

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

**Cranston School District &
Chariho Regional School District**

v.

Rhode Island Department of Education

.....

DECISION

Held: In this appeal the Cranston School District and Chariho Regional School District are requesting reimbursement from the state for salaries they have paid to directors and guidance counselors employed in the Regional Vocational Schools that these two districts operate. The motion of the Rhode Island Department of Education to dismiss the above entitled matter is granted.

DATE: January 21, 2010

Jurisdiction and Travel of the Case

In this appeal the Cranston School District and Chariho Regional School District are requesting reimbursement from the state for salaries they have paid to directors and guidance counselors employed in the Regional Vocational Schools that these two Districts operate. The Districts contend that the state should have been paying for these salaries in accordance with Board of Regents' regulations. Jurisdiction is present under R.I.G.L.16-39-1 and R.I.G.L. 16-39-2. This matter is now before us on a motion of the Rhode Island Department of Education (RIDE) to have this matter dismissed.

Positions of the Parties

Position of the School Districts

The petitioning school Districts, the Cranston School District and the Chariho Regional School District, contend that the Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island¹ require 100% state funding of the salaries of directors and guidance counselors at the Regional Career and Technical Centers operated by these school committees.² The Districts further submit that these salaries have not, in fact, been funded by the state for many years. The Districts therefore request the state to fund these positions and to retrospectively reimburse the Districts for the sums the Districts have spent to fund these positions.

Position of the Rhode Island Department of Education (RIDE)

RIDE contends that the Commissioner lacks jurisdiction to decide this matter and that this matter is barred in whole or in part by the statute of limitations and the doctrine of sovereign immunity. On the merits of the case, RIDE contends that R.I.G.L. 16-7.1-19 (Vocational technical equity fund) and, presumably, its statutory predecessor, R.I.G.L.16-45-7 (Annual appropriations) trump whatever regulations concerning salaries that might have been enacted by the Board of Regents.

Findings of Fact

For purposes of the present case Regional Vocational Schools in Rhode Island may be said to fall into two categories.³ The first category consists of Regional Vocational Schools that are directly and entirely funded by the state. The Davies Vocational School, the Providence Metropolitan School and the Newport Metropolitan School fall into this first category. The second category consists of Regional Vocational Schools that are funded by tuition payments from sending school districts. These tuition based Regional Vocational Schools are administered by a school district located in the region. In the present matter we are dealing with Regional Vocational Schools that are respectively administered by Cranston and the Chariho Regional School District.

¹ Adopted on July 19, 1990.

² See: Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island, at IV.A.2. and IV.A.3

³ For background see: "A History of State Vocational Education in Rhode Island." (Ph.D. thesis, 1982, John Wilkinson, formerly of the Rhode Island. Department of Education.

The facts of this case are not in material dispute. Sections IV.A.2 and IV.A.3 of the Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island specify that director and guidance counselor positions at Regional Vocational High Schools, “*shall be reimbursed 100% by the state....*” (Emphasis added) Despite this regulation it has been many years since any such reimbursement has been provided by the State. In fact, nothing in the record before us shows that such sums have ever been paid.

Conclusions of Law, Relevant Statutes & Relevant Regulations

1. The Rhode Island Supreme Court has stated: “It is a basic tenet of administrative law that the rule-making power of an administrative body may not abrogate state law dealing with the same subject.”⁴
2. The Rhode Island Supreme Court has stated: “We have held that a public official may not expend public funds in the absence of a valid appropriation by the Legislature. *In re John Doe*, 120 R.I. 885, 896, 390 A.2d 390, 396 (1978) We have further held in *Roe v. Affleck*, 120 R.I. 679, 691-92, 390 A.2d 361, 368 (1978), that although an applicant for medical benefits was eligible for assistance under the relevant statute, the director of the Department of Mental Health, Retardation, and Hospitals could deny such assistance because the Legislature had not provided appropriations to the annual budget adopted by the Legislature in statutory form has all the force of law.”⁵
3. **R.I.G.L. 16-60-4. Board of regents for elementary and secondary education – Powers and duties.** – The board of regents for elementary and secondary education shall have in addition to those enumerated in § 16-60-1, the following powers and duties:

(5) To prepare with the assistance of the commissioner of elementary and secondary education and to present annually to the state budget officer, in accordance with § 35-3-4, *a total educational budget* for the elementary and secondary sector which shall include, but not be limited to, the budgets of the department of elementary and secondary education, subordinate boards and agencies, and state aid to local school districts.

(ii) In the preparation of the budget, the regents shall determine priorities of expenditures for elementary and secondary education purposes of state revenues and other public resources made available for the support of public elementary and secondary education among the various education agencies of the state. *Nothing contained in this section shall authorize any individual or group of individuals to reallocate resources in a manner other than that prescribed in the budget as appropriations by the general assembly.* (Emphasis added)

⁴ *Reback v. Board of Regents*, 560 A.2d 357 (R.I. 1989)

⁵ *State v. Roberts*, 697 A.2d 1075 (R.I. 1997)

