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Chapter 17: Education Law

Stephen F. Roach

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C H A P T E R 1 7

Education Law

STEPHEN F. ROACH

§17.1. **General.** This chapter consists of the court decisions, legislation, and opinions of the Attorney General, concerned with the field of education within the Commonwealth during the 1967 SURVEY — September 1, 1966 through August 31, 1967.

A. COURT DECISIONS

§17.2. **Teacher's Oath Law.** In *Pedlosky v. Massachusetts Institute of Technology*,¹ the plaintiff, a resident-citizen of Boston, was employed as an assistant professor of mathematics at the Massachusetts Institute of Technology. Under the Teacher's Oath Law,² Pedlosky, as a condition to his employment, was required to subscribe to the following oath:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the Commonwealth of Massachusetts, and that I will faithfully discharge the duties of the position of (insert name of position) according to the best of my ability.

Pedlosky refused to sign the oath, maintaining that the statute violated the federal and state constitutions.³

In declaring the statute invalid, the Supreme Judicial Court chose to limit its discussion to the constitutionality of the requirement of "a faithful discharge of the plaintiff's duties to the best of his ability."⁴ The Court reasoned that the determination the courts are asked to make, i.e., "the degree of skill and faithfulness with which the plaintiff discharges the duties of his private position . . . and perhaps to compare that degree with that of the best of his ability,"⁵ is too vague a standard to enforce judicially and is also not a reasonable regulation in the public interest. The Court also noted that since the Supreme Court of the United States has made no decision as to the extent of

STEPHEN F. ROACH is Professor of Education at Boston College and Editor of *School Law Review* newsletters.

§17.2. ¹ 1967 Mass. Adv. Sh. 369, 224 N.E.2d 414.

² G.L., c. 71, §30A.

³ 1967 Mass. Adv. Sh. at 370, 224 N.E.2d at 416.

⁴ Id.

⁵ Id.

legislative power in prescribing a loyalty oath for teachers it would not be "constructive for a State court to attempt to formulate the necessary constitutional foundation"⁶ for such decisions.

In view of this decision, the Attorney General suggested that school officials should take no action either to compel the taking of the Teacher's Oath or to receive the oath on a voluntary basis.⁷ The Attorney General also stated that the *Pedlosky* decision did not deal with, or otherwise affect, the Public Employee's Oath Law,⁸ which does not require a promise to discharge faithfully the duties of the particular position to the best of the ability of the applicant.⁹

The Attorney General suggested that a teacher could properly subscribe his Public Employee's Oath by adding that his oath to uphold and defend the federal and state constitutions must be qualified by the fact that he is a conscientious objector. However, a determination must be made as to whether this is based on religious scruples against participating in a war.¹⁰

§17.3. Racial imbalance. In *School Committee of Boston v. Board of Education*,¹ the Supreme Judicial Court held that the Racial Imbalance Act² is not in violation of the Fourteenth Amendment to the Constitution of the United States, nor of Articles 1, 10, 11, 12, and 30 of the Declaration of Rights of the Constitution of the Commonwealth.³

§17.4. Other litigation. Several other cases decided during the 1967 SURVEY year related to education. In *Konovolchik v. School Committee of Salem*,¹ the committee voted to award a three-year contract to the incumbent football coach upon specified salary terms, and requested the city solicitor to draw up the contract for submission at the committee's next meeting. A contract substantially similar to the existing contract was drawn up and signed by the plaintiff. Although the next meeting had to be adjourned for lack of a quorum, the contract, as drawn up, was signed by a majority of the school committee.

After the lower court ruled that the contract was legal and binding,² the school committee appealed to the Supreme Judicial Court. In reversing, the Supreme Judicial Court held that there was no contract since the formal contract was never voted upon in a proper school committee meeting. The Court reasoned that the four members "were

⁶ Id. at 371, 224 N.E.2d at 416.

⁷ Opinion dated April 13, 1967, in reply to Commissioner of Education.

⁸ G.L., c. 264, §14.

⁹ Note 7 *supra*.

¹⁰ Opinion dated April 21, 1967, in reply to Assistant to the President, Lowell Technological Institute.

§17.3. 1 1967 Mass. Adv. Sh. 1027, 227 N.E.2d 729, also noted in §8.6 *supra*.

² Acts of 1965, c. 641.

³ 1967 Mass. Adv. Sh. at 1034, 227 N.E.2d at 735.

§17.4. 1 1967 Mass. Adv. Sh. 863, 226 N.E.2d 222.

