STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: DECEMBER 15, 2011)

BETHANY FURTADO, ET AL. and MEMBERS OF THE WARWICK SCHOOL COMMITTEE	:	
VS.	:	**C.A. No.: KC 2011-0930**
SCOTT AVEDISIAN, STEVEN COLANTUONO ET AL., MEMBERS OF THE CITY COUNCIL, CITY OF WARWICK	:	

DECISION

RUBINE, J., The public schools of every municipality in Rhode Island receive local financing from municipal appropriations; in the case of the City of Warwick, the appropriations are made by the City Council, which makes decisions with input from the mayor with respect to how much of the municipal budget will be allocated to the School Committee for the support of public education in the City. The discretion with regard to the amount of such local appropriation is constrained by state law, since a municipality's financial support of public education is governed by an intricate, and often overlapping, array of state statutes. One of those statutory requirements has become known as the "maintenance of effort" ("MOE") embodied in R.I. Gen. Law 1956 § 16-7-23. Prior to amendments in 2010, municipal government has been obligated to appropriate not less than the amount appropriated for the previous fiscal year. Maintenance of effort is in essence a mechanism to ensure level and predictable local funding for public schools. Decisions with respect to the expenditures of local funding are made by the school committee in each municipality.

Through the vehicle of a petition for Writ of Mandamus[1] coupled with a complaint seeking declaratory relief, the Warwick School Committee (School Committee) has challenged the appropriation from the City Council to the School Committee for Fiscal Year 2012, including a claim that the appropriation fails to conform to G.L. § 16-7-23 (as amended), together with a challenge to a restricted hold-back of $875,000 which was appropriated with constraints on how the school committee must allocate that portion of the appropriations. The legal questions raised involve the statutory construction of G.L. § 16-7-23, including the 2010 amendments to that statute.

I

Facts

The material facts agreed to by way of a statement of undisputed facts are as follows:

1.) The local appropriation to the School Committee in Fiscal Year 2009 was $123,968,068.

2.) For Fiscal Year 2010, the City Council again appropriated to the School Committee $123,968,068, in other words an amount equal to, one-hundred percent (100%) of the previous year's appropriation.

3.) In 2010, the General Assembly amended § 16-7-23. Following the 2010 amendments to G.L. § 16-7-23, the annual appropriation by the City to the School Committee for 2011 was $117,769,632 (or ninety-five percent (95%) of the allocation for Fiscal Year 2009).

4.) For Fiscal Year 2012, the current fiscal year, the City has appropriated $118,644,629. That amount includes a provision from the Mayor's budget

[1] Writ of Mandamus is the statutorily prescribed enforcement mechanism set forth in G.L. § 16-7-23, which provides, "the courts of this state shall enforce this section by writ of mandamus." 16-7-23(a).

recommendation for Fiscal Year 2012 of an $875,000 "set- aside" to be held by the City, the use of which would be restricted to funding Warwick Public School extracurricular activities. This restricted funding was released to the School Committee during Fiscal Year 2011, and is reflected in the 2012 appropriation. See Resolution of City Council R-10-153. The total appropriation for Fiscal Year 2012 is less than the amount of funds appropriated for Fiscal Year 2009, but is more than 100% of the appropriation made in the previous fiscal year, Fiscal Year 2011.

5.) On February 17, 2011, the Commissioner of Elementary and Secondary Education (Deborah A. Gist) issued an interpretive opinion in a memo as to how municipalities should apply MOE appropriations under §16-7-23 to Fiscal Year 2012. The parties dispute whether this letter constituted a binding interpretation of law concerning application of the MOE statute.

The annual appropriations from FY 2009 to the present are summarized as follows:

FISCAL YEAR	TOTAL APPROPRIATION
2009	$123,968,068
2010	$123,968,068
2011	$117,769,632
2012 (proposed)	$118,644,632

This dispute arises as a result of the Fiscal Year 2012 appropriation, and whether such appropriation is sufficient to satisfy MOE embodied in G.L. § 16-7-23 (as amended). The School Committee seeks mandamus and declaratory relief from this Court. The request for issuance of a writ of mandamus is to seek an order from this Court that the City be required to fund the School Committee for Fiscal Year 2012 in an amount not less than the total

appropriation for operation of the Warwick Public Schools for Fiscal Year 2009. The declaratory relief sought is an order finding that, because the School Committee has the exclusive authority under state law and City Charter to designate how any appropriated funds will be utilized, the restricted hold-back violates that principle and the Court should make that declaration and order the City to release the "hold-back" amount of $875,000 to the School Committee.[2] The difference between the current appropriation, inclusive of the $875,000 hold back, and that which the School Committee deems an amount in compliance with current MOE requirements is $5,323,436.

