

#167-05 (No OAL Decision)

AGENCY DKT. NO. 17-1/05

TOWNSHIP OF MAPLEWOOD, :
 ESSEX COUNTY, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECLARATORY JUDGMENT
 TOWNSHIP OF SOUTH ORANGE VILLAGE, :
 ESSEX COUNTY, AND BOARD OF :
 EDUCATION OF THE SOUTH ORANGE- :
 MAPLEWOOD SCHOOL DISTRICT, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

This matter was initiated by a Petition for Declaratory Judgment wherein petitioner requested that the provisions of *N.J.S.A.* 18A:22-5, relating to Boards of School Estimate in Type II districts, be construed and clarified. The dispute centers on the nature of the secondary majority requirement set forth by the Legislature at *N.J.S.A.* 18A:22-5, which states:

When it is required by law that any action shall be taken by at least a majority of the full membership of the board of school estimate, such majority must include a majority of the members, representing the respective municipal governing bodies and the action shall be certified accordingly.

Pursuant to *N.J.S.A.* 18A:4-33, this matter has been delegated to the Deputy Commissioner for decision. Upon a thorough and thoughtful review, the Deputy Commissioner finds that *N.J.S.A.* 18A:22-5 mandates that when it is required by law that any action shall be taken by at least a majority of the full membership of the BSE, both a majority of the full membership including the Board’s representatives *and* a majority of all of the representative members of the municipalities is required.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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_____ :

For Petitioner, Roger J. Desiderio, Esq. (Bendit Weinstock)

For Respondent Township of South Orange Village, Edwin R. Matthews, Esq. (Bourne, Noll & Kenyon)¹

For Respondent Board of Education of the South Orange-Maplewood School District, Sidney A. Sayovitz, Esq. (Schenck, Price, Smith & King, LLP)

This matter was initiated by a Petition for Declaratory Judgment, filed January 13, 2005, wherein petitioner requests that the provisions of *N.J.S.A.* 18A:22-5 be construed and clarified to determine whether both a majority of the municipality representatives of South Orange and a majority of the municipality representatives of the Township of Maplewood (Maplewood) are required for any resolution of the Board of School Estimate (BSE)

¹ South Orange Village (South Orange) did not submit an Answer or brief indicating its position with respect to the interpretation of the statute at issue in this matter. In its sole submission, dated March 9, 2005, counsel for South Orange states:

...The Board has requested that I monitor this matter and obtain copies of letter briefs filed on behalf of those two parties. The Board may then join in the position advocated by one of the parties...

to pass or whether only a majority of all of the members of the two municipalities is required to pass any resolution.

The BSE, which considers and approves the South Orange-Maplewood School Board's (Board) budget in this Type II school district, is composed of eight members, pursuant to *N.J.S.A. 18A:22-4*, consisting of three representatives from each of the two municipalities and two representatives from the board of education. The parties concede that *N.J.S.A. 18A:22-26* requires that a majority of the full membership of the BSE must vote affirmatively to pass a measure. The dispute centers on the nature of the secondary majority requirement the Legislature set forth at *N.J.S.A. 18:22-5*, which states:

When it is required by law that any action shall be taken by at least a majority of the full membership of the board of school estimate, such majority must include a majority of the members, representing the respective municipal governing bodies and the action shall be certified accordingly.

Maplewood contends that the language of the statute dictates that not only is a majority of the full board required to pass a measure, but such "majority must consist of a majority of elected officials of *each* municipality" (emphasis in text) (Maplewood's Brief at 2) The Board's interpretation is that "when a majority vote by the Board of School Estimate is required, not only must a majority of the full board support a measure, but such majority must also include a majority of the members of the Board of School Estimate that are appointed by the two municipalities." (Board's Brief at 2)

In support of its position, Maplewood points to *McCann v. Clerk of Jersey City*, 167 *N.J.* 311, 321 (2001) referring to *Gabin v. Skyline Cabana Club*, 54 *N.J.* 550 (1969) in asserting that a cardinal rule of statutory construction is that full effect should be given to every word of a statute "because the legislature cannot be assumed to have used meaningless

language.” (Maplewood Brief at 4-5) In this regard, Maplewood notes that, in describing how the BSE is to determine the amount of money necessary to be appropriated for the use of a district’s public schools, *N.J.S.A.* 18A:22-26 states that the BSE will ““fix and determine the amount of monies necessary by a recorded roll call *majority vote of its full membership.*”” (emphasis in text) (*Id.* at 5) Additionally, Maplewood notes that, in the same sentence when discussing how the BSE shall make a certificate of the amount, *N.J.S.A.* 18A:22-26 states that the signatures required for the certificate are to be “*at least a majority of all members*” of such board. (*Ibid.*) Maplewood thus concludes that the language used in *N.J.S.A.* 18A:22-26 regarding the signature requirement of a majority of all members is obviously different from the requirement set forth in *N.J.S.A.* 18A:22-25 which states that the majority of its full membership is required. (*Id.* at 6)