² Id.

without authority to determine for the committee the contract terms or to submit any document or offer of contract to the plaintiff.”³

In *McCaffrey v. School Committee of Haverhill*,⁴ it was held that the school committee could request or direct a private conference (without the presence of the public, the press, or counsel for the teachers) as part of its investigation into the relationship of some Haverhill public school teachers with an association formed to provide individual after-school tutoring for pupils. Although refusing declaratory relief due to “confused and imprecise”⁵ allegations in the plaintiff’s bill, the Court did state that for the school committee to investigate such matters is “well within the scope of its official administrative functions.”⁶ It reasoned that such behavior is proper on the part of the school committee since such “‘off-duty’ activities are in a field so closely similar to their work as teachers and, thus, [could] raise serious doubts concerning its compatibility with their public teaching work.”⁷

In *Wheaton College v. Labor Relations Commission*,⁸ the plaintiffs filed a petition for a writ of prohibition against the defendant commission to prevent it from hearing and determining a representation petition.⁹ The petition was reported without decision to the Supreme Judicial Court. The Court held that Wheaton College, a nonprofit educational institution whose students pay a comprehensive fee for tuition, room and board, does not engage in “industry and trade,” as defined by General Laws, Chapter 150A. Even though Wheaton College operated student and faculty dining facilities as a joint employer with a nationwide commercial food caterer, and had continuing control and overall supervision of food management service, it did not come within the jurisdiction of the state Labor Relations Commission.

In *Boylston Water District v. Tahanto Regional School District*,¹⁰ the plaintiff sought money allegedly due from the defendant for real estate taxes and betterment assessments. The trial judge sustained the demurrer of the defendant on the ground that there was no cause of action. In affirming, the Supreme Judicial Court held that the Boylston water district was not entitled to recover moneys allegedly due from a regional school located within the geographical limits of the water district. The Court reasoned that property held for public use by one political subdivision within the territorial limits of another is not subject to taxation so long as it is actually devoted to a public use.¹¹ In this way, property held and used for the benefit of the public would not be made to share the burden of paying public expenses.

³ Id. at 865, 226 N.E.2d at 223.

⁴ 1967 Mass. Adv. Sh. 825, 226 N.E.2d 232.

⁵ Id. at 826, 226 N.E.2d at 233.

⁶ Id. at 826, 226 N.E.2d at 234.

⁷ Id.

⁸ 1967 Mass. Adv. Sh. 1071, 227 N.E.2d 735, also noted in §§12.13, 12.17 *supra*.

⁹ Id. at 1071, 227 N.E.2d at 736.

¹⁰ 1967 Mass. Adv. Sh. 1201, 227 N.E.2d 921.

¹¹ Id. at 1202, 227 N.E.2d at 922.

B. LEGISLATION

§17.5. **School construction.** When a school building committee, authorized by a town to provide for the planning and construction of a new school building, submits a plan to the state Department of Education under the School Building Assistance Law,¹ the committee henceforth “shall forthwith” notify the town selectmen that the plan has been submitted. Under an amendment adopted during the 1967 SURVEY year, the selectmen are now to be notified of any changes in the plan which are required or recommended by the Department of Education.²

§17.6. **Salaries of teachers.** During the 1967 SURVEY year legislation was also enacted increasing the minimum salary of public school teachers from \$5,000 to \$5,750 for the school year. This increase, applicable to teachers employed in any public day school but not to persons employed as teachers-in-training or temporary substitutes, is to take effect on September 1, 1968.¹

§17.7. **School tax rates.** A third enactment of the legislature related to the formula to be used in the determination of school tax rates. General Laws, Chapter 59, Section 23C was amended so that “school assessments” are to be determined from total school appropriations, the estimated amount of school income, and the school percentage of estimated general receipts. Added to this amount is the school percentage for any overlay for abatements. Definitions of “general receipts” and “school percentage” were also added to General Laws, Chapter 59, Section 23C.¹

§17.8. **School funds from federal sources.** School committees are authorized to expend certain federal funds, which have been received by city, town or school district officers, for educational purposes, without having to include the purpose of such expenditure in, or apply such amount to, the annual or any supplemental budget or appropriation request of the school committee.¹ Previously, only an officer or department of any city or town, with the permission of the school committee, could spend such funds.

§17.9. **Compact for Education.** Massachusetts entered into the Compact for Education under which persons, chosen by the Governor, who represent the educational interests of the citizens of the Commonwealth, will discuss with persons in other interested states “the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord

§17.5. ¹ Acts of 1948, c. 645.