II

Standard of Review

As this case comes before the Court on cross motions for summary judgment, and upon an agreed statement of material facts, this Court must now determine which party is entitled to judgment as a matter of law, based upon those undisputed facts. Rule 56 R. Civ. P. Statutory construction "is a matter reserved for the Courts." Darney v. Carcieri, 996 A.2d 1144, 1150 (R.I. 2010), quoting Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987). This Court reviews questions of statutory interpretation in a de novo manner. In re Brown, 903 A.2d 147, 149 (R.I. 2006).

III

Analysis

Rhode Island General Law § 16-7-23 provides as follows with the amendments made in June, 2010 underlined:

[2] In light of the release of those funds in 2011, it appears that portion of the complaint is moot and does not present a sufficient "case or controversy" to justify the declaratory relief requested. See Mckenna v. Williams, 874 A.2d 217 (R.I. 2005). However, because the issue of a future hold-back to be used only for purposes designated by the City Council is capable of repetition. The Court nonetheless will address the legality of such a hold-back at this time.

"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 except to the extent permitted by § 16-7-23.1.[3] Provided that for the fiscal years 2010 and 2011 each community shall contribute to its school committee in an amount not less than ninety-five percent (95%) of its local contribution for schools for the fiscal year 2009."

In summary, the "maintenance of effort" (MOE) statute, as originally promulgated mandates that each community in Rhode Island fund its School Committee in an amount not less than the full amount of the contribution made in the previous Fiscal Year. The 2010 amendment provides that for Fiscal Years 2010 and 2011, the appropriated amount must be not less than ninety-five percent (95%) of its Fiscal Year 2009 contribution. In addition, the statute permits computation of MOE on a per pupil basis, if a community has a decrease in enrollment.[4]

This analysis begins with the consideration of the Fiscal Year 2009 budget allocation of $123,968,068. Fiscal Year 2010 was also $123,968,068, or one-hundred percent (100%) of the previous Fiscal Year, 2009. For Fiscal Year 2011, determined after the 2010 amendment to G.L. § 16-7-23 the appropriation was $117,769,632; or ninety-five percent (95%) of Fiscal Year 2009. For Fiscal Year 2012, the City asserts its statutory obligation must be based on not less than 100% of the previous Fiscal Year, in other words not less than $117,769,632, the appropriation made in Fiscal Year 2011. The City urges the Court to find that the City's appropriation for 2012 is compliant with this formula, and in fact exceeds the statutorily mandated minimum.

For purposes of this litigation, the School Committee accepts the City's allocation at ninety-five percent (95%) of Fiscal Year 2009 for the Fiscal Year 2011 appropriation based on

[3] Section 16-7-23.1 is not pertinent to this lawsuit.
[4] The parties, with the Court's consent, have initially addressed only the "aggregate" funding issue, reserving for a second phase of this litigation, issues, if any, that might relate to a per pupil appropriation.

the understanding that this allocation was consistent with the clear provisions of the 2010 amendment to G.L. § 16-7-23.

The dispute is limited to the current Fiscal Year 2012 appropriation in which the City reverted back to the Fiscal Year 2011 as the base year on which to compute the MOE for 2012. The City believes that the Fiscal Year 2012 allocation is consistent with the plain meaning of the 2010 amendments to G.L. § 16-7-23, in that the City believes its MOE obligation is met if the 2012 appropriation is not less than the full amount of the 2011 appropriation, that being the previous fiscal year to 2012.

The School Committee, on the other hand, believes the City is obligated by § 16-7-23 (as amended) to allocate at a minimum one-hundred percent (100%) of the Fiscal Year 2009 allotment for Fiscal Year 2012 in order to be in compliance with the so-called "maintenance of effort." The Commissioner of Elementary and Secondary Education, Deborah A. Gist, on February 17, 2011 issued an interpretive memorandum to all School Committees in the State, entitled, "Maintenance of Fiscal Effort – Temporary Reduction." The Commissioner offers therein an interpretation of G.L. § 16-7-23 in accordance with what she believes was the intent of the General Assembly. Her interpretation was given in accordance with her duty to interpret school law as set forth in G.L. § 16-1-5(10). The memorandum opinion was not issued as a declaratory ruling, nor is it a final order of an administrative agency appealed to this Court in accordance with the Administrative Procedures Act as set forth in G.L. § 42-35-15, nor was the ruling a result of an investigation by the Board of Regents, as set forth in G.L. § 16-60-9. The interpretation was issued in an effort to provide uniform guidance to all municipalities in the state on a matter of statewide concern.

