

C #162-02L
C #275-02L
SB # 24-02

BOARD OF EDUCATION OF THE NORTHERN :
BURLINGTON COUNTY REGIONAL SCHOOL :
DISTRICT, BURLINGTON COUNTY, :

PETITIONER-APPELLANT, :

V. :

WILLIAM L. LIBRERA AND WALTER KEISS, :
BURLINGTON COUNTY SUPERINTENDENT :
OF SCHOOLS, :

STATE BOARD OF EDUCATION

RESPONDENTS-RESPONDENTS, :

DECISION

AND

TOWNSHIP OF MANSFIELD, BURLINGTON :
COUNTY, :

PETITIONER, :

V. :

WILLIAM L. LIBRERA AND WALTER KEISS, :
BURLINGTON COUNTY SUPERINTENDENT :
OF SCHOOLS, :

RESPONDENTS. :

Decided by the Commissioner of Education, April 12, 2002

Decision on motion by the State Board of Education, July 2, 2002

Decided by the Commissioner of Education, July 19, 2002

For the Petitioner-Appellant Northern Burlington Regional High School District, Parker, McCay & Criscuolo, P.A. (Frank P. Cavallo, Jr., Esq., of Counsel)

For the Respondents-Respondents, Allison Colsey Eck, Deputy Attorney General (Peter C. Harvey, Acting Attorney General of New Jersey)

For the Intervenor Township of North Hanover, Costa, Vetra & LaRosa, P.C. (Joseph A. D'Aversa, Esq., of Counsel)

This appeal arises from a reapportionment by the Burlington County Superintendent of the nine seats comprising the Board of Education of the Northern Burlington County Regional School District (hereinafter "Regional Board"). The Regional School District includes four constituent school districts, and the reapportionment was effectuated pursuant to N.J.S.A. 18A:13-8 and -9 as the result of the 2000 census. Based on the data from the 2000 census and calculated under the "equal proportions" formula, North Hanover lost one of its two seats on the Regional Board and Chesterfield gained a seat. In calculating the population figures that led to this result, the County Superintendent included military personnel and inmates despite the fact that the statutory terms called for their exclusion.

The Regional Board and the Township of Mansfield filed petitions with the Commissioner of Education challenging the County Superintendent's reapportionment of the Regional Board's seats. By letter decision of April 12, 2002, the Commissioner granted the State respondents' motion to dismiss the petition, concluding that the County Superintendent had neither abused his discretionary authority nor acted in contravention of law when he used the equal proportions method to reapportion seats on the regional board. The Commissioner further found that the reapportionment had

satisfied the statutory requirement that seats be assigned to constituent districts “as nearly as may be according to the number of their inhabitants.” In addition, the Commissioner concluded that the County Superintendent’s decision to include the inmates of a State facility in Chesterfield in his population figures was not arbitrary and capricious or beyond the scope of his lawful authority. In this respect, the Commissioner found that excluding the inmates would be in violation of the equal protection clause of the United States Constitution, basing his determination on Borough of Oceanport v. Hughes, 186 N.J. Super. 109 (Ch. Div. 1982), in which the Chancery Division concluded that excluding military personnel under the same statute would be in violation of equal protection.

By letter decision of July 19, 2002, the Commissioner declined to reconsider his determination of April 12, reaffirming that determination. In addition, the Commissioner clarified that his earlier determination to include the inmates in the population figures was based on the fact that he agreed with the State respondents’ contention that the equal protection clause of the United States Constitution would be violated if they were excluded since the weighting of individual votes and the level of representation on the Regional Board would be reduced if the entire population, including inmates, was not counted.

The Regional Board filed the instant appeal to the State Board. The Regional Board points to the fact that judicial determination that it was a violation of equal protection to follow the statutory provision to exclude military personal from the population figures was based on the constitutional requirement of “one man, one vote.” In contrast to military personnel, inmates cannot vote. The Regional Board therefore

argues that there is not a constitutional requirement that inmates be included in the population figures and, hence, there is no reason why the statutory exclusion of inmates should not be followed. In addition, the Regional Board contends that it was improper to use the equal proportions method to effectuate the reapportionment in this case since the statute does not direct the use of this methodology for regional school districts with fewer than nine constituent districts.

For the reasons expressed by the Commissioner in his decision, we affirm the Commissioner's determination that use of the equal proportions method in this case was proper. Furthermore, after thoroughly reviewing the record and carefully considering the arguments of counsel, we also concur with the Commissioner that inmates residing in State facilities were properly included in determining the population for purposes of reapportionment. However, we affirm this determination for reasons different than those relied upon by the Commissioner.

The statute at issue, N.J.S.A. 18A:13-8, provides in pertinent part that:

...there shall be subtracted from the number of inhabitants of a constituent school district shown by the last Federal census officially promulgated in this State, the number of such inhabitants who according to the records of the Federal Bureau of the Census were patients in, or inmates of, any State or Federal hospital or prison, or who are military personnel stationed at, or civilians residing within the limits of, any United States Army, Navy or Air Force installation, located in such constituent school district.

This provision was added to the statute as the result of two different legislative amendments, one enacted in 1958 and the other in 1959. The 1958 legislation added the provision that required subtraction of inmate and patient populations from the population figures to be used for reapportionment purposes, and the 1959 bill amended

the statute to require that military personnel also be subtracted in determining the number of inhabitants in a constituent district.

