

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: MAY 8, 2012)

SCHOOL COMMITTEE OF THE :  
TOWN OF WEST WARWICK, ET AL. :

v. :

C.A. KC 2010-1106

EDWARD A. GIROUX, TOWN OF :  
WEST WARWICK, ET AL. :

DECISION

**RUBINE, J.** This matter is before the Court on petition for issuance of Mandamus, as contained in Count I of the Amended Complaint. Decision on that issue was originally reserved by the Court in its February 28, 2012 decision (as amended, February 29, 2012) which decision resolved by way of summary judgment, the declaratory Count of the Amended Complaint, as it pertained to the Town’s appropriation to the School Committee for Fiscal Year 2009 (“FY 2009”) and the adequacy of that appropriation, under G.L. § 16-7-23 (maintenance of effort)<sup>1</sup>. Based upon the un rebutted affidavit of Michael Petrarca, the Court found that there was no genuine issue of material fact, and entered summary judgment on the declaratory relief sought by the School Committee. It was the decision of the Court that the Town’s appropriation to the School Committee for FY 2009 was \$1,162,343 less than what was required under the maintenance of effort

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<sup>1</sup> Maintenance of effort refers to that portion of G.L. § 16-7-23 which provides as follows: “Each community shall contribute local funds to its school committee in an amount not less than its local contribution for schools in the previous fiscal year.”

provisions of state law. The reason for the shortfall in FY 2009 was due to the Town's miscalculation of the Fiscal Year 2008 ("FY 2008") appropriation. When the FY 2008 appropriation was recalculated to include certain payments the Town made directly to creditors of the School Committee, the Court found the total contribution for FY 2008 should have been \$21,991,481. For FY 2009, however, the Town's contribution was \$28,839,138 or \$1,162,343 less than that which was required.<sup>2</sup> For purposes of background and context, the earlier decision is incorporated herein by reference.

This Court's ruling on declaratory relief is entirely consistent with the final decision of the Commissioner of Education in her declaratory ruling dated August 31, 2009.<sup>3</sup> The Commissioner has no jurisdiction to order the Town to appropriate more money to the School Committee as the Commissioner acknowledged in her decision. This Court, however, has the statutory authority to enforce the Commissioner's decision by way of mandamus under the provisions of G.L. § 16-39-3.1. See West Warwick School Committee v. Joseph Souliere, 626 A.2d 1280 (R.I. 1993). Section 16-39-3.1 provides:

“All final decisions made after hearing by the commissioner of elementary and secondary education, and which are not subject to further judicial or administrative review, shall be enforceable by mandamus or

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<sup>2</sup> The amounts of the FY 2008 and 2009 appropriations are as set forth in the Petrarca affidavit. Since the Town in opposition to the motion for summary judgment failed to file any affidavit or other materials acceptable under Rule 56, to rebut Petrarca's affidavit, the Court considered the facts as contained in the Petrarca affidavit to be undisputed. Accordingly, the court determined that there were no genuine issues of material fact, and entered judgment for the school committee, as a matter of law. See RCP 56.

<sup>3</sup> G.L. § 16-39-1 grants the Commissioner the authority to hear and determine matters of dispute arising under any law relating to schools or education. The finality of the Commissioner's ruling is determined by the fact that the Town appealed the Commissioner's ruling to the Board of Regents. The Board affirmed the Commissioner's ruling. Thereafter the Town filed a petition for certiorari seeking appellate review by the R.I. Supreme Court. The Supreme Court denied certiorari, accordingly the Commissioner's decision became final (not subject to further judicial or administrative review). See G.L. § 16-39-3.1.

any other suitable civil action in the superior court... at the request of any interested party.”

Not only does this Court have the authority to issue mandamus to compel compliance with a final determination of the Commissioner, it also has the statutory authority in an action for declaratory judgment (G.L. § 9-30-1) to make its own independent determination of whether the Town’s 2009 appropriation was consistent with state law and to enforce its own independent determination by writ of mandamus. G.L. § 16-7-23.

In this case, both the Commissioner and the Court agree that for the Town to be in compliance with state law regarding maintenance of effort under G.L. § 16-7-23, its 2009 appropriation had to be no less than the 2008 appropriation. For FY 2008, this Court and the Commissioner concluded that the Town’s 2009 appropriation had to be no less than \$29,991,481. However, in 2009 the Town appropriated only \$28,839,138, which is \$1,162,343 less than the 2008 appropriation as properly calculated.

Accordingly, the School Committee prays that this Court issue a judgment in the form of a writ of mandamus, compelling the Town to pay to the School Committee forthwith the full amount of the 2009 local funding deficiency. As noted by our Supreme Court, there is no doubt of the responsibility of appropriating bodies, including a financial town meeting, to fund contractual obligations made by the School Committee in collective bargaining agreements. West Warwick School Committee v. Souliere, 626 A.2d 1280, 1282 (R.I. 1993). In reaching that conclusion the Court relied on its earlier decision in Exeter-West Greenwich Regional School District v. Exeter-West Greenwich School District, Exeter West Greenwich Teachers Association, 489 A.2d 1010 (R.I.

1985). Although those decisions dealt with an appropriating authority's obligation under a different provision of state law with respect to local funding of public education, the concept is no less applicable to a municipality's funding obligations under the maintenance of effort provisions, or any other state law compelling a minimum level of local support for public education.

This Court therefore has no doubt that it is authorized by way of mandamus, to compel the Town to make-up the shortfall of its 2009 appropriation, by making payment to the School Committee in the amount of \$1,162,343. If this Court did not require such payment, a municipality could evade its statutory funding obligations with impunity.

The School Committee is not without fault in this 2009 funding fiasco. It entered a settlement agreement with the Town in 2008, which it knew or should have known was unenforceable, and would result in a 2009 appropriation of less than that required under state law. Furthermore, it appears from the affidavit filed in connection with the mandamus portion of this action, that the School Committee once again (as occurred in fiscal year 2008) reached the end of the current fiscal year (2013) with insufficient funds to meet its obligations to creditors. (Aff. of Michael Petrarca 03/26/2012). R.I. Gen. Law § 16-9-1 requires all school committees to live within their means, and not to incur debts which exceed their revenues. State law requires, "the school committee of each school district shall be responsible for maintaining a school budget which does not result in a debt." G.L. § 18-2-9(d). If the schools realize and anticipate that public school expenditures will exceed revenues in any given fiscal year, the school committee has a statutory obligation to notify Town officials, and prepare a corrective action plan which must be approved by the auditor general. G.L. § 16-2-9(f). The School Committee in the

future should anticipate its financial needs, and prepare a realistic budget to address those needs, rather than coming up short at the end of a fiscal year, and asking the Court for an emergency order to compel the Town to appropriate funds to fill the budget gap. “A Caruolo action is not intended to be used as an end of the year budget plug to fix a deficit that the school committee had anticipated for months before the school year began.” School Committee of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 639 (R.I. 2009).

If sufficient care is taken to design a school budget reflective of the fiscal needs of the school district, and the Town adheres to its statutory obligation of appropriating sufficient funds annually to meet the required minimum for local funding, as required by state law, then perhaps the need for expensive and time-consuming litigation annually to address issues of local funding can be avoided in the future.

### **CONCLUSION**

The Court has afforded each party a fair opportunity to address the issue of mandamus, and to recommend to the Court a proper and equitable manner to address the Town’s underfunding in fiscal year 2009. In the absence of any alternative suggested by the parties, this Court shall enter a judgment in mandamus, requiring the Town to make payment to the School Committee in the full amount of the FY 2009 under-funding: \$1,162 343.