

C # 235-97L
SB # 53-97
APP. DIV. #A-7438-97T1
S. CT. # A-106-99

IN THE MATTER OF THE DISTRIBUTION : STATE BOARD OF EDUCATION
OF LIQUID ASSETS UPON DISSOLUTION : DECISION
OF THE UNION COUNTY REGIONAL HIGH :
SCHOOL DISTRICT NO. 1, UNION COUNTY. :

Remanded by the New Jersey Supreme Court, January 30, 2001

Decided by the Appellate Division, October 1, 1999

Decided by the State Board of Education, July 1, 1998

Decision on motion by the State Board of Education, May 6, 1998

Decided by the Commissioner of Education, May 5, 1997

For the Petitioner-Appellant Borough of Mountainside, Post, Polak, Goodsell &
MacNeil, P.A. (Robert A. Goodsell, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Borough of
Mountainside, David B. Rubin, Esq.

For the Respondent-Respondent Board of Education of the Township of Berkeley
Heights, Algeier, Tosti & Woodruff (Robert M. Tosti, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Township of Clark,
Kenney, Gross, Kovats and Campbell (Douglas J. Kovats, Esq., of
Counsel)

For the Respondents-Respondents Borough of Garwood and Board of Education
of the Borough of Garwood, Apruzzese, McDermott, Mastro & Murphy,
P.C. (Linda Ganz Ott, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Borough of
Kenilworth, James P. Granello, Esq.

For the Respondent-Respondent Borough of Kenilworth, Thomas A. Vitale, Esq.

For the Respondent-Respondent Board of Education of the Township of
Springfield, Sills, Cummis, Radin, Tischman, Epstein & Gross (Cherie L.
Maxwell, Esq., of Counsel)

This matter is before the State Board of Education pursuant to a remand by the New Jersey Supreme Court. In its decision, the Court reversed the Appellate Division's determination of the case. The Appellate Division had affirmed the State Board's decision in the matter.

In its decision, the State Board affirmed with modification the decision of the Commissioner of Education to dismiss a petition filed by the Borough of Mountainside. Mountainside had sought a distribution of the liquid assets of the Union County Regional High School District No. 1 upon its dissolution according to a feasibility report prepared in April 1995 by the then County Superintendent Dr. Leonard Fitts (hereinafter "Fitts Report"),¹ rather than in accordance with the statutory plan. Under the Fitts Report, the regional district's four school buildings and accompanying real estate would be deeded to the school districts in which they were located while the liquid assets would be shared exclusively by Mountainside and Garwood, which did not have any of the regional district's school buildings within their boundaries.

In dismissing Mountainside's petition, the Commissioner had relied on Egg Harbor Bd. of Ed. v. Greater Egg Harbor, Etc., 188 N.J. Super. 92 (App. Div. 1983), concluding that because no method of distribution had been specified in the dissolution referendum placed before the voters, the assets of the dissolving regional district were

¹ Dr. Fitts had recommended against dissolving the regional district, but set forth his recommendations with respect to the division of assets in the event of dissolution.

required to be distributed in accordance with the plan set forth in N.J.S.A. 18A:13-62 and N.J.S.A. 18A:8-24.

The State Board rejected the Commissioner's interpretation of Egg Harbor, observing that the Court's decision in that case did not stand for the broad proposition that, as a matter of law, any departure from the statutory distribution scheme was prohibited unless it had been included in the question placed before the voters. Rather, the decision was grounded in equitable principles. In this particular case, however, the State Board found that Mountainside had not shown any circumstances that would warrant a departure from the statutory scheme.

As indicated, the Appellate Division affirmed the State Board's decision, and the New Jersey Supreme Court granted certification.

The New Jersey Supreme Court agreed with the State Board that Egg Harbor does not oblige the parties to a dissolution of a regional school district to place all possible deviations from the statutory scheme on the referendum ballot. In re Distribution of Liquid Assets, 168 N.J. 1, 14-15 (2001). Rather, as clarified by the Court, the decision in Egg Harbor stands only for the proposition that if a liquid asset scheme is specified in a referendum question, the parties cannot later seek alteration of that scheme. Id. at 15. The Court found that the overriding goal of the statutory scheme is to distribute equitably the regional district's assets and liabilities. Id. Further finding that the statutory scheme can result in equalization for all constituent communities, including those with no real property, only when the debt load is significant, the Court stressed that most of the debt had been paid off in this case so that equalization could not be achieved simply by shifting debt. Given the statutory purpose and assumption

that debt allocation is a sufficient mechanism for ensuring equity, the Court was persuaded that insistence on the strict application of the statutory distribution scheme was unwarranted. Id. at 17.

