Development of the Law

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School Funding Disputes

A local school board wants greater county funding for operation of the public schools. The county commissioners are amenable to granting a small increase in their appropriation for the schools but are unwilling to meet the school board's entire budget request. The school board determines that the amount appropriated is not sufficient to support the public schools.

Impasse?

The General Assembly, in Section 115C-431 of the North Carolina General Statutes, has laid out a procedure for resolving the dispute, a procedure that moves through stages of mediation to, if necessary, a trial by jury. In that trial, the question to be presented to the jury is what amount of money is needed from sources under the control of the commissioners to maintain a system of free public schools.

In the following article, Tom Powell traces the legal history of the development of this dispute resolution procedure, from its underpinnings in the early part of this century through major changes enacted in 1997.

In an accompanying article, John Stephens and Matthew Michel look at the recent experiences of three counties in using the procedures as modified in 1997. (See "Mediate,

Don't Litigate":)

—Editor's Note

Each North Carolina school board annually submits to the county commissioners a request for funds. The commissioners determine the amount of county revenues to be appropriated to the school board, taking into account the school board's request, revenues available, and all the competing demands for funding. The school board then makes a critical determination: whether the amount of money appropriated by the commissioners is "sufficient to support a system of free public schools."[1] If the school board finds that the appropriation is not sufficient, the two boards engage each other in a dispute resolution process mandated by statute. The process begins with compelled mediation and the hope of compromise. Its conclusion, if all preceding efforts fail, is a trial by jury in superior court.

The statute setting out a dispute resolution process has its roots in 1909 legislation and has been reworked a number of times over the years. From 1923 on, the mediator to whom the boards turned was the county's elected clerk of superior court. When a good faith effort at resolution failed, either board could refer the dispute to the clerk "for arbitration." It was a role that the clerks, themselves elected officials, did not relish, as they were caught between two elected boards. In 1989 the North Carolina General Assembly amended the statute [2] to allow the clerk to opt out and to push the matter directly into superior court.

The procedure has been challenging for the parties since its inception, and by 1993 the North Carolina Court of Appeals had this appraisal: [3]

> The current procedure is unworkable and impractical. A procedure which provides for an expedited review of budget disputes and which terminates on a local level, without entangling the cumbersome machinery of the appellate courts, would be preferable. Our General Assembly, however, is the only body capable of providing these solutions.

The General Assembly responded in 1996 [4] and 1997 [5] with modifications to the dispute resolution procedure, replacing the old role of the clerk with a new role by a mediator chosen by agreement of the two boards or, in the absence of agreement, by the senior resident superior court judge. If mediation fails from this point on, the matter moves to the superior court and trial by jury, just as it has for a century. This article presents a historical overview of the development of the state's dispute resolution procedure as the General Assembly has sought to address changing public policy concerns over the course of the twentieth century.

Budget Dispute Procedures: Pre-1920 Statutes

In 1901 the General Assembly established a state fund for the public schools, to be allocated to the counties.[6] If these state funds turned out to be inadequate to maintain the schools for a prescribed period of four months, then the legislature required the county commissioners to "levy annually a special tax" intended to remedy the deficiency.[7] The funds generated by this special tax levy were to be spent for maintenance of the schools as the school board saw fit: "The funds thus raised shall be expended in the county in which collected, in such manner as the county board of education may determine for maintaining the public schools for four months at least in each year." [8] The statute had

two significant shortcomings: It did not specify how the determination was to be made that the state funds were inadequate, and it contained no mechanism for resolving a dispute over whether the special tax levied by the commissioners was sufficient.

In 1909 the General Assembly replaced the 1901 law with a new statute that addressed both of these shortcomings. First, the 1909 law made clear that the school board—after examining all funding from "the regular school tax . . . fines and penalties and . . . the annual per capita appropriation to the county from the special state appropriation for public schools"[9]—was to determine whether the amount available was "less than the amount ascertained to be needed"[10] and, if so, to submit a statement of the facts to the commissioners. It was then the duty, the statute provided, of the commissioners "to levy a special tax on all property and polls in said county to supply one-half the deficiency for the support and maintenance of the public schools." [11] The proceeds from this special tax were to be spent "as the county board of education may determine for maintaining" the public schools. [12] The statement submitted by the school board to the commissioners was to be specific as to what types of expenditures would be necessary, and it was to "state separately the amounts needed for supervision, for administration, for buildings and repairs, for expenses (this to be itemized) and for salaries of teachers. . . . the number of teachers . . . and the salary of each teacher. . . ." [13] Thus the 1909 law included the first legislative requirement of detailed budgeting by the school board as a prerequisite for its budget request.

