73-00

BOARD OF EDUCATION OF THE BOROUGH OF WILDWOOD CREST, CAPE MAY COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY STATE DEPARTMENT OF EDUCATION, OFFICE OF COMPLIANCE,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioning Board contested the Department's determination (resulting from an audit) that petitioner exceeded its authority in purchasing materials for the construction of a sidewalk on property not owned by the school district and in waiving the Borough's obligation to pay contaminated soil removal costs in return for labor which was supplied for such sidewalk construction.

The ALJ found that the legislative scheme permits a school district to improve its own property but not that of the municipality. Therefore, the ALJ found that a school district may not expend public funds to construct a sidewalk improvement on property which is not owned by the board but is municipally-owned in order to jointly develop and construct a recreational field. Thus, the ALJ concluded that there is no statutory authority that would permit the Board to make the sidewalk improvement in question at its expense. The ALJ found no merit to the Board's argument that *N.J.S.A.* 18A:20-22 and 33-1 may be read *in pari materia*. Moreover, the ALJ noted that the requirement of "convenience of access" in *N.J.S.A.* 18A:33-1 was not applicable in this instance. The ALJ affirmed the Department's determination made in a Notice of Determination that the Board exceeded its authority. Petition was dismissed.

Commissioner adopted findings and determination in Initial Decision and directed the Department's Division of Finance to recover from the Board all State aid received on the amounts inappropriately disbursed.

February 28, 2000

OAL DKT. NO. EDU 6662-98
AGENCY DKT NO. 223-7/98

BOARD OF EDUCATION OF THE BOROUGH OF WILDWOOD CREST, CAPE MAY COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY STATE DEPARTMENT OF EDUCATION, OFFICE OF COMPLIANCE,	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Both petitioner's exceptions and respondent's reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering his decision herein.

Petitioner's exceptions express concurrence with the factual findings of the Administrative Law Judge (ALJ), but disagree with his conclusions of law, arguing that the ALJ erred in his interpretation that *N.J.S.A.* 18A:20-22 and *N.J.S.A.* 18A:33-1 are distinct statutes with separate objects, rather than interpreting the two statutes *in pari materia.* (Petitioner's Exceptions at 3)

Petitioner proposes that consideration of *N.J.S.A.* 18A:20-22 and *N.J.S.A.* 18A:33-1 *in para materia* would effect a different conclusion of law as follows:

> 1. *N.J.S.A.* 18A:20-22 authorizes a board of education to join with the governing body of municipality in which the school district is located for the purpose of acquiring land and developing recreational facilities.
> 2. Facilities so developed may constitute recreational facilities or they may constitute educational facilities and school facilities within the meaning of *N.J.S.A.* 18A:33-1, depending on the

> purpose of the construction and the use to which the facilities are put.
> 3. *N.J.S.A.* 18A:20-22 and 18A:33-1 may be read *in para materia.*
> 4. The field in question here, developed jointly with the Borough of Wildwood Crest pursuant to *N.J.S.A.* 18A:20-22, is an educational facility.
> 5. The sidewalk in question here was constructed to provide "convenience of access" to that educational facility within the meaning of *N.J.S.A.* 18A:33-1.
> 6. Petitioner was, therefore, authorized to spend money on the joint development of the sidewalk with the Borough of Wildwood Crest. (Petitioner's Exceptions at 4)

Petitioner further argues that the ALJ's interpretation of *N.J.S.A.* 18A:20-22 is a "narrowly restrictive interpretation" in that it permits the joint development of recreational facilities, but does not take into consideration the involvement of a board of education as developer in determining that facilities jointly developed under *N.J.S.A.* 18A:20-22 are not also educational facilities. Petitioner maintains that *Winslow Twp. v. Camden Board of Ed.*, 108 *N.J. Super*. 215, 219 (App. Div. 1970) mandates that *N.J.S.A.* 18A:20-22 be interpreted liberally, so that the nature of the developed property is determined by the purpose of development of the property and its use. (*Id*. at 5, 6) Because Wildwood Crest students make use of the jointly developed facility both for recreational purposes and for physical education classes[1], petitioner contends, *N.J.S.A.*18A:33-1 obligates the school district to provide "convenience of access" to the facility in question, and therefore grants it the authority to financially contribute to sidewalk construction in this instance. (*Id.* at 7)

Additionally, petitioner argues that under the ALJ's assessment, if the jointly developed facility is solely recreational, then the land exchange entered into by petitioner and the Borough of Wildwood Crest would be invalid under *N.J.S.A.* 18A:20-8, which permits boards of education to exchange lands for school purposes. (Petitioner's Exceptions at 8)

[1] Although petitioner's exceptions reference the school district's use of the jointly developed recreational facility for physical education classes, the record below contains no such reference.

