

IN RE:

MONTGOMERY COUNTY
COUNCIL

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-05

OPINION

Montgomery County has filed an appeal to the State Board, pursuant of Md. Educ. Code Ann. § 5-213, asserting that it has complied with maintenance of effort (MOE) laws.

On November 4, 2009, the Attorney General issued an Opinion on that issue concluding that Montgomery County had not complied with the law. The Attorney General stated:

. . . Montgomery [County is] attempting to meet the MOE obligations by effectively including a new item in the local board's budget for the current fiscal year. In both cases, debt service was previously paid from appropriations in the county's budget. Thus, an expense has been shifted from the county budget in the prior fiscal year to the local board budget in the current fiscal year so that the funds associated with that expense appear in the current school budget for the purpose of satisfying the MOE requirement.

As indicated above, the MOE statute provides that "[p]rogram shifts between a county operating budget and county school operating budget may not be used to artificially satisfy the [maintenance of effort] requirements. . . ." ED §5-202(d)(2). In other words, the test whether a county has met its MOE obligation is to be computed on an "apples to apples" basis. See Letter of Assistant Attorney General Richard E. Israel to Delegate Norman H. Conway (January 2, 1996) at pp.2-3 & n. 1 ("artificial" shifting of education expenses to be disregarded for MOE purposes whether it involves shifting into or out of the local board's budget). Thus, it appears that, in order to assess accurately whether a county has met that obligation, the computation must include one of the following adjustments: (1) the debt service appropriation for the current fiscal year must be excluded from the comparison; or (2) an equivalent portion of the appropriation for school debt service in the prior county

budget must be included as part of the “highest local appropriation to [the] school operating budget for the prior fiscal year” in the computation of the target MOE level. Otherwise, the computation does not accurately assess changes in county support, as intended by the MOE law.

In our opinion, the inclusion of an appropriation for debt service in the Fiscal Year 2010 budget for a local school system cannot be used to satisfy the MOE target if the same expense – and appropriation – were not a part of the computation of the highest local appropriation for the school operating budget for the prior fiscal year – Fiscal Year 2009.

94 Att’y Gen. Op. 177 (2009)(Footnote omitted).

Montgomery County argues in its appeal that the Attorney General’s opinion is incorrect and that this Board should find that the County’s inclusion of the debt service obligation in the local board’s budget complies with the MOE law.

Pursuant to Md. Educ. Code Ann. § 5-213(b)(2), the State Board is the final decision-maker on the issue of compliance with MOE laws. Therefore, we consider Montgomery County’s arguments *seriatim*.

The County’s first argument is based on the fact that the County fully funded the FY 2010 MOE amount of \$1.5 billion. The County asserts that its directive to the local board to use \$79.5 million of the \$1.5 billion appropriation for payment of debt service “had no effect on the funds available for educational programs.” We do not agree. In our view, shifting \$79.5 million away from classroom education services into payments for debt service, however worthy and necessary such payments may be, means that the local board has \$79.5 million less to spend on the direct educational needs of its students and teachers.

The County’s second argument addresses the legality of shifting program costs to the local board. The law specifically precludes shifting responsibility for payment for programs from the county’s budget to the local board’s budget in order to “artificially satisfy the [MOE] requirements” Md. Educ. Code Ann. §5-202(a)(2). Montgomery County argues that the language of §5-202 permits shifting education-related programs, like debt service, to the local board’s budget, and that such a shift is not an “artificial” way to satisfy MOE.

As Montgomery County points out in its appeal letter, the County budget supports “education programs” such as crossing guards and police officers (\$9.1 million); school nurses and health technicians (\$19.8 million) as well as debt service on school construction bonds (\$111.3 million, a portion of which expenses were transferred to the local board’s budget, \$79.5 million). The County reads the statute to mean that the local government can meet the MOE target by shifting any of those “education programs” to the local board but “a local government

cannot meet its MOE target by artificially shifting a non-education program to the school system's operating budget." The words of the statute, however, do not make a distinction between education and non-education programs. The statute simply states - - "*Program shifts between a county operating budget and a county school operating budget may not be used to artificially satisfy the requirements of this section.*" Md. Educ. Code Ann. § 5-202(d)(2).

The words of the statute and the rules of statutory construction guide our decision-making on this issue. The cardinal rule of statutory interpretation "is to ascertain and effectuate the intent of the legislature." *Gillespie v. State*, 370 Md. 219, 221 (2002).

To that end, we must begin our inquiry with the words of the statute. Ordinarily, when the statutory language is clear and unambiguous, we end our inquiry there, giving the words their plain and ordinary meaning. *Dyer v. Otis Warren Real Estate Co.*, 371 Md. 576, 581, 810 A.2d 938 (2002). When the words of a statute are plain, we may neither add nor delete language so as to reflect a legislative intent that the language does not reflect. *Id.* When the statute to be interpreted is part of a statutory scheme, we read it in context, together with the other statutes on the same subject, harmonizing them to the extent possible. *Mid-Atlantic Power supply Ass'n v. Pub. Serv. Comm.*, 361 Md. 196, 204, 760 A.2d 1087 (2000).

Superior Outdoor Signs v. Eller Media Co., Inc., 150 Md.App. 479, 503 (2003).

