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DLC

DOCKET NO: LLI-CV-13-6009045-S	: SUPERIOR COURT
TOWN OF WOODBURY, SELECTMAN'S OFFICE & TOWN OF BETHLEHEM, SELECTMAN'S OFFICE	: J.D. OF LITCHFIELD
VS.	: AT LITCHFIELD
BOARD OF EDUCATION, REGIONAL SCHOOL DISTRICT NO 14 MR. JODY IAN GOELER, SUPERINTENDENT, ET AL.	: OCTOBER 24, 2013

JOINT TRIAL BRIEF OF PLAINTIFFS TOWN OF WOODBURY AND TOWN OF BETHLEHEM

The plaintiffs in this matter, in the interest of judicial economy, respectfully submit this joint brief in support of the arguments made at trial on October 9, 2013.

The parties to this case submitted a stipulation of facts dated September 30, 2013 and filed with the Court on October 3, 2013. As such, the facts are not in dispute. For simplicity sake, the salient facts are as follows:

1) Regional School District 14 is made up of just 2 towns-Woodbury and Bethlehem;

2) Regional School District 14 has its own Board of Education which Board is comprised of representatives from Woodbury and Bethlehem;

3) Region 14, like all other regional districts in Connecticut, is a creature of statute and has no revenue of its own, but, rather, gets its revenue from its member towns;

4) On May 16, 2013, the Region 14 Board voted to make a $63,800,000.00 renovation to Nonnewaug High School, the only high school in the Region;

5) As a result of said vote, the Regional Board sent the minutes of its vote to the Town Clerk of Woodbury and the Town Clerk of Bethlehem wherein a funding referendum was to be conducted in Bethlehem and and Woodbury on June 18, 2013;

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6) The funding referendum was, in fact, conducted in both towns, with the funding (i.e.: bonding) being approved by a very close vote of 1,269 in favor to 1,265 opposed;

7) After the vote was taken, it became apparent that, as a result of a communication error between the Board and the Town Clerks, notice of the referendum was not published in the "legal notice" section of any newspaper;

8) Even though a "legal notice" was not published, some publicity was generated in the local weekly and daily newspapers by way of news articles.

As a result of the foregoing chain of events, the parties are now before the Court seeking a declaratory judgment on a single issue: whether the lack of a published "legal notice" renders the June 18, 2013 referendum void and invalid.

The plaintiffs respectfully submit that the lack of a published "legal notice" is a fatal flaw and, as such, declaratory judgment should enter rendering the referendum invalid and ordering a new referendum to take place.

The starting point of the analysis is C.G.S. § 9-371b which is the basis for the present case. Specifically, Section 9-371b allows interested parties to challenge alleged improprieties in a referendum within 30 days of the vote. The present action was commenced by service of process upon the defendant Board in a timely fashion which is uncontested.

The next step for the Court is C.G.S. §52-29 which authorizes the Court to issue declaratory judgments upon request of the parties, as has been done here.

Statutorily, the next step is C.G.S. §10-56 which states, in pertinent part:

> A regional school district shall be a body politic and corporate with power...to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds...for school purposes, if so authorized by referendum. Such referendum shall be conducted in accordance with the procedure provided in Section 10-47c... (emphasis added).

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It thus follows that we must next look to C.G.S. §10-47c for guidance as to the proper conduct of a regional school board funding referendum. The relevant portion of Section 10-47c states:

> At least thirty days before the date of the referenda, the regional board of education shall notify the town clerk in each member town to call the referendum on the specified date to vote on the specified question. The warning of such referenda shall be published, the vote taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of a town. (emphasis added).

Based on the language of Section10-47c, the next statute to be considered is C.G.S. §9-226 which is the statutory provision regulating "the manner as is provided for the election of officers of a town". Specifically, Section 9-226 mandates that:

> Notice of a town election shall be given by the town clerk or assistant town clerk, by publishing a warning in a newspaper published in such town or having a general circulation therein, such publication to be not more than fifteen, nor less than five days previous to holding the election. (emphasis added).

It thus follows that, since the town clerk has a mandatory duty to publish a "warning" or notice of the election or referendum, the central issue is one of what constitutes an appropriate statutory notice.

As noted in oral argument, all parties agree that there was a breakdown in communication between the Board and the Town Clerk regarding the issue of notice. Frankly, it is unimportant for this litigation to engage in finger pointing. The only issue is whether mere newspaper publicity constitutes "warning" for purposes of C.G.S. §§10-47c and 9-226 when no "legal notice" was printed in a newspaper.

The plaintiffs submit that C.G.S. §§10-47c and 9-226 were not satisfied.

