

Office of Administrative Law
Initial Decision
OAL DKT NO. EDU 3472-95
AGENCY DKT NO. 54-3/95
Record Closed: August 8, 1995
Decided: September 11, 1995

Randall H. Enterline, Petitioner

v.

Board of Education of the
Township of Hillsborough, Respondent

Randall H. Enterline, petitioner, pro se

Stephen R. Fogarty, Esq., on behalf of respondent (Fogarty &
Hara, attorneys)

This matter arises out of a complaint filed by petitioner with the Commissioner of Education pursuant to N.J.S.A. 18A:6-9. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 through -10. The parties filed cross motions for summary decision and the last papers were received on August 8, 1995, after which the record closed.

The operative facts are either stipulated or undisputed. Respondent placed a bond issue before the voters on March 28, 1995, seeking approval to construct a new high school and make certain other renovations; the proposal failed. During the process respondent prepared and distributed a newsletter which petitioner, a homeowner and taxpayer in Hillsborough Township, found offensive. The issue presented is whether this expenditure advocated passage of the public question and thus exceeded respondent's authority, or whether it was merely permissible voter education. Citizens to Protect Pub. Funds v. Board of Educ. of Parsippany-Troy Hills, 13 N.J. 172 (1953); Schettino v. Ridgefield Bd. of Educ., 93 N.J.A.R. 2d (Vol. 4A) 224 (Education)

The newsletter is eight pages long and must be reviewed in its entirety for a proper appraisal. I note here a few features that bear on the inquiry. Page one begins with the heading "Planning For Our Children's Future" and an article discussing respondent's decision to bring the matter of a new high school to the electorate. The article explains that there has been a "dramatic" increase in the number of students attending the public schools and that this trend is expected to continue. Additionally, space needs generally have increased over the years for computers, library materials and the like. An excerpt boldly printed in the center of the page states, "An approved referendum enables us to continue providing the quality education our children deserve and parents expect, stabilizing property values for all homeowners." The last paragraph on the page submits that respondent has a "heartfelt responsibility" to deliver quality education and plan "for the future of our children," which is "what the March 28 bond referendum is all about." This article concludes on page eight.

On page two respondent briefly reviews the options it rejected and notes that a complete report of these deliberations is available at its office. On the third page respondent presents graphs showing capacity versus projected enrollment for the next five years. Petitioner points out that the first graph, which depicts this balance for the high school, creates a visual impression which is inconsistent with the data presented. Without studying the numbers a reader might conclude that enrollment will be twice capacity by the 1998-99 school year. The data shows, however, that the high school has capacity for approximately 1,350 students and will need to serve some 1,650 students in the out year. This is not a doubling of the high school population, but an increase of about 18 percent. The middle and elementary school graphs are illustrated accurately.

On pages four and five respondent shows the layout of the proposed high school. Page six reviews the tax implications of approval and an inset lists "Ten Facts About the Hillsborough Schools," where certain achievements are highlighted. For example, it shows that 87 percent of 1994 graduates continued their formal education, that per-pupil cost is the lowest in Somerset County, that the district recently received a reward for administrative efficiency from the Department of Education, that SAT scores are above the norm, and so on.

On the seventh page respondent lists persons who may be contacted for more information and in an inset notes "Ramifications of a Defeated Referendum." These include continued increases in class size, reductions in electives and extracurricular activities, higher costs if the question should have to be revisited, a possible split in the community, a tarnished image and reductions in property values. On page eight the newsletter lists polling places and, in the article continued on that page, urges people to be well informed "when casting [their] ballot[s] for the children of Hillsborough Township." This is the substance of the record.

The newsletter is very much an advocacy piece, If some of the effort is subtle, the nature of the enterprise is unveiled in the graphs on page three. Here the visual presentation of capacity versus projected enrollment at the high school does not merely cross the line between education and advocacy, but actually distorts the facts in the apparent hope that a picture will be worth a thousand words. As the graphs depicting the middle and elementary school data are accurate, the illustration inflating high school enrollment to twice capacity for 1998-99 must have been intentional. Nothing further is necessary to establish petitioner's cause, although the motive is plain in phrases like "An approved referendum enables us to continue providing the quality education our children deserve" and "responsibly planning . . . is what the March 28 bond referendum is all about." Functionally, these are exhortations to vote "yes." The inset on page six, appears intended to assure voters that respondent is doing a good job and can be trusted to wisely spend the tax money discussed on that same page. The inset on page seven, touches hot-button local concerns about property values and community image.

Petitioner argues with some justification that merely admonishing respondent is not an adequate remedy, I am not aware, however, that there is precedent for much more. In Schettino, the Commissioner directed that future publications of the kind found offensive be for one year reviewed by the full Board in consultation with counsel prior to distribution. A remedy along these lines is minimally appropriate here. Thus, it is ORDERED that any publications by respondent explaining any bond referendum to be presented to the voters within one year of final agency action be reviewed in advance by the full Board in open session with the assistance of counsel. Findings are to be made that such materials are educational in nature and not for the purpose of swaying opinion. So ORDERED.

I hereby FILE this initial decision with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION for consideration.

This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, 225 East State Street, CN 500, Trenton, New Jersey 08625, marked "Attention: Exceptions." A copy of any exception must be sent to the judge and to the other parties.

Dated: September 11, 1995 /s/ Solomon A. Metzger, ALJ

Mailed to parties: September 18, 1995