of enactment unless a specific date of enactment is stated."

The Committee also relies on a recent Superior Court decision involving another school district which held that the Commissioner retained jurisdiction of a budget dispute.<sup>4</sup>

### Discussion

As previously noted, the School Committee referred this budget dispute to the Commissioner on May 25, 1995. On July 3, 1995, Public Law 95-173 was enacted. The final provision of the law states that it "shall take effect upon passage."

We recently declined to apply the newly-enacted R.I.G.L. 16-2-21.4 retroactively, stating that to do so "would be contrary to the express language used by our Legislature." In Re: Appeal by the East Providence School Committee Regarding Funding for Schools for Fiscal Year 1994-1995, September 5, 1995, pp. 7-8. While a separate rationale for our decision in the East Providence case was based on practical considerations which are not fully applicable here, we nevertheless find the legal basis for that decision to be controlling.

We find further support for our interpretation of R.I.G.L. 16-2-21.4 in several recently-decided Superior Court cases.<sup>4</sup> These cases hold that the statute is not to be construed as operating retroactively, and that it shall apply to appeals from school budget disputes which arise after the statute's date of passage, i.e., July 3, 1995.

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4 Beil v. Chariho Regional School Committee et al., C.A. No. 95-4209; City of Warwick v. Warwick School Committee et al., C.A. No. 95-4782; and Town of Narragansett v. Narragansett School Committee et al., C.A. 95-5145. The Beil case is on appeal to the Rhode Island Supreme Court (95-502-A). The Supreme Court denied a motion to stay the Superior Court judgment in the Warwick case, which also is on appeal (95-545-A). The appeal period in the Narragansett case had not expired as of the date of this decision.

Given these decisions, and the facts showing that the School Committee invoked the Commissioner's process and participated in a pre-hearing conference with regard to this budget dispute prior to July 3, 1995, we conclude that jurisdiction to hear and decide this case properly rests with the Commissioner of Education.<sup>5</sup>

We therefore deny the Town's motion to dismiss this action.

  
Paul E. Pontarelli  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner of Education

Date: October 20, 1995

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- 5 We do not find merit in the Town's contention that this proceeding is premature because the School Committee acted upon an estimated state aid allocation. Under R.I.G.L. 16-2-21(2), a school committee must amend its budget within 30 days of the town's appropriation if the amount appropriated is less than that which the school committee recommended as being necessary to support the public schools for the ensuing fiscal year. The school committee retains the responsibility under R.I.G.L. 16-7-23 to provide in its budget "for an amount from all sources sufficient to support the basic program and all other approved programs shared by the state." To the extent the school committee cannot reconcile this responsibility with the town's appropriation pursuant to R.I.G.L. 16-2-21(2), it must act expeditiously to seek a resolution of the dispute. Given these statutory directives, we do not believe that the school committee is precluded from presenting the matter to this forum prior to the passage of the state budget and the finalization of its state aid allocation. As for the School Committee's alleged failure to follow its "Balanced Budget Plan" policy, we find no basis to dismiss this action prior to the taking of any testimony or other evidence regarding the School Committee's efforts to comply with the policy.