

#235-97

May 5, 1997

Dear :

Upon review of the papers filed in *In the Matter of the Distribution of Liquid Assets upon Dissolution of the Union County Regional High School District No. 1*, Agency Dkt. No. 581-12/96, wherein the Borough of Mountainside disputes the manner in which the dissolving district's liquid assets will be distributed among its former constituents, I have determined to dismiss the appeal for the reasons set forth below.

Petitioner argues that the April 7, 1995 County Superintendent's Report on the feasibility of dissolution clearly recommended that liquid assets be divided entirely between Garwood and Mountainside rather than among all constituent districts on the basis of their respective ratables. Petitioner further contends that all constituent districts, and the Board of Review, understood that this was the method that would be employed should the question of dissolution be successfully placed before the voters. However, *Egg Harbor Board of Education v. Greater Egg Harbor*, 188 N.J. Super. 92 (App. Div. 1983), establishes that where a dissolution is conditioned on a distribution of assets different from the scheme set forth in *N.J.S.A. 18A: 13-62* and *N.J.S.A. 18A:8-24*, that is, distribution among all constituents on the basis of ratables, the Board of Review will so acknowledge in its decision and direct that the resulting ballot question be so drafted. Inherent in that ruling is the prescription that no method of distributing assets other than that set forth in statute may be implemented in the absence of such method having been included in the referendum question posed to the voters of the regional district, an action which undisputedly did not occur herein and cannot now be imputed retroactively to the will of the voters.

Accordingly, because no method of distribution of liquid assets was specified in the question placed before the voters at the time of the referendum, such assets shall be distributed in accordance with the clear provisions of *N.J.S.A. 18A:13-62* and *N.J.S.A. 18A:8-24*. The instant petition of appeal is dismissed pursuant to the authority granted me by N.J.A.C. 6:24-1.9.¹

Sincerely,

Leo Klagholz
Commissioner

c: Dr. Frances Lobman, County Superintendent
Michelle Miller, DAG

¹ In dismissing the appeal on the merits, the Commissioner notes his rejection of the argument that petitioner did not have standing to bring this matter. He further finds that, to the extent that petitioner seeks to challenge the Board of Review's decision or the outcome of the referendum, those matters are outside the Commissioner's jurisdiction. Finally, the Commissioner concurs that the County Superintendent and Department of Education are not appropriate respondents in this matter and hereby severs them as parties.