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Attorney General's Opinion

Attorney General, Richard Blumenthal

March 5, 2010

The Honorable Donald E. Williams, Jr., Senate President Pro Tempore
The Honorable Martin M. Looney, Senate Majority Leader
The Honorable Christopher G. Donovan, Speaker of the House
The Honorable Denise Merrill, House Majority Leader
General Assembly
State Capitol
Hartford, CT 06106-1591

Dear Senator Williams, Senator Looney, Representative Donovan and Representative Merrill:

This letter responds to your request for a formal opinion regarding the decision by Mark McQuillian, Commissioner of Education ("Commissioner") and the State Board of Education ("State Board") to suspend the operation of J.M. Wright Technical High School ("J.M. Wright") in Stamford, Connecticut. In addition, you ask whether deed restrictions exist on the real property and buildings that comprise J.M. Wright, limiting its use to certain purposes. Finally, you ask whether students who were affected by the suspension of operations of J.M. Wright have any legal recourse.

It is our opinion that the State Board and Commissioner followed the statutory procedure for suspending operations at J.M. Wright Technical High School, but the existing procedural requirements are minimal and do not explicitly describe the opportunity for and weight to be afforded the views and opinions of the public on the potential suspension of operations or closing of any technical school. In this case, it appears probable that the interested public was not actually aware of the school's suspension of operation until the Commissioner announced his decision one month prior to the start of the school year.

Legislation is necessary to ensure that the process for closing or suspending the operation of a technical school is open and transparent and affords all stakeholders a true opportunity - - with prior notice and public hearings - - to voice their concerns and opinions prior to a final decision. Additionally, if a technical school is to be closed or its operations suspended, students should be provided with alternate educational opportunities and sufficient time to make other arrangements.

Finally, there is a serious question whether the state may use this property for other than educational or charitable purposes. The property conveyed by the city to the state for the J.M. Wright School was park property, already subject to charitable restrictions. While the deed conveying the property from the city to the state is silent as to any restrictions, the city clearly intended the property to be used for educational purposes, and, pursuant to Conn. Gen. Stat. §§47-2, it is

likely the property can only be used for park or educational purposes. ¹

The events which led to your request appear to have begun when the State Board responded to a request for budget reduction options from the Office of Policy and Management. At its December 3, 2008 meeting, the State Board adopted a resolution recommending that, should it be necessary to implement a budget reduction for the technical high schools, such reduction would be made by suspending the operations of J.M. Wright. The State Board acknowledged that doing so would "deprive students in the Stamford area of a promising alternative high school model".

Section §10-95k(b) of the General Statutes requires that the State Board submit a biennial report regarding the status of the technical high school system to the "joint committee of the general assembly having cognizance of matters relating to education." *Id.* On December 10, 2008, the State Board's Connecticut Technical High School Committee adopted the 2009 Biennial report. The 2009 Biennial report includes the plan for the suspension of operations at J.M. Wright as set forth in the State Board's December 3, 2008 resolution. The 2009 Biennial Report was adopted by the State Board itself at its February 4, 2009 meeting and thereafter submitted to the appropriate legislative committee.

When Governor Rell introduced her 2009 budget proposal in February 2009, she included full funding for J.M. Wright. Funding for J.M. Wright also was included in the budget passed by the General Assembly but that budget was vetoed by Governor Rell. When the Governor's July emergency spending plan was released, no funding for J.M. Wright was included. On July 29, 2009, the Commissioner issued a press release announcing that operations at J.M. Wright would be suspended for two years. In addition, the Commissioner sent letters to returning and incoming J.M. Wright students notifying them of the suspension and of their options - - which did not include any plan to place incoming freshmen in other technical schools.

Concerned about these matters, Senator Andrew J. McDonald sent a letter to the Commissioner and State Board Chair Allan Taylor asking various questions about the suspension of operations at J.M. Wright. The Commissioner responded, detailing the basis for his suspension of operations at J.M. Wright. In addition, he stated that new students were not offered opportunities at other technical high schools due to the lack of sufficient space to accommodate them. On November 4, 2009, the State Board adopted a resolution which "approved and ratified" the Commissioner's actions.

You have expressed concern that other than the adoption of its December 3, 2008 resolution, no other "official action" was taken by the State Board with regard to the suspension of operations at J.M. Wright. Specifically, you note that there were no subsequent votes by the State Board and no public hearings for parents and students. While such procedures and safeguards would be reasonable and clearly warranted when closure or suspension of operations of a technical school is being considered, the current law does not require or provide for such procedures or safeguards. Instead, a review of the current statutory scheme governing the management and operation of the technical high school system shows that no further action was required by the State Board to suspend operations at J. M. Wright once the State Board adopted and submitted its biennial report on the technical high school system to the General Assembly.

There are no statutory provisions requiring specific votes or public

hearings by the State Board prior to suspending the operation of or closing a technical high school.² The only mention in the General Statutes regarding the closure of a technical high school can be found in Conn. Gen. Stat. §10-95k(b).

Section 10-95k(b) requires the State Board to submit a biennial report to the "joint committee of the general assembly having cognizance of matters relating to education." The statute expressly requires the report to "identify each regional vocational-technical school for which enrollment on the preceding October first was less than seventy percent of the enrollment capacity identified in the report pursuant to this section for the prior year." For each such school, the State Board must provide an analysis as to the reasons for the low enrollment, whether there is an expectation that the enrollment will increase or decrease, what options there may be for utilizing unused space, and "a recommendation on the steps to be taken to improve enrollment or of a timetable for closing the school." *Id.*

J.M. Wright's enrollment was less than seventy percent of its enrollment capacity. On December 10, 2008, the State Board's Connecticut Technical High School Committee adopted the 2009 Biennial report which was included on its agenda for that meeting. The 2009 Biennial report includes the proposal for the suspension of operations at J.M. Wright if necessary because of reductions to the Education Department's budget as set forth in the State Board's December 3, 2008 resolution. The 2009 Biennial Report was adopted by the State Board at its February 4, 2009 meeting and thereafter submitted to the appropriate legislative committee.