The Court found the State Board's conclusion that Mountainside had not shown circumstances warranting a departure from the statutory scheme to be untenable. Id. at 18. Acknowledging that inequity was perhaps inevitable in this situation under any alternative because the composition of the regional district's assets was weighted heavily with real property and burdened with little debt, the Court found that allocating the liquid assets exclusively to Mountainside and Garwood would at least ameliorate that disproportion. Id. at 19. Finding that none of the agency personnel who had reviewed the matter, including the State Board, had articulated any policy justification for adhering to the statutory scheme under circumstances that exacerbated the disproportion of the distribution of the asset shares, and stressing that five municipalities had agreed to distribute the liquid assets to Mountainside and Garwood when they had petitioned for dissolution,² the Court reversed the Appellate Division's decision and remanded the matter to the State Board with the direction that Mountainside and Garwood be awarded the sum of the regional district's assets allotted to them in the 1995 Fitts Report. Id. at 19-20. The Court further instructed the State Board to formulate appropriate payment schedules so that Mountainside and Garwood would receive their share of the liquid assets in a timely and efficient manner. Id. at 20.

On February 16, 2001, the matter was placed in abeyance to allow the parties to attempt to resolve the matter. By letter of March 13, 2001, counsel to the Fiscal Agent

² The regional district had been established in 1935 and was composed of six school districts: Clark, Kenilworth, Springfield, Mountainside, Berkeley Heights and Garwood. However, Garwood did not join in the original request for dissolution.

for the dissolved Union County Regional High School District³ advised the State Board of Education on behalf of the parties to the case that they had been unable to reach an agreement as to the distribution of the liquid assets. He further advised the State Board that there were differences among the parties as to the definition of liquid assets and the total amount to be paid to Mountainside and Garwood. This was confirmed by letter dated March 12, 2001 from the counsel for the Borough of Mountainside, which indicated that the parties were not in agreement as to the value of the liquid assets to be distributed. Accordingly, by letter of March 23, 2001, the parties were afforded the opportunity to submit supplemental briefs on the question of what constitutes the liquid assets that are to be distributed pursuant to the Court's decision.

As set forth in their briefs, the basic dispute between the parties is a simple one. Mountainside and Garwood take the position that the liquid assets that must now be distributed include all assets held by the regional district as of June 30, 1997 other than those assets subject to N.J.S.A. 18A:13-62 and N.J.S.A. 18A:8-24 and which were distributed pursuant to N.J.S.A. 18A:13-61.⁴ Under this formulation, the amount distributed to Mountainside and Garwood would total approximately \$10.6 million.

Not surprisingly, Clark, Kenilworth, Springfield, and Berkeley Heights⁵ have a different view of what constitutes the liquid assets that must be distributed pursuant to the New Jersey Supreme Court's decision. These districts take the position that the liquid assets at issue are limited to \$3.3 million, which was the amount of such assets

³ We note that the Berkeley Heights Board is not a party in this matter in its capacity as Fiscal Agent.

⁴ Those assets distributed pursuant to N.J.S.A. 18A:13-61 included buildings and building-related assets that were transferred to the school districts in the municipalities in which the buildings were located and equipment and furnishings that were shared or rotated among the districts that received the buildings.

⁵ See supra note 3.

accounted for in the June 30, 1997 report submitted by Dr. Francis Lobman, who was then the County Superintendent for Union County, and which was the amount set forth in the tables referenced by the Court in its decision.

The parties have also raised a variety of issues regarding the specific amounts that Mountainside and Garwood should receive, including the question of whether Mountainside and Garwood should be awarded interest on any amounts to which they are entitled. However, the threshold issue that must be addressed before these disputes can be resolved is the question of what constitutes the liquid assets that are subject to distribution under the New Jersey Supreme Court's decision. After careful review of that decision, we find that the view held by Mountainside and Garwood is the correct one.

The thrust of the New Jersey Supreme Court's opinion was the achievement of equity. The fact that the four districts in which the school buildings were located had received assets that were valued at approximately \$110 million and which were unencumbered by any significant debt was pivotal to the Court's decision.⁶ It was in this context that the Court agreed with the State Board of Education's determination that Egg Harbor does not oblige parties to place all proposed deviations from the statutory distribution scheme on the ballot and in which it reviewed and rejected the asset allocation set forth in Dr. Lobman's June 1997 report.

