

BOARD OF EDUCATION OF THE	:	
CITY OF ABSECON,		
	:	
PETITIONER,		COMMISSIONER OF
EDUCATION		
V.	:	
		DECISION
CITY COUNCIL OF THE CITY OF	:	
ABSECON, ATLANTIC COUNTY,		
	:	
RESPONDENT.		
_____:		

SYNOPSIS

Board of Education appealed action of City Council reducing, by \$179,068.58, the tax levy of \$5,201,617 proposed for 1997-98 school budget. Because Board had proposed budget at minimum level necessary to meet statutory requirement for “local share” under the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), City was prohibited from reducing line-item appropriations; consequently, it acted to increase allocations from surplus, from \$75,000 to \$254,069. City contended Board erred in not applying to an anticipated program for reduction of the required minimum local share in certain districts affected by transfer of lease purchase payments to the debt service fund.

Commissioner initially noted that the Board had not, in fact, taken advantage of the tax levy reduction program offered, and that, in the event, the program was not enacted by the Legislature. Thus, there is no current statutory authority for exception to the requirements of CEIFA. Commissioner found that City’s action to reallocate surplus, while permissible under CEIFA, would leave the Board herein in the untenable position of having no undesignated, unreserved surplus at all, whereas the amount of surplus proposed by the Board (\$179,069) represented an appropriate level of about 2.8% of the General Fund Budget. Commissioner rejected City’s attempt to identify line items where reductions could be made so as to avoid depleting surplus, finding such attempt to be impermissible under CEIFA. Reduction to tax levy was ordered restored, for a total levy of \$5,201,617 as proposed by the Board.

AGENCY DKT. NO. 216-6/97

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For the Board of Education, Louis J. Greco, Esq.

For the City Council, Tuohy and Tuohy (Michael J. Blee, Esq.)

PROCEDURAL HISTORY

This matter was opened before the Commissioner of Education on June 12, 1997 through the filing of a Petition of Appeal by the Absecon Board of Education (Board), seeking restoration of reductions to the school budget made by the City Council of the City of Absecon (City) pursuant to *N.J.S.A. 18A:22-37* following defeat of the budget at the annual school election on April 15, 1997.

At that election, the voters rejected a public question proposing a General Fund tax levy of \$5,201,617 for the 1997-98 school year. On May 15, 1997, following consultation with the Board as required by law, the City adopted a resolution determining to certify a General Fund tax levy of \$5,022,548.42 as sufficient to provide for a thorough and efficient system of education (T&E) in the District. This amount represented a reduction of \$179,068.58 from the tax levy proposed by the Board, and was effectuated through an increase in appropriation of surplus, consistent with the directive of the State Department of Education that appropriations could not be reduced since the amount

proposed by the Board represented the minimum tax levy required to meet the statutory local share of the cost of providing T&E. (As set forth below, however, the City concurrently contended that this statutory minimum levy could be reduced by the Commissioner, or alternatively, that equivalent reductions could be effectuated through a total of fourteen line items for the reasons stated.) By resolution dated June 3, 1997, the Board determined to appeal the City's reduction and duly filed the within petition.

The amounts in dispute in this appeal are thus as follows:

<u>Tax Levy Proposed by Board</u>		<u>Tax Levy Certified by City</u>	
General Fund	\$5,201,617.00	General Fund	\$5,022,548.42
<u>Amount of Reduction by City</u>		<u>Amount of Reduction in Dispute</u>	
General Fund	\$ 179,068.58	General Fund	\$ 179,068.58

An answer to the Board's petition was filed by the City on July 10, 1997, together with an addendum explaining what the City believed to be an unusual circumstance related to the appeal. On July 14, 1997, the City filed its position statement required pursuant to *N.J.A.C. 6:24-7.8*, followed by a response to the Board's position on August 8, 1997 and a final summation on August 18, 1997. The Board submitted a combined position statement and response on July 29, 1997, and elected not to file a final summation thereafter.

