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Administrative Law—Permanent State Board Of Equalization And Assessment Held Properly Constituted

Rosario J. Dilorenzo

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in its favor," and that the utility of a panel made up of these experts would far outweigh any infringements upon the public's voice in the selection of a Board of Education.

B. D. K.

PERMANENT STATE BOARD OF EQUALIZATION AND ASSESSMENT HELD PROPERLY CONSTITUTED

In 1949 the Legislature created a temporary State Board of Equalization and Assessment. It consisted of three members who were appointed by the Governor and was empowered to review and revise State equalization rates. This board was continued in existence by subsequent acts of the Legislature until April 1, 1960, when there was created a permanent State Board of Equalization and Assessment. This permanent board consisted of the Commissioner for Local Government and four others to be appointed by the Governor. The Governor, however, failed to make any appointments to the permanent board until January 1961, when the three persons who had been on the temporary board were appointed to the permanent board. These were the only appointments made. In August 1960, the three men who had constituted the temporary board made a determination reducing the equalization rate for the Town of Smithtown. One month later, petitioner (town) instituted an article 78 proceeding pursuant to section 760 of the Real Property Tax Law to annul the determination. The petitioner argued that the permanent board could not be properly constituted until the Governor appointed its full complement of five members, and since at the time the determination was made no one had been appointed to the permanent board, the action taken by the respondents was void. Additionally, petitioner claimed that in any case, the rate fixed was arbitrary, capricious, and unreasonable. The lower court dismissed the petition, and the intermediate court affirmed the dismissal. On appeal by permission to the Court of Appeals, *held*, affirmed, one judge dissenting. The permanent board was properly constituted at the time the determination was made since a reading of the statute which created that board showed that the three respondents were empowered to act as the majority of the permanent board. Furthermore, despite the fact that certain erroneous material was used by the board in making its determination, the rate fixed was not arbitrary because this material was furnished by local assessors, and the overall methods used by the Board in determining the rate were adequate. *Town of Smithtown v. Moore*, 11 N.Y.2d 238, 183 N.E.2d 66, 228 N.Y.S.2d 657 (1962).¹

In New York, when a problem of statutory construction arises, the courts will attempt to determine the intent of the Legislature from the language of the statute,² and effect will be given, when possible, to the plain meaning of

1. 14 A.D.2d 229, 218 N.Y.S.2d 802 (3d Dep't 1961).

2. *Dept. of Welfare of City of New York v. Siebel*, 6 N.Y.2d 536, 161 N.E.2d 1, 190 N.Y.S.2d 683 (1959), appeal dismissed, 361 U.S. 535 (1960).

the statute.³ However, literal meanings will not be adhered to to defeat the general purpose and manifest policy intended to be promoted.⁴ Further, a statute must be ambiguous before aids to construction are consulted,⁵ but when doubt arises as to the meaning of a statute, results are an important clue to meaning.⁶

In the instant case the Governor did not appoint the three members of the old Board to the permanent Board until after the rate determination in question. However, the Court pointed out that this fact was not crucial since the law which created the new Board provided for the transfer of the officers and employees from the temporary Board to the permanent one. The Court declared that the law also provided for a continuity of functions and powers running from the temporary Board to the permanent Board and that under New York law the three members constituted a working majority. The Court reasoned, therefore, that the Legislature must have intended that there should be no break in the work of the Board no matter how great the Governor's delay in appointing the full complement of the five member Board. The Court stated that a great many districts throughout the state would be adversely affected by a ruling that all the determinations of the Board made after April 1, 1960, were void and expressed its apprehension over such "far reaching and upsetting consequences."⁷ The dissent argued that the new Act absolutely abolished the old Board and that the old board members could not act unless they were specifically appointed. The dissent declared that the majority had no right to reach a strained construction simply because of the possible adverse results which might follow from a proper reading of the statute. There is great merit in trying to determine Legislative intent and in using results as a clue to meaning, when the meaning of a statute is ambiguous. Such considerations, however, should only apply when there is real doubt as to the meaning of the statute. Unfortunately, courts out of policy considerations will often find doubt and ambiguity where there is none and advance a construction in keeping with their belief as to what the intent of the Legislature *ought* to have been rather than what it actually was. The statute in the instant case has a clear meaning. The Legislature created a permanent Board whose five members were "to be appointed" by the Governor.⁸ The functions of the old Board were to be transferred to the new,⁹ and all rules, regulations, orders, and determinations of the temporary Board were to continue in force until changed by the new Board.¹⁰ It was further provided that the unfinished business of the old Board

