

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

Tiverton School Committee

v

Town of Tiverton

.....

DECISION

When state aid does not materialize in the sum expected, a city or town must still fully fund the appropriation it has made.

DATE: June 17, 2011

Jurisdiction and Travel of the Case

Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L.16-39-2. The Town of Tiverton suggests that the Commissioner lacks jurisdiction because only the Rhode Island Superior Court has jurisdiction to enforce maintenance of effort requirements. R.I.G.L.16-7-23 Though generally correct as a statement of law, the Town's argument is misdirected in that the purpose of the present hearing, does not involve maintenance of effort issues. The purpose of this hearing is to determine how appropriations must be structured to meet the requirements of R.I.G.L.16-7-23 rather than to determine maintenance of effort issues.¹

This case will also require us to decide a peripheral issue as to whether certain tuition payments made by the City of Fall River should be placed in the school committee's account or in the general fund of the Town of Tiverton. There is no dispute concerning the jurisdiction of the Commissioner to decide this claim.²

Positions of the Parties

The Town of Tiverton

The Town of Tiverton contends that when its Financial Town Meeting makes an appropriation in support of the public schools of Tiverton, this appropriation may lawfully consist of a sum certain in "locally" raised funds, plus another sum equivalent to anticipated state school aid. That is to say, a town's appropriation in support of its school committee consists of two separate and distinct sums in both fact and law. The first sum comes from "locally" raised money, while the second fund consists of projected state school aid. The Town of Tiverton contends that these funding sources may maintain their separate identities on the proposed budget so that the "bottom line" appropriation made by the Financial Town Meeting does not have to be "topped-up" with local funds if state school aid does not materialize in the amount expected. Therefore, the Town of Tiverton contends that because state aid fell short in the amount of some \$367,165 for the fiscal year at issue the School Committee must return this sum of \$367,165 to the Town of Tiverton.

Concerning the peripheral tuition payment issue in this matter, the Town of Tiverton contends that it properly placed certain special education tuition payments received from the Fall River, Massachusetts school system into the general fund of the Town of Tiverton rather than into the Tiverton School Committee's separate account. See R.I.G.L. 16-9-1. It contends that such a process finds support in a Commissioner's decision entitled: *Portsmouth School Committee v. Portsmouth Town Council, Rhode Island Commissioner of Education*, #000104, January 8, 2004.

The School Committee of Tiverton

The Tiverton School Committee contends that a town must appropriate a sum certain in support of the Town's public schools and that this "bottom line" sum becomes a fixed sum appropriated to the credit of the Tiverton School Committee. This means, in the view of the Tiverton School Committee, that if state school aid does not materialize in the sum expected, then the town is required to "top up"

¹ At oral argument in this matter the Town of Tiverton itself observed in regard to this case that: "It's not about maintenance of effort obligation." (Transcript, page 91.)

² Brief of the Town of Tiverton, page 11.

the towns appropriation to make up for the loss in expected state aid. The Tiverton School Committee therefore contends that it does not owe the Town of Tiverton \$367,165.

Concerning the peripheral issue in this case, the Tiverton School Committee contends that the tuition payments from the Fall River school system should have been placed in the School Committee's separate account. See R.I.G.L.16-2-19.

Findings of Fact

1. At the May 2009 Tiverton Financial Town Meeting (FTM), the voters of Tiverton appropriated the sum of \$24,900,722 for educational use by the Tiverton School Committee during fiscal year 2009-2010. This total sum was based upon \$20,047,960 in existing "local funds" and included an amount in anticipated state aid to schools in the sum of \$4,852,762.³
2. The anticipated state aid of \$4,852,762 fell short by \$669,232 resulting in a sum of state aid proper of only \$4,183,530.⁴ This sum of \$4,183,530 of state aid however was augmented by \$293,067 in Federal Stabilization Funds for a total of \$4,476,597 in "state" education aid paid to Tiverton. This meant that there was a shortfall of some \$367,165 in expected state funding, the amount currently at issue.⁵
3. The Tiverton Town Treasurer had deposited in the account of the School Committee the total sum of \$24,900,722—the amount of funds (local funds and expected state funds) appropriated to the Tiverton School Committee by the Tiverton Financial Town Meeting.

Discussion

In essence, the Town of Tiverton contends that the Tiverton Town Treasurer erred in making this deposit of \$24,900,722 into the account of the Tiverton School Committee. Rather, the Town of Tiverton contends that the Tiverton Town Treasurer should have deposited to the school committee account only the sum of the total "local appropriation" \$20,047,960 plus the amount of state school aid actually received (\$4,476,597) for a total sum of 24,524,577 rather than the some \$24,900,722 that was actually deposited into the account.

