

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

PORTSMOUTH SCHOOL COMMITTEE

V.

PORTSMOUTH TOWN COUNCIL

Decision

Held: Portsmouth Town Council did not retain tuition payments for out-of-district students in violation of R.I.G.L. 16-2-19.

Date: January 8, 2004

Introduction

This matter concerns a petition by the Portsmouth School Committee alleging that the Portsmouth Town Council violated Rhode Island General Law 16-2-19 by retaining tuition payments from Little Compton for students attending Portsmouth High School.¹

For the reasons stated below, we do not find a violation of R.I.G.L. 16-2-19 in this case.

Background

Beginning with the 2002-2003 school year, Portsmouth High School became the “high school of record” for students residing in Little Compton. Little Compton agreed to pay Portsmouth an established tuition rate for each Little Compton student attending Portsmouth High School. Little Compton paid Portsmouth \$312,000 in high-school tuition during the 2002-2003 school year. For 2003-2004, Portsmouth anticipated receiving \$669,500 in tuition payments from Little Compton.

At the outset of budget preparations for the fiscal year ending June 30, 2004, the Portsmouth Town Council instructed town departments to strive to keep budget increases within 3%. The School Committee submitted a budget summary to the Town Council which included a comparison of its proposed 2003-2004 budget to its approved 2002-2003 budget. The summary includes two budget totals, one “without Little Compton income,” and one “with Little Compton income.” [Petitioner’s Exhibit G]. The “Anticipated Receipts” section of the summary lists federal, state and local sources of revenue. Local revenue includes monies from “Miscellaneous Receipts,” “Inter-scholastics,” and the Little Compton tuition. The amount of tuition is listed at \$669,500.

The budget summary shows a 6.59% increase for 2003-2004 (\$26,720,906) without the Little Compton income, and a 5.23% increase (\$26,051,407) with the Little Compton income.

In its initial consideration of the School Committee’s budget, the Town Council tentatively approved a budget of \$25,820,614. The School Committee budget was discussed extensively at an April 9, 2003 budget session of the Town Council. The

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the petition. A hearing was held on August 5, 2003. The parties subsequently filed memoranda.

Town's 3% guideline, the \$669,500 in Little Compton tuition, and the application of R.I.G.L. 16-2-19 all were addressed during the meeting.² At one point in the meeting, the Town Council president, in response to audience comments concerning the School Committee's entitlement to the Little Compton tuition payments, stated that

If you're playing with columns of money, it makes no difference where the money comes from. You're still looking for an amount of spending . . . Whether it comes from the left pocket or the right pocket . . . If we say fine, take all that money because of what you just said because of Title 16, then the other side would reduce it by that amount. I'm just saying . . . where they come from doesn't make a difference . . . We're looking at bottom line spending. [Petitioner's Exhibit B2, pp. 30-31].

Later in the meeting, after a discussion of the fact that not all of the \$669,500 was needed to educate the Little Compton residents attending Portsmouth High School,³ the Town Council president stated that

I just want to say -- say one thing and getting it mixed up in numbers and what money goes where. There is no surplus. The extra money is going to help pay for expenditures of the School Department . . . we can take that money and put it in the bank but we still need that amount of money to pay for the school. So, I mean we're getting mixed up on extra money, it's going to offset the budget to pay for things within the budget . . . the whole school system either needs X amount of dollars or not no matter where it comes from. [Petitioner's Exhibit B2, pp. 41-42].

Eventually, a motion that the provisional School Committee budget be set at \$26,170,614, which was described as 3% plus \$350,000 of the \$669,500 in Little Compton tuition, passed by a vote of 6 to 1.

² R.I.G.L. 16-2-19 is entitled "Children Attending in Adjoining Cities or Towns." It states:

Whenever the school committee of any city or town shall find that it is more convenient or expedient for any child residing in the city or town to attend school in an adjoining city or town, the committee may arrange with the school authorities of the city or town for the attendance of the child at their schools, and may pay for the tuition out of the city or town appropriation for public schools. The amount paid shall be used for school purposes only.

³ School officials observed that the addition of the Little Compton residents to Portsmouth High School would require the hiring of four additional teachers at an approximate expense of \$350,000.

The Town Council conducted a public budget hearing on May 15, 2003. Once again, R.I.G.L. 16-2-19 and the Little Compton tuition money were specifically discussed. During the discussion, the Town Council president stated that a majority of the Town Council

gives a bottom line number on spending. How we get there, quote unquote, is semantics. In many respects, whether you use the money in this column or use the money in that column, the money comes into the general fund as all money does and the School Department has a level of funding approved by the Town Council, so that the money that comes in will go to education. [Petitioner's Exhibit C, tape 1, side 1].

When asked by the audience if the Little Compton tuition money will go to the School Department, the Town Council president replied "of course." When asked if the tuition money will be taken out of the 3% increase, the president replied "that's the way that the bookkeeping would be." Later, an audience member commented that the language of R.I.G.L. 16-2-19 clearly states that the entire tuition money is to be used for school purposes only. The audience member asked if there was some basis for holding back some of the tuition money for non-school uses. The president replied

I'm not saying it's my position, I'm just saying that it's kind of semantics on which pocket it comes out of. All that money goes into the general fund and it's going to come out as part of education to the school system. The majority of the Council is voting on a bottom line. How they got there is 3% plus \$350,000. Ibid.