In addition, as the parties had been advised by letter from the Assistant Commissioner dated April 16, 1997, distributed through the County Superintendent to boards and municipalities experiencing budget defeats and again in conjunction with proceedings herein, as part of the record of the within appeal, the Commissioner is taking official notice of the Board's revised budget and its June 30 financial report to be filed by August 1 pursuant to *N.J.S.A. 18A:17-10*, as well as applicable portions of the School Report Card and the Comparative Spending Guide. That same notice further provided that official notice would be taken of the annual audit for purposes of verifying surplus information given in the June 30 report and any prior year data relied upon by the Commissioner in making his determinations.

Consistent with the above, upon receipt of the City's summation on August 18, 1997, the record of the within appeal was closed and the matter duly proceeded to determination herein.

STANDARD OF REVIEW

In rendering judgment relative to budgetary appeals, the Commissioner notes that the Constitution of the State of New Jersey requires the Legislature to provide for a thorough and efficient system of education. The Legislature by way of statutory scheme has delegated the responsibility for providing such thorough and efficient system to local boards of education. Additionally, the Legislature pursuant to *N.J.S.A. 18A:6-9, 22-14, 22-17 and 22-37* has authorized the Commissioner of Education to review and decide appeals by boards of education seeking restoration of budgetary reductions imposed by local governing bodies. In reviewing such appeals, the Commissioner's standard has historically been whether a district board of education has demonstrated that the amount by which a specific line-item reduction imposed by the governing body is necessary for the provision of T&E. *Board of Education of East Brunswick Township v. Township Council of East Brunswick*, 48 *N.J.* 94 (1966) and *Board of Education of Deptford Township v. Mayor and Council of Deptford Township*, 116 *N.J.* 305 (1989). However, on December 20, 1996, the Legislature enacted the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), wherein a prescribed level of expenditure range was established as sufficient for provision of T&E. Appeal of General Fund budget amounts in excess of that range, following voter defeat and municipal reduction, was expressly restricted to grounds of negative impact on the stability of the district given the need for long-term planning and budgeting, while budgets within the established range could be appealed on either stability or T&E grounds; budgets proposed or reduced below the established range required automatic review by the Commissioner and a showing by the governing body that reduction would not negatively impact the district's stability or its ability to provide T&E. (*P.L. 1996, c. 138; N.J.S.A. 18A:7F-1 et seq.*)

In the present instance, the Board proposed a General Fund budget below the T&E amount established for the District pursuant to CEIFA. Accordingly, the within review is a mandatory one, and the burden of proof lies with the City.

Additionally, CEIFA provides for support of the public schools through a combination of State aid and a minimum level of local resources (“required local share”). The latter is individually calculated for each district and establishes the minimum tax levy that must be certified to support the district’s base budget. In the present instance, the amount proposed by the Board, \$5,201,617, represents that minimum amount.

POSITIONS OF THE PARTIES

The City argues that the Board was given the opportunity, by letter dated March 12, 1997, from the Department of Education’s Director of Finance, to apply for an adjustment to the statutorily required minimum “local share” tax levy, based on the District’s having been required by CEIFA to transfer lease purchase payments to the debt service fund so as to result in an overall increase in taxes when the unaided portion of the lease purchase payments was combined with the required local share. (City’s Position Statement, Exhibit A) The Board failed to exercise this option, the City opines, then made spending increases over the prior year so as to reach the statutory minimum tax levy in an effort to circumvent the City’s ability to make reductions. Later, when the City inquired about its ability to make reductions (City’s Position Statement, Exhibit D), it was advised by letter from the Commissioner that no reductions could be made to appropriations, and that the amount of tax levy proposed by the Board represented the District’s statutory minimum local share; however, that levy could be reduced by appropriation of additional general fund balance (surplus) or increase of miscellaneous revenue. (City’s Position Statement, Exhibit E) Having determined that no increase to miscellaneous revenue was possible, the City contends that it took the only available option to respect the wishes of voters, who overwhelmingly rejected the proposed budget, and increased the appropriation from surplus. It also, however, identified specific line items in which it believed the District could make reductions so as to avoid having to appropriate the additional surplus. The City urges the Commissioner to preserve the sanctity of the voting process, and to not overlook the fact that the Board took advantage

of a loophole in CEIFA by failing to exercise the option of lowering the minimum required tax levy when it was offered, regardless of the fact that the option was never incorporated as part of the FY 98 Appropriations Act.

