

BOARD OF EDUCATION OF THE :
TOWNSHIP OF HILLSIDE, :
UNION COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

MUNICIPAL COUNCIL OF THE : DECISION
TOWNSHIP OF HILLSIDE, MAYOR :
KAREN OLIVER, AND TOWNSHIP :
OF HILLSIDE, UNION COUNTY, :

RESPONDENTS. :

SYNOPSIS

Petitioning Board of Education alleges that respondents misappropriated State Abbott Bordered District Aid (“Rim” Aid) when the Municipal Council (Council) reduced the proposed base tax levy after it was defeated by the voters, and converted the aid to municipal use, which reduced the school budget – thereby neutralizing the benefit to the District of the “Rim” Aid in violation of *N.J.S.A. 18A:7F-10.1*, which has since been appealed. Petitioner demands restoration of the base tax levy which it proposed in the budget that was rejected by the voters; respondents contend that the Board’s demand is without merit, and filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no relevant or material facts in dispute, and the matter is ripe for summary decision; the petitioner cites no law, regulation, or authority that suggests that the actions of the Council violated any school law; and neither *N.J.S.A. 18A:7F-10.1*, nor the budget review provisions of *N.J.S.A. 18A:7F-5(e)*, prohibit a governing body from considering the receipt of “Rim” Aid in determining whether to reduce a district’s proposed base tax levy. Accordingly, the ALJ determined that the respondents’ motion for summary decision should be granted, and the petition dismissed.

Upon full and independent review and consideration, the Commissioner concurred with the ALJ’s findings, adopted the Initial Decision with supplementation, and dismissed the petition.

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.

OAL DKT. NO. EDU 10979-06
AGENCY DKT. NO. 289-8/06

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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL) and petitioner’s exceptions and respondents’ reply thereto have been reviewed. Upon full and independent consideration, the Commissioner asserts jurisdiction and adopts the Initial Decision as the final decision in this case, as supplemented below.

In planning the total school district funding for the 2006-2007 school year, petitioner put together a budget that sought \$25,242,459 (referred to as the base tax levy) from the local taxpayers. This was over half of the projected general fund amount of \$42,764,452 for the district. One of the many sources of monies available to petitioner – over and above the base tax levy – was “rim aid” in the amount of \$1,749,273, which petitioner was eligible to receive because it borders on several Abbott districts and met the rim aid criteria set forth in the now repealed *N.J.S.A. 18A:7F-10.1*.

The requested \$25,242,459 base tax levy was rejected by the voters. Thus, the universe of funds available to the school district from the various State, local and/or federal sources could not reach the total budget figure originally proposed by petitioner unless the local governing body, *i.e.*, the respondent town council (Council), exercised its discretion under *N.J.S.A.* 18A:7F-5(e) to provide the school district with the base tax levy that had been rejected by the voting residents of Hillside. The Council declined to do so. After a meeting with petitioner's representatives, the Council voted to reduce petitioner's proposed budget by \$1,500,000.

Petitioner contends that the Council's action was in violation of *N.J.S.A.* 18A:7F-10.1, which had been in effect at the time but is now repealed. It argues as follows. Petitioner planned to use its rim aid for improvements in school facilities. The Council directed that \$1,275,000 of the \$1,500,000 cut from the proposed school budget be subtracted from the \$2,948,011 that petitioner had allocated for school facility improvements. Therefore, petitioner asserts, the Council was redirecting the rim aid that petitioner intended to use for school facilities, using it to supplement the municipal budget in violation of *N.J.S.A.* 18A:7F-10.1.¹

The factual support offered by petitioner for its position that the rim aid served as the Council's justification for reducing the school budget was a comment by the Council's accountant – given at a meeting between petitioner's representatives and the Council to discuss options for the defeated budget. When the accountant was asked what differences existed between Hillside and neighboring towns that could explain Hillside's larger school budget cut, the accountant observed that the other towns had not qualified for rim aid.

¹ As a factual matter, the record before the Commissioner does not include evidence that the Council knew about petitioner's plan to use rim aid for facility improvements.

