

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....
City of Providence

v.

Rhode Island Department of Education
.....

DECISION

Held: Providence's Motion for Judgment as a Matter of Law is denied at this time. This matter will be set down for a hearing on the merits. The parties are requested and required to meet and mark for identification the exhibits that they expect to be submitted during the hearing of this matter. A copy of these exhibits will be provided to the hearing officer before the hearing convenes. This matter will be heard and decided on an expedited basis.

DATE: April 26, 2010

Jurisdiction and Travel of the Case

The Commissioner of Education has jurisdiction to hear cases arising under any law relating to schools or education:

R.I.G.L. 16-39-1 Appeal of matters of dispute to commissioner. – Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved. (Emphasis added)

This case arises under the state’s *Foundation Program for School Housing* which can be found at R.I.G.L.16-7-35 through R.I.G.L. 16-7-47. The Commissioner therefore has obvious jurisdiction to decide this case.

The matter now before us concerns the efforts of the Rhode Island Department of Education (RIDE) to recoup a substantial amount of funds paid to Providence under the state’s *Foundation Program for School Housing*. The basis for RIDE’s claim for recoupment can be found in a document entitled *Final Program Review Determination Letter* issued by RIDE on May 27, 2008. Providence disputes this claim and filed for a hearing under R.I.G.L.16-39-1. Providence has filed a “Motion for Judgment as a Matter of Law.” The purpose of this present decision is to rule on this motion. We address only the legal issues placed before us by the Motion since evidence has not yet been taken in this matter. The parties have filed extensive briefs in this matter which fully canvass the relevant statutes and case law.

Decision on Issues Presented in Providence’s Motion for Judgment as a Matter of Law

1. Does the fact that the General Assembly has made an annual appropriation in statutory form vitiate the requirements of the law and regulations in support of which the appropriation was made?

The Foundation Program for School Housing provides that:

The board of regents for elementary and secondary education will promulgate rules and regulations for the administration of this section.¹

We read the above quoted statutory provision as a direction from the General Assembly that the regulations of the Board of Regents governing the *Foundation Program for School Housing* shall be used as a measuring stick to determine whether or not a school district is acting in a way that comports with the requirements of the Act. We note here that the General Assembly annually appropriates “those sums that it may deem necessary to carry out the purposes of §§ 16-7-35 to 16-7-46 [the *Foundation Program for School Housing*]. Since these statutory provisions

¹ R.I.G.L. 16-7-44

themselves require the Board of Regents to promulgate regulations to govern the *Foundation Program for School Housing* we are sure that validly promulgated Board regulations may be used to determine compliance with the purposes of the Act.² That is to say, that simply because the General Assembly makes an appropriation in statutory form does not wipe out either the requirements of the Act under which the General Assembly has made the appropriation, nor does it vitiate the effectiveness of the regulations that have been promulgated to implement the purposes of the Act. We therefore reject any argument that the General Assembly's appropriations have obviated any need by Providence to comply with the applicable laws and regulations governing the *Foundation Program for School Housing*.

2. Does this matter have to be dismissed on the basis of the Commissioner's alleged inability to grant effective relief? Is Section 1.13 of the School Construction Regulations void for vagueness?

Providence contends that the Commissioner has no statutory authority to recoup funds or grant any relief in the nature of damages. It therefore contends that the Commissioner should dismiss this matter. We, however, reject the notion that it is beyond the authority of the Commissioner to grant effective relief in the case at hand. While we have closely read the cases cited by Providence, we conclude that these cases are not determinative of the issue. On this point it suffices to observe that the law at R.I.G.L. 16-39-3.1 provides as follows:

R.I.G.L. 16-39-3.1 Enforcement of final decisions. – All final decisions made after a hearing by the commissioner of elementary and secondary education or the board of regents for elementary and secondary education, and which are not subject to further judicial or administrative review, shall be enforceable by mandamus or any other suitable civil action in the superior court for Providence County at the request of any interested party. All these decisions of the commissioner and board shall become final if judicial or further administrative review is not properly sought within thirty (30) days of their issuance. (Emphasis added)