The memorandum, by its terms, was to provide guidance to all municipalities as to the proper application of the 2010 amended language of G.L. § 16-7-23. The Commissioner believes the amendments in essence provided only for a temporary reduction in maintenance of effort for Fiscal Years 2010 and 2011, from not less than one-hundred percent (100%) of the previous fiscal year, to not less than ninety-five percent (95%) of the municipal contribution for Fiscal Year 2009. Gist's interpretive opinion, in pertinent part viewed the amendment to § 16-7-23 as limited only to Fiscal Years 2010 and 2011, using Fiscal Year 2009 as the base. The Commissioner opined that beyond Fiscal Year 2011, the statutory requirement "reverts" to a minimum of one-hundred percent (100%) of the base year which she believes should be Fiscal Year 2009. She also reiterated that the maintenance of effort requirement is independent of and in addition to the so-called "Caruolo Act" requirement that municipalities must appropriate each year funds sufficient when added to state and federal aid to cover the costs associated with implementing "the basic education plan," (as established by the Board of Regents) as well as sufficient funds to implement federal and state mandates. See G.L. § 16-7-24. This action does not involve application of the principles of the Caruolo Act, nor does the School Committee allege that the 2012 appropriation is insufficient under G.L. § 16-7-24.

Commissioner Gist opined that communities which chose to exercise their rights to a lower appropriation for Fiscal Years 2010 or 2011 (in accordance with the 2010 amendments), will not be able to "drop back" to a ninety-five percent (95%) MOE as applied to a base year set by the previous fiscal year, but must revert back to a contribution of not less than one-hundred percent (100%) of 2009 as the relevant base year. She concludes that the "maintenance of effort" base year for Fiscal Year 2012 must be 2009, not 2011. Stated in other words, the Commissioner believes that it was the intent of the General Assembly that, if a municipality acts

in accordance with the amendments for 2010 or 2011, the "reprieve" permitted by the 2010 amendments should be applied temporarily only for Fiscal Years 2010 and 2011, and that thereafter the MOE must be calculated as not less than one-hundred percent (100%) of the Fiscal Year 2009 amount. According to the Commissioner's interpretation and that advocated by the School Committee, once the City of Warwick calculated its appropriation for Fiscal Year 2011 using the ninety-five percent (95%) of Fiscal Year 2009 allocation (authorized by the 2010 amendment), Fiscal Year 2012 reverts back to one-hundred percent (100%) and uses Fiscal Year 2009 as the base instead of the previous fiscal year. Commissioner Gist explicitly refers to what she believes to be the legislative intent in her interpretive memo. "The purpose of the statute (§ 16-7-23) is the protection of the General Assembly's constitutional interest in the promotion of public education." See Rhode Island Constitution Art. XII, Section 1. Such purpose is not mentioned at all in the amendment to § 16-7-23. Therefore, the source of the Commissioner's speculation as to the legislative intent being a matter of constitutional duty is unknown.

In 2011, Warwick opted to take advantage of the amendment and made its appropriation to the School Committee using the formula of not less than ninety-five (95%) of Fiscal Year 2009. The School Committee does not take issue with the 2011 appropriation or the manner by which it was calculated. The Committee, however, asks this Court to issue a writ of mandamus pursuant to §16-7-23, requiring that the City appropriation for Fiscal Year 2012 be made in accordance with the Commissioner's interpretation. The petition for issuance of a writ of mandamus seeks a determination that for 2012, the City must appropriate not less than $123,968,068, or one-hundred percent (100%) of Fiscal Year 2009. A ruling in accordance with the interpretation of the Commissioner, as advocated by the School Committee, would require

the City to appropriate an additional $5,323,439 over its current appropriation for Fiscal Year 2012 for the School Committee's use in its operation of the Warwick public schools.

In addition, by way of declaratory relief, the School Committee asks this Court to order the release of $875,000 held by the City in connection with the 2012 allocation, and release those funds to the School Committee for its unrestricted use according to its exclusive authority under G.L. § 16-2-9(a), and similar provisions of the Warwick City Charter.

