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From Agency to Zattiero - the Effect of School Board Policy

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by John E. Rumel

Just over two years ago, the Idaho Supreme Court handed down an opinion which may significantly impact the relationship between school districts and the various stakeholders—employees, students and patrons—with whom it interacts and/or serves. Specifically, in *Zattiero v. Homedale School District No. 370*,[1] the Supreme Court ruled that, because school districts and school boards are not administrative agencies within the meaning of the Idaho Administrative Procedures Act ("IAPA,") school board policies do not have the force and effect of statutory law.[2]

This article summarizes the Supreme Court's decision in *Zattiero*. It points out that the Idaho high court's decision in *Zattiero* is both inconsistent with and not compelled by the Court's prior decisions and is out-of-step with decisions from other jurisdictions. It discusses how the Court's decision will result in school districts not having to comply with their own duly-enacted policies (unless they have otherwise contractually bound themselves to do so), but will also result in school district patrons not having to follow school board policy either. The article concludes by suggesting that, because of the foregoing criticisms and unintended consequences, the Idaho high court's decision in *Zattiero* must be overturned.

I. The Zattiero Decision

Nancy Zattiero was employed as a school nurse in the Homedale School District for many years. During her employment with the school district, Zattiero held a certificate as a school nurse issued by the Idaho State Department of Education. Since throughout her years of employment, Zattiero performed nursing duties that could only be performed by a certificated school nurse, the school district reported Zattiero to the state as a certificated employee for funding purposes. The district paid all non-administrative certificated school employees who performed certificated duties—including counselors and librarians/media specialists—on the certified salary schedule enacted as part of school board policy. These facts notwithstanding, the school district paid Zattiero at a salary somewhere between the lower, classified/non-certificated salary schedule and the higher, certified salary schedule.

In late 1998, Zattiero filed a complaint against the school district, alleging, among other things, that the school district improperly withheld wages from her when it failed to pay her under the terms of the certified salary schedule set forth in board policy. In mid-July, 2000, Zattiero filed a motion for summary judgment seeking judgment on both the liability and damage aspects of her wage claim. Thereafter, the School District filed a cross-motion for summary judgment seeking judgment of its own. In late September 2000, the district court denied Zattiero's motion for summary judgment and granted the school district's cross-motion, holding that the school district was not required to compensate Zattiero pursuant to the certified salary schedule set forth in school board policy.

On appeal, the Idaho Supreme Court affirmed. In an opinion issued in late April, 2002, the Supreme Court, focusing on the fact that the lowest level on the certified salary schedule grid was for employees holding a bachelor's degree and that Zattiero possessed only an associate of arts degree, held that "[w]hile the school board could pay Zattiero in accordance to the certified schedule, it was not required to do so either by statute or by school district policy."[3]

Although the Court's conclusion that the certified salary schedule did not cover Zattiero was sufficient to resolve the issue before it, the Court went on to buttress its holding with another, far more significant determination. Thus, in response to Zattiero's argument that the certified salary schedule qualified as a local administrative regulation that had the force and effect of statutory law, the Court stated as follows:

> Zattiero ... correctly points out that policies enacted by administrative agencies have the force and effect of statutory law. *Holly Care Center v. State, Department of Employment*, 110 Idaho 76, 78, 714 P.2d 45, 47 (1986) (citing *Higginson v. Westergard*, 100 Idaho 687, 690, 604 P.2d 51, 54 (1979)). However, the policies adopted by the School District do not qualify as statutory rights as the School District does not qualify as an administrative agency. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 721, 918 P.2d 583, 590 (1996) (school board is not an agency within the meaning of the Idaho Administrative Procedures Act (IAPA)). The IAPA defines an "agency" as "each state board, commission, department or officer authorized by law to make rules or to determine contested cases ... ." I.C. §67-5201(2). As noted by this Court in *Smith*, a school district does not meet the definitional requirements for an agency because a school district, once validly organized and in existence, is a "body corporate and politic" and may sue or be sued, may acquire, hold, and convey real and personal property, and may incur debt as provided by law. *Smith* at 721, 918 P.2d at 590 (citing I.C. §33-301). Thus, because the School District is not an agency within the IAPA, the policy set forth in the Certified Schedule does not have the force and effect of existing law ... .[4]

The Court denied Zattiero's petition for rehearing in early-August, 2002.

