

RHONDA WILLIAMS BEMBRY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
CITY OF HACKENSACK, :
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning member of the Hackensack Board of Education (Board) challenged the manner in which the March 28, 2012 meeting of the respondent Board was conducted, contending that the respondent violated terms of the Open Public Meetings Act (OPMA), *N.J.S.A. 10:4-6 et seq.*, when it failed to contact petitioner by telephone to participate in a vote on the 2012-2013 school budget. Petitioner sought an order from the Commissioner invalidating all of the votes and resulting actions taken by the Board at the March 28, 2012 meeting. The respondent Board contended that the Commissioner is without jurisdiction to entertain petitioner's claims because they do not arise under the school laws, and filed a motion to dismiss. The parties agreed to summary disposition of the matter.

The ALJ found, *inter alia*, that: pursuant to *Sukin v. Northfield Board of Education*, 171 *N.J. Super.* 184 (App. Div. 1979), an underlying school law controversy over which the Commissioner has primary jurisdiction is necessary in order to invoke the Commissioner's jurisdiction in an OPMA matter; petitioner's claims in this matter do not involve a controversy or dispute arising under the school laws, *N.J.S.A. 18A:6-9*, as she alleges only OPMA violations and does not make any claim that educational action was taken at the meeting in question; and petitioner was present at the March 28, 2012 meeting, but chose to leave prior to the vote on the school budget – which was on the meeting agenda. Accordingly, the ALJ concluded that the Commissioner lacks jurisdiction with regard to petitioner's claims – which solely involve alleged violations of the OPMA – and granted respondent's motion to dismiss the petition.

Upon independent review of the record and the Initial Decision, the Assistant Commissioner, to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34*, concurred with the findings and conclusions of the ALJ. The Initial Decision of the OAL was adopted as the final decision in this matter.

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.

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In the instant controversy, petitioner has asked the Commissioner to invalidate certain votes and actions which took place at a March 28, 2012 public meeting of the Hackensack Board of Education. More specifically, petitioner alleges that respondent violated the Open Public Meetings Act (OPMA), *N.J.S.A. 10:4-6 et seq.*, because it failed to solicit her vote via telephone when the school budget was presented for approval.¹

The parties agreed to summary disposition of the matter on September 18, 2012 and the record closed on October 29, 2012. On September 23, 2013 the Initial Decision of the Office of Administrative Law (OAL) was issued, granting summary disposition to respondent and dismissing the petition. The Administrative Law Judge agreed with the respondent board that the Commissioner does not have jurisdiction over this matter, since the only alleged violation(s) relate to provisions of OPMA.

¹ Petitioner had attended the meeting in question but had departed prior to the budget vote.

Upon independent review of the record and Initial Decision,² the Commissioner³ adopts the Initial Decision as the final decision in this case. Provisions of OPMA may be decided by the Commissioner only when they are married to school law issues. *See, e.g., Sukin v. Northfield Board of Education*, 171 N.J. Super. 184 (App. Div. 1979). Given that the alleged OPMA violations stand alone in the present controversy, the Commissioner is without jurisdiction to adjudicate.

Accordingly, summary disposition is granted to respondent and the petition is dismissed.

IT IS SO ORDERED.⁴

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: November 7, 2013

Date of Mailing: November 7, 2013

² No exceptions were filed by the parties.

³ This matter has been delegated to the undersigned Assistant Commissioner pursuant to *N.J.S.A.* 18A:4-34.

⁴ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).