

SCOTT EVANS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 ATLANTIC CITY BOARD OF EDUCATION, : DECISION
 VENTNOR CITY BOARD OF EDUCATION, :
 MARGATE CITY BOARD OF EDUCATION, :
 LONGPORT BOARD OF EDUCATION, :
 BRIGANTINE BOARD OF EDUCATION, :
 AND DANIEL LOGGI, ATLANTIC COUNTY :
 SUPERINTENDENT OF SCHOOLS, :
 :
 RESPONDENTS. :

SYNOPSIS

Petitioner, a member of the Atlantic City Board of Education, sought a ruling that the sending district members of the Atlantic City Board are prohibited from voting on the selection of a board attorney pursuant to *N.J.S.A. 18A:38-8.1*. Respondent Ventnor City Board of Education filed a motion for summary decision, and was joined by the Brigantine, Margate and Longport boards in its request for relief.

The ALJ found that: the right of a sending district member to vote on the choice of a board attorney is not found within the voting rights enumerated in statute; prior decisions rendered by the Commissioner have expanded the role played by sending district members to allow non-enumerated voting powers over board procedure and organizational matters; voting on the choice of a board attorney cannot, however, be construed among the voting rights necessary for the internal organization of the board; therefore, sending district members do not have voting rights in the appointment of a board attorney. The ALJ denied respondents' motion for summary decision.

The Commissioner concurs fully with the ALJ that sending district board members are not entitled to vote on the selection of a board attorney, finding that the question has previously been considered and resolved by two previous Commissioner's decisions. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

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| <p>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.</p> |
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May 1, 2007

OAL DKT. NO. EDU 4116-06
AGENCY DKT. NO. 190-5/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Ventnor City Board of Education, the Margate City Board of Education and the Borough of Longport Board of Education were filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4, as were the reply exceptions of petitioner. All of these submissions were considered by the Commissioner in reaching her determination herein.

The exceptions of each of the Boards essentially recast and reiterate the arguments advanced in their submissions below. The Commissioner determines that such arguments were fully addressed and considered by the Administrative Law Judge (ALJ) in her decision and, therefore, will not be revisited here.

Upon a full and independent review, the Commissioner is in full agreement with the ALJ that – in light of *N.J.S.A.* 18A:38-8.1, the legislative history of this provision and

applicable case law – sending district board members are not entitled to vote on the selection of a board attorney.

As recognized by the ALJ, *N.J.S.A.* 18A:38-8.1 accords a sending district representative membership on the receiving district's board and, at the same time, circumscribes the voting rights of such member. In an effort to reconcile the tension created by the limiting of these individuals' voting rights and their statutory duties and responsibilities as members of a board of education, the Commissioner has, over time, attempted to broadly construe the governing statutory provision to permit these individuals to function effectively on the board, while at the same time remaining cognizant of the limits inherent in the overall statutory scheme and its legislative history. Such endeavor has resulted in an expansion of sending district board member rights over and above the substantive rights expressly specified in statute. However, these additional rights are not unlimited, parameters for them having been established by prior decisional law. (See Initial Decision, pages 4-8) This said, the Commissioner finds and determines that the question at issue in this matter – the entitlement of a sending district board member to vote on the selection of a board attorney – has previously been considered and resolved by the Commissioner on two separate occasions. The first of these, as discussed by the ALJ on pages 5-6 of her decision, was in *Callowhill v. Board of Education of Atlantic City*, 96 *N.J.A.R.* 2d (EDU) 693, and – more recently – in *Board of Education of the Borough of Bloomingdale, Passaic County v. Board of Education of the Borough of Butler, Morris County*, decided by the Commissioner June 17, 2004. In both instances the Commissioner determined that the rights afforded to sending district members on receiving boards of education in effectuation of their status as board members, over and above the substantive voting rights expressly enumerated in statute, did not extend to voting for the selection of a board attorney.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons stated therein, as amplified above.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: May 1, 2007

Date of Mailing: May 1, 2007

* This decision 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.*