EDU #10887-98
C # 64-00
SB # 19-00

BOARD OF EDUCATION OF THE TOWNSHIP OF FAIRFIELD, CUMBERLAND COUNTY,	:	
PETITIONER-RESPONDENT,	:	
V.	:	STATE BOARD OF EDUCATION
ROBERT ENCH AND SANDERINA R. KASPER, EXECUTRIX OF THE ESTATE OF BENJAMIN KASPER, PARTNERS TRADING AS BENCH REALTY, FEDERICK A. JACOB, AND OLD REPUBLIC NATIONAL INSURANCE COMPANY,	:	DECISION
RESPONDENTS-APPELLANTS.	:	

Decided by the Commissioner of Education, February 17, 2000

For the Petitioner-Respondent, Frank D. Domenico, Esq.

For the Respondent-Appellant Frederick A. Jacob, Jacob & Ferrigno (Frederick A. Jacob, Esq., of Counsel)

For the Respondent-Appellant Bench Realty, Davidow, Sherman, Eddowes & Geiger (David J. Eddowes, Esq., of Counsel)

This matter arises from the purchase of vacant land in 1996 by the Board of Education of the Township of Fairfield (hereinafter "Board"). The Board funded the purchase entirely from its budget surplus with the intent of building a new school on the site.[1]

Because the Board was not going to borrow any money to fund the purchase, its solicitor at that time, Frederick A. Jacob, Esq., advised the Board that it was not

[1] A referendum to authorize the construction of a new school was defeated by the voters in April 1997.

required to place the question before the voters pursuant to N.J.S.A. 18A:20-4.2. The Board followed Jacob's advice and did not place the issue before the voters as a ballot question. However, it also did not include its appropriation of surplus as a line item in the budget it developed for 1996-97 pursuant to N.J.S.A. 18A:22-1 et seq.

On September 16, 1997, a resident of Fairfield (hereinafter "resident") wrote to Commissioner of Education Leo Klagholz, bringing to his attention the fact that the Board had purchased land for a new school without a referendum. She requested that the Commissioner investigate the situation and that he advise her of what could be done to correct it. She also expressed her understanding that a line item would have to be included in the budget approved by the voters if no money was borrowed. However, there is no indication in the letter whether she was aware that the Board had not borrowed any money to make the purchase in this case.

The Commissioner asked Michael Azzara, then Assistant Commissioner for the Division of Finance, to respond to the letter because the Commissioner believed that he might be called upon to adjudicate the matter as a contested case. In a letter dated October 20, 1997, Azzara responded that:

> It has generally been the department's position that voter approval is required whether by outright purchase or through exercising an option in accordance with N.J.S.A. 18A:20-4.1(b), except where acquisition is exempt from voter approval by statutory authority such as lease purchase or gift. This could be accomplished by a separate question at a special election or as part of the advertised school budget as you have indicated in your letter. (Emphasis added.)

Azzara also advised the resident that the general legal questions raised by her letter had not been formally adjudicated and that the appropriate mechanism to obtain a formal ruling was by filing a petition with the Commissioner.

The resident did not file a petition of appeal with the Commissioner. However, because the validity of its purchase had been questioned, the Board filed a petition for declaratory judgment with the Commissioner in October 1998, seeking a declaration that the acquisition of land without submitting the question to voters was valid in this case. In the alternative, the Board sought a determination that the purchase was void, along with an order directing that the sellers return the purchase price to the Board and other relief.

The Board named three respondents in its petition. First, it named the sellers, Robert Ench and Sanderina R. Kasper, Executrix of the Estate of Benjamin Kasper, Partners Trading as Bench Realty, seeking the return of the purchase price in the event that the purchase was declared illegal. Second, it named its former solicitor, Frederick A. Jacob, Esq., as a respondent, alleging legal malpractice. Third, the Board named Old Republic National Title Insurance Company, which had issued the Board title insurance guaranteeing clear title to the property.

Although the petition requested a declaratory judgment, the Director of the Office of Controversies and Disputes in the Department of Education advised the Board by letter dated December 15, 1998 that the matter would be considered as a contested case and would be transmitted to the Office of Administrative Law ("OAL") for appropriate proceedings.

Following transmittal to OAL, two pre-hearing conferences were held during which it was agreed that there were no material facts in dispute. Accordingly, the Administrative Law Judge ("ALJ") granted the parties leave to file motions for summary decision pursuant to N.J.A.C. 1:1-12.5. The record closed on September 27, 1999,

following receipt of a motion for summary decision filed by the Board and responses from the sellers and the Board's former solicitor, both supporting the Board's motion and agreeing with the relief sought.[2]

On November 10, 1999, the ALJ, citing N.J.S.A. 18A:20-4.1 and 18A:20-4.2, determined that voter authorization was not required in this case since the Board had not borrowed any money for the purchase. Thus, the ALJ concluded that, under the facts and circumstances of this matter, the Board had not violated the school laws when it purchased the property without submitting the proposal to voters.

