

RURAL TABERNACLE COALITION, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
LENAPE REGIONAL HIGH SCHOOL :
DISTRICT, BURLINGTON COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning Rural Tabernacle Coalition (RTC) alleged that the Board violated *N.J.A.C.* 6:22-2.1 and improperly spent public funds by engaging in campaign activities for the purpose of advancing its interest in proceeding with the construction of a new high school. All other issues, which had been the subject of a previous petition and amended petition, were no longer part of this contested case proceeding.

Following analysis of RTC's status as a jural entity and the finding that RTC failed to submit any evidence of impropriety concerning expenditure of public funds, the ALJ concluded that nothing RTC submitted suggested that there was a genuine issue that the Board's actions were arbitrary, capricious and unreasonable. The ALJ granted the Board's motion for summary decision.

The Commissioner, initially finding that RTC was an "interested person" pursuant to *N.J.A.C.* 6A:3-1.2, concluded that RTC failed to set forth facts showing that there was a genuine issue with respect to the Board's expenditure of bond and other public monies, which can only be determined in an evidentiary hearing. Petition was dismissed.

August 6, 2001

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Both parties submitted exception arguments and the Board submitted replies in accordance with *N.J.A.C.* 1:1-18.4 which were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record of this matter, and notwithstanding the Board’s continued arguments to the contrary, the Commissioner initially finds that petitioner Rural Tabernacle Coalition (RTC) is an “interested person” pursuant to *N.J.A.C.* 6A:3-1.2 (formerly, *N.J.A.C.* 6:24-1.1) with “sufficient stake in the outcome of these proceedings so as to have the requisite standing to maintain this action.” *West Village Civic Club, Inc. and Arthur Silverstein v. Board of Education of the Township of Manchester et al.*, State Board decision June 5, 1996, Slip Opinion at 6.

However, with respect to the Board’s Motion to Dismiss this matter, the Commissioner finds that RTC has failed to “set forth specific facts showing that there is a genuine issue [with respect to the Board’s expenditure of bond and other public monies] which can only be determined in an evidentiary proceeding.” *N.J.A.C.* 1:1-12.5(b). Rather, as the

Board notes, the affidavits provided by RTC, as the nonmoving party, are insufficient to meet the legal standard necessary to defeat the Board's motion.

In this connection, the Commissioner observes that the affidavit provided by Frances Brooks, a resident of Tabernacle Township and a former member of the Township Committee and Land Development Board (LDB), predominantly speaks to Ms. Brooks' involvement with the district vis-à-vis its application for zoning changes before the LDB, and her subsequent "intense harassment by the SOS campaign" when she did not, as a member of the LDB, vote as the district wanted her to vote. (Certification of Frances Brooks at 1-2) Additionally, the affidavit of Raymond McCarty, a resident of Tabernacle Township and member of the RTC, underscores that the district was instrumental in supporting a change to Tabernacle's zoning ordinance, that key persons in the district, as well as district counsel, engineers, architects and consultants, attended those meetings, that district staff distributed SOS buttons and American flags at certain meetings, and did not attempt to distinguish "the Lenape District from the SOS campaign ***." (Certification of Raymond McCarty at 1-2)

Similarly, the lengthy affidavit of Edmund Hallowell, together with 50 exhibits, raises numerous issues that are not germane to the single issue remaining before the ALJ and the Commissioner. Neither does the Hallowell affidavit assert facts which specifically refute those offered by Superintendent Hicks regarding the Board's alleged improper spending of bond money (Board's Motion for Summary Decision; Hicks Affidavit at 6-7)¹ so as to raise a genuine issue which can only be determined in an evidentiary hearing.²

¹ Superintendent Hicks attested, in pertinent part:

With respect to the accusation that the Lenape District is improperly spending bond money, the estimated budget for the various projects included in the referendum anticipated monies to obtain all of the necessary approvals and permits necessary to construct the additions, make the alterations, and construct the new high school.

Accordingly, the recommendation of the ALJ dismissing the Petition of Appeal is adopted for the reasons herein noted.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2001

Date of Mailing: August 7, 2001

We have followed the dictates of the New Jersey Pinelands Commission insofar as the fourth high school is concerned, and are meeting the conditions of the New Jersey Pinelands Commission's various approvals.

The purchase of these development rights/credits does not involve the purchase of real estate, and is a condition to building the new high school.

One of the requirements is the purchase of development rights/credits which I understand are a part of the New Jersey Pinelands Commission Comprehensive Management Plan. (Board's Motion for Summary Decision; Hicks Affidavit at 6-7, paragraphs 36-39)

² Note, in this connection: "[D]isputes as to the conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment." *Contini v. Board of Education of Newark*, 96 N.J.A.R. 2d(EDU) 196, 215, citing *Lima & Sons, Inc. v. Borough of Ramsey*, 269 N.J. Super. 469, 478 (App. Div. 1994). *In the Matter of the Tenure Hearing of Andrew Phillips, School District of the Borough of Roselle, Union County*, Commissioner's Decision No. 129-97, decided March 20, 1997; *In the Matter of the Tenure Hearing of Neal A. Ercolano, Board of Education of Branchburg Township, Somerset County*, Commissioner's Decision No. 140-00, decided May 1, 2000.

³ 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:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.