C #235-97L
SB # 53-97

IN THE MATTER OF THE DISTRIBUTION :

OF LIQUID ASSETS UPON DISSOLU- :

TION OF THE UNION COUNTY : STATE BOARD OF EDUCATION

REGIONAL HIGH SCHOOL DISTRICT : DECISION

NO. 1, UNION COUNTY. :

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Decided by the Commissioner of Education, February 5, 1997

Decision on motion by the Commissioner of Education, February 20, 1998

For the Petitioner-Appellant Mountainside Borough, Post, Polak, Goodsell & MacNeill (Charles R. Church, Esq., of Counsel)

For the Respondent-Respondent Kenilworth Borough, Thomas A. Vitale, Esq.

For the Respondent-Respondent Board of Education of Mountainside, David B. Rubin, Esq.

For the Respondent-Respondent Board of Education of Berkeley Heights, McCarter & English (Steven B. Hoskins, Esq., of Counsel)

For the Respondent-Respondent Board of Education of Springfield, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross (Lester Aron, Esq., of Counsel)

For the Respondents-Respondents Garwood Borough and Board of Education of Garwood, DeCotiis, Fitzpatrick & Gluck (Agnes I. Rymer, Esq., of Counsel)

For the Respondent-Respondent Board of Education of Clark, Kenny, Gross & McDonough (Douglas J. Kovats, Esq., of Counsel)

For the Respondent-Respondent Kenilworth Board of Education, James P. Granello, Esq.

For the Respondent-Respondent Board of Education of the Union County Regional High School District, Schwartz, Simon, Edelstein, Celso & Kessler (Jeffrey A. Bennett, Esq., of Counsel)

This is an appeal by the Borough of Mountainside from a decision of the Commissioner of Education involving the division of assets of the Union County Regional High School District No. 1 upon its dissolution.

Union County Regional High School District No. 1 was a limited purpose regional district comprised of Berkeley Heights, Kenilworth, Mountainside, Garwood, Clark, and Springfield. By letter from the Commissioner of Education dated November 8, 1995, the boards of education and the municipal governing bodies of these districts were notified that the Board of Review[1] had decided to grant a petition for dissolution of the Regional School District that had been submitted by the constituent districts,[2] and that it had thereby authorized a referendum on the question.[3]

[1] N.J.S.A. 18A:13-56 confers on a board of review consisting of the Commissioner as chairperson, a member of the State Board of Education appointed by the President of the State Board, the State Treasurer or his designee, and the Director of the Division of Local Government Services in the Department of Community Affairs the responsibility to make a determination as to whether the petition should be granted and, if so, the amount of indebtedness to be assumed by the districts involved before the question may be submitted to the voters.

[2] The district boards of education and the governing bodies of Berkeley Heights, Kenilworth, Mountainside, Clark, and Springfield submitted a petition for dissolution, and the district board and governing body of Garwood submitted a cross-petition and third party petition.

[3] The Commissioner's letter indicated that such grant was conditioned on Kenilworth's agreement to accept Garwood's high school students if Garwood chose to enter into a sending-receiving relationship with that district.

On December 13, 1995, the Commissioner of Education, as chairperson of the Board of Review, issued an amplification of the Board of Review's November 8 determination.[4]

On March 8, 1996, the parties were advised by the Acting County Superintendent, David Livingston, that unless they requested and agreed to an alternate method of distribution, the liquid assets of the Regional District would be distributed according to the statutory plan set forth in N.J.S.A. 18A:13-62 and N.J.S.A. 18A:8-24. On May 14, 1996, the voters approved dissolution. The ballot question did not indicate that an alternate method would be used for distributing the liquid assets. The Borough of Mountainside then petitioned the Commissioner of Education seeking a distribution of the liquid assets according to then County Superintendent Leonard Fitts' feasibility report of April 7, 1995 rather than the statutory plan. If the distribution scheme in County Superintendent Fitts' report been followed, Garwood and Mountainside would have received all of the liquid assets because neither had any buildings in their districts and could not share in the division of real property.

Prior to transmittal of the matter to the Office of Administrative Law (OAL), the Commissioner dismissed the petition under authority granted him by N.J.A.C. 6:24-1.9.[5] In doing so, he relied on the Appellate Division's decision in Egg Harbor Bd. of Ed. v.

[4] Such amplification of the Board of Review's November 8 statement was submitted to the Appellate Division and mailed to the parties pursuant to R 2:5-1(b) of the New Jersey Court Rules. That rule provides that within 15 days of notice of appeal to the Appellate Division from a decision or action by an administrative agency or officer, that agency or officer may file and mail to the parties an amplification of a prior statement, opinion or memorandum, or, if there is no prior statement, he must file a written opinion stating his findings of fact and conclusions of law.