In short, we do not read words into a statute unless such a reading reflects the intent of the legislature. In this case, it is our view that reading the words "non-education program" into the statute would not satisfy legislative intent. Specifically, as the Attorney General pointed out, a provision in the same statute concerning the shift of non-recurring costs of a program from the local board's budget to the county budget "allows a reduction in the MOE target level "and necessarily concerns [the shifting of] education programs." Md. Educ. Code Ann. § 5-202(d)(3)(ii).

Under the MOE statutory scheme, it is our view that when any program and the costs related to the program are shifted between the county and the local board (or vice versa), the MOE target is concomitantly adjusted up or down. There is no statutory exemption allowing "education programs" to be shifted between budgets without an adjustment to the MOE amount.

For these reasons, we conclude that Montgomery County has not complied with the MOE law. Therefore, we will issue forthwith a "Certificate of Non-Compliance", pursuant to Md. Educ. Code Ann. § 5-213(b)(3), directing the Comptroller to withhold \$23,422,297 from the upcoming payment(s) to Montgomery County Public Schools from the General State School Fund. We explain below how we arrived at that withhold amount.

Education Article § 5-213(b)(3), calls for a withhold to be imposed on the local school system when the county fails to meet its MOE target. Specifically,

Upon receipt of certification of noncompliance by the Superintendent or the State Board, as the case may be, the Comptroller shall suspend, until notification of compliance is received, payment of any funds due the county for the current fiscal year, as provided under §5-202 of this subtitle which are appropriated in the General State School Fund, to the extent that the State's aid due the county in the current fiscal year under that section in the Fund exceeds the amount which the county received in the prior fiscal year.

Md. Educ. Code Ann. § 5-213(b)(3).

The statute at issue directs a withhold of the increase in State's aid that the local school system received in FY 2010. Because of the unique circumstances surrounding education funding in Maryland in FY 2010, we are called upon to determine the true intent and meaning of the statute, specifically, how the term "State's aid" should be construed. Because in FY 2010 the State's general aid package to public education was funded in part with federal stimulus funds appropriated to the State through the American Recovery and Reinvestment Act (ARRA), how to interpret the meaning of "State's aid" is both a question of first impression for this Board and also one that is unique to circumstances of education funding in FY 2010.

We requested an Opinion of the Attorney General on whether the federal stimulus funds should be considered part of "State's aid" to Montgomery County schools. On January 20, 2010, the Chief Counsel, Opinions and Advice, for the Attorney General wrote:

[A]lthough the matter is not entirely free from doubt, computation of "the State's aid due the county in the current fiscal year" should include, for Fiscal Year 2010, any funds provided under ARRA that are to be distributed in accordance with ED § 5-202. This is because such funds were specifically directed under federal law to be distributed under the State's primary funding formulae for elementary and secondary education and thus represent funds that the State itself otherwise would have devoted to local school systems under ED § 5-202. Indeed, the State budget bill designates those funds as part of the appropriation for the "State Share of Foundation Program." See Chapter 484, Laws of Maryland 2009 at pp. 2457-58 (Supplemental Budget No.1).

Letter of January 20, 2010 to James DeGraffenreidt, President of the State Board, from Robert McDonald, Chief Counsel, Opinions and Advice.

We considered that advice in our deliberations and do not doubt the strength of the legal support for considering "State's aid" to mean both the State and federal dollars used to fund the public education budget. We note, however, the caveat in the letter - - that the matter is not free from doubt - - meaning, in our view, that there would be legal support for a conclusion that "State's aid" means only the dollars that the State contributes from its own tax revenues to fund the education budget.

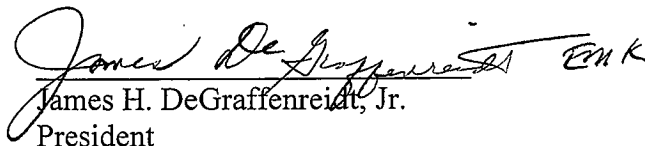
From that perspective, we turn again to the rules of statutory construction. First, looking at the whole MOE statutory scheme, we note that under Maryland law, one-time, non-recurring expenses are excluded from the calculation of the MOE target. Md. Educ. Code Ann. § 5-202(d)(3)(i). In our view, the federal stimulus funds are similar. They are a one-time, non-recurring fund used to back-fill cuts in the public education budget for FY 2010. Using the non-recurring cost analogy, we would likewise exclude the federal stimulus funds in calculating the amount of "State's aid" to Montgomery County schools in FY 2010.

On a simpler level, looking solely at the plain language of the statute, we believe that when the statute uses the term "State's aid," the legislature meant state tax dollars only. Indeed, when the statute was passed the General Assembly would never have thought or considered that federal dollars would fund general aid to education. As we have stated, FY 2010 presents a unique set of circumstances that we do not believe should be read into a law that was never intended to encompass such circumstances.

Finally, we must address the inequities in the State law and the impact they had on our decision here. The MOE law penalizes the school system and the students it serves, not once, but twice. First, the County's failure to comply with MOE law shifted \$79.5 million away from the classroom into debt service payments. Next, that non-compliance by the County will lead to a significant withholding of funds - - again draining dollars away from the students and the classroom.

Faced with the County's failure to comply with its responsibility under the law, it is our view that the best education policy decision we can make is to impose the least monetary impact on students that the law allows.

Accordingly, when only state dollars are counted, Montgomery County Public Schools received a \$23,422,297 increase in State's aid in FY 2010. For all the reasons stated herein, that amount should be the amount of the withhold.


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January 29, 2010