As set forth above, the Court repeatedly stressed that the overriding goal of the statutory scheme is to distribute equitably the regional district's assets and liabilities and that the principal tool for achieving such equity is the shifting of debt. The Court

⁶ The Court noted that the four districts that received the real property shared responsibility for \$300,000 in debt, which reduced the value of the assets each received by \$75,000. In re Distribution of Liquid Assets, *supra*, at 9.

observed that when some of the constituent communities do not own any real property, equalization can be achieved only when there is significant outstanding debt. As explained by the Court, the regional district in this case:

was established in 1935 and most of its debt has been paid off. The debt that remains is dwarfed by the value of the District's assets. When the debt load is small and the real property is valuable, equalization among constituent municipalities cannot be achieved simply by shifting debt.

Id. at 16-17.

To illustrate this point, the Court turned to the tables set forth earlier in its opinion. Referencing these tables permitted the Court to specify for the sake of comparison the amount that Mountainside would have received under the statutory scheme as compared to that which it would have received under the distribution scheme in Dr. Fitts' Report. Although the Court's opinion reflects that it assumed that the liquid assets of the regional district had already been distributed to each of the six municipalities, nowhere in the opinion is there any indication that the Court had intended to limit the amounts that Mountainside and Garwood received to the specific amounts set forth in the tables it had referenced. To the contrary, in rejecting the application of the statutory scheme in this case, the Court found that the "alternate liquid asset distribution formula" to which the parties had agreed prior to dissolution and which was embodied in the 1995 Fitts Report represented a "more equitable asset allocation." Id. at 17.

Quite simply, careful reading of the opinion shows clearly that the Court's review was focused on the method by which the regional district's liquid assets should be distributed, not on the amount of those assets. In this respect, it bears repeating that

the Court stressed in its opinion that inequity might be inevitable in this case under any distribution scheme because of the composition of the regional district's assets, but that allocating the liquid assets exclusively to Mountainside and Garwood would help to ameliorate the situation. It would be inconsistent to limit the liquid assets to be distributed now to an amount that the Court recognized would be inadequate to achieve equity when distribution of the actual amount of those assets would better help to ameliorate the situation.

We therefore hold that the amount of the liquid assets to be distributed to Mountainside and Garwood pursuant to the New Jersey Supreme Court's remand includes the entire amount of those assets and not just the \$3.3 million identified in Dr. Lobman's report of June 1997 as available for distribution at that time. It appears that this amount includes approximately \$8.6 million in liquid assets that has been distributed among the six municipalities which comprised the regional district, approximately \$6.9 million of which will need to be redistributed, and that approximately another \$2 million is now available for distribution subject to certain contingencies. However, we are not able to ascertain on this record the exact amount to be distributed. Accordingly, we remand this matter to the Commissioner to establish that amount and effectuate its distribution so that 76% of the total liquid assets are received by Mountainside and 24% by Garwood.⁷ We direct that upon verification by the Fiscal Agent of the amount of the liquid assets remaining and available for distribution, the Commissioner order the immediate distribution of those assets to Mountainside and

⁷ In its exceptions to our Legal Committee's report, the Kenilworth Board argues that a full plenary hearing is necessary to establish this amount and urges that the State Board direct such a hearing. By our decision, we have entrusted any judgments that must be made in this regard to the Commissioner.

Garwood.⁸ We further direct that once he establishes the amount of the liquid assets that has already been distributed, the Commissioner establish a payment schedule whereby 76% of that amount is redistributed to Mountainside within a five year period and 24% to Garwood. Finally, we find that any award of interest is governed by N.J.A.C. 6A:3-1.17, and we therefore reject Mountainside's request for such award.

Attorney exceptions are noted.

March 6, 2002

Date of mailing _____

⁸ From the submissions of the parties, it appears that certain amounts have been reserved, including approximately \$2,400,000 for the "Settlement Pending Lawsuits." Hence, we recognize that not all of the liquid assets remaining are currently available for distribution. Pursuant to our remand, the Commissioner is charged with the responsibility for establishing the amount in this category and for effectuating the ultimate distribution of the amounts remaining once the Regional High School District's obligations have been satisfied.