[5] N.J.S.A. 6:24-1.9 provides that:

> At any time after the receipt of the answer and prior to the transmittal of the pleadings to the OAL, the Commissioner, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for

Greater Egg Harbor, Etc., 188 N.J. Super. 92 (App. Div. 1983) (hereinafter "Egg Harbor") to conclude that because no method of distribution of liquid assets had been specified in the question placed before the voters in the referendum, the liquid assets had to be distributed in accordance with the plan set forth in N.J.S.A. 18A:13-62 and N.J.S.A. 18A:8-24.

Mountainside appealed to the State Board, arguing that the Commissioner had improperly interpreted Egg Harbor as an absolute bar to an alternative method of distributing the liquid assets in the absence of specification of such method in the referendum question placed before the voters. Mountainside asserted that in petitioning the Board of Review, all of the constituent districts had agreed that Mountainside and Garwood would get the liquid assets and that the Board of Review had incorporated this scheme for distribution in its determination by virtue of the petitions it had before it and the County Superintendent's feasibility report. Mountainside further argues that it is unfair to apply the statutory scheme because the other districts were to get the buildings in their districts while Mountainside and Garwood would be left with nothing since there were no buildings in their districts.

After reviewing the record and the applicable law, we affirm the Commissioner's determination as modified herein. Initially, we concur with Mountainside that the Appellate Division's decision in Egg Harbor does not stand for the proposition that, as a matter of law, any departure from the statutory distribution scheme is prohibited unless it has been included in the question placed before the voters. In point of fact, that decision was an equitable one, grounded in the specific circumstances of that case.

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determination has been advanced, lack of jurisdiction, failure to prosecute or other good reason.

However, careful examination of the Court's decision reveals that it was based on circumstances far different than those reflected by the record before us in this case.

The issues in Egg Harbor arose from a withdrawal by one district from a regional school district rather than, as here, from the dissolution of a regional district.[6] The underlying case had been initiated when Egg Harbor sought to withdraw from the Greater Egg Harbor Regional School District, a limited purpose school district comprised of five constituent districts. On Egg Harbor's application, the County Superintendent investigated the advisability of the withdrawal and issued his report as provided by N.J.S.A. 18A:13-52. In his report, the County Superintendent set forth what he considered to be the appropriate basis for dividing assets and liabilities. As here, the County Superintendent's view of the appropriate manner to divide the assets and liabilities departed from the statutory scheme.

Egg Harbor then petitioned the Commissioner for permission to submit the issue of withdrawal to the voters. As provided by N.J.S.A. 18A:13-56, the Commissioner submitted the petition to the Board of Review, see supra note 2, which authorized a special election on the question.

In its decision, the Board of Review included the finding that Egg Harbor did not seek to acquire any assets if it were permitted to withdraw from the Regional District, that Egg Harbor assumed that it would not incur any liabilities, and that all remaining assets and liabilities would be assessed proportionately to the remaining districts. Then, adopting verbatim the County Superintendent's report, the Board of Review

[6] We note that until August 1993, the language of the applicable statutes included only withdrawals. Effective August 13, 1993, the statutes were amended to expressly provide for dissolution. L. 1993 c. 255. See N.J.S.A. 18A:13-51 et seq.

specified that the question submitted to the voters must include a statement to that effect.

Nonetheless, following voter approval of the withdrawal, Egg Harbor sought distribution of assets and liabilities pursuant to N.J.S.A. 18A:13-62. In response the County Superintendent indicated that the assets and liabilities were to be distributed in accord with the scheme described in the ballot question rather than the statutory scheme.

The following spring, Egg Harbor petitioned the Commissioner to compel the Regional District to pay it a distributive share of its budget surplus from the previous year. At that point, the matter was transmitted to the Office of Administrative Law. There, acting on a motion to dismiss by the Regional District, an Administrative Law Judge (ALJ) found that Egg Harbor had waived any claim to the assets of the Regional District by acquiescing to the Board of Review's approval of the election, which had been given on the condition that Egg Harbor would neither assume any further debts or acquire any assets. The ALJ further concluded that Egg Harbor's claim was barred by res judicata since the Board of Review had been fulfilling its quasi-judicial function when it had granted approval to place the question of withdrawal before the voters.