² Acts of 1967, c. 99.

§17.6. ¹ Acts of 1967, c. 272.

§17.7. ¹ Acts of 1967, c. 315.

§17.8. ¹ Acts of 1967, c. 388, amending G.L., c. 44, §53A, as appearing in Acts of 1964, c. 99.

with the needs and advantages of diversity among localities and states.”¹

§17.10. Other legislation. Other enactments amended the following chapters of the General Laws:

Chapter 15, Section 28, authorizes all cities and towns to purchase or take by eminent domain land therein for the purpose of conveying it to the Commonwealth with or without consideration, for the use of a regional community college.¹

Chapter 32, Sections 44A, 77D, 78A, authorizes cities and towns to grant a retirement pension to certain school janitors and laborers not already in contributory retirement systems.²

Chapter 32, Section 91, increases the amount of annual compensation certain retired teachers may earn while employed as substitute teachers in public schools.³

Chapter 44, Sections 40 and 44 permits a regional school district to petition for an audit of its accounts or for the installation of an accounting system and restricts, under certain circumstances, the amount of funds a regional school district shall have on deposit in a bank, trust company, or banking company.⁴

Chapter 71, Section 13D, requires that the content of high-school courses in motor vehicle driving education be established by the Commissioner of Education in collaboration with the Registrar of Motor Vehicles.⁵

Chapter 71, Section 40, provides that the compensation paid to public school teachers “shall be deemed to be fully earned at the end of the school year, and proportionately earned during the school year.”⁶

Chapter 74, Section 24A, permits the appointment of otherwise qualified persons over 50 years of age as teachers in state-aided approved vocational schools.⁷

Chapter 90, Section 3, requires that every nonresident student who operates a motor vehicle registered in another state for more than thirty days in the aggregate of the academic year, shall be required to register with the local police.⁸

Chapter 111, Section 62M, permits the Massachusetts Hospital School to admit crippled and deformed children on a “commuting” basis and also to admit children able to pay the charges for their

§17.9. ¹ Acts of 1967, c. 453.

§17.10. ¹ Acts of 1967, relating also to G.L., c. 40, §14; G.L., c. 43, §30.

² Acts of 1967, c. 330.

³ Id., c. 344.

⁴ Id., c. 46, §§6, 9.

⁵ Id., c. 111.

⁶ Id., c. 278.

⁷ Id., c. 50.

⁸ Id., c. 580.

support at the school.⁹ This legislation followed an opinion of the Attorney General expressing the same view.¹⁰

Chapter 123, Section 42, requires that school teachers employed in state hospitals shall be exempt from the merit system provisions of General Laws, Chapter 31, in any teaching position, provided, however, that whenever a condition is placed upon federal grants that the federal standards of a merit system apply, the application of the merit system will apply to teachers.¹¹

Chapter 138, Section 14, permits local licensing authorities to grant special licenses for the dispensing of wines and malt beverages, to persons over 21, in dining halls maintained by incorporated educational institutions.¹²

Chapter 180, Section 17D, authorizes, with the approval of school committee, payroll deductions from the salaries of teachers in any amount, for the payment of premiums for income-protection insurance.¹³

C. OPINIONS OF THE ATTORNEY GENERAL

§17.11. Education of children living on federal reservations. The Lincoln School Committee had operated a school on the federal base at Hanscom Field on a year-to-year basis. All expenses were borne by the Federal Government. It was the opinion of the Attorney General that the school committee had no legal obligation to provide educational facilities for the children who live on the base. Neither the Supreme Judicial Court nor the General Laws require a municipality to provide educational facilities for children who reside on federal reservations.¹

§17.12. Vietnam veterans. "Service in Vietnam, credited to the Commonwealth" is a requirement to be met before the Department of Education may issue to a "Vietnam veteran" a certificate of exemption for tuition at a state institution of higher education.¹

§17.13. Board of Schoolhouse Structural Standards. To the extent that performance of duties of the Board of Schoolhouse Structural Standards may not subject the Commonwealth to liability, Board actions — following the exhaustion of the funds appropriated for the Board's operation — will be valid if otherwise performed in accordance with law. If the appointive members of the Board are willing

⁹ *Id.*, c. 252.

¹⁰ Opinion dated February 1, 1967, in reply to Superintendent, Massachusetts Hospital School.