The Board, in turn, argues that the City ignores both the clear dictates of the law and the programmatic, operational and stability needs of the District. It emphasizes that the tax levy reduction option offered to districts in March 1997 is, in fact, no longer available, and was not at the time the City made its reductions; and, further, that the District cannot reduce appropriations under CEIFA even if it could make the specific line-item adjustments proposed by the City, which it cannot without impairing T&E and stability. Ultimately, the City's action has left the District in an untenable position as to its reserve of undesignated surplus, and such action cannot be sustained herein.

COMMISSIONER'S DETERMINATION

Upon review, the Commissioner finds that the City's position in this matter essentially rests upon the Board's failure to apply for an adjustment to the statutorily required minimum tax levy under CEIFA, as it was advised it could do by the Department of Education; in effect, the City seeks to have that adjustment made by the Commissioner herein. In order to utilize this adjustment, the Board would have had to apply to the Commissioner prior to setting its budget, demonstrating to the Commissioner's satisfaction that a reduction could be made without detrimental impact on the district's educational offerings. The Board, however, voted not to exercise this option. In addition, the offer embodied in the Department's letter of invitation was expressly contingent on the inclusion of effectuating language by the Legislature, and its adoption by the Governor, in the FY 98 Appropriations Act; indeed, the letter specifically states that, should such language not be adopted, any reduction of tax levy made in anticipation of such adoption will be subject to adjustment (City's Position Statement, Exhibit A, page 2, paragraph 2). As events transpired, no district elected to apply to the program, so it was not necessary for the Legislature to include language authorizing adjustment of minimum tax levy, as set forth in the referenced letter, in the bill enacted as the FY 98 Appropriations Act (*P.L.* 1997, *c.* 131). Accordingly, the program anticipated by the Department became null and

void from its outset, and there is no statutory basis on which the action sought by the City may be taken. The budget appeal process cannot serve as a forum for the City's redress, on its own behalf and that of the voters, of the Board's express discretionary determination not to apply for tax relief; that is a matter for which Board members will be held accountable at the annual school election.

In view of the above, within the context of the present proceedings, the provisions of CEIFA must control as a matter of law. As the City has previously been apprised by the Commissioner, CEIFA does not permit a governing body to make reductions to line-item appropriations in a defeated budget under the circumstances present herein; it may only increase allocations from surplus or amounts of miscellaneous revenue. Thus, the action taken by the City to increase allocations from surplus was permissible under CEIFA, but must now be subjected to scrutiny in terms of its impact on the District's budget.

In its advertised annual school district budget statement, the Board had allocated \$75,000 of unreserved surplus as revenue, leaving \$179,069, or about 2.8% of its total general fund budget, as undesignated unreserved surplus. Both the Board's annual financial report filed pursuant to *N.J.S.A. 18A:17-10* (June 30 Board Secretary's report) and its annual audit reveal a surplus comparable to that projected by the Board in preparing its budget. Therefore, the Commissioner determines that appropriation of an additional \$179,068.58 as proposed by the City, would leave the District in the entirely untenable position of having essentially no surplus at all. In this regard, the Commissioner notes the City's identification of fourteen line items where it believes the Board can make reductions so as to accommodate a reduced tax levy without depleting surplus. The Commissioner must reject this approach, however, as a "back door" means of effectuating reductions expressly prohibited by CEIFA, as well as prior Commissioner directive. Therefore, the City's action cannot be sustained and the tax levy proposed by the Board must be restored.

SUMMARY

In summary, the Commissioner directs restoration of the City's increase to revenue as set forth below.

General Fund Tax Levy Certified by Governing Body:	\$5,022,548.42
Restoration of Reduction to Tax Levy:	179,068.58
Amount of Restoration To Be Funded by Surplus:	N/A
Total General Fund Tax Levy for 1997-98:	\$5,201.617.00

Accordingly, the Atlantic County Board of Taxation is directed to make the necessary adjustments as set forth above to reflect a total of \$5,201,617 to be raised in tax levy for General Fund purposes of the Absecon Board of Education for the 1997-98 school year.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date: November 17, 1997