

TABLE OF CONTENTS

DESCRIPTION	PAGE
Table of Contents	1
Table of Authorities	2
Points Relied On	3
Argument	5
Conclusion	14
Certificate of Compliance	15
Certificate of Service	16

TABLE OF AUTHORITIES

CASES:

Mason v. Normandy School District,

No. ED82594, slip op. at 4 (Mo.App.E.D. Dec. 2, 2003) 4, 14

Missouri Nat’l Educ. Ass’n v. Missouri State Bd. Of Educ.,

34 S.W.3d 266 (Mo.App.W.D. 2001) 3, 4, 5, 7, 8, 10, 13, 14

STATUTES:

Section 161.122 RSMo. (2001) 3, 12

Section 165.016 RSMo. (2001) 3, 5, 6, 7, 8, 10, 11, 12, 13, 14

POINTS RELIED ON

- I. THE EASTERN DISTRICT COURT OF APPEALS CORRECTLY FOUND THAT THE NORMANDY SCHOOL DISTRICT DID NOT RECEIVE PROPER NOTICE OF VIOLATION OF SECTION 165.016 RSMO. WHICH WOULD HAVE ENABLED THE DISTRICT TO ACT TO EITHER (1) PAY THE PENALTY OR (2) APPLY FOR AN EXEMPTION.**

Section 165.016 RSMo. (2001)

Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Educ., 34 S.W.3d 266 (Mo. App. W.D. 2001)

A. Role of the State Board.

Section 165.016 RSMo. (2001)

Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Educ., 34 S.W.3d 266 (Mo. App. W.D. 2001)

B. Effect of Western District decision.

Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Educ., 34 S.W.3d 266 (Mo. App. W.D. 2001)

Section 165.016 RSMo. (2001)

C. Renotification avoids an unfair and costly result.

Section 161.122 RSMo. (2001)

Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Educ., 34 S.W.3d 266

(Mo. App. W.D. 2001)

Mason v. Normandy School District, No. ED82594, slip op. at 4

(Mo.App.E.D. Dec. 2, 2003)

ARGUMENT

I.

THE EASTERN DISTRICT COURT OF APPEALS CORRECTLY FOUND THAT THE NORMANDY SCHOOL DISTRICT DID NOT RECEIVE PROPER NOTICE OF VIOLATION OF SECTION 165.016 RSMO. WHICH WOULD HAVE ENABLED THE DISTRICT TO ACT TO EITHER (1) PAY THE PENALTY OR (2) APPLY FOR AN EXEMPTION.

Plaintiffs-Respondents fault the Eastern District Court of Appeals for adding words to a statute that is “clear and unambiguous”. The wording of the statute does not contain an express requirement that application for relief be filed within one year. The one year limitation comes from an interpretation of Section 165.016 RSMo. by the Western District Court of Appeals in *Missouri Nat’l Educ. Ass’n v. Missouri State Bd. of Educ.*, 34 S.W.3d 266, 286 (Mo. App. W.D. 2001). In this case, the Eastern District has further refined that statutory interpretation to avoid a potentially absurd result.

A school district notified of violation of Section 165.016.1 or 165.016.2 may request an exemption from the penalty. (Section 165.016.4(1)). At any time (but only once) when a district believes the base school year certificated percentage is not an accurate reflection of the district’s situation it may request a revision of that base line figure. The Western District decided that the revision of the base line by the State Board was retroactive only for the year immediately preceding the

application for revision. It made no conclusions regarding requests for exemption after its reversal.

A.

Role of the State Board

The statutory mandate of Section 165.016 RSMo. is enforced by “the state board of education.”¹ The remedy for “violation” is for a penalty to be paid “during the year following the notice of a violation.” (Section 165.016.6).

Plaintiffs-Respondents characterize the actions of the State Board as “subsequent representations by DESE” (Brief, page 16) and “prior (but erroneous) representations” (Brief, page 17). Under the mechanisms established by Section

¹ Subsection 1 provides for the calculation of the “base school year certificated salary percentage” with reference to a two year average “except as otherwise established by the state board under subsection 4 of this section”; Subsection 4(a) says “The state board may exempt a school district from the requirements of this section upon receiving a request for an exemption by the school district.”

Subsection 5 requires the state board to hear comments from the certified staff after which, “The state board decision shall be final.” Subsection 6 requires a determination by “*the department*” regarding as to whether a violation had occurred. The “department” is the Department of Elementary and Secondary Education.