A basic reading of the statute at issue, Maplewood submits, is that “‘such’ majority must include a majority of the members representing the ‘respective’ municipal govern[ing] bodies,” claiming that the word “respective” is the most essential word in the statute at issue. (*Ibid.*) If the Board’s interpretation is correct, Maplewood argues, there would be no reason for the word “respective” to appear in the statute. (*Ibid.*) To underscore its point, Maplewood poses that, under the Board’s view, the word “respective” would be ineffective and redundant in that the majority of the BSE could be all three members representing Maplewood, one member representing South Orange and one member representing the Board. (*Id.* at 6-7) Maplewood contends that this would clearly not be a majority under the statute because a majority of the representatives of the municipal body of South Orange would not have concurred in the result, and that this construction is contrary to the idea of a representative government as it

would mean that either Maplewood or South Orange could be bound by a decision made by elected officials who are not accountable to such taxpayers. (*Ibid.*)

According to Webster's Deluxe Unabridged Dictionary, Maplewood contends, the word "respective" means "each" and the one synonym for "respective" listed in Merriam Webster's online dictionary/thesaurus is the word "several." (*Ibid.*) Maplewood, therefore, opines that "the word 'respective' refers to an individual or specific element which goes to make up the whole as opposed to the whole itself." (*Id.* at 8) In conclusion, Maplewood argues that its interpretation gives full effect and meaning to the statute, produces a system more amenable to compromise and consensus, and assures that actions which impose financial burdens on the taxpayers of a municipality are actions that have been agreed upon by the municipality's elected officials. (*Ibid.*)

The Board sets forth its position as follows:

[I]n order for the Board of School Estimate to pass a measure, two majorities are required: (i) a majority of the full Board of School Estimate (at least five of eight) must vote affirmatively; and (ii) a majority of the municipal members (at least four of six) must also vote affirmatively. (Board Brief at 3)

In support of this interpretation of the statute, the Board asserts that Maplewood ignores the fact that the language of the statute refers to "a *majority* of the members," not to the "*majorities* of the municipal sub-groups." (emphasis in text) (*Ibid.*) The Board also takes issue with Maplewood's contention that there can only be one meaning to the word "respective" as it appears in the statute, pointing out that Webster's Dictionary also defines "respective" as "severally connected or belonging." (*Id.* at 4) In the Board's view, when respective is considered in the context of the statute, the use of "respective" simply provides a way to compare a majority of the municipal members with a majority of the full membership of the

BSE. (*Ibid.*) The Board thus contends that “respective” appears in the statute in order to emphasize that a majority of the aggregate municipal members is required in addition to a majority of the full membership. (*Ibid.*) Moreover, the Board points to the Legislature’s Statement accompanying the laws of 1933, c. 232, the predecessor law to *N.J.S.A.* 18A:22-5, as providing conclusive support for the Board’s interpretation:

The purpose of this bill is to change the composition of the board of school estimate in school districts comprising more than one municipality in counties of the first class in the State and having a population in such school district of more than 30,000 inhabitants. In such school district, the board of school estimate is now composed of two members from the governing body of each municipality and two members from the Board of Education. This bill gives greater representation and voting power on the board of school estimate to the governing bodies of each of the municipalities with said district and *requires that at least a majority of the representatives of the municipal governing bodies shall approve the budget.* (emphasis supplied by the Board) (*Id.* at 4-5)

The Board points out that, although the Legislature’s expressed intent is to increase the voting power of the municipal members relative to the votes of the school board members, it did not require majority approval by each sub-group from each municipality for passage of a measure, but, instead, added the requirement that “at least a majority of the representatives of the municipal governing bodies shall approve the budget.” (*Id.* at 5) If it was the Legislature’s intent to require separate majorities from each of the municipal governing bodies, the Board argues, it would have made references to such separate majorities. (*Ibid.*)

The Board also claims that its past practice interpretation of *N.J.S.A.* 18A:22-5 is entitled to substantial deference, noting that between May 1996 and April 2000, the BSE voted to approve measures that included a majority vote by four members appointed by the two municipalities, but without a majority vote by the members representing each municipality.

(*Ibid.*) Arguing that consistent and uniform interpretations of a statute by an agency are entitled to deference, the Board points out that, in each of these instances where the BSE was confronted with interpretation of the statute at issue, the BSE interpreted the statute as advocated herein by the Board. (*Id.* at 6) Additionally, the Board argues that under an interpretation that a majority of each municipality is required for passage of a measure, two members from either group of representatives from a municipality can prevent passage of the school budget even when 75 percent, or all six of the remaining members of the BSE, vote in support of the budget. (*Id.* at 7)

In response, Maplewood emphasizes that the statute defines “majority of the members” by including the language “representing the *respective* municipal governing bodies” and asserts that the Legislature had no reason to have included that phrase unless it intended the majority of the members to mean a majority of each of the respective municipal governing bodies. (emphasis in text) (Maplewood’s Reply Brief at 2) Maplewood claims that no other interpretation makes sense because one municipality could be taxed even where the majority of its representatives had not concurred if interpreted otherwise. (*Id.* at 2-3)

