

MURPHY TRANSPORTATION, INC., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF OCEAN, :  
MONMOUTH COUNTY AND :  
JEWISH COMMUNITY CENTER OF :  
GREATER MONMOUTH, INC., :  
(Improperly pled as The Ruth Hyman :  
Jewish Community Center of Greater :  
Monmouth), :  
RESPONDENTS. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning transportation company sought a ruling from the Commissioner declaring that any lease agreement between the respondents to provide district school buses for transporting children to the Jewish Community Center's private summer camp is in violation of *N.J.S.A. 18A:39-22* and *N.J.A.C. 6A:27-7.8*, and requested reimbursement for fees related to the lawsuit. The parties filed cross motions for summary decision.

The ALJ found that: the sole issue in this case is whether the contract entered into between the Board of Education and the Jewish Community Center (JCC) violated *N.J.S.A. 18A:39-22* and *N.J.A.C. 6A:27-7.8*; the statute and regulation are both clear that a school district may permit use of school buses owned or leased by the district for senior citizen groups, handicapped citizens and other specifically enumerated groups for specific purposes, and that those specific groups are required to pay part or all costs incurred by the district in permitting the use. The ALJ concluded that neither statute nor regulation prohibits the school board from entering into a lease with a private entity such as the JCC, and accordingly denied petitioner's motion for summary decision.

Upon full review and consideration of the record, the Commissioner rejected the Initial Decision, finding that the plain language of the statute, as well as its legislative history, limits the use of school buses to the transportation of senior citizens, handicapped citizens and participants in programs operated by the municipality in which the school district is situated. Accordingly, the Commissioner granted the respondent's cross motion for summary decision 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.

February 24, 2009

OAL DKT. NO. EDU 2991-07  
AGENCY DKT. NO. 61-3/07

MURPHY TRANSPORTATION, INC., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
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The petitioning transportation company sought a ruling from the Commissioner that the respondent school district is precluded by *N.J.S.A.* 18A:39-22 and *N.J.A.C.* 6A:27-7.8 from leasing its buses to the respondent Jewish Community Center (the JCC) for use in transporting children to the Center’s private summer camp. Prior to the scheduled hearing date in the Office of Administrative Law (OAL) the parties moved and cross moved for summary decision.

After consideration of the motion papers the Administrative Law Judge (ALJ) granted summary decision to respondents, finding that *N.J.S.A.* 18A:39-22 and related authority allow the Ocean Township School District “to enter into a lease with a private entity [such as the lease entered into by the Ocean Township school district and the JCC] and require all costs be

covered.” Upon review of the record, Initial Decision,<sup>1</sup> and applicable law, the Commissioner rejects the Initial Decision.

It is a long established principle of statutory construction that when a statute is clear and unambiguous on its face, it is not open to construction or interpretation, and its plain meaning must be enforced. *McQueen v. Brown*, 342 N.J. Super. 120, 131 (2001), aff’d. 175 N.J. 200 (2002). Thus, in construing a statute, we begin by examining its plain language. [\*Miah v. Ahmed\*, 179 N.J. 511, 520 \(2004\)](#). If the language is clear and unambiguous in its meaning, our duty is to enforce it as written. [\*Bunk v. Port Auth. of N.Y. & N.J.\*, 144 N.J. 176, 194 \(1996\)](#). There is no need, if that is the case, to look beyond the statutory terms to determine statutory intent. [\*State v. Butler\*, 89 N.J. 220, 226 \(1982\)](#).

N.J.S.A. 18A:39-22 provides in pertinent part that:

The board of education of any district may, pursuant to the rules adopted by it, permit the use of school buses owned or leased by the school district for the purpose of transporting senior citizens’ groups to and from events within its district or in any contiguous district, and for transporting handicapped citizens in any district, and for transporting children and adults participating in a recreation or other program operated by municipality or municipalities in which the district is located or the municipality in which any constituent district of a regional school district is located;<sup>2</sup>

In construing the statute, the ALJ focused on the language permitting school bus use for senior and disabled citizens “and other specifically enumerated groups for specific

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<sup>1</sup> No exceptions were submitted.

<sup>2</sup> The balance of N.J.S.A. 18A:39-22 states:

provided that each use of school buses for these purposes is approved by the board; provided that such use of school buses shall not interfere with the transportation of school pupils; and provided that school buses so used shall be operated only by persons licensed as bus drivers. The board shall require groups seeking such use of school buses to pay all or part of any costs incurred by the district in permitting such use, including but not limited to the costs of fuel, driver salaries, insurance and depreciation.

purposes . . . .” Initial Decision, p. 5. As mentioned above, the ALJ took that permissive language to signify that school boards were not prohibited from entering into contracts with private entities, such as the JCC.

The Commissioner notes, however, that the relevant language in the above cited statute belies such a broad interpretation. The statute allows three categories of non-school uses for school buses: 1) the transport of senior citizens within a defined geographic area, 2) the transport of disabled persons within a school district, and 3) the transport of people participating in recreational or other programs operated by the municipalities in which the school district is located. Thus, the plain language of the statute itself limits the use of school buses to programs operated by the municipality in which the school district is situated.

Moreover, if there were ambiguity in the language of *N.J.S.A. 18A:39-22* – such that an alternate construction could be supported – it would be necessary to determine the legislative intent underlying the statute.<sup>3</sup> A look at the legislative history of *N.J.S.A. 18A:39-22* is instructive.