The part of the statutory provision at issue here which requires that military personnel be excluded for reapportionment purposes was found to be unconstitutional on equal protection grounds in Oceanport, supra. In reaching this conclusion, the Court relied on the decisions of the United States Supreme Court in Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L.Ed.2d 320 (1973), modified 411 U.S. 922, 93 S. Ct. 1475, 36 L.Ed.2d 316 (1973), Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L.Ed.2d 376 (1966), Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441, 12 L.Ed.2d 609 (1964), and Carrington v. Rash, 381 U.S. 89, 85 S. Ct. 775, 13 L.Ed.2d 675 (1965).

No court has explicitly passed on the constitutionality of the remaining portions of the statute, that is, whether it is constitutionally permissible to exclude patients and inmates of State or federal institutions in determining the number of inhabitants for apportionment purposes. However, the New Jersey Supreme Court has provided some direction by its decision in Franklin Township v. Board of Education of North Hunterdon Regional High School District, 74 N.J. 345 (1977).

In Franklin Township, a township challenged the apportionment of seats on a regional high school district board. The Court held the statute unconstitutional as applied to that district because it did not give each of the regional district's twelve constituent districts an appropriate proportion of the control in accordance with their individual populations. In arriving at that conclusion, the Court stated:

All references to population are computed on the basis of an "apportionment population," and are the figures used in calculating the current distribution of seats on the board as

provided by N.J.S.A. 18A:13-8(a). That figure is determined in each district by deducting institutional and military population [sic] from the total census population. Although not projected by this appeal, we entertain serious doubts whether such an exclusion is constitutional in light of what was said in Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L.Ed.2d 320 (1973), modified 411 U.S. 922, 93 S. Ct. 1475, 36 L.Ed.2d 316 (1973), Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441, 12 L.Ed.2d 609 (1964) and Carrington v. Rash, 381 U.S. 89, 85 S. Ct. 775, 13 L.Ed.2d 675 (1965).

Franklin Township, supra, at 349, n.2.

In 1979, following the Court's decision in Franklin Township, the Legislature amended the statute. The statutory amendment established a new system for determining the number of inhabitants for purposes of reapportionment of the membership on regional boards of education. That system eliminated the exclusion of institutional populations altogether. The terms of the statute, however, eliminated the exclusion only with respect to those regional school districts with more than nine constituent districts.

We recognize that when the language of a statute is unambiguous and clearly reveals its meaning, the express language of the statute controls its interpretation. E.g., SASCO 1997 NI, LLC v. Zudkewich, 166 N.J. 579 (2001); Casey v. Brennan, 780 N.J. Super. 83 (App. Div. 2001). In such instances, it is not necessary to look beyond the terms of the statute in order to ascertain the Legislature's intent. E.g., State v. Sutton, 132 N.J. 471 (1993). However, this is not the case here. Given the circumstances of the enactment of the 1979 amendment to the statute at issue and the serious doubts expressed by the New Jersey Supreme Court in Franklin Township as to the constitutionality of excluding institutional populations in determining the population

figures, it is necessary to examine the legislative history in order to determine the Legislature's intent.

The Assembly Education Committee Statement to Senate Bill No. 1391, dated January 25, 1979, shows clearly that the Legislature's action in amending the statute was in response to the New Jersey Supreme Court's decision in Franklin Township and that the Legislature, by the amendment, intended to devise a new apportionment formula that would fully address the constitutional concerns expressed by the Court. As set forth in the Statement:

The court indicated that such a plan probably should be based on total population, rather than "apportionment population" (the total minus institutional and military population),

...

This bill meets the constitutional requirements, as stated by the New Jersey court.

(1) It bases the apportionment on total number of inhabitants, instead of eliminating institutional and military population.

Again, the amendment, including the elimination of the subtraction of institutional populations, applied only to regional school districts with more than nine constituent districts. This is explained by the fact that Franklin Township involved a regional district with more than nine constituent districts and, accordingly, this was the context in which the Court expressed its concerns. In that the amendment was in response to the Court's decision in Franklin Township, the system devised by the Legislature was to address the problem as articulated by the Court in that case. Hence, the Legislature amended only that portion of the statute which dealt with more than nine constituent

districts.

We must now determine the Legislature's intent with respect to regional school districts with fewer than nine constituent districts. The legislative history clearly shows the Legislature's intent to fully address the concerns expressed by the New Jersey Supreme Court in Franklin Township. Although the Court did not articulate those concerns in the context of regional boards with fewer than nine constituent school districts, given the nature of those concerns, we can find no basis for drawing a distinction between those regional districts comprised of more than nine school districts and those comprised of fewer districts. Hence, to effectuate the Legislature's intent to fully address the Court's concerns, its removal of the exclusion provision must be applied to regional school districts with less than nine constituent municipalities as well as those with more.

Therefore, for the reasons expressed herein, we affirm the Commissioner's determination that the inmate population as reported in the last federal census officially promulgated in New Jersey was properly included for purposes of reapportioning board membership on the Board of Education of the Northern Burlington County Regional School District.

Thelma Napoleon-Smith recused herself.

March 5, 2003

Date of mailing _____