

IN THE SUPREME COURT OF OHIO

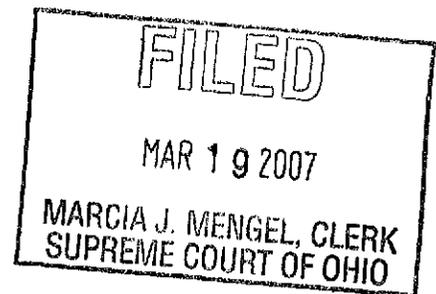
Cincinnati City School District Board of Education	:	Case No. 07-0411
	:	
	:	
Appellant,	:	On Appeal from the Franklin
	:	County Court of Appeals, Tenth
v.	:	Appellate District
	:	
Richard and Joan Bartchy, et al.,	:	Court of Appeals
	:	Case No. 06AP-697
Appellees.	:	
	:	

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
AMICUS CURIAE THE OHIO SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF THE APPEAL OF THE OHIO STATE BOARD OF EDUCATION**

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I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

The Ohio School Boards Association (OSBA) is a private, not-for-profit statewide association of public school boards founded in 1955 to encourage and advance public education through local citizen responsibility. Membership is open to all public school boards of education in Ohio. OSBA currently has a total membership of 723 public school boards across the state.

The Court of Common Pleas and the Court of Appeals for Franklin County hear all appeals from the State Board of Education (State Board) on school district territory transfers. Thus, what that Court of Appeals does in misapplying the standard of review has great significance. Ohio's public school district boundaries are a result of intricate local history and politics, often having nothing to do with other political boundaries. Susan C. Hastings, Richard D. Manoloff, Timothy J. Sheeran & Gregory W. Stype, *Ohio School Law* §4:2 (2006-2007 ed.). This case is a good example – according to the Hearing Officer, the transfer area is one “where all sorts of municipal boundaries, township boundaries, and school district boundaries come together.” For the Court of Appeals to second-guess the State Board and the trial court will lead to less predictability in this area of law, resulting in more transfer requests by landowners and more protracted proceedings as the parties seek to relitigate the issues in the Court of Appeals on the chance that it will second guess the trial court and State Board.

That is especially true where the transfer area, like this one, has no pupils who would be affected by the result. The remaining interests are those of landowners, whose most tangible interests, of course, would be economic. These economic interests translate into two issues – land values and tax rates. Despite appellees' assertions that they “feel” disconnected from their municipality and desire to have a greater sense of “community spirit,” one appellee candidly

admitted that the fair market value of the four homes would increase if the transfer were approved. The other issue is tax rates. According to the Hearing Officer's Report, the effective millage tax rate in Madiera City School District is considerably below that of Cincinnati City School District.

In short, if "the present and ultimate good of the pupils concerned" is taken out of the equation because there simply are no pupils, this kind of territory case is largely one of economic interests. The effect of the Court of Appeals' decision is to encourage such litigation. This case happens to involve a large urban school district and a small suburban district. But the same economic forces are at work between suburban districts and between local school districts in rural areas and small towns. The grass often looks greener on the other side of the fence, or school district boundary. The adjacent school district often will have a different and more favorable tax rate or be perceived as a better school district (due to academic results, athletics, demographics, or all such factors), translating into higher property values. Due to the decision below, school districts all over Ohio will be forced to spend more time, resources and legal fees on preserving their territorial integrity as more landowners play the lottery with the Court of Appeals for Franklin County. How ironic it is that such resources would be devoted to litigation encouraged by the Court of Appeals in a case where the "present and ultimate good of the pupils" is irrelevant. OSBA's membership wants school district resources spent on education, not on landowners seeking economic advantages.

This Court's decision in *DeRolph v. State of Ohio* (2002) 97 Ohio St.3d 434, 780 N.E. 2d 529, is also significant. This Court has held the present school funding system in Ohio unconstitutional and recognized the responsibility of the General Assembly to correct it. As legislators, school districts and their school board members, and Ohio voters grapple with this issue, the decision below adds one more destabilizing factor. If that decision is allowed to stand, there

will be more litigation over territory transfers, more efforts by landowners, and efforts by even some school districts to gain an economic advantage based on geography. The school funding issue is big enough by itself to solve without school districts fighting rear-guard actions with landowners seeking the greener economic grass of adjacent school districts. OSBA urges this Court to consider unpredictability introduced by the decision below, its potential cost in resulting litigation about the value of land, and its potential destabilizing effect when the focus should be on devising a constitutional system of school funding. Adherence to the proper standard for appellate review of trial court judgments in administrative cases would produce a more stable environment for school districts.

