

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

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 IN RE: COACHING CERTIFICATE \*  
 OF PAUL D. RIZZO \*  
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DECISION

Held: Despite his recent felony conviction, the petitioner has demonstrated his fitness to continue to hold a coaching certificate.

Date: October 24, 1995

### Travel of the Case

The Rhode Island Department of Elementary and Secondary Education notified Paul Rizzo of its intent to recommend that his coaching certificate be revoked on February 1, 1995. Through his attorney, Mr. Rizzo requested a hearing which took place on May 24, 1995. The transcript in this matter was received on June 16, 1995 at which time the record in the case closed.

### Issue

Does "cause" exist for revocation of Paul Rizzo's coaching certificate?

### Findings of Relevant Facts

- Paul Rizzo presently holds a coaching certificate issued by the Rhode Island Department of Elementary and Secondary Education. (Department Ex. A)
- He has been on the coaching staff at North Providence High School, as a coach of girls softball and boys basketball, since the 1988-1989 school year. (Tr. pp. 36, 50)
- During the period November 1992 through January 26, 1993, Mr. Rizzo participated in an illegal sports gambling operation located at Smith Street, North Providence, Rhode Island. (Tr. pp. 10-15)
- On or about June 13, 1994 Paul Rizzo entered a plea of nolo contendere and was convicted of engaging in an organized criminal gambling business and conspiracy to engage in an organized criminal gambling business. (Department Ex. D)
- For each conviction, Mr. Rizzo received the sentence of a five thousand (\$5,000) dollar fine and five year suspended sentence. (Department Ex. D).
- Mr. Rizzo's participation in the gambling operation consisted of permitting an acquaintance to utilize Rizzo's apartment to conduct gambling activities. (Tr. pp. 10-11, 118-120).

- Occasionally, Mr. Rizzo would hand the telephone to this individual or take messages as to the identity and telephone number of the person making the incoming call. (Tr. pp. 13, 120).
- At its inception, this person's use of Mr. Rizzo's apartment for illegal sports gambling was without his knowledge, and Rizzo understood the purpose of the acquaintance's coming to stay with him was to give him an opportunity to work out some marital difficulties. (Tr. pp. 118-121).
- After a week or two, Mr. Rizzo became aware of the nature of the telephone calls and the fact that the use of his apartment was to facilitate this other individual's conducting an illegal sports gambling operation. (Tr. pp. 114-115; 118-121) With reservations, he continued to permit the bookmaking operation to take place at his apartment, even after he acquired knowledge of what was going on, for a period of approximately two months. (Tr. pp. 114-115; 118-121).
- Paul Rizzo did not receive any proceeds from the gambling operation which was conducted from his apartment or profit from these activities in any way. (Tr. pp. 125-126).
- In the North Providence community, Paul Rizzo is known as an accomplished, dedicated and compassionate coach, who, since his conviction has still continued to gain the respect of students, parents of the children he coaches, his supervisors and co-workers at North Providence high school. Testimony of Diane Sparling, Donald Pastine, John K. Aurecchia, Joseph McDonald and Anthony Carbone. Tr. pp. 28-103.
- Despite his felony convictions, Paul Rizzo's overall impact on the children he coaches has continued to be that of a positive role model. (Tr. pages 28-103) He has been intent on using his coaching skills and rapport with children to prevent them from getting into trouble as he did. Tr. pp. 92-102, testimony of Anthony Carbone; Tr. pp. 86-87, testimony of Joseph P. McDonald; Tr. pp. 77-81, testimony of John K. Aurecchia.

### Decision

Annulment or revocation of coaching certificates issued by the Department of Elementary and Secondary Education is governed by the same standards as that for certified

teachers in our state. As used in R.I.G.L. 16-11-4 "cause" for such annulment exists when a certified professional is shown to be unfit to perform his or her professional duties. There is substantial precedent in our state that a criminal felony conviction, together with underlying misconduct, is sufficient evidence that a teacher or a coach is professionally unfit. This is true even when the conduct has occurred off school premises. See e.g. In Re: Revocation of Coaching Certificate of Peter Slom<sup>1</sup>; Department of Education v. Paul J. Wenz<sup>2</sup>. In the Wenz case the basis for revocation was illegal gambling activity and resulting criminal convictions. We assume, although we are unable to tell from the text of the decision in Wenz, that he violated the same criminal laws of which Paul Rizzo stands convicted. The task of the hearing officer in such cases is not limited to verification of the criminal violation. We are charged to review all relevant factors relating to the individual's present fitness to be certified.

Certainly the conviction of any felony under state law creates a presumption that the person holding the certificate is unfit and can alone be sufficient basis for suspension (or revocation) of the certificate. Hainline v. Bond, 824 P.2d 959 (Kan. 1992). However, under Rhode Island law, no automatic disqualification from teaching or coaching

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<sup>1</sup>Decision of the Commissioner dated September 15, 1992.

<sup>2</sup>Decision of the Commissioner dated May 27, 1992.

results from a felony conviction<sup>3</sup>. The lack of a per se disqualification by statute or regulation permits the licensed individual to show that unlike convicted felons in general, he or she is qualified for the certificate. supra, Hill v. Gill, 1038 (see the discussion regarding substantive due process).