With respect to the Board’s reliance on the legislative history of the predecessor statute, Maplewood sets forth its position that resort to legislative intent for statutory interpretation is only necessary if the statute is ambiguous and claims that, in this case, the statute is not ambiguous, but, rather, it is the Legislature’s statement that is ambiguous. (*Id.* at 3-5) In support thereof, Maplewood contends that the first clause of the last sentence, *e.g.*, “[t]he bill gives greater representation and voting power on the board of school estimate to the governing bodies of each of the municipalities within said district” supports Maplewood’s position, but the second clause, *e.g.*, “and requires that at least a majority of the representatives

of the municipal governing bodies shall approve the budget,” supports the Board’s interpretation. (*Id.* at 5) However, the legislative statement is not what controls the interpretation of the statute, Maplewood maintains, because there would have been no need to amend the statute to increase municipal membership from two to three members under the Board’s reading. (*Id.* at 6)

Maplewood emphasizes its contention that the reason it was necessary to change the municipal representation from two to three was so there could always be a majority of each municipal delegation to avoid municipalities being taxed without their consent. (*Id.* at 5) Under the original statute, in a four member municipality BSE with a total of ten votes, Maplewood poses, the board of education, with two votes, and two of the municipalities, with two votes each, could have out-voted the other two municipalities by achieving the six votes needed for passage of a measure without the other two municipalities’ consent. (*Id.* at 4) Under the current law, Maplewood points out, the same BSE with four municipalities would have fourteen votes. (*Id.* at 4-5) Maplewood contends that two municipalities could still be out-voted under the current law using the Board’s interpretation if two municipalities voted three each for a measure, one member of one of the municipalities’ representatives voted with the majority and one member of the school board voted in the majority. (*Ibid.*) Thus, two municipalities would be taxed without their consent, which, Maplewood asserts, is the situation the Legislature sought to avoid by changing the statute. *Id.* at 4-6)

Finally, Maplewood takes issue with the Board’s claim that past practice is critical in interpreting the statute, averring, *inter alia*, that the cases upon which the Board relies are those involving administrative agencies, not elected governmental agencies like a BSE, and arguing that an elected body’s incorrect interpretation does not change what the Legislature enacted. (*Id.* at 6)

N.J.S.A. 18A:22-5 and the parties' positions on the meaning of the language therein have been thoroughly and thoughtfully reviewed by the Deputy Commissioner to whom this matter has been delegated for decision, pursuant to *N.J.S.A.* 18A:4-33. Initially, the Deputy Commissioner reiterates that the parties concede that *N.J.S.A.* 18A:22-26 requires that a majority of the full membership of the BSE must vote affirmatively to pass a measure and the only issue is the secondary majority requirement the Legislature set forth at *N.J.S.A.* 18A:22-5:

When it is required by law that any action shall be taken by at least a majority of the full membership of the board of school estimate, such majority must include a majority of the members, representing the respective municipal governing bodies and the action shall be certified accordingly.

In viewing this statute's plain meaning and in light of the Legislature's Statement accompanying the laws of 1933, c. 232, the Deputy Commissioner construes *N.J.S.A.* 18A:22-5 as mandating that a majority of all of the representative members of the municipalities is required to pass any resolution, *e.g.*, in this instance, at least four of the six members representing the two municipalities. In so determining, the Deputy Commissioner observes that, when *N.J.S.A.* 18A:22-5 was changed in 1933 to expand the number of municipal representatives from two to three for each municipality, the Legislative Statement indicated that the intent was to provide greater representation and voting power to the municipalities and to require a majority vote of the aggregate voting municipal members, specifically stating that "[t]his bill gives greater representation and voting power on the board of school estimate to the governing bodies of each of the municipalities with said district and requires that at least *a majority of the representatives of the municipal governing bodies shall approve the budget.*" (emphasis supplied) If the Legislature had intended the revised statute to require separate majorities from each of the municipal governing bodies' representatives as petitioner contends, it is reasonably inferred that

specific references to such separate majorities would have appeared in the revised statute and in the Legislature's Statement as this requirement would represent a significant departure from the previous requirement.

Moreover, the Deputy Commissioner finds that the use of the word "respective" in this statute is not definitive so as to require a separate majority requirement for each of the municipalities, but, instead, is simply used to differentiate and emphasize that a majority of the aggregate municipal members is required in addition to a majority of the full membership. Additionally, the representative scheme set forth in *N.J.S.A.* 18A:22-5 to assure that municipalities will not be taxed without representation is entirely consistent with that established for regional school districts where the total vote of the entire regional district is counted without regard to municipal boundaries in determining the result of an election or the passage of a school budget. See *N.J.S.A.* 18A:13-5.

Accordingly, the Deputy Commissioner finds that *N.J.S.A.* 18A:22-5 mandates that, when it is required by law that any action shall be taken by at least a majority of the full membership of the BSE, both a majority of the full membership including the Board's representatives *and* a majority of all of the representative members of the municipalities is required.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: May 9, 2005

Date of Mailing: May 9, 2005

² This declaratory judgment 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.* 6A:4-1.1 *et seq.*