II. Pre-Zattiero Authority

A. General Principles, Prior Idaho Case Law and Out-of-State Authorities

Certainly, the Supreme Court held in *Smith* that, because school districts and school boards do not fall within the definition of "agency" under the IAPA, their decisions are not subject to

judicial review under that statutory provision. However, the Court's conclusion does not end the inquiry. In this regard, at least one well-respected commentator has stated that "an entity can be an agency for some purposes but not for others,"[5] and both the United States Supreme Court and state courts have held that, even though an entity, including a local school board, may not be considered an agency for purposes of judicial review under the relevant federal or state administrative procedures act, that same entity may be treated as an agency for other purposes, including reviewing the entity's actions vis-à-vis individuals who come before it.[6]

Thus, both before and after the Supreme Court's decision in *Smith*, the Supreme Court and the Court of Appeals, although not directly addressing the issue, have repeatedly suggested or assumed that, with respect to matters other than IAPA review, school boards, when addressing employment and other policy matters, act as administrative agencies under Idaho law. For example, in *Roberts v. Board of Trustees*, the Supreme Court treated its review of a school board's decision discharging a bus driver as the review of administrative agency action and indicated that the evidence before an arbitration panel constituted the "agency" record before the school board.[7] Similarly, in *Baker v. Independent School District*, the Court referred to a school board meeting to determine possible nonrenewal of teachers' contracts due to a reduction in force as an "administrative process" and, further, treated the school board as a public "agency" for purposes of the Open Meetings Act.[8] Likewise, in *Knudson v. Boundary County School District*, the Court of Appeals held that, in a mandamus proceeding seeking to compel administrative action, i.e. the re-employment of a teacher, school board policy regarding evaluations and probation constituted "administrative" interpretation of statutes.[9] Further, in *Bowler v. Board of Trustees*, the Supreme Court, although recognizing that a school board's decision discharging a teacher was not subject to appellate review under the IAPA, stated that a statement of reasons requirement in dismissal proceedings did not constitute an undue "administrative" burden on a school district and school board.[10] Also, in *Doolittle v. Meridian Joint School District*, the Court, in case involving a special education student, considered a school district a "local education 'agency'" within the meaning of special education law.[11] And, in *Independent School District of Boise City v. C. B. Lauch Construction Co.*, the Court assumed that, when a school board exercises eminent domain power, it acts as a public "agency."[12]

In addition, a number of courts in other jurisdictions have agreed that school districts and school boards, when addressing employment issues, act as or like administrative agencies or bodies.[13] Likewise, consistent with the Supreme Court's above-quoted statement regarding the force and effect of administrative policies generally, a legion of cases and secondary authorities have recognized the statutory legal status of, and applied statutory rules of construction to, local school board policy.[14]

Given the definition of "agency" set forth in the IAPA, the Supreme Court correctly held in *Smith* that a school board is not an agency for purposes of IAPA jurisdiction and review. However, the Supreme Court's determination in *Zattiero* that a school board is not, for non-IAPA purposes, an administrative agency both ignores the well-established principle that an entity may be an agency for some purposes but not for others and runs counter to over fifty years of the Court's jurisprudence assuming or suggesting, as well as numerous decisions from other jurisdictions recognizing, that school boards otherwise have administrative agency status. As such, the Supreme Court's conclusion that school board policy does not have the force and effect of statutory law is founded on an erroneous premise and is at odds with prior decisions of the Court concerning the force and effect of policies promulgated by administrative agencies generally, as well as the decisions of other courts concerning the force and effect of school board policies specifically.