The ALJ further found that the Board had improperly failed to provide a line item including the proposed expenditure in its annual school budget that had been presented to the voters. However, he concluded that this procedural defect was not sufficient grounds to warrant overturning the purchase. The ALJ therefore recommended that the Board's acquisition of the property be sustained.

None of the parties filed any exceptions to the ALJ's decision.

On February 17, 2000, the Commissioner adopted in part and rejected in part the ALJ's recommended decision. The Commissioner concurred with the ALJ that the Board had erred in not including a line item appropriation for purchase of the property in the annual school budget submitted to the voters. However, the Commissioner disagreed that the Board had not been required to obtain authorization from the voters before purchasing the land, concluding that N.J.S.A. 18A:20-4.1, when read in conjunction with 18A:20-4.2, did not permit district boards to purchase property without

[2] The title company did not respond to the Board's motion. Rather, in a letter dated December 8, 1998 to the Director of the Office of Controversies and Disputes, the title company took the position that the Commissioner did not have the jurisdiction to decide any questions relating to its responsibilities to the Board and, therefore, that it had elected not to become involved in the process before the Commissioner.

prior approval of the district's voters, regardless of whether money was being borrowed for that purpose.

The Commissioner, however, declined to void the transaction or order any of the relief sought by the Board, finding that the effect of a holding that the Board was not in compliance with law had not been fully argued or considered during the proceedings at OAL. The Commissioner found this particularly significant since the Board sought a directive, in the event the purchase was invalidated, for reconveyance of the land to the sellers, return of the purchase price to the Board and reimbursement of its costs. The Commissioner therefore remanded this matter to OAL for further proceedings on that issue.

Frederick A. Jacob, Esq., the Board's former solicitor, and the sellers, Robert Ench and Sanderina R. Kasper, Executrix of the Estate of Benjamin Kasper, Partners Trading as Bench Realty, filed appeals to the State Board from the decision of the Commissioner.[3] In support of his appeal, Jacob argues that the Commissioner's decision should be reversed because his interpretation of N.J.S.A. 18A:20-4.1 and 18A:20-4.2 ignored the plain and unambiguous language of those statutes. Jacob further argues that the legislative history supports the ALJ's analysis.

The brief filed by the Board in response to the appeal incorporates the procedural history and material facts as set forth in Mr. Jacob's brief. Like its former solicitor, the Board argues for reversal of the Commissioner's decision, contending that the Commissioner ignored the plain meaning of the applicable statutes.

[3] We note that only Jacobs filed a brief in support of the appeal.

After careful review of the record and consideration of the arguments of the parties, we reverse the Commissioner's determination that the purchase at issue was in violation of the education laws because there had not been a voter referendum on the purchase conducted pursuant to N.J.S.A. 18A:20-4.2. We affirm the ALJ's determination, which was adopted by the Commissioner, that the Board failed to comply with the education laws because it did not include a line item reflecting the appropriation in the budget submitted to the voters. However, as set forth herein, we find that this failure is significant and remand the matter for further proceedings and a determination by the Commissioner as to the impact of such failure.

Initially, we find that the statutes governing the acquisition of property by district boards of education did not require the Board to seek voter approval in this instance by placing the question on the ballot prior to purchasing the property in question. As both appellant and respondent argue in their briefs, well-established principles of statutory construction direct that we look first to the statute's plain language to derive its meaning. E.g., Town of Morristown v. Woman's Club, 124 N.J. 605 (1991); Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987). Accordingly, if the meaning of the statute is plain on its face, that meaning will ordinarily govern. E.g., Lammers v. Board of Education of Point Pleasant, 134 N.J. 264 (1993). Hence, as part of an administrative agency, we may not interpret the statute to give it greater effect than the statutory language permits. New Jersey Turnpike Authority v. American Federation of State County and Municipal Employees, Council 73, 150 N.J. 331 (1997).

