

MICHAEL A. NOVAK, :  
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 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
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 NEW JERSEY STATE DEPARTMENT OF : DECISION  
 EDUCATION, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioning English teacher appealed his disqualification from teaching. Petitioner contended that a motor vehicle offense is not a disqualification offense under *N.J.S.A. 18A:6-7.1b*

The ALJ granted summary decision to the respondent Department and denied summary decision to petitioner. The ALJ found that any conviction involving possession of marijuana is a disqualifying offense for employment as a teacher in the public schools of New Jersey.

The Commissioner set aside the Initial Decision, finding that notwithstanding that petitioner may have been initially charged with a criminal violation, his *conviction* under the Motor Vehicle Statute does not disqualify him from school employment. The Commissioner found that in construing *N.J.S.A. 18A:6-7.1b*, the plain meaning of “offense,” as utilized therein, must be limited to those infractions specifically delineated in *N.J.S.A. 2C:1-14k* and does not extend to convictions for violation of the motor vehicle laws. Moreover, convictions for motor vehicle infractions in New Jersey are not generally revealed by criminal history background checks. Thus, the Initial Decision was reversed and petitioner’s disqualification from school employment was vacated.

December 10, 2001

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and respondent’s reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner’s exceptions present three succinct points:

1. A motor vehicle offense is not a disqualifying offense under *N.J.S.A.* 18A:6-7.1(b).
2. The term “offense” under the criminal case of New Jersey is a term of art and refers only to a crime, a disorderly persons offense, or petty disorderly persons offense. *N.J.S.A.* 2C:1-14k.
3. The term “offense” under *N.J.S.A.* 18A:6-7.1(b) applies *only* to a crime, disorderly persons offense or petty disorderly persons offense and not to a motor vehicle offense. (emphasis in text) (Petitioner’s Exceptions at 1)

In reply, respondent defends the lawfulness and reasonableness of the Administrative Law Judge’s (ALJ) decision and charges that, although listing the disputed findings, petitioner provides no supporting reasons, authorities, or documentation which would

serve to challenge the propriety of the decision in light of the record. (Respondent's Reply Exceptions at 2)

Upon his independent and careful review, the Commissioner is compelled to reverse the Initial Decision as he cannot agree that, under applicable law and existing legal precedent, petitioner's conviction for Operating a Motor Vehicle While in Possession of a Controlled Substance, in violation of *N.J.S.A.* 39:4-49.1, is a disqualifying offense, pursuant to *N.J.S.A.* 18A:6-7.1, for employment as a teacher in the public schools of New Jersey.

The record in this matter reveals that, on October 28, 1999, petitioner was arrested and charged with violating *N.J.S.A.* 2C:35-10, Possession of Marijuana under 50 grams, a disorderly persons offense under Title 2C, the New Jersey Code of Criminal Justice. On April 7, 2000, however, this criminal code violation charge was amended to a violation of Title 39, the Motor Vehicle Code, specifically, Operating a Motor Vehicle While in Possession of a Controlled Substance (*N.J.S.A.* 39:4-49.1), and it is for *this* motor vehicle violation that petitioner was ultimately convicted and sentenced to a two-year suspension of his driver's license and a fine of \$80.00.

The Commissioner observes that the applicable portions of *N.J.S.A.* 18A:6-7.1,

**Criminal history record checks for final candidates for school employee positions**, reads:

A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ or contract for the services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, *that no criminal history record information exists on file in the Federal Bureau of*

*Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position.\*\*\**

An individual, \*\*\*shall be permanently disqualified from employment or service under this act *if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or*

\*\*\*

b. An *offense* involving the manufacture, transportation, sale, possession, distribution or habitual use of a “controlled dangerous substance” as defined in the “Comprehensive Drug Reform Act of 1987,” *N.J.S.2C:35-1 et al.* or “drug paraphernalia” as defined pursuant to *N.J.S. 2C:36-1 et seq.* (emphasis supplied)

