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January 27, 1999

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Dear Counsel:

Upon review of the papers filed in *In the Matter of the Dissolution of the Lower Camden County Regional High School District No. 1*, Agency Docket No. 377-8/98, wherein the municipal governments and boards of education of Waterford and Chesilhurst seek to have me invalidate the results of the May 12, 1998 referendum authorizing dissolution of the Regional District or, in the event that such referendum is not overturned, alternatively seek that I award other specified reliefs, I have determined to dismiss the appeal for the reasons set forth below.[1]

Initially, the parties' submissions reflect the following chronology of events. On or about October 10, 1997, the Lower Camden County Regional High School District No. 1 constituent districts submitted an application to the Commissioner, pursuant to *N.J.S.A.* 18A:13-56, requesting that a Board of Review convene to authorize a public referendum to consider the dissolution of the Regional District. The parties were advised by letter dated January 27, 1998, that the Board of Review had granted the

[1]The Assistant Commissioner has been designated by the Commissioner to hear and determine this matter pursuant to *N.J.S.A.* 18A:4-34(c), which authorizes each assistant commissioner to hear and determine controversies and disputes which may arise under school laws, or the rules of the state board, or of the Commissioner of Education.

application. At the ensuing public referendum, conducted on May 12, 1998, dissolution of the Regional District was approved by a majority of the voters in the seven communities and by five of the seven towns in accordance with *N.J.S.A.* 18A:13-59. On August 11, 1998, petitioners filed the within Petition of Appeal, setting forth eight counts for relief.

The first five counts of petitioners' plea for relief herein seek, for various reasons, to have me invalidate the results of the May 12, 1998 referendum authorizing the dissolution of the Regional District. Specifically, Counts 1, 3, and 4 seek such relief as a result of, what petitioners allege, were infirmities in the application before or the process utilized by the Board of Review in granting authorization for a public referendum. Specifically, these counts, respectively, contend that authorization for the referendum should never have been given without an explicit resolution from the Regional District approving the dissolution; the process followed by the Review Board, the Assistant Commissioner and the County Superintendent was violative of *N.J.S.A.* 18A:13-56 and N.J. Constitution, Art 8, §4, paragraph 1; and the process followed by the Review Board, the Assistant Commissioner and the County Superintendent did not take into account the historic precedent, circumstances and legal precedents regarding the formation of the Regional School District in 1939 and legislative history of the applicable acts in violation of the constitutional rights of the taxpayers of the constituent school districts and contrary to the public policy in the State of New Jersey. It is observed that the Appellate Division in *Winslow Twp. Board of Ed. v. Board of Review*, 275 *N.J. Super.* 206 (App. Div. 1994), specifically considered the issue of appealability of a Board of Review determination and concluded

> Before discussing the merits, we note our agreement with the parties that the appeal was properly taken to this court from the decision of the board of review. Ordinarily, we do not hear a school law matter until after the State Board of Education has rendered a decision. *Dora v. Bedminster Tp. Bd. of Ed.*, 185 *N.J. Super.* 447, 452 (App. Div. 1982). However, the State Board has authority to review only a determination of the Commissioner of Education. *N.J.S.A.* 18A:6-27. Here the Commissioner has no authority to act alone on the matter because as a member of the board of review he or she has only one vote. Thus a determination of the board of review is a final decision of a state administrative agency and therefore may be appealed as of right to this court. *R.* 2:2-3(a)(2) (at 210)

Consequently, I find that each of these counts must be dismissed as I am without jurisdictional authority to overturn the Board of Review's decision in this matter.

Petitioners' two remaining counts seeking invalidation of the referendum request this relief based on, what they avow, were improprieties in the referendum process itself. Count 2 charges that the interpretative statement attached to the

Referendum Question was contrary to relevant statutes, administrative code, the N.J. State Constitution, and applicable case law, in that it did not properly nor accurately inform the public of the consequences with regard to indebtedness of each constituent district. Count 5 contends that the board of education for the Regional District passed a resolution which barred the Regional Board Members and the staff of the Regional School District from speaking about the election, thereby violating the constitutional rights of these persons and was also contrary to the purpose of the election. My review persuades me that these two counts must be dismissed as untimely. In this regard, I note that the proposed language of the referendum question to be placed before the voters, with the interpretive statement, was established by a letter, dated April 21, 1998, from the Camden County Superintendent of Schools and disseminated to all involved school districts. If, upon their receipt of the County Superintendent's letter, petitioners found such language objectionable, pursuant to *N.J.A.C.* 6:24-1.2(c), they had 90 days within which to appeal to the Commissioner for modification of this language. Notwithstanding the availability of this 90-day window within which petitioners could have challenged the proposed referendum language, I find that common sense would dictate that such an objection should have, most appropriately, been filed immediately, on an emergent basis, given that this particular language was scheduled to be placed before the public approximately one month later. In any event, there appears to be no reasonable rationalization here for petitioners' procrastination, waiting until August 11, 1998, well outside the allotted regulatory deadline and three months **after** the referendum approving dissolution was approved by the voters, to first express their dissatisfaction with the wording of the interpretive statement.