In his decision, the Commissioner focused on one provision, N.J.S.A. 18A:20-4.1(b). He concluded that "the provision of 18A:20-4.1(b) limiting the availability

of options to only those pieces of land which the board could purchase after securing voter approval and permitting the actual exercise of the option only after authority for the purchase has been given at any annual or special school election clearly makes no sense without a concomitant requirement that land purchases must generally be authorized by the voters of the district." Commissioner's decision, slip op. at 18-19 (emphasis in original). On the basis of this conclusion, the Commissioner inferred in N.J.S.A. 18A:20-4.2(d), which expressly requires prior voter approval when the funds are to be borrowed, a requirement that all land purchases must be approved by voter referendum whether or not funds to make the purchase are to be borrowed. The Commissioner found this to be supported by the legislative history. In this respect, he concluded that no significance should be placed on the fact that the Legislature had eliminated the express statutory requirement for voter approval for all purchases when it enacted N.J.S.A. 18A:20-4.2 in 1967. The Commissioner reasoned that the amendment was enacted as part of the Legislature's comprehensive revision of Title 18A rather than as the result of consideration of the pertinent section alone. Id. at 20.

We find that careful examination of N.J.S.A. 18A:20-4.1 and N.J.S.A. 18A:20-4.2 yields a different result. In essence, the language of the statutes is clear and unambiguous and, therefore, it is inappropriate for this agency to infer additional requirements beyond those that have been included in them by the Legislature. In re Jamesburg High School Closing, 169 N.J. Super. 328, aff'd as modified, 83 N.J. 540 (1980) (the duty is to construe and apply the statute as enacted). See e.g., Munoz v. New Jersey Auto. Full Ins. Underwriting Ass'n, 145 N.J. 377 (1996) (when the words of a statute are clear, that meaning is to be given effect absent legislative intent to the

contrary); Unsatisfied Claim and Judgment Fund Bd. v. New Jersey Mfrs. Ins. Co., 270 N.J. Super. 31, aff'd, 138 N.J. 185 (1994) (the duty is to construe the statute as written, not to effect an unexpressed legislative intent).

N.J.S.A. 18A:20-4.1 provides the authority to district boards to act "without authority first obtained from the voters of the district" in two specific ways:

> (a) Rent, on a year-to-year basis, or for a term not to exceed 5 years, in case of emergency, buildings to use for school purposes; and
> (b) Take an option not to exceed 1 year in duration, at a cost not to exceed the fair market value of such option, on the purchase of any land which the board could lawfully purchase after securing the consent of the legal voters to the purchase thereof, but such option may be exercised by the board only after authority to purchase the property covered by such option has been given at an annual or special school election.

N.J.S.A. 18A:20-4.2 provides that:

> The board of education of any school district may, for school purposes:
>
> (a) Purchase, take and condemn lands within the district lands not exceeding 50 acres in extent without the district but situate in a municipality or municipalities adjoining the district, but no more than 25 acres may be so acquired in any one such municipality, without the district, except with the consent, by ordinance, of such municipality;
> (b) Grade, drain and landscape lands owned or to be acquired by it and improve the same in like manner;
> (c) Erect, lease for a term not exceeding 50 years, enlarge, improve, repair or furnish buildings;
> (d) Borrow money therefor, with or without mortgage, in the case of a type II district without a board of school estimate, when authorized so to do at any annual or special school election…;
> (e) Construct, purchase, lease or otherwise acquire a building with the federal government, the State, a political subdivision thereof or any other individual or entity properly authorized to do business in the State…;

> (f) Acquire by lease purchase agreement a site and school building…;
> (g) Establish with an individual or entity authorized to do business in the State a tenancy in common, condominium, horizontal property regime or other joint ownership arrangement on a site contributed by the school district….

By the clear and express terms of the statute, prior voter approval at an annual or special school election is required when a board of education in a Type I district borrows money to purchase land. Nothing in the language of the statutes even suggests that prior voter approval is required if the district does not borrow money to make the purchase. We find that the words of the statute are clear and unambiguous. We also assume that in including the words "borrow money therefor" in N.J.S.A. 18A:20-4.2(d), the Legislature intended that those words would have meaning and not be superfluous. E.g., Phillips v. Curiale, 128 N.J. 608 (1992).

Because the language of the statute can be read sensibly without any absurd or anomalous result, it is that language which must be implemented. E.g., Dixon v. Gassert, 26 N.J. 1 (1958). See, e.g., City of Clifton v. Passaic County Bd. Of Taxation, 28 N.J. 411 (1959). In this respect, we reject the Commissioner's view that N.J.S.A. 18A:20-4.1(b) makes no sense unless a requirement is inferred in N.J.S.A. 18A:20-4.2(d) that all purchases of land must be the subject of a voter referendum. N.J.S.A. 18A:20-4.1(b) specifies that a district board does not need prior voter approval to take an option, but does require such approval in order to exercise that option. It was reasonable for the Legislature to distinguish between purchases resulting from the exercise of an option and those that do not. The language of N.J.S.A. 18A:20-4.1(b) makes it clear that prior voter approval is not required to take an option, but that it is

required to exercise the option whether or not the funds are to be borrowed. If no option is involved, N.J.S.A. 18A:20-4.2 controls, and prior voter approval is required only if the funds are to be borrowed.