B. Prior Decisions concerning Non-IAPA Agencies

Prior to the Supreme Court's decision in *Zattiero*, the Court held that the governing bodies of cities and counties, except in the land use planning context, are not considered agencies under the IAPA.[15] Notwithstanding those entities' non-IAPA status, the Supreme Court and the Court of Appeals have repeatedly treated city and county ordinances like statutes, giving such quasi-legislative enactments the force and effect of statutory law and interpreting such enactments consistent with principles of statutory construction.[16] Like school boards, cities are "bod[ies] corporate and politic" under state statutory law.[17]

The Supreme Court's decision in *Zattiero* that school boards are not agencies under the IAPA and, as such, school board policy does not have the force and effect of statutory law, cannot be reconciled with the Court's prior decisions concerning other non-IAPA agencies/bodies corporate and politic. In so holding, the Court either (1) carved out a "school board" exception to the general rules that the quasi-legislative enactments of non-IAPA agencies must be construed consistent with well-settled principles of statutory construction and have the force and effect of statutory law, or (2) implicitly overruled its prior holdings concerning the statutory legal status of quasi-legislative enactments of other, non-IAPA agencies, such as the governing bodies of cities and counties. Either way, no principled basis exists for such distinction or implicit determination.

III. Illogical Reasoning and Unintended Consequences

In addition to running afoul of its prior decisions, the Supreme Court's decision in *Zattiero* does not withstand logical scrutiny. In this regard, the fact that an agency is not subject to IAPA jurisdiction and review does not remotely lead to the conclusion that such agencies' actions do not have the force and effect of statutory law—particularly where both IAPA agencies and school boards are statutorily empowered to enact rules to specifically regulate matters within their jurisdiction,[18] and where both IAPA agencies and school boards may only exercise their authority to engage in rule making or policy making through the public hearing process.[19]

Moreover, under the logic of the Supreme Court's decision in *Zattiero*, if school board policy does not have the force and effect of statutory law when a school district employee attempts to require a school district to comply with its own policy, then school board policy will not have the force and effect of statutory law when the school board itself attempts to require a teacher or other school district employee to comply with its requirement. This unintended consequence will not significantly impact the school district-employee relationship because certificated employees and school

district are mutually bound by school district policy as a matter of contract law.[20] The same cannot be said, however, for the relationship between school districts and their patrons—a relationship where no such contractual relationship exists. Thus, although city and county residents are not free to disregard local ordinances because such local enactments have the force and effect of statutory law, under the logic of *Zattiero*, a school district patron would not be required to comply with school board policy regarding such diverse topics as complaint procedures to enrollment policies. In sum, although the Supreme Court's decision in *Zattiero* may have the short-term result of affording school boards more discretion in addressing personnel matter, it may well result in creating a level of "lawlessness" in the relation between the school district and its patrons unforeseen by the Court.

IV. Conclusion

The Supreme Court's decision in *Zattiero* is out of step with the Court's prior decisions and out-of-state authority, based on faulty logic, and, although superficially beneficial to school districts, will lead to unintended consequences which will not likely be in the best interest of those local administrative bodies. For these reasons, *Zattiero* was not properly decided and should be overturned by the Court at the first opportunity.