Likewise, I note that the subject resolution of the Regional District Board which petitioners contend inappropriately served as a "gag order" was passed on April 27, 1998. Once again, if petitioners believed that the Board's resolution would serve to compromise free expression or unduly influence the referendum vote, a petition of appeal should have been filed at that time, not almost four months later. Petitioners' vigorously advanced argument that interests of fairness and justice support relaxation of the 90-day filing timeline is unpersuasive. The purpose of the 90-day limitation period is to encourage litigants to use proper diligence in the enforcement of their rights so as to allow opposing parties the fair opportunity to defend themselves, thus preventing the litigation of stale claims and penalizing dilatoriness. Here, petitioners provide no viable explanation for their failure to submit a Petition of Appeal prior to August 11, 1998, and I find no justification, whatsoever, under the circumstances existing in this case, to even consider a relaxation of the rules.

Moving to petitioners' three alternative counts for relief, I observe that in this regard they first request a declaratory judgment apportioning the equities of the districts withdrawing from the Regional School Ddistrict to recognize and compensate petitioners for their contribution made since 1939 to the value of buildings and properties of the Lower Camden County Regional School District No. 1, arguing that principles of equity, as well as the Constitution of the State and the history of the controlling statute entitle them to such a recoupment. I conclude that such a request must be denied. It is clear that unless the Board of Review has considered and endorsed an alternate method of

distribution, the liquid assets of the Regional District are, generally, to be distributed pursuant to the statutory plan set forth in *N.J.S.A.* 18A:13-62 and *N.J.S.A.* 18A:8-24. The very issue set forth herein, that such required distribution improperly deprives petitioners of their "equity" in the assets of the Regional District, has previously been addressed and resolved by the Appellate Division, when in *In re Union County Dissolution*, 298 *N.J. Super.* 1 (App. Div. 1997) it held

> ***[A]ppellants' argument about their loss of equity is premised on a claim to an ownership interest in assets of the regional district; that claim is without legal basis. (at 9)

As such, petitioners' claim of any legal entitlement to recompense is without foundation. Neither can petitioners advance any equitable entitlement to such compensation, as the materials before me have not pled or established any circumstances which would warrant a departure from the statutory scheme, in that "[n]othing presented ***in this case*** would result in an inequity such as to provide a basis for denying the finality of the resolution of this issue that is embodied in the Board of Review's determination." *In the Matter of the Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School District No. 1, Union County,* State Board of Education, decided July 1, 1998, Slip Opinion at p. 9, citing *City of Hackensack v. Winner*, 82 *N.J.* 1 (1980*)* at 30-33. I further find petitioners' pronouncements with respect to the legislative history of *N.J.S.A.* 18A:13-61.1, intended to buttress their claim of an equitable entitlement to payment, inapplicable to the instant proceedings.

Petitioners next seek that I grant them a declaratory judgment to bar the Regional School District from passing any resolutions regarding funding of capital improvements at the present apportionment rate per constituent district with benefit beyond the dissolution period or, alternatively, for a declaratory judgment to apportion the equities for each capital improvement attributed to each withdrawing district in accordance with a study petitioners suggest be conducted for each considered capital improvement to the Regional School District. (Petition of Appeal at p. 14) Petitioners claim that such relief is necessary to prevent the Regional District from advancing capital improvements, not immediately necessary for the health, safety or welfare of the student population, on existing buildings which would serve to result in long-term benefit to only some of the Regional School District. Further, petitioners contend that, subsequent to the referendum election, the Regional Board has been discussing certain capital improvements in an effort, they assert, to "rob" the constituent districts who shall not benefit from such capital improvements and who shall be deprived of taxpayer funds to fund such improvements. Careful contemplation of petitioners' prayer for relief here compels that I deny granting such an extraordinary restraint which would, undoubtedly, serve to impede the District in the satisfaction of its statutory responsibilities. In this connection, it must be remembered that the Regional District will continue to operate, as configured, until the effectuation of the dissolution and during this period is charged with providing the students comprising the District with a thorough and efficient education. Absent any demonstration that the District is engaging in bad faith or fraud in the

exercise of its responsibilities, it cannot be restrained from expending those budgeted funds deemed necessary to fulfill its obligations.

Finally, petitioners ask that I direct definitive timelines and deadlines for each constituent school district to find a seat for every student and pass appropriate funding and bonding. (Petition of Appeal at p. 14) In considering this request, I duly recognize that the process dealing with the actual timing of dissolution is dictated by *N.J.S.A.* 18A:13-59. Inasmuch as I have every indication that the constituent districts are moving forward to allow completion of the process, and petitioners advance no allegation that I have been dilatory or deficient in fulfilling my statutory responsibility in such process, I find no basis to compel action to disturb the ordinary operation of statute in this regard.

Accordingly, for the reasons expressed above, the instant Petition of Appeal is hereby dismissed pursuant to the authority granted me by *N.J.A.C.* 6:24-1.9.[2] [3]

Sincerely,

Jeffrey V. Osowski
Assistant Commissioner

c: County Superintendent

[2] The Assistant Commissioner acknowledges receipt of a second amended Petition of Appeal received on January 26, 1999, which was duly considered in reaching his determination herein.

[3] This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.