The Commissioner cannot accept the broad interpretation, espoused by the ALJ, of the term “offense” as encompassing *all* convictions where there is a concomitant involvement of possession of a controlled dangerous substance as defined in the Comprehensive Drug Reform Act of 1987 as grounds for disqualification. (Initial Decision at 5) When considering the nature and purpose of this particular statutory configuration, to protect school children by disqualifying from school employment individuals whose criminal history record includes certain legislatively designated convictions, the Commissioner, rather, agrees with petitioner’s contention that “offense” as used in this statute to disqualify individuals based on information in their *criminal history* background check, is a legal term of art, inextricably linked to the specific definition of this particular term contained in the New Jersey Code of Criminal Justice, *N.J.S.A. 2C:1-14k.*, *i.e.*, “a crime, a disorderly persons offense or petty disorderly persons offense\*\*\*.” Consequently, in order to resolve the question as to whether petitioner’s motor vehicle conviction permanently disqualifies him from school employment, it is necessary to ascertain whether motor vehicle violations are included under the rubric “offense,” as defined in *N.J.S.A.*

2C:1-14k. New Jersey Courts have uniformly answered this question in the negative. *See State v. Hammond*, 118 N.J. 306, 311-313 (1990); *State v. Muniz*, 118 N.J. 319, 325 (1990); *State v. Loyle*, 208 N.J. Super. 334, 341 (App. Div. 1986); and *State v. Parker*, 198 N.J. Super. 272, 276-77 (App. Div. 1984), *certif. den.* 99 N.J. 239 (1985). In reaching its determination in this regard, the Supreme Court in *Hammond* extensively reviewed the legislative histories of both the Code and the Motor Vehicle Act and concluded that “[i]t is \*\*\* readily inferable from all the relevant legislative history that the Legislature did not intend to include motor vehicle violations under the Code.”<sup>1</sup> (*Hammond*, 118 N.J. at 313) The Commissioner, therefore, finds and determines that, in construing N.J.S.A. 18A:6-7.1b., the plain meaning of “offense,” as utilized therein, must be limited to those infractions specifically delineated in N.J.S.A. 2C:1-14k and does not extend to convictions for violation of the motor vehicle laws. Consequently, notwithstanding that he may have initially been charged with a criminal violation, petitioner’s *conviction* under the Motor Vehicle Statute does not disqualify him from school employment.

Such interpretation is reinforced by the fact that convictions for motor vehicle infractions in New Jersey are not generally revealed by criminal history background checks. As pointed out by petitioner:

[T]he motor vehicle offense to which Petitioner pled guilty on April 7, 2000, in the Franklin Township Municipal Court, is not an offense for which post arrest identification procedures are applicable. Thus, *if he were charged with this offense in the first instance*, as opposed to via amendment to the complaint, *the offense would not even have appeared on a criminal history record check*, because the conviction would not have been forwarded to

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<sup>1</sup> The Commissioner further finds instructive the reflective observation made by the ALJ in *Rose Drabich v. Board of the Township of Hillsborough, Somerset County*, decided by the Commissioner February 8, 1993, *rev’d on other grounds* by the State Board, August 4, 1993:

It is helpful to bear in mind that the Motor Vehicle Act is a penal statute, but not a criminal statute. Penal, in its ordinary sense, simply means punishable or containing a penalty. Many civil statutes and regulations are penal. This does not make them criminal\*\*\*. (Slip Opinion at 9)

the State Bureau of Identification. (emphasis supplied)  
(Petitioner's Letter Brief in Support of his Motion for Summary  
Decision at 4)

While recognizing that the result herein may be viewed as anomalous, and less than optimal from a *policy* perspective, the Commissioner concludes that, as a matter of law, he has no alternative but to find for petitioner.

Accordingly, the Initial Decision of the OAL is reversed. Summary decision is granted to petitioner and it is hereby ordered that petitioner's disqualification from school employment be vacated.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: December 10, 2001

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<sup>2</sup> This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:1-1.1 et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.