The legal basis for petitioner's stance is the word "additional" in *N.J.S.A. 18A:7F-10.1*, which stated in pertinent part:

Additional State school aid for certain districts bordered by Abbott districts.

1. a. In addition to any State school aid to which a school district is entitled for the school year under P.L.1996, c.138 (C.18A:7F-1 et seq.) or any other law, a school district, other than a regional or consolidated school district, which is bordered by three or more Abbott districts shall receive additional State school aid if the district meets one or more of the following criteria:²

(Emphasis added)

Petitioner urges that the word "additional" signified that rim aid could not be considered by municipal lawmakers when they evaluated a school budget. Stated differently, the rim aid, in petitioner's view, should have been additional to any school budget approved by a municipality.

The Commissioner finds no merit in these arguments. First, the accountant's comment at a meeting between petitioner and the Council, even if made as described by petitioner, does not suffice as proof that the Council's budget decision was influenced by the rim aid. Second, even if the existence of the rim aid had influenced the Council's budget

² (1) the district's per pupil cost in the prebudget year as reported in the Department of Education's Comparative Spending Guide was less than the average per pupil cost for the Abbott districts in the prebudget year as calculated based on data from the Comparative Spending Guide;

(2) the district had an average school student mobility rate of 10% or greater as reported in the most recent New Jersey School Report Card;

(3) 35% or more of the district's students were eligible for free or reduced price meals under the federal school lunch program;

(4) 15% or more of the numbers shown in the most recent New Jersey School Report Card data for class size by grade level, other than prekindergarten, and school for a district indicated an average class size of 30 or more students; and

(5) the per capita personal income of the residents of the school district was \$19,000 or less for the 2004-2005 school year based upon aggregate total income reported on the NJ-1040 for 2001 and all public assistance including Temporary Assistance to Needy Families for 2001. For each subsequent school year, the per capita personal income limit shall be increased by the CPI as defined in section 3 of P.L.1996, c.138 (C.18A:7F-3).

determination, petitioner offers no legal authority for its theory that factoring a rim aid award into budget deliberations must necessarily have been deemed a violation of *N.J.S.A.18A:7F-10.1*. Third, the text of *N.J.S.A.18A:7F-10.1* stated that rim aid was to be additional to other State aid. There was no express language instructing municipalities to establish the local share of their school budgets without taking rim aid – or other non-local funding sources – into account. In point of fact, the function of *N.J.S.A.18A:7F-10.1*, as set forth in its provisions, was to identify 1) the conditions that would entitle an Abbott rim district to receive aid and 2) the calculations that would be employed in determining how much aid the district would receive. As there was no language in the statute dictating how the aid had to be allocated, there can be no finding of violation of the statute based upon how the rim aid was used. Finally, there is nothing in the record that supports the notion that the rim aid was ultimately used for anything other than school district expenses.

In its exceptions, petitioner also invokes *Abbott v. Burke*, 119 *N.J.* 287, 385-86 (1990). The particular language which petitioner references instructs the State that state aid must be dispensed in order that children may receive a thorough and efficient education regardless of local tax bases. There is nothing in the record to suggest that the Council's budget decision threatened the provision of a thorough and efficient education to the students of Hillside. In fact, it was apparently stipulated by the parties that such a threat did not exist. (Initial Decision at 4) Thus, petitioner's *Abbott* citation is not germane to the instant controversy. Similarly, the language petitioner cited from a later *Abbott* litigation,³ which language discusses the provision

³ *Abbott v. Burke*, 153 *N.J.* 480, 519 (1998).

of State funding to Abbott districts for facilities, is also informed by the concern that children receive a thorough and efficient education.⁴

Petitioner's contention that summary decision was inappropriate due to the dispute about the Council's intentions concerning the rim aid warrants no discussion, since the Commissioner has determined that the Council's actions did not violate the legal authority discussed in petitioner's papers.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: September 19, 2008

Date of Mailing: September 19, 2008

⁴ The Commissioner notes that after the Council's budget cut, there was still \$1,673,011 in the budget for facility projects for the 2006-2007 school year. No affidavit or documentary evidence was submitted by plaintiff to explain how this was insufficient to address the facility issues in petitioner's district.

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.