Finally, petitioner reiterates its argument that respondent did not have the authority, absent rulemaking by the State Board, to conduct the limited scope special examination at issue herein. (*Id.* at 10)

In its reply, respondent counters that there is nothing in the record below to indicate that petitioner holds physical education classes at the jointly developed site as petitioner now contends in its exceptions, and that petitioner should therefore be precluded from relying on facts that are not part of the record. Respondent further avers that "[t]he site was developed jointly by the Board and the municipality pursuant to *N.J.S.A.* 18A:20-22, which governs purchase and development of recreational sites only." (Respondent's Reply Exceptions at 2)

Respondent argues that petitioner's reliance on *Winslow, supra,* is misplaced and that petitioner's "[f]inancial contribution to the acquisition does not transform a municipal property into an educational facility." In regard to the exchange of land pursuant to *N.J.S.A.* 18A:20-8, respondent contends that petitioner's receipt of the land at issue did not convert the land acquired into an educational facility, but rather, petitioner donated the property it had received in the exchange to the joint acquisition. (*Id.* at 3)

Petitioner's argument with respect to its obligation to provide "convenience of access" is flawed, respondent reasons, because "access" has clearly been held to refer to remoteness of property within the district for purposes of pupil transportation, not ease of entry as petitioner claims. *Board of Education of the Township of West Amwell v. State Board of Education, S.N.J. Misc.* 152 (Sup Ct. 1927) (*Ibid.)* "[I]t is also settled law that a school district has no obligation regarding the safety of the route on which children travel to school. *Nichols v. Wayne Board of Education,* App. Div. Docket No. A-3525-93T5 (March 3, 1995), 95 *N.J.A.R.* 2d (EDU) 157. Moreover, the new recreation facility was already accessible by sidewalk at the time the Board elected to construct the new sidewalk at issue." (Respondent's Reply Exceptions at 3-4)

Finally, respondent concurs with the ALJ's finding that respondent had the authority to conduct the limited scope special audit.

Upon careful and independent review of the record, the Initial Decision, the exceptions and the reply thereto filed in this matter, the Commissioner determines to affirm the Initial Decision.

Initially, the Commissioner concurs with the ALJ that *N.J.S.A.* 18A:4-35 and *N.J.S.A.* 18A:6-4 grant the Commissioner both the responsibility and the authority to assure the fiscal integrity of school districts and the proper use of public funds, including the authority to delegate inspection of the fiscal accounts of boards of education to the Office of Compliance. (Initial Decision at 9)

Additionally, the Commissioner agrees with the ALJ for the reasons expressed in the Initial Decision that the joint facility at issue is a recreational facility. The Commissioner disagrees with petitioner's argument that the school district's involvement in joint ownership of a recreational facility, in itself, renders that facility an educational facility. Although petitioner asserts that *Winslow Twp., supra,* mandates that *N.J.S.A.* 18A:20-22 be interpreted liberally, so that the nature of the developed property is determined by the purpose of the development and the property's use (Petitioner's Exceptions at 5- 6), petitioner acknowledges in its Petition of Appeal that the purpose of its joint project with the municipality was to construct and maintain a recreational facility.

> [i]n the exercise of its powers, including those found in *N.J.S.A.* 18A:20-22 and 18A:33-1, in 1995, Petitioner acquired certain land within the Borough of Wildwood Crest (the "Borough"), known as Blocks 184 and 185 on the Borough Tax Map, and Petitioner then joined with the Borough in developing certain plans to improve that land *for the purpose of constructing and maintaining thereon a recreational complex* (the "Recreational Complex"). (emphasis added) (Petition of Appeal at 2)

Like the ALJ, the Commissioner finds no merit to petitioner's argument that *N.J.S.A.* 18A:20-22 and 18A:33-1 may be read *in pari materia*. The statutes do not pertain to the same subject matter. The Commissioner also agrees that the requirement of "convenience of access" in

N.J.S.A. 18A:33-1 is not applicable in this instance. There is no statutory authority which would enable a school district to expend school funds to make sidewalk improvements, as in this case to municipal property surrounding a municipal garage and other nonschool property, so as to provide convenient access to a recreational facility, notwithstanding that the property is partially owned by the district.

The Commissioner therefore adopts the decision of the ALJ finding that petitioner exceeded its authority in constructing a sidewalk on property owned by the municipality and in waiving the municipality's responsibility to pay contaminated soil removal costs in return for labor provided by the municipality. In so doing, the Commissioner directs the Department's Division of Finance to recover from petitioner all State aid received on the amounts inappropriately disbursed.[2]

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: February 28, 2000

Date of Mailing: _____

[2] While the Commissioner does not so direct, nothing herein precludes petitioner from seeking reimbursement of the disallowed expenditures from the Borough of Wildwood Crest.

[3] This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* 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.