II. STATEMENT OF THE CASE AND FACTS

The proposed transfer involves four properties that were annexed into the City of Madeira in 1996. The properties are located in a subdivision where various school district boundaries, township boundaries, and municipal boundaries come together. In March 2000, the owners of the properties submitted a petition to the Cincinnati Public School District requesting that the four properties be transferred from the Cincinnati Public School District to Madeira City School District. After Cincinnati Schools submitted the petition to the Ohio State Board of Education, both Cincinnati Schools and Madeira City Schools provided information and submitted answers to the 17 questions set forth the Ohio Adm. Code 3301-89-02(B). An evidentiary hearing followed with a Hearing Officer hearing testimony from the four property owners.

On April 28, 2005, the Hearing Officer issued a Report and Recommendation proposing that the State Board deny the requested transfer. He based his decision, in part, and most importantly,

on the lack of evidence concerning the ultimate good of any students who currently reside in the transfer area. It is undisputed that the proposed transfer will affect *no students* in the transfer territory. In fact, Counsel for the property owners stated at the hearing, “the evidence will show in this case, there is not one student in these four houses, who has ever lived in these four houses, who attended public school from any of these four houses.” Since a transfer should only be granted where it serves the best interest of the students involved, and because no public school students resided on any of the four properties, the Hearing Officer recommended the transfer be denied.

The property owners filed Objections and Cincinnati Schools filed Responses to the Objections. On July 15, 2005, the State Board adopted a resolution adopting the Hearing Officer’s recommendations and denying the transfer. Pursuant to R.C. 119.12, the property owners appealed the State Board’s decision to the Franklin County Court of Common Pleas, which affirmed the State Board’s order concluding that there was reliable, probative, and substantial evidence to deny the transfer. That decision was then appealed to the Court of Appeals, which reversed the decision and ordered the trial court to enter a judgment that directed the State Board to approve the property owners’ request to transfer the property to Madeira City Schools.

III. ARGUMENT IN SUPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: The Court of Appeals Must Affirm the Trial Court’s Affirmance of the State Board of Education’s Order in a Territory Transfer Case Absent an Abuse of Discretion by the Trial Court.

Although paying lip service to the standard of review, the Court of Appeals ignored the standard set by this Court and thus did not determine that the trial court’s exercise of discretion in affirming the order of the State Board amounted to “perversity of will, passion, prejudice, partiality

or moral delinquency,” as required by *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707, 590 N.E.2d 1240, and *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 260-61, 533 N.E.2d 264. At the same time, the Court of Appeals wholly failed to respect the administrative expertise that the people of Ohio and the General Assembly vested in the State Board of Education with respect to school district territory transfers. Const. Art. VI, §4, R.C. Chapter 3301, *Lorain*, supra at 260.

The result is the anomaly that while “the present and ultimate good of the pupils concerned” is the governing principle for school district territory transfers, Ohio Admin. Code 3301-89-01(F), and it is undisputed that absolutely no school age pupils would be affected by transferring or not transferring the territory in question, the Court of Appeals held that four property owners who expected that a transfer would increase their property values are “entitled” to the transfer because their “feeling” that “community spirit and pride” would be enhanced by transferring their property to a different school district.

The Court of Appeals gave incredibly short shrift to the property owners’ burden of changing the status quo. It acknowledged the moving party’s burden of proof but then ignored the findings of the State Board that the “petitioners did not introduce any evidence regarding how this proposed transfer would benefit the students in the transfer territory” and that the transfer request by landowners “appears to be an attempt to increase their property value by transferring to a more desirable school district.” The State Board concluded that in light of the entire record “the petitioners have failed to present reliable, substantial and probative evidence in support of their request,” and the trial court affirmed that conclusion. Relying only on the landowners’ testimony of their “feeling” of isolation from the Cincinnati City School District, their sense of connection to the City of Madiera (with the resulting “community spirit and pride”) and some evidence of proximity

of roads and schools to the transfer area, the Court of Appeals held that the landowners were “entitled to a transfer,” thus overcoming the status quo of territory boundaries.*