It is therefore abundantly clear that the Honorable Superior Court has full authority to completely enforce a decision of the Commissioner of Education. R.I.G.L. 16-39-3.1 In fact our Supreme Court has pointed out that once the Superior Court had determined that the Commissioner had subject matter jurisdiction over a controversy, "the role of the Superior Court ... was limited to enforcement of the final decision of the commissioner in accordance with § 16-39-3.1...." *West Warwick School Committee v. Souliere*, 626 A.2d 1280 (R.I. 1993) See: *Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers' Association*, 489 A.2d 1010 (R.I. 1985). The remedies available to the Superior Court will certainly suffice to sustain a decision of the Commissioner of Education.

² See "Regulations of the Board of Regents On School Housing Aid (1997), Information and Instructions on the Necessity of School Construction, School Construction Regulations (2007)

We therefore conclude that the Commissioner has authority to enforce Section 1.13 of the School Construction Regulations where it states:

When RIDE determines that false or intentionally misleading information or documentation was submitted by an applicant in support of any effort to obtain acceptance of an application, approval for a Project, reconsideration of an appeal, granting of waiver or any other action or forbearance by RIDE, or a district commits any other act affecting the integrity of the Program, RIDE may permanently revoke any and all payments due to a district, RIDE may take steps to recover any previous payments made to a district and/or said district shall be prohibited from receiving school housing aid for a period of time to be determined by RIDE.

We also must reject the contention that Section 1.13 of the Regulations is in some way “void for vagueness.” The ground the regulation covers is quite well defined and is certainly well within constitutional limits. See: *Arnett v. Kennedy*, 416 U.S. 134 (1974) in which the Supreme Court held that the term dismissal “for cause” was not impermissibly vague. See also” *CSC v. Letter Carriers*, 413 U.S. 548 (1973). If a “for cause” standard is not constitutionally void for vagueness it is hard to see any reason why Section 1.13 would not pass constitutional muster.

3. Does the doctrine of “laches” or of estoppel bar the hearing of this matter?

The doctrines of laches can bar a claim if it can be shown that delay in filing the claim by the claimant has in some way prejudiced the party defending against the claim. *Adam v. Adam*, 624 A.2d 1093 (R.I. 1993). Since there are presently no facts on a record in this case it cannot be determined if laches might be applicable. This matter therefore cannot presently be dismissed on the grounds of laches.

An estoppel against a claim can arise if there has been detrimental reliance by party on a misstatement made by the other party to the dispute. The doctrine of estoppel is rarely applied against the government. *Romano v. Retirement Board of the Employees’ retirement System of the State*, 767 A.2d 35 at page 38 (R.I., 2001). In any event there are no facts on a record now before us to justify dismissing this action on the basis of estoppel. Indeed it is possible, for all we can tell at the present moment, that both parties to this dispute may put forth estoppel claims. Providence’s motion to dismiss on the grounds of estoppel must therefore be denied at this time.

4. Does the Statute of Limitations Bar This Matter?

Since no evidence has been taken in this matter, it is not possible at this time to determine whether RIDE’s recoupment claim is barred in whole or in part by the statute of limitations. *Narragansett Electric Company v. Carbone*, 898 A.2d 87 (R.I., 2006) Moreover it is not possible to determine at this time whether or not the statute of limitations may have been tolled through the operation of some form of estoppel. Indeed, until evidence is heard in this matter it is not possible to tell which, if any, statute of limitations may be applicable in this case.³

³ See: R.I.G.L.9-1-36, Enumeration of statutes of limitations.

Conclusion

For the above cited reasons Providence's Motion for Judgment as a Matter of Law is denied at this time. This matter will be set down for a hearing on the merits. The parties are requested and required to meet and mark for identification the exhibits that they expect to be submitted during the hearing of this matter. A copy of these exhibits will be provided to the hearing officer before the hearing convenes. This matter will be heard and decided on an expedited basis.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

April 26, 2010

Date