An audience member noted that if the entire tuition amount were given to the School Department, the Town's 3% increase actually would be reduced to 1%, to which the president responded "I guess if you use that law, I guess, yes, that's what's happening." Ibid.

On May 27, 2003, the Town Council met to adopt its final budget. A motion to give the School Committee a 3% increase plus the \$669,500 Little Compton tuition money was defeated. A motion to set the budget at \$25,945,956, or a 3.5% increase over the previous year, also was defeated. When no other motions were made, the previously-adopted provisional budget of \$26,170,614 became the final School Committee budget.

The final approved budget for the School Committee lists the same local anticipated revenues, including the \$669,500 in Little Compton tuition, as the budget summary previously submitted by the Committee. A net town appropriation of \$20,111,768 is listed, as well as \$6,058,846 in anticipated receipts, for a total School Committee budget of \$26,170,614. The net town appropriation for fiscal year 2004 is \$999,782 more than that of fiscal year 2003.

Positions of the Parties

The School Committee contends that the Portsmouth Town Council violated R.I.G.L. 16-2-19 by adopting a School Department budget that allocated only \$350,000 of the \$669,500 Little Compton tuition payments. It argues that the Council treated the School Committee's budget as having two components: the percentage increase in the general appropriation and the tuition paid by Little Compton. It notes that the prevailing motion at the April 9, 2003 budget meeting establishing the Committee's provisional budget, which by default eventually became the final budget, was based on a 3% increase and \$350,000 of the Little Compton tuition. It asserts that the Commissioner in the Johnston School Committee v. Town of Johnston case rejected the "bottom line" approach used by the Town Council here, and that R.I.G.L. 16-2-19 requires that the Little Compton tuition monies be placed in a restricted fund, outside of the town's budget appropriation. The Committee asks that the Town Council be ordered to restore the balance of the Little Compton tuition, i.e., \$319,500, in a restricted account for the Committee.

The Town contends that the final budget document and the minutes of the Council meetings demonstrate that all anticipated receipts from Little Compton were appropriated to the School Committee. It argues that the political discussions that occurred within the Council during the consideration of different funding levels for the School Department do not change the clear votes of the Council. It asserts that the actual focus of the Council's budget discussions was the net impact on the Town's taxpayers, not the seizure of any monies expected from Little Compton.

Discussion

R.I.G.L. 16-2-19 requires that tuitions received for out-of-district students “shall be used for school purposes only.” This statutory requirement was discussed on numerous occasions during the Town Council’s budgeting process for the 2004 fiscal year. This occurred because the \$669,500 in Little Compton tuition was treated as a separate and distinct element of the School Department’s budget. The other element of the budget, as the School Committee correctly points out, was the percentage increase from the previous year. This latter element is attributable to the Town’s expressed wish to keep department budget increases within 3%.

The record shows that the School Committee itself isolated the Little Compton tuition in the budget summary it presented to the Town Council. As previously noted, that summary provided two budget totals: one “without Little Compton income,” and one “with Little Compton income.” The Town Council did not separate the Little Compton tuition from the School Committee’s budget request. A majority of its members merely chose to work from the School Committee’s budget numbers that did not include the Little Compton tuition. In fact, the Council never removed the \$669,500 in Little Compton tuition from the local anticipated receipts column of the School Committee’s budget. Given that fact, along with the Council president’s recurring statements regarding the Council’s handling of the Little Compton tuition, we find that the School Committee has failed to establish that the Council, when discussing what to do with the \$669,500, was dealing with actual tuition revenue, and not just a number.

Instead, we find that certain numbers discussed by the Town Council during the budget process, including the 3% increase, were indeed “semantics.” This fact was brought to light during the budget hearings and admitted by the Council. It necessarily follows that, if \$669,500 was just a number and not the actual anticipated Little Compton tuition revenue, then 3% was just a number as well, and not a true representation of the actual local contribution to the School Department.

Although we find that the Town Council resorted to some sleight of hand in arriving at the School Committee’s budget, the Council did not violate any laws within the jurisdiction of this forum. For we do not find, nor is it alleged, that the Town Council failed to meet its maintenance-of-effort obligation for fiscal year 2004. Furthermore,

unlike Johnston School Committee v. Town of Johnston,⁴ where the town claimed Medicaid reimbursements as town revenue and listed them that way in the town budget, the evidence in this case does not establish that the Town of Portsmouth took possession of the actual tuition revenue. In addition, the Johnston case was governed by R.I.G.L. 40-8-18, which not only provides that Medicaid payments are to “be used solely for educational purposes,” but further directs that such payments “shall not be made available to local communities for purposes other than education” and that the local fiscal effort to support education “shall not be reduced in response to the availability of these federal financial participation funds to the local education agency.” This is the type of statutory language that requires a restricted receipt account and prohibits the budgetary semantics that were used in this case. R.I.G.L. 16-2-19, the statute that governs this case, does not contain this type of language.

Because the Town Council’s final budget lists the entire amount of Little Compton tuition as School Committee revenue, and because the overall Town appropriation for fiscal year 2004 exceeds that of fiscal year 2003 by more than \$669,500, we hold, in the circumstances of this case, that the Town Council did not violate R.I.G.L. 16-2-19.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: January 8, 2004

⁴ Decided April 1, 2003.