165.016 RSMo. the State Board is not merely an advisor to the school districts, it is the agency responsible for determining issues of compliance and penalty. The *Missouri Nat'l Educ. Ass'n* case emphasized this role:

The statute vests the State Board with sole discretion to grant a school district an exemption or revision and to establish the revised year percentage upon receiving from the district a request showing the reason or reasons for the exemption or revision. The legislature did not intend to limit the State Board's exercise of discretion to grant an exemption or revision. 34 S.W.3d at page 280 (Mo. App. 2001)

Section 165.016.4(1) does not specify when the request for exemption must be filed, it states only:

4.(1) The state board of education may exempt a school district from the requirements of this section upon receiving a request for an exemption by a school district. The request shall show the reason or reasons for the noncompliance, and the exemption shall apply for only one school year. Requests for exemptions under this subdivision may be resubmitted in succeeding years;

B.

Effect of Western District decision

The issue in this case is when the District must file a timely request for an **exemption**. In particular, after a revision of the base is reversed, should the District receive notice and be allowed an opportunity to request an exemption? The Court in *Missouri Nat'l Educ. Ass'n* interpreted Section 165.016.4 to mean “a request for an exemption or revision must be **filed in the year following the notice of violation** and the State Board may grant an exemption from the requirements of Section 165.016 for the preceding year or a permanent revision of the base year percentage for the preceding year.” 34 S.W.3d at page 286 (emphasis added)

Confusion arises from the two separate types of relief provided to a school district. Although Normandy School District was not joined as a party in the *Missouri Nat'l Educ. Ass'n* case, the Court attempted to determine the propriety of actions of the State Board relative to the District.² That Court ruled that the

² The extensive discussion concerning “JOINDER OF SCHOOL DISTRICTS” concluded that: “In the case of the 16 school districts whose exemptions or revisions were upheld by the trial court, the failure to join those school districts in the action for judicial review was not prejudicial. The trial court’s judgment benefited those districts; the granting of their exemptions and revisions were

(footnote 2 continued)

upheld. The 16 school districts obtained complete relief. A better outcome was not possible.” 34 S.W. 3d at page 278 (footnotes omitted).

The Court ruled that “The trial court’s failure to join the remaining 13 districts whose exemptions or revisions were reversed by the trial court however, was erroneous.” 34 S.W. 3d at page 278 (footnotes omitted). Seeming to ignore its own conclusion regarding the necessity of joinder, the appellate court reversed the permanent revision of Normandy’s base year percentage for two of the years in question without joining Normandy. No mention was made of the negative effect that decision might have on Normandy’s liability for penalties.

The reversal would seem to contradict the Court’s analysis of why a district adversely affected would be a necessary party. It states:

The granting of the exemptions or revisions also excused the districts’ obligations to pay penalties for their noncompliance. The school districts, therefore, claimed an interest in the action seeking to set aside the Board’s decisions granting them exemptions or revisions. The possibility that the school districts would be affected by the judgment of the trial court was not remote or conjectural. Rather, the outcome of the proceeding would directly determine whether the school districts would be required to pay the required

requested one-time revision of the base was not retroactive for two of the three prior years. 34 S.W.3d at page 286. A base line revision can only be sought once. Nothing in that case discussed the propriety of further applications for exemptions by the Normandy School District or when an application for exemption would be

statutory certificated salary percentage plus penalties for their noncompliance or receive exemptions from the requirements of section 165.016 or revisions of their base year percentages. A final judgment in the absence of the districts reversing the State Board's decisions to grant the school districts exemptions or revisions would impair the districts' ability to protect their interest. While the State Board did defend its decisions to grant exemptions and revisions to the school districts, the rights involved in the proceeding for judicial review were the school districts' not the State Board's. If the exemptions and revisions of the school districts were set aside by the trial court, as they were in the case of 13 school districts, the school districts and not the State Board would experience the financial effect. The 29 school districts whose exemptions or revisions MNEA sought to set aside were, therefore, necessary parties in the judicial review proceeding and should have been joined. 34 S.W.3d at page 277 (footnotes omitted).

tardy after the reversal. Unlike the revision of the base, a request for exemption can be filed for any year “in the year following **notice** of violation” and “may be resubmitted in succeeding years.”

The decision of the Eastern District did not **add** a “renotification requirement” to the statute. The Court interpreted the statute in light of the Western District’s conclusion that the request for relief must follow within a year of the “notice of violation.” The Eastern District determined how “proper notice” should be given which would define the beginning of the one year period. The term “renotify” was used to describe the obligation to the State Board to correct its erroneous notice of compliance.

The original notices received by the Normandy School District were conditional. They provided for a penalty to be paid “if no waiver or other revision is approved by the staff of the State Board of Education.”³ The District was then notified that the State Board had approved its request for a base year revision and for an exemption. From that date forward, the District had no reason to pay a penalty, adjust its expenditures, apply for an exemption or take any other action pursuant to Section 165.016 RSMo.

