



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the matter of

SMITHVILLE R-II
SCHOOL DISTRICT

Applicant.

Docket No. 91-4-I

Impact Aid Case

DECISION OF THE SECRETARY

On February 6, 1992, Administrative Law Judge Daniel R. Shell issued his Initial Decision in this cause. Also on February 6, 1992, Administrative Law Judge Allan C. Lewis issued his Initial Decision in Lemont Township High School District #210, Docket No. 89-48-I. The Initial Decision in this cause held that an Administrative Law Judge had the authority to overturn established regulations of the Department, while the Initial Decision in Lemont held that an Administrative Law Judge did not have such authority.

The Secretary reviewed both cases simultaneously to resolve the conflicting holdings. On May 4, 1992, the Secretary certified the Lemont decision as the Final Decision of the Department. On May 11, 1992, the Secretary issued a order vacating the Initial Decision and remanding this cause to Judge Shell for action appropriate in light of the Lemont certification.

On May 18, 1992, Judge Shell issued a Decision in this cause finding that the only issue in dispute is the validity of 34 C.F.R. § 222.102 (b)(1)(i), and holding that an Administrative Law Judge does not have authority to overturn an established regulation of the Department. However, Judge Shell also incorporated the findings of fact and conclusions of law contained in his Initial Decision in this cause. In incorporating the conclusions of law from his Initial Decision of February 6, 1992, Judge Shell overlooked their fundamental conflict with the specific holding of the May 18, 1992 Decision.

HOLDING

Based upon Judge Shell's finding that the only issue in dispute is the validity of 34 C.F.R. § 222.102 (b)(1)(i), I uphold the determination of the Office of Elementary and Secondary Education and find that Smithville R-II School District (Smithville) is ineligible for assistance under section 2 of P.L. 81-874 for fiscal years 1989 and 1990.

DISCUSSION

The Administrative Law Judge does not have authority to overturn a Department regulation, and as a matter of public policy the Secretary is extremely reluctant to overturn a regulation established through the formal rulemaking process. In an adjudicatory setting, the Secretary does not have the opportunity to receive input from the broader community which would be affected, and the advocates' primary concern is for the outcome of an individual case resting on a particular factual setting. In rulemaking, the Secretary has an opportunity to widely solicit input and fully consider regulations in context. Further, a rulemaking reflects policies that often involve a delicate balancing of competing interests. The potential for unforeseen harm weighs heavily in any decision to invalidate or modify a regulation in an adjudication.

The regulation in question is a reasonable interpretation of the statute. Section 2 of P.L. 81-874, 20 U.S.C. 237, authorizes payments to local education agencies that experience financial burdens due to the Federal government acquiring a substantial portion of the total assessed value of the real property within the district. Section 2(c), 20 U.S.C. 237(c), provides that consolidated districts may elect to meet eligibility requirements based upon the consolidated district as a whole, or based upon one or more of the former districts. The regulation in question, 34 C.F.R. § 222.102 (b)(1)(i), interprets section 2(c) to require a former district to have some Federal property within the boundaries of a former district at the time of consolidation. This interpretation is reasonable considering the statutory language, purpose, and legislative history.

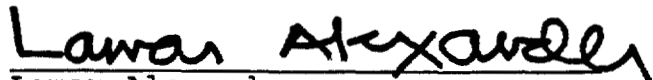
The purpose of section 2 is to provide financial assistance to school districts that have been financially burdened by the reduction of local tax revenues as a result of real property acquisitions by the Federal government. 20 U.S.C. 236 (a)(1) and 237 (a)(2). The legislative history indicates that section 2(c) was added so as not to discourage consolidations. H. Rept. No. 2287, 81st Cong., 2d Sess. at 10 (1950). By requiring a former district to have had at least some Federal property when it existed independently, the regulation ensures that eligibility can only be established on the basis of former districts where Impact Aid considerations could reasonably have been expected to impinge on consolidation decisions.

I do not find persuasive the ALJ's reliance on the fact that the interpretation articulated by the regulation is not one of longstanding. An agency clearly has authority to change its policy through rulemaking, so long as there is an adequate basis and explanation for the change. American Hospital Association v. NLRB, 111 S. Ct. 1539, 1546 (1991). Here the basis for the change is the statute, and, as explained in the notice of

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proposed rulemaking, its legislative history (53 Fed. Reg. 5565 (Feb. 24, 1988)). Nor do I find persuasive the ALJ's reliance on the fact that Congress did not show any disfavor with the previous interpretation. Congress has also left the revised regulation undisturbed since it was published as a final rule in 1989.

This decision is issued this 27th day of July, 1992.


Lamar Alexander

Washington, DC

SERVICE LIST

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-3644

Mark W. Smith, Esq.
Office of the General Counsel
U.S. Department of Education
Room 4091, FOB-6
400 Maryland Avenue, SW
Washington, DC 20202

Roger Guy Burnett, Esq.
Burnett & Driskill
19 North Water
Liberty, Missouri 64068