

EDU #10887-98  
C # 64-00  
SB # 19-00  
EDU # 6856-00  
C # 220-01R

BOARD OF EDUCATION OF THE TOWNSHIP :  
OF FAIRFIELD, CUMBERLAND COUNTY,  
: PETITIONER-RESPONDENT,  
V. : STATE BOARD OF EDUCATION  
: DECISION  
ROBERT ENCH AND SANDERINA R. KASPER,  
EXECUTRIX OF THE ESTATE OF BENJAMIN :  
KASPER, PARTNERS TRADING AS BENCH  
REALTY, FREDERICK A. JACOB, AND OLD  
REPUBLIC NATIONAL INSURANCE COMPANY,  
: RESPONDENTS-APPELLANTS.  
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Decided by the Commissioner of Education, February 17, 2000

Remanded by the State Board of Education, August 2, 2000

Decision on remand by the Commissioner of Education, July 16, 2001

For the Petitioner-Respondent, Samuel J. Serata, Esq.

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

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

For the Respondent-Appellant, Clark J. Cornwell, III, Esq.

On August 2, 2000, the State Board of Education reversed the determination of the Commissioner of Education that the Fairfield Board's purchase of land for a school from its budget surplus without conducting a voter referendum on that purchase

pursuant to N.J.S.A. 18A:20-4.2 was in violation of the education laws. The State Board did, however, affirm the Commissioner's determination that the district board had failed to comply with the education laws by not including a line item reflecting the appropriation in the annual school budget submitted to the voters. Finding that this failure was significant and that the record was not sufficient to permit it to evaluate the impact of this defect on the validity of the transaction at issue, the State Board remanded 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. In doing so, we retained jurisdiction over the matter.

In response to our remand, the Commissioner transmitted the matter to the Office of Administrative Law. The Administrative Law Judge ("ALJ") understood our decision to require him to develop a sufficient record upon which the State Board could determine whether the public was provided with the opportunity to assess the Board's use of surplus funds and evaluate the district's financial condition so as to make the necessary judgment concerning the Board's proposed budget. Consequently, the testimony at hearing and the initial decision focused on whether members of the public participated in the discussion of the land acquisition and whether the public was kept informed of the Board's proposal to build a school on that site. Based on the testimony of Dr. Daniel R. Mastrobuono, who was then the District's superintendent, the ALJ found that members of the public had in fact participated in the discussions at the Board's public meetings and that the public was kept informed of the Board's proposal through publications and meetings throughout the District. The ALJ further found that although the Board's budget proposals did not reflect the land acquisition, the proposed purchase

price was reflected in the Board's 1995-96 budget statement and that the updated amount was included in its statement of appropriations for the period ending February 28, 1996. In addition, he found that the Board's intent to purchase the property was reflected in the Board's annual audit and that, as public records, all of the documents were available for review by the public. On this basis the ALJ concluded that the record was sufficient to determine whether the public had access to information concerning the Board's use of surplus funds to purchase the property in question. The ALJ did not, however, include in his initial decision any assessment of the impact of the Board's failure to include a line item appropriation for purchase of the property in the annual budget submitted to the voters.

In his decision, the Commissioner concurred with the ALJ's findings and conclusion that:

...notwithstanding the Board's failure to specifically include the purchase of vacant land as a line item in its budget, in light of the unique circumstances and sequence of events which existed here, the purchase should remain undisturbed and this matter should be considered closed.

Commissioner's Decision, slip op. at 11.

However, careful reading of the ALJ's initial decision shows that it does not include this conclusion. Nor, as stated, does the initial decision include an assessment of the impact of the Board's failure to include a line item appropriation for the purchase in its budget. Nonetheless, on the basis of the ALJ's findings of fact, we concur with the Commissioner's conclusion.

As set forth in the initial decision, the Board had formed a Community Task Force and had opened its special meeting on February 7, 1995 to the public so that members

of the public could discuss their feelings about the proposed project. Meetings were held with parent/teacher organizations and there were public pronouncements and publications by the Board. The Board's resolution of March 15, 1995 to take an option on the property was adopted at a public meeting. The matter was further considered at public meetings on October 18 and 21, 1995, and on February 21 and August 24, 1996. In addition, Dr. Mastrobuono's testimony indicates that the public discussion of the Board's statement of appropriations for the period ending February 28, 1996 linked the Board's available balance with the proposed land acquisition. Moreover, the Board's budget for 1996-97 included the amount of the purchase as a carryover from the 1995-96 appropriation for the proposed purchase. Also, the audit statement for the period ending June 30, 1996 reported the status of the proposed purchase and stated that the amount needed for the purchase was reflected as a reserve for encumbrances in the general fund.

As we stated in our decision of August 2, 2000, we do not view the statutory requirements applicable to the budget process as merely technical. In this instance, we were concerned that the failure to include the appropriation in the budget presented to the voters deprived them of their only opportunity to pass on the purchase. We were also concerned that absent such inclusion, the public would not have the ability to assess the district's use of surplus in the context of the district's overall financial condition so as to make the necessary judgments concerning the Board's budget proposal.

The fact that the public was informed about the proposed purchase and provided with opportunities to express opinions does not alone alleviate these concerns.

However, from the record developed by the ALJ, it appears that the proposed purchase was presented and discussed in such manner that the public was informed that the purchase was to be funded out of surplus. Although this is not a substitute for the opportunity to formally vote on the question, there does not appear to have been opposition from the public to funding the purchase in this way. Given this fact and the impact on the District and its students of invalidating the purchase at this point, we, as previously stated, agree with the Commissioner that the purchase in this particular case should not be disturbed. We therefore affirm his determination in this matter.

October 3, 2001

Date of mailing \_\_\_\_\_