Although under state law the Commissioner has a duty to interpret school law, that duty is not exclusive and does not preempt this Court's independent duty to interpret all state law. See G.L. § 16-1-5(10). This Court is not bound to apply the interpretation offered by the Commissioner, and must independently review the Commissioner's interpretation of how, if at all, the 2010 amendment to G.L. § 16-7-23 affect the City's 2012 financial obligation to the Warwick public schools. It should be noted that the interpretation contained in the Commissioner's memo dated February 17, 2011 was not the result of a contested case, nor was the opinion a final order of an administrative agency subject to appeal to the Superior Court. See G.L. § 42-35-15. In fact, the Commissioner's interpretive opinion was not requested by either the City or the School Committee of the City of Warwick but was a general interpretive opinion rendered generally concerning all of the public schools in Rhode Island.

It is this Court's belief that as a matter of law and statutory construction, Commissioner Gist's interpretation of G.L. § 16-7-23, and its amendments, improperly concludes that for Fiscal Year 2012, maintenance of effort requires a municipality to allocate one-hundred percent (100%) of Fiscal Year 2009 allocation, rather than look to the allocation for the previous fiscal year, which for Fiscal Year 2012 would be 2011. Applying the tenets of statutory construction mandated by our Supreme Court, this Court believes that the interpretive opinion of

Commissioner Gist is clearly erroneous as a matter of law, and should not be enforced by way of a writ of mandamus.

This Court agrees with the City that the clear and unambiguous language of § 16-7-23 as amended allows a municipality to use ninety-five percent (95%) of Fiscal Year 2009, only for Fiscal Years 2011 and 2010 and not thereafter. The City of Warwick complied with its funding obligation in those two fiscal years. However for 2012, the statute must be read as it existed before the amendments and the allocation must reflect one-hundred (100%) of the allocation for the previous fiscal year (2011) and not revert back to Fiscal Year 2009 as the base year. The School Committee's calculation of the required minimum for Fiscal Year 2012 is contrary to the clear and unambiguous language of G.L. § 16-7-23 as amended, and should not govern the application of the maintenance of effort obligation of the City for the current fiscal year. The Court understands and respects the opinion of the Commissioner and the rationale upon which her interpretation relies. That rationale assumes that the General Assembly's amendment was meant to temporarily reduce the funding obligation only for two years whereas using the 2011 appropriation as a base year would have the effect of perpetuating the reduction beyond 2011, contrary to her belief as to the legislature's intent. However, this Court has an independent obligation to review de novo the principles of law, including application of the tenets of statutory construction that underlie the decision of the Commissioner.

It is a primary canon of statutory construction in Rhode Island that statutory intent is to be found in the words of a statute if they are free of ambiguity and express a reasonable meaning." State v. Groff, 17 A.3rd 1005, 1009 (R.I. 2011). In other words "when the language of a statute is clear and unambiguous, we must enforce the statute as written by giving the words of the statute their plain and ordinary meaning." Harvard Pilgrim Healthcare of New England,

Inc. v. Gelati, 865 A.2d 1028, 1037 (R.I. 2004). The text of § 16-7-23 as amended is straightforward, clear and unambiguous. While the statute does refer to Fiscal Year 2009 as the reference year in applying MOE for Fiscal Years 2010 and 2011, the norm as set forth in the statute prior to the amendment is to use "the previous fiscal year" as the reference year. Once the provisions for Fiscal Years 2010 and 2011 are no longer applicable, the MOE reverts to the application of the statute as it existed before the amendments of 2010. In other words, for Fiscal Year 2012, the MOE standard must be no less than the local contribution for schools in the "previous fiscal year."

This Court believes, therefore, that the City's Fiscal Year 2012 obligation to the public schools must be at a minimum of $117,769,732. In other words, the City's current allocation of $118,644,629 is adequate to comply with its maintenance of effort obligations under state law. The allocation for Fiscal Year 2012 is clearly not less than one-hundred percent (100%) of the appropriation for 2011, the previous fiscal year, and need not be modified to reflect one-hundred percent (100%) of the appropriation for Fiscal Year 2009.