3. Capone v. Weaver, 6 N.Y.2d 307, 160 N.E.2d 602, 189 N.Y.S.2d 833 (1959).

4. Chittenden Lumber Co. v. Silberblatt & Lasker Inc., 288 N.Y. 396, 43 N.E.2d 459 (1942).

5. Town of Putnam Valley v. Slutzky, 283 N.Y. 334, 28 N.E.2d 860 (1940).

6. Emerson v. Buck, 230 N.Y. 380, 130 N.E. 584 (1921).

7. Town of Smithtown v. Moore, 11 N.Y.2d 238, 244, 183 N.E.2d 66, 69, 228 N.Y.S.2d 657, 661 (1962).

8. N.Y. Real Prop. Tax Law § 200.

9. N.Y. Sess. Laws 1960, ch. 335, § 10.

10. N.Y. Sess. Laws 1960, ch. 335, § 15.

could be completed by the new Board.¹¹ In addition, the law created a Division of Equalization and Assessment which was to carry out the policies of the permanent Board¹² and into which all officers and employees of the temporary Board should be transferred.¹³

It is clear that the essential purpose of the statute was to effect the transfer of the powers and duties of the temporary Board to the permanent Board. Nowhere in the statute is it stated that the temporary board members should continue to exercise rate-making power in the absence of their appointment to the new Board. Nor does such authority arise by implication. The majority, recognizing that this implication cannot be found in the statute, and realizing a contrary decision would create chaos in the tax system, chose to read into the statute an ambiguity, and justified the interpretive procedure by cloaking it in a protective mantle of legislative intent. Such a procedure is unjustified when the statute, as in the instant case, is clear.

R. J. D.

TEACHER TENURE—WAIVER

After a meeting of the local school board, a teacher was dismissed without written charges and a hearing as required by N.Y. Education Law, section 3013. The school agreed to pay the teacher's salary for the duration of the school year and to give her a letter of recommendation for a new teaching position in return for the teacher's waiving her right to a hearing under the Education Law. The teacher after having accepted the salary and waiting an additional two years sought a statutory hearing and back pay. The school board appealed from an Appellate Division ruling in favor of the teacher.¹ *Held*: affirmed, with two judges dissenting, because Education Law section 3013 forbids a waiver for consideration by a teacher to written charges and a hearing, as contrary to the avowed public policy of giving a substantial degree of permanency to the jobs of experienced teachers. To admit otherwise, the Court added, would permit local school boards to fashion public policy as they see fit. The Court also held that the paying of a teacher's salary for not teaching is in violation of the N.Y. Constitution, as an unconstitutional gift of public monies. *Boyd v. Collins*, 11 N.Y.2d 228, 182 N.E.2d 610, 228 N.Y.S.2d 228 (1962).

No prior relevant case law deals with the question. Although there is a limited prohibition against waiver in section 96 of the Civil Service Law, it is applicable only to "candidates for employment." No similar prohibition is found in the Education Law. It would seem to follow from the instant case that since the agreement was void, as a matter of law, there was an unconstitu-

11. N.Y. Sess. Laws 1960, ch. 335, § 16.

12. N.Y. Real Prop. Tax Law § 201.

13. N.Y. Sess. Laws 1960, ch. 335, § 11.

1. 14 A.D.2d 645, 218 N.Y.S.2d 203 (3d Dep't 1961).