The Court of Appeals did not even address, let alone explain, how the trial court abused its discretion out of a “perversity of will, passion, prejudice, partiality, or moral delinquency” in deferring to the State Board decision that such factors were not sufficient to “entitle” the landowners to a transfer of territory in the face of absolutely no effect on “the present and ultimate good of the pupils concerned.” Ohio Admin. Code 3301-89-01(F). Where there are no pupils affected by a proposed transfer and there is no unique factor like the area being an isolated island, *e.g.*, *Levey v. State Bd. of Edn.* (Feb. 28, 1995), Franklin App. No. 94APE08-1125, it is as a matter of law virtually impossible for a court of appeals to hold that a trial court abused its discretion in affirming the State Board’s denial of an effort by a few landowners to change the status quo.

Proposition of Law No. II: A Court of Appeals Usurps the Role of a State Agency or Board When It Weighs Various Factors Which Are Contained in a Regulation of the State Agency or Board.

The State Board of Education has established the criteria for judging the merits of a request for territory transfers. See Ohio Admin. Code 3301-89-02 and 3301-89-03. The State Board has discretion to interpret these regulations as to the weight of particular factors and, because the “good of the pupils” is the primary consideration, “by definition no other single factor may be

* The Court of Appeals’ reliance on geography and proximity appears to be incorrect factually. According to the Hearing Officer’s report, the school buildings of Cincinnati are closer to the transfer area than those of Madiera (1 and 2 miles vs. 2.2-3.5 miles). Further, while the only street access to the four properties is through Madiera City School District, the properties on the other three sides of the transfer area are within Cincinnati City School District.

determinative of the transfer request.” *Cincinnati City School Dist. v. State Bd. of Edn.* (1996), 113 Ohio App.3d 305, 310, 312. It is for the State Board “to weigh the competing factors to determine whether a transfer is in the best interest of the students involved.” *In re Proposed Transfer of Territory from Clermont Northeastern Local School Dist. to West Clermont Local School Dist.*, Franklin App. No. 02AP-257, 2002-Ohio-5522.

The Court of Appeals usurped the role of the State Board in this case. Both the Court and the State Board acknowledged that few of the traditional criteria in transfer cases exist in this case. The Court of Appeals criticized how the Hearing Officer analyzed the minimal economic impact of the transfer on Cincinnati and the effect of prior transfers on that district. Having eliminated in this way the relevance of even more criteria, the Court analyzed the only couple criteria that remained (geography, “community spirit and pride” and a feeling of “connectedness”), weighed those criteria and then made the policy decision that on those factors alone appellees were “entitled” to the requested territory transfer. Given the deference owed to the State Board, even if the Court of Appeals had held that the trial court abused its discretion under the proper standard, it should have remanded the case to the trial court for further remand to the State Board to review and weigh the criteria in light of the court’s decision. Not to do so usurped the State Board’s role and constitutes an abuse of discretion by the Court of Appeals.

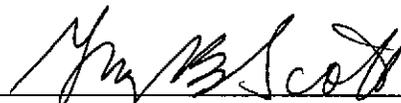
IV. CONCLUSION

OSBA urges this Court to grant the appeal of the State Board of Education so that the Franklin County Court of Appeals will not persist in applying the wrong standard of review to trial court decisions in school district territory transfer cases. There is a public and great general interest

in this case because the decision below will create instability in school district territorial integrity, encourage wasteful litigation that diverts resources from education to the legal process and complicate efforts of the General Assembly and public to achieve a constitutional basis for funding of Ohio's public schools.

Respectfully submitted,

Gregory B. Scott, Counsel of Record

A handwritten signature in black ink, appearing to read "Gregory B. Scott", written over a horizontal line.

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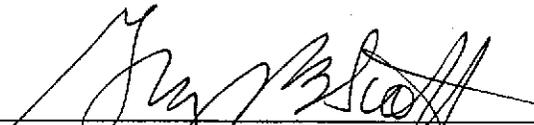
V. **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction on behalf of the Amicus Curiae The Ohio School Boards Association was served upon the following by first-class U.S. Mail, postage prepaid, on this 19th day of March, 2007:

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