Mr. Rizzo utilized fully his opportunity to demonstrate that unlike most convicted felons, he is still professionally fit to function as a coach for high school students. It is our conclusion that he has been successful in demonstrating his continued fitness, and that he has overcome the prima facie case made by the Department of Education.

- A. Mr. Rizzo has demonstrated that his criminal involvement probably resulted from a mistake in judgment, rather than bad character.

Generally speaking, conviction of a serious crime indicates the inability or unwillingness of a teacher (or a coach) to obey the laws of the state, or to otherwise act in accordance with traditional moral principles. The record in this case clearly documents Mr. Rizzo's continued ability to distinguish right from wrong and act in conformity with this distinction. He clearly perceives that what he did was inexcusably wrong, especially given his own family background. He has taken full responsibility for his actions. When presented with an opportunity at the hearing

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<sup>3</sup>See Hill v. Gill, 703 F.Supp. 1034, 51 Educ. L. Rep. 858 (D.R.I. 1989), a case upholding the automatic disqualification of school bus drivers convicted of a felony.

to rationalize his conduct or otherwise diminish his own responsibility for his actions<sup>4</sup> Rizzo declined to do so.

Review of the record indicates that Paul Rizzo's participation in the organized criminal gambling activity was limited in both time and extent, and was not for purposes of any personal profit. He testified that he did in fact let this friend use his apartment for bookmaking purposes for the time period of approximately two months. Initially the friend approached Mr. Rizzo with the request to stay at his apartment while he worked out some marital difficulties. Mr. Rizzo agreed, and it was not until later on that he became aware that the friend was using his telephone for gambling activities. When he did become aware of what was going on, Rizzo did ask, but did not insist, that the friend find another location from which to conduct his business. At no time did Rizzo accept any money for his role in facilitating the criminal activity conducted from his apartment. He is culpable, and criminally responsible, for his part in these activities, however his involvement in organized gambling was clearly not as extensive as that giving rise to similar convictions in the Wenz case. Based on the facts and circumstances of the criminal conduct here as well as Mr. Rizzo's own testimony we are persuaded that he made an isolated mistake in judgment, rather than being unable or unwilling to conform his behavior to our laws.

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<sup>4</sup>Counsel for the Department asked Mr. Rizzo if one of the principal conspirators threatened him or placed him in fear - to which Mr. Rizzo responded that he did not. Tr. p. 121.

B. Mr. Rizzo has demonstrated his continued ability to function as an exemplar for students.

We totally accept the testimony of the Department's expert witness that school children emulate the person coaching them and that Mr. Rizzo's convictions pose a threshold impediment to his functioning as a role model. However, based on all of the facts and circumstances on the record here, the difficulties posed by his status as a convicted felon need not prevent and have not prevented Mr. Rizzo from serving as a positive influence on the character development of the students he coaches. Several factors in the record support this conclusion.

Testimony from several of his supervisors and associates, as well as parents, attest to his extraordinary talents as a coach. Many witnesses described the tremendous rapport he is capable of establishing with students. Given our analysis that his misconduct was, indeed, a mistake in judgment<sup>5</sup> and given Paul Rizzo's own testimony and his perspective that he must use his talents to help others avoid similar mistakes, we are convinced that his overall impact on students will likely continue to be a positive one.

In addition, those testifying from the North Providence High School community emphasized their continued assessment of Mr. Rizzo as a person of good character,

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<sup>5</sup>Again, given the limited, isolated involvement of Paul Rizzo in the bookmaking operation, we find it has been shown to be "out of character".

despite his criminal conviction. Their knowledge of his peripheral involvement in the crimes, and their substantial opportunity to observe Paul Rizzo at games, practices, and other community activities validate their assessment of his character. Testimony of supervisors and professional associates confirmed his continuing ability to be a positive influence on students.

While the Department has certainly raised the question of his ability to function as a good role model, Mr. Rizzo has demonstrated by competent evidence that he is likely to overcome the impediment resulting from his criminal convictions. We conclude that questions raised concerning his fitness to continue as a coach must, on this record, be resolved in Paul Rizzo's favor, given our duty to conduct "a careful and reasoned inquiry" on this issue. Morrison v. State Bd. of Ed., 461 P2d 37J, 394; West Valley Mission Community College District v. Concepcion, 2 Cal Rpr 2d5 (Cal app. 6 Dist 1993).

We do require, however, that Mr. Rizzo disclose to any prospective employer (in the teaching or coaching field) the fact of his conviction unless the record of his conviction has been expunged under provisions of Rhode Island law. Furthermore should he at any future point be arrested for violation of the criminal laws of any state, including Rhode Island, he must immediately advise the Commissioner of Elementary and Secondary Education of this fact in writing.

Mr. Rizzo's appeal is sustained.



Kathleen S. Murray  
Kathleen S. Murray  
Hearing Officer

Approved:

Peter McWalters  
Peter McWalters, Commissioner

October 24, 1995  
Date