The Town of Tiverton therefore submits that the prime issue in this case is whether the School Committee must repay this alleged "overage" of \$367,000 which the Town contends was inadvertently placed in the Tiverton School Committee's account. The Town of Tiverton relies on R.I.G.L. 16-7-24 which in pertinent part reads as follows:

R.I.G.L. § 16-7-24 Minimum appropriation by a community for approved school expenses. – Each community shall appropriate or otherwise make available to the school committee for approved school expenditures during each school year, to be expended under the direction and supervision of the school committee of that community, an amount, which, together with state education aid and federal aid: (1) shall be not less than the costs of the basic program during the reference year, (2) plus the costs in the reference year of all optional programs shared by the state; provided, however, that the

³ Town Exhibits 1, 2 and 6.

⁴ School Committee Exhibit 12.

⁵ Town's Brief, page 2.

state funds provided in accordance with § 16-5-31 shall not be used to supplant local funds. The board of regents for elementary and secondary education shall adopt regulations for determining the basic education program and the maintenance of local appropriation to support the basic education program. A community that has a local appropriation insufficient to fund the basic education program pursuant to the regulations described in this section and all other approved programs shared by the state and required in law shall be required to increase its local appropriation in accordance with § 44-5-2 or find efficiencies in other non-education programs to provide sufficient funding to support the public schools. ...History of Section. (P.L. 1960, ch. 27, § 10; P.L. 1983, ch. 200, § 1; P.L. 1988, ch. 84, § 74; P.L. 1988, ch. 336, § 10; P.L. 2010, ch. 124, § 1; P.L. 2010, ch. 125, § 1.)

The Town of Tiverton contends that the language of R.I.G.L. 16-7-24 allows the Tiverton Financial Town meeting to make its appropriation in support of its public schools under two separate and independent headings. Under the first heading are placed sums derived from local sources and under the other heading are placed sums to be derived from projected state school aid. In its Post-Hearing Memorandum the Town of Tiverton argues that:

The interpretation of a separate local contribution is further supported by language found section 16-7-24 entitled “Minimum appropriation by a community for approved school expenses.” This section states that “[e]ach community shall appropriate or otherwise make available to the school committee for approved school expenditures during each school year, to be expended under the direction and supervision of the school committee of that community, *an amount, which, together with the state education aid and federal aid:* (1) shall be not less than the costs in the reference year of all optional programs shared by the state; provided, however, that the state funds provided in accordance with section 16-5-31 shall not be used to supplant local funds.” (emphasis added). The language “together with” clearly indicates that the single amount (the Town’s contribution) is put “together with” the state and federal aid.⁶

We appreciate the force of this argument, however, it fails to put sufficient emphasis on that portion of R.I.G.L. 16-7-24 which references “an amount for approved school expenditures.” (emphasis added) The word “an” plainly indicates that a single sum is to be made “available to the school committee for approved school expenditures during each school year...” We therefore adhere to our previous position contained in the Commissioner’s opinion letter of April 29, 2010 issued to the Tiverton School Committee that states:

The purpose of R.I.G.L. 16-7-24 is to require a “community” – which under R.I.G.L. 16-7-16 (5) is “any town, city, or regional school district” – to appropriate a “budget provision” in “an amount from all sources sufficient to support the basic program and all other approved programs shared by the state.” This means that a town’s appropriation must take the form of a total appropriation sufficient in and of itself to operate the public schools of the town. It does not suffice to simply appropriate a locally raised sum in the expectation or hope that state or federal aid will subsequently materialize to fill any resulting budgetary gap. Such a practice would run contrary to the statutory mandate that, “...in no event, shall state funds be used to supplant, directly or indirectly, any

⁶ Post-Hearing Memorandum of the Town of Tiverton, page 6.

money allocated by a city or town for educational purposes.” The upshot of this is that if state aid is reduced a town must still fully fund the appropriation it has made.

We therefore conclude that the treasurer of the Town of Tiverton did not err in depositing the full sum of \$24,900,722 into the account of the Tiverton School Committee since this was the sum deemed necessary by the Fiscal Town Meeting of Tiverton to operate the public schools of Tiverton as required by R.I.G.L.16-7-24. That is to say, under our reading of R.I.G.L.16-7-24 the Town of Tiverton was required, in essence, to hold the School Committee of Tiverton harmless if state aid did not materialize in the sums expected at the time the Town’s appropriation to its school was made. The School Committee of the Town of Tiverton therefore does not owe the Town of Tiverton \$367,000.

The Tuition Issue

We conclude that while Rhode Island law requires that out-of-district tuition payments must “be used for school purposes only”, this does not necessarily prohibit the placement of these tuition payments into the Town’s general fund so long as these payments are ultimately credited to the use of the school committee. R.I.G.L. 16-2-19. See: *Portsmouth School Committee v. Portsmouth Town Council, Commissioner of Education*, #001-04, January 8, 2004.

Conclusion

- The School Committee of the Town of Tiverton does not owe the Town of Tiverton \$367,000.
- The Town of Tiverton may properly place out-of-district tuition payments in the Town’s general fund so long as these payments are ultimately credited to the use of the School Committee

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

June 17, 2011
Date