³ See footnote 5 of the Opinion of the Missouri Court of Appeals, Eastern District in this case.

Plaintiffs' contention that the ruling of the Eastern District changes a "clear and unambiguous" statute misreads the actions of both courts. The Western District added the one year requirement and the Eastern District said that a new notice was required after the reversal. The Western District went to considerable lengths to limit its holding regarding Normandy to the specific issue of retroactivity. The Court said:

The trial court's judgment upholding the State Board's decision to grant a revision of the Normandy School District's base year percentage is reversed **only** to the extent that the judgment applies retrospectively to the 1994-1995 and 1995-1996 school years.

C.

Renotification avoids an unfair and costly result.

Plaintiffs-Respondents have argued that reliance by the Normandy School District on the findings of the State Board was unwarranted. They suggest that the District is "simply 'stuck' with the facts that DESE overstepped its bounds." In addition to having "sole discretion" on matters of compliance with Section 165.016 RSMo., the State Board's chief executive officer (the Commissioner of Education) has the duty to "advise...school district officers...on all matters pertaining to the school law..." pursuant to Section 161.122 RSMo. Plaintiffs suggest that the District could not rely upon the explicit findings of the State Board granting a

retroactive base line adjustment (as well as exemptions for the years it was out of compliance) and upon the established practice of the Commissioner to grant revisions retroactively.⁴

Normandy School District did not simply develop its own interpretation of Section 165.016 RSMo., it submitted requests for base line adjustments and exemptions based upon the practice and interpretation of the law by the agency designated by that statute which had “sole discretion” to grant those requests. 34 S.W.3d at page 280 (Mo. App. 2001). In addition, the District relied upon a practice adopted by the Commissioner of Education who has the power to advise it “on all matters pertaining to school law.” Being “stuck” with huge penalties by Court decisions in which this District was not a party is harsh punishment indeed.

The Western District discusses the “absurd” result which would follow if the school districts were required to request an exemption before the notice of violation.⁵ Likewise, a requirement that a district request an exemption after it had

⁴ Legal File, page 305 contains the statement of that practice from the Assistant Commissioner.

⁵ That Court said, “To expect a school district to file a request for exemption or revision for the 1994-1995 school year in early 1996 before the enactment of the statute or first notice of violation would have been **absurd.**” 34S.W.3d at page 286 (emphasis added).

been notified by the State Board that the District was in compliance would violate both the letter and the spirit of Section 165.016 RSMo. and interpreting a court decision so as to impose sanctions without joining the district would “impair the district’s ability to protect their interest.” 34 S.W.3d at page 277.

The Eastern District disagreed with plaintiff’s contention that DESE had no duty “to inform school districts of court decisions that impact on prior notices of violation.” *Mason v. Normandy School District*, No. ED82594, slip op. at 4 (Mo.App.E.D. Dec. 2, 2003). A notice of noncompliance is the trigger for a district to apply for an exemption. Finding a school district must apply for an exemption after it was found to be in compliance and before it received another notice of noncompliance would be absurd. The Eastern District Court of Appeals reasonably interpreted the statute to mean that a reversal of the State Board’s action should not begin to foreclose the School District’s right to seek an exemption until a corrected notice is issued.

CONCLUSION

For the reasons set forth above, and for those set forth in Appellant’s original brief, the Normandy School District respectfully requests this Court reverse the findings of the trial court, uphold the findings of the Missouri Court of Appeals, Eastern District, and enter judgment in favor of Appellants.

Respectfully submitted,

CROTZER, FORD, ORMSBY
& SCHRAEDER

Cindy Reeds Ormsby, #50986
Darold E. Crotzer, Jr., #19434
222 S. Central Ave., Suite 500
Clayton, Missouri 63105
Phone: (314) 726-3040
Fax: (314) 726-5120
Attorneys for Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned certifies that:

- (1) this brief contains the information required by Rule 55.03;
- (2) this brief complies with the limitations contained in Rule 84.06(b);
- (3) there are 2558 number of words in this brief;
- (4) there are 334 number of lines of monospaced type in this brief;
- (5) the floppy disk containing a copy of this brief filed contemporaneously herewith has been scanned for viruses and is virus free.

Cindy Reeds Ormsby, #50986

CERTIFICATE OF SERVICE

The undersigned certifies that two (2) copies of the foregoing document were mailed, postage prepaid, this _____ day of May, 2004, to Attorney for Respondents, Loretta K. Haggard, Schuchat, Cook and Werner, 1221 Locust Street, Second Floor, St. Louis, MO 63103.

Cindy Reeds Ormsby