The Commissioner adopted the ALJ's decision, and the State Board affirmed the determinations of the ALJ and Commissioner with modification.[7] On appeal to the Appellate Division, Egg Harbor argued that N.J.S.A. 18A:13-62 mandated the distribution of all assets other than school buildings, grounds, furnishings and

[7] The State Board modified the decisions below to indicate that the County Superintendent should have filed a report on the Regional District's assets and liabilities even though Egg Harbor was not entitled to a share of those assets.

equipment, and provided the sole means for distributing those assets by specifying that they be divided in the same manner as provided in N.J.S.A. 18A:8-24.

The Appellate Division rejected the claim, stressing that both the County Superintendent and the Board of Review had considered the impact of Egg Harbor's withdrawal on debt service for the remaining districts and, in that context, had determined that Egg Harbor should not acquire assets at the time of final distribution. The Court found that Egg Harbor had not protested the terms of the Board of Review's approval although it had sufficient notice of those terms to enable it to protest. Consequently, the Regional District, the voters, and the remaining constituent districts had been induced to suppose that Egg Harbor had agreed to relinquish its assets. Hence, Egg Harbor was estopped from requesting a distribution of assets because, by its acquiescence, it had allowed the voters to approve a plan under which it was required to relinquish any claim to the Regional District's assets.

The Court further found that because it had resolved the issue of Egg Harbor's acquiescence in the affirmative, there was no need to decide whether Egg Harbor's claim was barred by res judicata on the basis of the Board of Review's decision. Given that the State Board's decision had not rested on grounds of res judicata, the Court found it unnecessary to reach that issue in order to affirm that decision.

As set forth herein, the Court's decision in Egg Harbor was an equitable decision, grounded in an examination of the particular circumstances presented by that case. That examination was not limited to the ballot question placed before the voters, but focused equally on the other circumstances which surrounded the proceedings before the Board of Review. Basically, the Court concluded that under all of those

circumstances, including the wording of the ballot question, it would be unfair to permit Egg Harbor to claim assets. Hence, Egg Harbor can not properly be read so broadly as to create an absolute bar to any claim involving a different arrangement than provided by the statute because the arrangement was not included in the wording of the ballot question.

However, neither can Egg Harbor be read to entitle Mountainside to pursue its claim in this case. Quite simply, Mountainside has not shown any circumstances that would warrant a departure from the statutory scheme. In contrast to Egg Harbor, there is no indication in the record before us that the Board of Review intended a departure from the statutory method for distributing the assets at issue. To the contrary, the Commissioner's letter of November 8, 1995 states that the Board of Review was not convinced that following the statutory scheme "results in such inequity of such proportion as to provide a basis for denying the petition [for dissolution]." Further, the December 13 amplification of the Board of Review's November 8 statement states that:

> The apportionment of the remaining assets and liabilities, as defined in N.J.S.A. 18A:8-24 as those assets other than school buildings, grounds, furnishings and equipment, is directly proportional to the amount of local contribution that each of the municipalities has contributed to the regional district. Therefore, each municipality will leave the regional district structure with the same percentage share of these assets as its contribution to them.

In this context, we reject Mountainview's contention that the petitions and the County Superintendent's feasibility report provide a sufficient basis to assume that an alternate scheme was adopted by the Board of Review, especially in view of the fact that the ballot question did not reflect such scheme. Quite simply, given the record

before us, we can only speculate as to the circumstances surrounding the proceedings before the Board of Review.

While we recognize that judicial doctrines such as res judicata and collateral estoppel are not automatically applicable to quasi-judicial proceedings such as these, we can find no basis to justify a review in this context of the proceedings before the Board of Review. City of Hackensack v. Winner, 82 N.J. 1 (1980). In this respect, we stress that the applicable statutory scheme does not confer on either the Commissioner or the State Board of Education the authority to determine whether a petition for dissolution should be granted, but rather entrusts that determination to a board of review comprised of both the Commissioner and a member of the State Board of Education, as well as the State Treasurer and the Director of the Division of Local Government Services. N.J.S.A. 18A:13-56. See supra note 2. Consistent with the character of the composition of such board, appeals from determinations by the Board of Review have been made, not to the State Board, but rather directly to the Appellate Division pursuant to R 2:2-3(a)(2). See In re Petition For Authorization to Conduct a Referendum on Dissolution of Union County Regional High Sch. Dist. No. 1, 298 N.J. Super. 1 (App. Div. 1997). Nothing presented to us in this case reflects that application of the statutory scheme to the division of liquid assets involved here would result in an inequity such as to provide a basis for denying the finality of the resolution of this issue that is embodied in the Board of Review's determination. City of Hackensack v Winner, 82 N.J. at 30-33.

Attorney exceptions are noted.

Sam Podietz did not participate in deliberations in this matter.

July 1, 1998

Date of mailing _____