The Court understands and respects the rationale of both the Commissioner and the School Committee in reverting to 2009 as the base year. Reference is made by Commissioner Gist that the purpose of § 16-7-23 is "the protection of the General Assembly's Constitutional interest in the promotion of public education." This intent is not expressed or implied by the words of the statute. Since 2011 was a reduced allocation year, based on the amendments, the practical effect of carrying that appropriation forward to 2012 and beyond would (by using the previous fiscal year as the base or point of reference) have the effect of perpetuating a reduced allocation permitted by the 2010 amendment beyond 2011, the last year of the exception. Presumably, the Commissioner and the Warwick School Committee believe that was not the

intent of the legislature in promulgating the 2010 amendment to G.L. § 16-7-23. However, the Commissioner's interpretation would superimpose a meaning beyond the clear words of the statute, since the statute makes no reference to using the Fiscal Year 2009 appropriation as the base or reference year for 2012 (or any fiscal year after 2011). Rather, the unambiguous words of the statute identify Fiscal Year 2009 as the reference year only for Fiscal Years 2010 and 2011. The words in the amendment after the word "Provided" are not ambiguous and therefore not subject to the construction advocated by the School Committee.

Somewhat coincidentally, this Court's interpretation is referenced in a letter to the Chairman of the Board of Regents for Elementary and Secondary Education dated May 13, 2011, and authored by Gordon D. Fox, Speaker of the House and M. Teresa Paiva Weed, President of the Senate. While this Court believes the statutory interpretation contained in that letter is sound under the "plain and unambiguous language" concept of statutory construction,[5] the statement of legislative intent in a letter signed by two members of the leadership in the General Assembly, cannot be used in substitution for the accepted rules of statutory construction. The Court has not made its determination in reliance on the Fox/Paiva Weed letter, and does not find the letter to be dispositive of legislative intent.[6]

IV

The Restricted Hold-Back

The School Committee asserts that the 2011 allocation includes or included an allocation of $875,000 with those funds to remain in the City accounts, and be restricted for the School

[5] For instance these two legislative leaders state the following, "If the General Assembly's intent was to require municipalities to revert back to the FY 2009 base, it would have specified that clearly in the legislation."

[6] Unlike the United States Congress, the Rhode Island General Assembly has no publicly available record of proceedings from which legislative intent could be gleaned. For that reason it would be improper for the Court to rely on the statements from individual members of the General Assembly as dispositive of legislative intent or statutory interpretation. Such v. State of Rhode Island, et al., 950 A.2d 1150, 1159 (R.I. 2008).

Committee's limited use to fund Warwick Public School's extracurricular activities. It appears the restricted hold-back was designed to further the Council's agenda to "prevent the School Committee from taking any action to eliminate or reduce student athletic activities." For purposes of this decision, it does not matter what the intended purpose of the "hold-back" was, nor does it require this Court to determine if in fact the City Council intended to designate and restrict the use of funds to protect student athletes.

This Court agrees with the position taken by the School Committee that such a restricted hold-back unlawfully restricts the use of an allocation to the School Committee, which, under state law has the exclusive authority to care, control, and manage the public school interests, and to direct the expenditure of such funds for any lawful purpose within their authority. See G.L. § 12-2-9(a).

The General Assembly has clearly vested the school committees of this State with exclusive authority to direct the expenditures of funds allocated to it by the municipality.[7] If the City Council intends the $875,000 to be part of the 2012 public school allocation (which appears to be the case based on the Supplemental Joint Stipulation of Agreed Facts par. 1), the City Council is prohibited by State law and City Charter,[8] from restricting its use.

V

Conclusion

The Court finds that the City of Warwick's appropriation to the School Committee for Fiscal Year 2012 meets the standard for maintenance of effort in accordance with State law as it

[7] The use in the statute of the word "entire" as a modifier to the words "care, control, and management" of all public school interests connotes exclusivity.

[8] Warwick City Charter Article IX § 9-8, provides in pertinent part: "The school committee shall submit budget estimates in the same manner as city departments, but the budget estimates and appropriations shall be considered by the council in total only. The allocation of the amounts appropriated shall be determined by the school committee."

presently exists. In addition, the Court further finds that any funds the City is holding as restricted funds for the School Committee is being held and restricted contrary to State law and the Warwick City Charter. The $875,000 is to be included in the City's Fiscal Year 2012 appropriation to be used by the School Committee for any lawful purpose.[9]

Counsel for the City shall submit to the Court, an appropriate form of order, reflecting this Decision.

[9] Paragraph 2 of the Supplemental Joint Statement of Undisputed Fact indicates that this transfer has already occurred during Fiscal year 2011 as evidenced by City Council Resolution R-10-153. See fn. 2, supra at page 4.