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Endnotes

1 137 Idaho 568, 51 P.3d 382 (2002).
2 137 Idaho at 571, 51 P.2d at 385.
3 137 Idaho at 570, 51 P.2d at 384.
4 137 Idaho at 571, 51 P.3d at 385.
5 1 R.J. Pierce Jr., Administrative Law Treatise, § 1.2 at 6 (4th Ed. 2000).
6 *See, e.g., Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 392-394 (1995); *Rogers v. Board of Educ. of City of New Haven*, 749 A.2d 1173, 1178, 1180 (S. Ct. Conn. 2000).
7 134 Idaho 890, 892, 11 P.3d 1108, 1110 (2000).
8 107 Idaho 608, 610, 691 P.2d 1223, 1225 (1984); *see also* 107 Idaho at 614, 691 P.2d at 1229 (Bistline and Huntley, JJ., concurring and dissenting).
9 104 Idaho 93, 95, 99, 656 P.2d 753, 755, 759 (Ct. App. 1982). Knudson was superceded by statute in 1984. *See, Gunter v. Board of Trustees, Pocatello School District No. 25*, 123 Idaho 910, 914, 854 P.2d 253, 257 (1993). However, nothing about that subsequent legislation addressed, let alone changed, the Court of Appeals' characterization of school board policy as administrative in nature.
10 101 Idaho 537, 543, 617 P.2d 841, 847 (1980).
11 128 Idaho 805, 811, 919 P.2d 334, 340 (1996).
12 74 Idaho 502, 505, 264 P.2d 687, 689 (1953).
13 *Hanes v. Board of Education of City of Bridgeport*, 783 A.2d 1, 5 (Conn. App. 2001), cited in *Spero v. Region 7 Board of Education*, 2002 W.L. 31818839, * 1 (Conn. Supp. 2002); *Palmer v. Van-Buren R-1 Board of Education*, 872 S.W. 2d 590, 592 (Mo. App. 1994) *Scott County School District No. 2 v. Dietrich*, 496 N.E.2d 91, 92 (Ind. App.1 Dist. 1986); *Noxubee County Board of Education v. Givens*, 481 So.2d 816, 819 (S. Ct. Miss. 1985); *Rumora v. Board of Education*, 335 N.E.2d 378, 383 (Ct. Com. Pl. 1973); *Foesch v. Independent School District No. 646*, 223 N.W.2d 371, 375 (S. Ct. Minn. 1975); but cf. *Board of School Commissioners v. Walpole*, 801 N.E. 2d 622, 624-625 (S. Ct. Indiana 2004).
14 *See, e.g., Forbis v. Fremont County School District No. 38*, 842 P.2d 1063, 1065 (Wy. S.Ct. 1992); 78 C. J. S., Schools and School Districts, Section 145 at 252 (1995), citing Tyska by *Tyska v. Board of Education*, 453 N.E.2d 1344, 1351 (Ill. App. 1st Dist. 1983) and *Aebli v. Board of Education*, 145 P.2d 601, 615-617 (Cal. Ct. App. 1944); see also 68 Am. Jur.2d , Schools, Section 77 at 375 (2000), citing *Iversen v. Wall Board of Education*, 524 N.W.2d 624, 628 (S.D. S. Ct. 1994); *Board of Education of City School District v. Licata*, 364 N.E.2d 1337, 1338 (N.Y. Ct. App. 1977); *Richardson v. Braham*, 249 N.W. 557, 559 (S.Ct. Neb. 1933); *Fertich v. Michener*, 11 N.E. 605, 610 (S.Ct. Ind. 1887), rehearing denied, 14 N.E. 68 (1887).
15 *Idaho Historic Preservation Council of City of Boise*, 134 Idaho 651, 653-654, 8 P.3d 646, 648-649 (2000) (cities); *Petersen v. Franklin County*, 130 Idaho 176, 182, 938 P.2d 1214, 1220 (1997) (counties); see also *Arthur v. Shoshone County*, 133 Idaho 854, 859, 993 P.2d 617, 622 (Ct. App. 2000) (same).
16 *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 42, 951 P.2d 1146, 1152 (1999) (cities); *Jackman v. Hamersley*, 72 Idaho 301, 305, 240 P.2d 829 (1952) (same); *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995 (counties).
17 *See* I.C. Sec. 33-301 (school boards) and I.C. Sec. 50-301 (cities).
18 *See* I.C. Sec. 67-5220 through 67-5232 (specifying rulemaking authority of IAPA agencies) and I.C. Sec. 33-506(1) (providing that school boards have the power and duty to "[t]o make by-laws, rules and regulations for its government and that of the district").
19 *See* I.C. Sec.67-5221 and 67-5222 (requiring IAPA agencies to provide public notice and hearing prior to promulgating rules) and I.C. Sec. 33-510 (requiring that all meetings of school boards comply with the requirements of Idaho's Open Meetings Act).
20 *See Willie v Board of Trustees*, 138 Idaho 131, 132-133, 59 P.3d 302, 303-304 (2002).