Our conclusion that the words of the statute are both clear and expressive of the Legislature's intent is reinforced by the fact that in addition to the requirement for prior voter approval to borrow money to purchase land, the language of N.J.S.A. 18A:20-4.2 specifies particular conditions that must be met to acquire a building with the federal government or the State, N.J.S.A. 18A:20-4.2(e), to acquire a site and building by lease purchase agreement, N.J.S.A. 18A:20-4.2(f), and to establish a tenancy in common, N.J.S.A. 18A:20-4.2(g). Each condition is detailed and each is tailored for the transaction to which it applies. If the Legislature had intended to make prior voter approval a condition for purchasing land without borrowing, it would have included it in the statute.

As set forth in the ALJ's initial decision, the legislative history supports this interpretation. Most significantly, the language of the predecessor statute, R.S. 18:7-73, expressly required that purchases be "with a previous authority of vote of the legal voters of the district." This language, which had been included for one hundred years, was eliminated by the Legislature in 1967. The fact that the change was made as part of a comprehensive recodification process does not alter the fact that the statute was changed through legislative action.

Moreover, as described in the decisions of both the ALJ and the Commissioner, the Legislature has amended N.J.S.A. 18A:20-4.2 numerous times since 1967 to include other transactions that do not require prior voter approval, such as the lease

purchase provisions of N.J.S.A. 18A:20-4.2(e) and (f). During the same period, the Legislature chose to leave the language of N.J.S.A. 18A:20-4.2(d) unchanged.

In sum, in these circumstances, we are compelled to implement the statute as the Legislature has enacted it. However, in reviewing the transaction involved here, we cannot ignore the other applicable requirements that are included in the education laws. Hence, the fact that N.J.S.A. 18A:20-4.2 does not require prior voter approval does not mean that the transaction involved here should have escaped review by the voters.

As stipulated, the Board did not include a line item appropriation for purchase of the property in the annual school budget submitted to the voters. As found by the ALJ:

> …petitioner was required to detail the anticipated expenditures for the properly [sic] acquisition in its school budget. N.J.S.A. 18A:22-8(a)(1). Petitioner was also required to account for its surplus funds, as well as any anticipated use of such funds in the ensuing school year. N.J.S.A. 18A:22-8(a)(2). See, Bd. of Educ. of Branchburg Tpw. [sic], Somerset County v. Branchburg Twp. Committee, 187 N.J. Super. 540, 545 (App. Div. 1983), cert. denied 94 N.J. 506 (1983) ("It is clear that a board [of education] has an obligation to account for surplus funds and investment income in planning its budget for the ensuing year.") Additionally, petitioner was required to hold public hearing on its proposal budget, inclusive of these specific line items. N.J.S.A. 18A:22-13. Finally, petitioner was required to submit its proposed budget, inclusive of these specific line items, to the district's voters at the annual school election. N.J.S.A. 18A:22-33. In the instant case, petitioner concedes that it did not meet any of these budget requirements, when it stipulates:
>
> > It this case, the purchase price of the land acquired was obtained from surplus monies, was never a line item of any budget submitted to the voters and was never placed as a public question on any ballot at any regular or special school election.
> >
> > (Petitioner's brief at 6)

> Accordingly, petitioner's failure to meet the statutory budget requirements regarding the acquisition of the property, as well as the accounting of surplus funds, constitute clear violations of the school laws.

Initial Decision, slip op. at 12-13.

The statutory requirements applicable to the budget process are not merely technical. In this instance, given that N.J.S.A. 18A:20-4.2 did not require a referendum specifically on the question of the purchase, inclusion of the appropriation in the budget presented to the voters was the only opportunity the voters would have to pass on the purchase.[4] Furthermore, the ability of the public to assess a district's use of surplus is critical to its ability to evaluate the district's financial condition so as to make the necessary judgments concerning the board's proposed budget. Because the ALJ did not find this defect to be significant, the record is not sufficient to permit us to evaluate its impact on the validity of the transaction at issue. We therefore remand this matter to the Commissioner for his determination of this question and for the development of a sufficient record upon which to base that determination.

We retain jurisdiction.

August 2, 2000

Date of mailing _____

[4] We note that if the Board had included the purchase as a line item in its budget, its actions would have been in conformity with the Department of Education's general position as articulated in Michael Azzara's letter of October 20, 1997.