There is no question that notice, or warning, is a mandatory requirement under

Section 9-226 which requires that "[n]otice of a town election shall be given..."

There is also no question that Connecticut courts place great systemic reliance on the use of the "legal notice" section of the newspapers in Connecticut. In this very case, an "Order of Notice" was issued requiring that the citizens of Woodbury and Bethlehem be notified of the pendency of this action via newspaper legal notice. Additionally, our Superior Court system relies upon the legal notice section of newspapers for, among other things, publication of foreclosure by sale notices as well as "Orders of Notice" for unknown or unlocated parties. Under those circumstances alone, why should notice of referendum be any different?

There does not appear to be any reported Connecticut case law which addresses the specific, narrow issue presented here. On the other hand, a very similar issue was addressed in Gendron v. Naugatuck, 21 Conn. Supp. 78 (1958).

In Gendron, a declaratory judgment action was brought by a private citizen challenging the validity of the, then, recently passed zoning ordinance in Naugatuck. In particular, among other things, the Gendron plaintiffs argued that the zoning ordinance that was passed was illegal and invalid because no Naugatuck official caused or requested publication of a legal notice of the public hearing regarding the zoning ordinance. Like the present case, Gendron dealt with the fact that news articles appeared in the local newspapers regarding the zoning ordinance. In the final analysis, the Court found that notice was lacking and the zoning ordinance was declared invalid.

In the present case, the Region has argued that some form of notice was essentially issued by the Woodbury Registrar in that a "press release" was sent to "Voices" (Stipulation #12). The fundamental flaw in that argument is that the press release was from the Registrar. The statutory requirement regarding notice, per C.G.S. §9-266, is that notice "... shall be given by the town clerk..."(emphasis added). It is thus

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submitted that any news article in the present case must be taken out of consideration.

As related to the Gendron analysis, the argument goes at least two steps further.

In Gendron, there was nothing to suggest that the news articles were "official" or could be attributed to any town official. This was of great concern to the Court, prompting Judge Meyers to write: "An essential element of a publication or legal notice is that it appears on its face to be caused to be given or published by competent authority". Gendron at 87. In the present case, Exhibit D is what the defendant Board relies upon. Exhibit D, however, is a simple news article that bears no resemblance to any "official" or "governmental" publication or notice.

Additionally, Gendron addressed the simple, obvious issue of the mandatory nature of strict compliance with the plain meaning of the statutes in place at the time. The Court held on page 83:

> As it has been observed, the enactment of the zoning regulations with which we are here concerned finds its authority in police power, and because the latter is delegated by the State of Connecticut, it is axiomatic that the defendant borough should have literally complied in the adoption and enactment of zoning with the provisions of the statutes which delegated that power, the so called enabling legislation (internal citations omitted).

By analogy then, the plaintiffs herein argue that regional school referenda are creatures of state statutes wherein the conduct of referenda are delegated to the member towns. In that regard, their strict adherence to the particular referendum statutes must take place.

Finally, some additional guidance may be had by reference to Pollard v. City of Norwalk, 108 Conn. 145 (1928). The Pollard case was one where a private citizen sought declaratory relief with regard to a bonding referendum. Specifically, Mr. Pollard

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argued that the city referendum which approved the bonding issue was flawed in that the official notice of the vote gave 13 days notice wherein the city charter required "at least two weeks".

In determining that the pre vote notice was flawed and that the vote was thus invalid, the Pollard court held on pages 146-147:

> The assembled voters are without power to act for or bind the town unless they have been called together in the statutory way and at the statutory time. There is no opportunity for the application of the rule that the deeds of parties are to have effect rather than to be destroyed...for if there has been no meeting, no deed has been executed, no right brought into existence, and it has been impossible for the town to have any intention; there is absolutely nothing to consider. Nor is there opportunity for the discussion of the question as to the reasonableness or unreasonableness; in the presence of a statute that only can be reasonable which it requires; anything less must be unreasonable.

It is patently clear that Gendron and Pollard require strict adherence to the procedure for noticing or warning a vote. When Gendron and Pollard are considered, in light of the fact that prior votes involving these parties had traditional "legal notices" (Stipulation #16) it becomes clear that the vote at issue in the present case must be declared invalid.

Based on the foregoing, it is respectfully submitted that: declaratory judgment should be entered on behalf of the plaintiffs; that the referendum results of June 18, 2013 should be declared invalid and void, and; that a new referendum should be ordered to take place.

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CERTIFICATION

I hereby certify that the above brief was mailed postage prepaid this 24th day of October 2013 to the following:

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