As part of its analysis of a school with less than seventy percent of enrollment capacity, Section 10-95k(b) requires the State Board to "provide an opportunity for public comment." There is no requirement for notice to students or for public hearings -- only an undefined "opportunity for comment." The Board did provide an opportunity for public comment on J.M. Wright, through the required Freedom of Information Act meeting notices for the December 3, 2008 and February 4, 2009 meetings. Conn. Gen. Stat. §1-225.

No statute requires the State Board or Commissioner to specifically reach out to parents, students, employees or other stakeholders about the possible closing or suspension of operation of a technical school. No public hearings are required to discuss or explain a proposed suspension of operations or closure. Clearly such actions would have been helpful here. Legislation should be considered to specifically define the public's opportunity for input on the suspension of operation or closing of any technical school and to require notice and public hearings for all stakeholders.

Prior to 1993, the State Board had the sole statutory authority to manage and operate the Technical High School System. With the passage of Public Act 93-376, that authority was transferred to the Commissioner so long as he did so in accordance with the policies of the State Board. See Conn. Gen. Stat. § 10-95(a). In its adoption of its December 3, 2008 resolution and its subsequent adoption and submission of the 2009 Biennial Report to the General Assembly, the State Board articulated that if budget reductions were necessary, the State Board recommended suspension of operations at J.M. Wright as "the least harmful option." Thus, on July 29, 2009 when the Commissioner suspended operation at J. M. Wright, he was acting within the authority granted to him under Conn. Gen. Stat. § 10-95 (a).³

While the Board and the Commissioner's actions were in accord with

the law, J.M. Wright's students were suddenly and unexpectedly notified that their school was being suspended immediately, with no accommodation for incoming freshmen to be placed in other technical schools. The suddenness of the closure so close to the start of the school year understandably caused confusion and dismay for students and their parents. We strongly recommend legislation to ensure that technical school students who are displaced by a school suspending operations or closing are given other opportunities to pursue their technical careers. Certainly, adequate time must be allowed for those students to be placed in other technical programs prior to the suspension of operations or closure of any technical high school.⁴

You also asked about the effect of deed restrictions on the real property and buildings encompassing the school. In 1956, the City of Stamford transferred property to the state for the construction and operation of the J.M. Wright Technical School. Although the deed from the city to the state did not place any restrictions on the state's use of the property, we believe that it is likely a court would find that the property may only be used for educational or park purposes.

Generally, deeds, like contracts, are interpreted to determine the intent of the parties based on the express language of the instrument. Parole evidence is not admissible to vary or contradict the terms of a deed, but it is permitted to explain an ambiguity in the instrument. Hare v. McClellan, 234 Conn. 581, 596 (1995). "In arriving at the intent expressed in the language... used, however, it is always admissible to consider the situation of the parties and the circumstances connected with the transaction, and every part of the writing would be considered with the help of that evidence." Id. At 593-594. In this instance, although the conveyance to the state does not contain a limitation on the state's use of the property, the property conveyed by Stamford was part of Woodside Park in Stamford. As such, the property was impressed with a charitable purpose at the time of its transfer to the state. "The uses for which a public park is acquired are continuous and peculiarly exclusive." Driscoll v. New Haven, 75 Conn. 92, 101 (1902). Because the property was impressed with a charitable purpose prior to its transfer, the intent of the parties to the conveyance is relevant. Hartford v. Maslen, 76 Conn. 599 (1904).

According to Conn. Gen. Stat. §§ 47-2: "All estates granted for the maintenance of ... schools of learning, or for any other public or charitable use, shall forever remain to the uses to which they were granted, according to the true intent and meaning of the grantor, and to no other use whatever." The resolutions of the city on the transfer clearly establish Stamford's intent to convey this property for "schools of learning." Further, Section 47-2 does not appear to require this intent to be specifically stated in the language of a deed transferring property for this purpose.

It appears, therefore, that the intent of the transfer of the land to the state was to use it for a technical school. Therefore, it is impressed with a charitable or public purpose requiring that property to be used for educational purposes. If the state is unable to continue to use the property for educational purposes, it must be used for park purposes.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

¹ If it becomes impossible to use the property for educational or park purposes, application can be made to the Superior Court for designating an alternate charitable use on the principles of cy pres. Duncan v. Higgins, 129 Conn. 136, 140 (1924).

² This is in sharp contrast to the statutory scheme governing regional school systems. Sections 10-63a through 10-63j of the General Statutes set forth a very detailed process that must be followed prior to dissolving an entire regional school district or allowing a participating town to withdraw from a regional school district.

³ The State Board's subsequent November 4, 2009 "ratification" of the Commissioner's actions, simply restates its previous position and neither adds nor detracts from the legality of the Commissioner's actions on July 29, 2009.

⁴ While Connecticut's education laws require local and regional boards of education to provide all students who reside in their districts with a public education (Conn. Gen. Stat. §§10-186 and 10-220), state law does not mandate that all students have the opportunity to attend technical high schools nor is there any requirement that such schools be established or maintained in any particular town or city. Conn. Gen. Stat. §10-95. This office, therefore, is not aware of any legal recourse available to the students who were displaced by the suspension of operations of J.M. Wright.

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