¹¹ Acts of 1966, Extra Session, c. 735, §5.

¹² Acts of 1967, c. 253.

¹³ *Id.*, c. 324.

§17.11. ¹ Opinion dated December 20, 1966, in reply to Commissioner of Education.

§17.12. ¹ Opinion dated February 1, 1967, in reply to the Commissioner of Education.

to continue to serve despite the absence of funds to pay their compensation, they may continue to do so.¹ It should also be noted that the General Court has extended the existence of the Board of Schoolhouse Structural Standards.²

§17.14. Community college summer session and evening classes. A community college need not admit a Vietnam veteran to a summer session or evening class, on a tuition-free basis, if to do so means to operate the class at an expense to the Commonwealth. However, if a course has sufficient tuition-paying students to enable it to be self-supporting, Vietnam veterans may be enrolled in such course.¹

§17.15. Educational TV. The executive Committee for Educational Television may not expend money in the Educational Television Program Fund, purchase or dispose of personal property, or lease real property, without approval by the state Board of Education.¹

§17.16. Pupil transportation. The Springfield School Committee may not regard a local street railway bus stop located 0.4 miles from a high school pupil's home, and at which the pupil could obtain transportation to the school without paying more than a single fare, as a "school bus stop" and decline to furnish transportation to the pupil whose home was 3.5 miles from the school. The term "school bus stop" as used in the school transportation statute¹ implies a vehicle by which transportation to a school is furnished at public expense; it is not suggestive of public transportation for which the rider is charged a fare.²

§17.17. Chapter 70 aid. In computing Chapter 70 aid for distribution in years subsequent to 1966, the "equalized valuations" to be used are those for 1966 which were submitted to the General Court by the State Tax Commission, under the provisions of General Laws, Chapter 58, Section 10C.¹

§17.18. Board of Education. A member of the state Board of Education may not teach a seminar at Harvard College whether or not he receives or waives compensation therefor. "The object of the legislation [relating to membership on the Board] is apparently to exclude from Board membership all 'schoolmen'—a term which

§17.13. ¹ Opinion dated February 14, 1967, in reply to Chairman, Board of Schoolhouse Structural Standards, Department of Public Safety.

² Acts of 1967, c. 300.

§17.14. ¹ Opinion dated March 16, 1967, in reply to President, Board of Regional Community Colleges.

§17.15. ¹ Opinion dated April 6, 1967, in reply to Commissioner of Education.

§17.16. ¹ G.L., c. 71, §68.

² Opinion dated April 18, 1967, in reply to Commissioner of Education.

§17.17. ¹ Opinion dated April 25, 1967, in reply to Commissioner of Education.

seems more descriptive of what the individual does than whether or not he is compensated.”¹

§17.19. Screening scholarship applications. The Board of Higher Education may further compensate salaried employees of Lowell State College for screening applications for scholarships to be awarded by the Board, provided the services are, in its discretion, (1) rendered only occasionally, (2) are performed outside the normal working hours of the employees, (3) are not required to be performed by the employees as part of their salaried duties, and (4) no other person is available to perform the services as part of his regular duties.¹

§17.20. Board of Higher Education. “Representative” members of the Board of Higher Education, i.e., those elected by the boards of trustees of the several segments that make up the Board, are entitled to designate alternates to serve in their absence, providing the alternate is himself an officer or employee of the representative member’s Board. However, “though a ‘representative’ member may appoint an alternate for certain meetings, he may not himself be absent from more than four (4) regularly scheduled meetings of the Board . . . , exclusive of July and August, in a calendar year.”¹

§17.21. Tax-exempt property. The Commonwealth is required to reimburse, in lieu of taxes, the cities and towns in which is located property of the following educational institutions: (1) Southeastern Massachusetts Technological Institute, (2) Lowell Technological Institute, (3) the state colleges, and (4) regional community colleges. However, “this . . . should not be regarded as requiring reimbursement contrary to the provisions of . . . [General Laws, Chapter 58, Section 15A] relative to land exempt from local taxation at the time of its acquisition by the Commonwealth.”¹

§17.18. ¹ Opinion dated June 8, 1967, in reply to Chairman, Board of Education.

§17.19. ¹ Opinion dated July 6, 1967, in reply to Chancellor, Board of Higher Education.

§17.20. ¹ Opinion dated July 13, 1967, in reply to Chancellor, Board of Higher Education.

§17.21. ¹ Opinion dated July 14, 1967, in reply to Commissioner of Corporations and Taxation.