*N.J.S.A. 18A:39-22* has its origins in Public Law 1977, chapter 5, entitled “An act permitting the use of school buses for the transportation of senior citizens’ groups and handicapped citizens . . . .” This title was apparently amended by Public Law 1979, chapter 403, to read: An act permitting the use of school buses for the transportation of senior citizens’ groups, handicapped citizens and children in certain recreation programs . . . .” (Emphasis added.) In 1989 the title was again changed, to the current text: “An act permitting the use of

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<sup>3</sup> If there is ambiguity in the statutory language that leads to more than one plausible interpretation, the Legislature's intent must be ascertained as a guide to interpretation. *Burns v. Belafsky*, 166 N.J. 466, 473 (2001). We may turn to extrinsic evidence, including any available legislative history. *Ibid.* Our task is to effectuate the legislative intent in light of the language used and the objects sought to be achieved. *Ibid.* (citations omitted). See, also, *Ramsey Teachers Ass'n v. Board of Educ. of Borough of Ramsey*, 382 N.J. Super. 241, 248-49 (App. Div. 2006).

school buses for the transportation of senior citizens' groups, handicapped citizens, and children and adults in certain municipal programs . . . ." (Emphasis added.) The text in the body of these statutory provisions was amended accordingly. (See legislative history for P.L. 1989, Chapter 136, attached.)

The changes in language enacted by the legislature between 1977 and 1989 clearly evidence the legislature's affirmative intent to progressively limit the 'non-educational' use of school buses. The use is narrowed from children's recreational programs in general to municipal programs for children and adults. Thus, both the statutory language and history support petitioner's position that *N.J.S.A.* 18A:39-22 and its ancillary regulation preclude the Ocean Township Board of Education from leasing school buses to the JCC for summer camp transportation. Accordingly, the petitioner's motion for summary decision is granted and respondent's cross motion is denied.

In addition to a determination concerning the legality of respondents' leasing agreement, petitioner asks for "counsel fees, interest and cost of suit . . . ." It is not within the Commissioner's jurisdiction to award counsel fees or costs of suit. Further, petitioner's allegation in paragraph 15 of the petition that it does not demand damages renders moot any award of interest.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 24, 2009

Date of Mailing: February 25, 2009

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<sup>4</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.

P.L.1989, CHAPTER 136: 1989 N.J. ALS 136; 1989 N.J. Laws 136

**SYNOPSIS:** AN ACT to amend the title of "An act permitting the use of school buses for the transportation of senior citizens' groups and handicapped citizens and supplementing Title 18A of the New Jersey Statutes," approved January 18, 1977 (P.L.1977, c.5), as said title was amended by P.L.1979, c.403, so that the same shall read "An act permitting the use of school buses for the transportation of senior citizens' groups, handicapped citizens and children [2] [A] AND ADULTS [A] [2] in certain [2] [D] recreation [D] [A] MUNICIPAL [A] [2] programs and supplementing Title 18A of the New Jersey Statutes," and to amend the body of said act.

**NOTICE:** [D] Text within these symbols is deleted [D]

[A] UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED [A]

Matter enclosed in superscript numerals has been adopted as follows:

[1] Assembly AED committee amendments adopted February 1, 1988. [1]

[2] Senate floor amendments adopted September 26, 1988. [2]

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

**[\* 1]** 1. The title of P.L.1977, c.5, as said title was amended by P.L.1979, c.403, is amended to read as follows: An act permitting the use of school buses for the transportation of senior citizens' groups [D] and [D][A], [A] handicapped citizens[A], AND CHILDREN [A] [2] [A] AND ADULTS [A] [2] [A] IN CERTAIN [A] [2] [D] [A] RECREATION [A] [D] [A] MUNICIPAL [A] [2] [A] PROGRAMS [A] and supplementing Title 18A of the New Jersey Statutes. (cf: P.L.1979, c.403).

**[\* 2]** 2. Section 1 of P.L.1977, c.5 (C.18A:39-22) is amended to read as follows:

1. The board of education of any district may, pursuant to rules adopted by it, permit the use of school buses owned or leased by the school district for the purpose of transporting senior citizens' groups to and from [D] such [D] events within its district or in any contiguous district, [D] and [D] for transporting handicapped citizens in any district, [A] AND FOR TRANSPORTING CHILDREN [A] [2] [A] AND ADULTS [A] [2] [A] PARTICIPATING IN A RECREATION [A] [2] [A] OR OTHER [A] [2] [A] PROGRAM OPERATED BY [A] [1] [D] [A] A [A] [D] [A] THE [A] [1] [A] MUNICIPALITY [A] [1] [D] [A], [A] [D] [A] OR MUNICIPALITIES IN WHICH THE DISTRICT IS LOCATED OR THE MUNICIPALITY IN WHICH ANY CONSTITUENT DISTRICT OF A REGIONAL SCHOOL DISTRICT IS LOCATED; PROVIDED THAT EACH USE OF SCHOOL BUSES FOR THESE PURPOSES IS APPROVED BY THE BOARD [A] [1] [D] as may be approved by the board [D]; provided that such use of school buses shall not interfere with the transportation of school pupils; and provided that school buses so used shall be operated only by persons licensed as bus drivers. The board shall require groups seeking such use of school buses to pay all or part of any costs incurred by the district in permitting such use, including but not limited to the costs of fuel, driver salaries, insurance and depreciation. (cf: P.L.1979, c.403, s.2)

**[\* 3]** 3. Section 2 of P.L.1977, c.5 (C.18A:39-23) is amended to read as follows:

2. The use of school buses [D] for the transportation of senior citizens and handicapped citizens [D] as herein provided shall not be construed as use for hire and shall in no way affect the no fee registration of such vehicles as provided in R.S.39:3-27. (cf: P.L.1979, c.403, s.3).

**[\* 4]** 4. This act shall take effect immediately.

Permits the use of school buses for the transportation of children and adults in recreation and other programs operated by municipalities.

**HISTORY:**

Approved August 2, 1989