4. **R.I.G.L. 16-7.1-19. Vocational technical equity fund.** – (a) The general assembly recognizes the need to support the academic instruction component of vocational education for students enrolled in career and technical education programs. To accomplish this, the general assembly shall appropriate some sum per student for each student who attends a locally operated career and technical center based on the enrollments reported to the department of elementary and secondary education for the reference year as defined in § 16-7-16. The sum shall be five hundred dollars (\$500) per student. Funding under this section will be limited to those students enrolled in programs that are part of the career and technical education system as approved by the department of elementary and secondary education.
(b) For fiscal year 2007, aid received pursuant to this section shall be equal to aid received in the fiscal year 2006 enacted by the 2005 general assembly. (Emphasis added)
5. **R.I.G.L. 16-45-7. Annual appropriations.** – (a) The general assembly shall appropriate any sum as it may deem necessary for the purpose of reducing local district area vocational technical school tuition. (Emphasis added) All districts which send students to state operated schools which are funded through the operations aid formula shall not be entitled to receive funds under this section for students attending those schools.
(b) Each year one hundred percent (100%) of the approved regional vocational school expenditures for the reference year is appropriated. The commissioner of elementary and secondary education shall be responsible for approving regional vocational technical school budgets and eligible programs and shall promulgate rules and regulations for the approval of budget expenditures and operation of the schools. All funds provided by this section will be ineligible for reimbursement under the provisions of chapter 7 of this title.
6. **R.I.G.L. 16-45-9. Vocational education.** – Upon the establishment of full funding of R.I.G.L. 16-45-7, the regulations promulgated by the board of regents for elementary and secondary education for the administration and operation of career and technical schools shall go into effect.
7. **Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island at IV. A. 2:** With the prior approval of the Commissioner of Education, the director of the area vocational-technical center shall be appointed by the superintendent with the consent of the school committee of the administering school district... The director's salary, fringe benefits, and travel expenses shall be set by the school committee with the approval of the Commissioner of Education *and shall be reimbursed 100% by the state.* (Emphasis added)
8. **Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island at IV. A .3:** Area vocational-technical center guidance counselors shall be appointed by the superintendent with the consent of the school committee of the administering school district with the prior approval of the Commissioner of Education. ... Their salaries, fringe benefits, and travel expenses are to be set by the school committee of the administering school district consistent with the appropriate local collective bargaining agreement and *shall be reimbursed 100% by the state...* (Emphasis added)

Discussion

We take it as axiomatic that the Board of Regents has no authority to second guess the appropriation decisions of the General Assembly.⁶ Furthermore the Board of Regents has no authority, “to reallocate resources in a manner other than that prescribed in the budget as appropriations by the general assembly”.⁷ At R.I.G.L.16-7.1-19. (Vocational technical equity fund.) the General Assembly has defined how it appropriates money in support of vocational education:

R.I.G.L. 16-7.1-19. Vocational technical equity fund. – (a) The general assembly recognizes the need to support the academic instruction component of vocational education for students enrolled in career and technical education programs. To accomplish this, the general assembly shall appropriate some sum per student for each student who attends a locally operated career and technical center based on the enrollments reported to the department of elementary and secondary education for the reference year as defined in § 16-7-16. The sum shall be five hundred dollars (\$500) per student. Funding under this section will be limited to those students enrolled in programs that are part of the career and technical education system as approved by the department of elementary and secondary education. (Emphasis added)

(b) For fiscal year 2007, aid received pursuant to this section shall be equal to aid received in the fiscal year 2006 enacted by the 2005 general assembly. (Emphasis added)

The above quoted statute, which is annually amended to reflect the General Assembly’s appropriation decisions, was enacted in 2000.⁸ Until the enactment of R.I.G.L.16-7.1-19 the annual vocational education appropriation decisions in support of vocational education was specified at R.I.G.L. 16-45- 7 at the now vanished paragraphs b and c of that statute.⁹ The statute at R.I.G.L. 16-45-7 now stands for the proposition that someday the General Assembly intends to itself fully fund vocational education in Rhode Island, while the statute at R.I.G.L. 16-7.1-19 demonstrates that this halcyon day has not yet arrived.

We therefore conclude that the vocational education appropriation statutes of the General Assembly, originally at R.I.G.L. 16-45-7 and now at R.I.G.L. 16-7.1-19 obviously trump the Vocational Education Regulations of the Board of Regents (at) providing for 100% reimbursement by the state” for the salaries of directors and guidance counselors at Regional Vocational High Schools.

⁶ *State v. Roberts*, 697 A.2d 1075 (R.I. 1997)

⁷ R.I.G.L. 16-60-4.

⁸ P.L 2000, ch. 55, art.20

⁹ P.L. 2001, ch. 86, sec. 48. (2001, Reenactment)

We have found above that we have jurisdiction in this matter since it arises under laws relating to “schools and education.”¹⁰ Even if jurisdiction was not as clear as it is in this matter the Rhode Island Supreme Court has advised that, when jurisdiction is questioned, it still may be wise in some cases for the Commissioner and the Board to decide a matter on the merits in the event that a reviewing court determines that jurisdiction is present.¹¹

We note also that the petitioners may lack standing to bring this matter.¹² It is also evident to us that sovereign immunity bars this matter.¹³

Conclusion

The motion of the Rhode Island Department of Education to dismiss the above entitled matter is granted.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

Date

¹⁰ R.I.G.L.16-39-1 and R.I.G.L. 16-39-2

¹¹ *In Re Michael C.* 487 A.2d 495, at 498 (R.I. 1985)

¹² *East Providence School committee v. Smith*, 896 A.2d 49 (R.I. 2006)

¹³ *Pelligrino v. Rhode Island Ethics Commission*, 788 A.2d 1119 (R.I. 2002)