Second, the 1909 law set out a procedure for dispute resolution. If the school board and the commissioners disagreed regarding what tax should be levied, the school board was empowered to bring an action "in the nature of mandamus" to force the commissioners to impose the tax requested by the school board. [14] If the school board brought such an action, the judge had the statutory duty to "find the facts as to the amount needed and the amount available . . . which finding shall be conclusive, and to give judgment requiring the county commissioners to levy the sum which he shall find necessary to maintain the schools for four months. . . ." [15] Recognizing the likelihood, if not the practical certainty, of disputes arising between the commissioners and the school board regarding budgetary appropriations, the General Assembly thus mandated that such disputes be adjudicated in the courts and that the judge hearing the case be finder of fact, both with regard to what funds are available and with regard to what funds are "necessary to maintain" the schools for the statutory period. [16]

In 1913 the General Assembly revised the 1909 law in two important ways. First, it strengthened the requirement that the school board's statement to the county commissioners be *specific*, calling for "an itemized statement of the amounts needed for supervision, for administration, for buildings and repairs, for salaries of teachers, and for all other expenses allowed by law." [17] Second, it provided explicitly that the school board could sue the commissioners not merely over a disagreement regarding the amount of tax to be levied (as the 1909 law had provided) but also over a disagreement regarding "the amount of the deficiency to be supplied." [18]

In 1917 the dispute resolution procedure was invoked by the board of education in Granville County. That board sued the commissioners, arguing that the special tax the commissioners had agreed to levy was too low. The trial court judge ruled in favor of the county commissioners, holding [19] that high schools were "not part of the general and uniform system of public schools required by the Constitution to be maintained in each school district in the State. . . ," and therefore the amount of the

levy that would be used to support them was not required. [20] The school board appealed, and the North Carolina Supreme Court held that the trial judge erred in disallowing consideration of high school funding needs, citing Article IX, Section 1, of the North Carolina Constitution (which stated that "religion, morality, and knowledge are necessary to good government and the happiness of mankind, and that schools and the means of education should be forever encouraged . . ."), Article IX, Section 2 (which required a general and uniform system of public schools), and Article IX, Section 3 (which provided that county commissioners who failed to comply with the school funding requirements were liable for indictment). [21] Losing on the high school argument, the commissioners tried a second tack: they argued that the 1917 statute's provision for resolving budget disputes was unconstitutional because it, in effect, conferred the authority to set the tax rate on the superior court judge. The supreme court ruled that the statute was not unconstitutional. It did not "confer legislative powers on the courts," the court said, but merely made the judge a finder of fact pursuant to the levy of a tax authorized by legislative enactment. [22] The constitutionality of the basic dispute resolution system was secured.

The education statutes were again revised in 1919, changing the period for which the schools must be in session from four months to six. [23] Regarding budget disputes, the new law followed the 1913 statute closely, reiterating both the mandamus procedure to be followed by the school board and the role of the judge as finder of fact. [24] The 1919 statute also provided for penalties for failure by the county commissioners to comply with the judge's order: "Any board of county commissioners failing to obey such order and to levy the tax shall be guilty of a misdemeanor and shall be prosecuted therefor in the superior court." [25]

In 1921 the state supreme court heard a different constitutional challenge. This time the school board in Yadkin County sued the commissioners over the perceived inadequacy of the tax levy. The trial court ruled in favor of the school board, and the commissioners appealed, challenging the constitutionality of the statute on the ground that it denied them the right to trial by jury. [26] The supreme court cited its decision in the Granville case and held that trial by jury was not required. [27] The court went on, however, to hold that the school board in this case had not established the necessity of the tax levy in the amount requested and remanded the case for additional findings. [28]

The following year the supreme court took the opportunity in a case [29] in which it upheld the constitutionality of a proposed statewide bond issue for funding school buildings to issue stern words of warning to school officials who might be tempted to become too free-spending. In the substantive portion of the decision the court rejected the argument that the bond issue was in violation of Article V, Section 4, of the constitution (which prohibited "lending the credit of the State in aid of any person, association, or corporation") and Article VII, Section 7 (which required that the counties not have an obligation imposed on them without a vote of the people). [30] But while noting that school boards have significant powers to determine their funding needs, the court admonished that "it must not be understood that the exercise of these powers is in all cases arbitrary and without limit as to amount." [31] Rather if the school board, "departing from any and all sense of proportion, should enter on a system of extravagant expenditure, clearly amounting to manifest abuse of the powers conferred, their action may well become the subject of judicial scrutiny and control." [32] The court, though supporting the constitutional mandate for maintenance of the public schools, as well as this mandate's statutory expression, sent a signal that this mandate does not provide a blank check for school expenditures. This being said, the court took care to note that "[i]t would present, indeed, an

incongruous and most deplorable condition if the General Assembly, having thus provided for a compulsory attendance on the public schools, were not allowed to make provision also for adequate and suitable housing for the purpose." [33]

The Clerk as Arbitrator: The 1923 Statute

In 1923 the statute's language regarding budget disputes was substantially rewritten, greatly expanding on the specific procedure to be followed. [34] Presumably for reasons of judicial economy, cost avoidance, and harmony between the two boards, the 1923 law put into place a two-step process for resolving a school budget dispute before litigation. First, the dispute would be aired at a joint meeting between the two boards. [35] If the boards failed to reach an agreement in this meeting, the dispute would, second, be referred to the local clerk of superior court, who would act as arbitrator. The two-step process would be triggered by a disagreement over "the amount of salary fund or the fund necessary to pay interest and installments on bonds, notes, and loans." The two boards were to meet "in joint session [in which a] majority of the members of each board shall cast the vote for each board." [36] If the two boards, as a result of this vote, continued to disagree on the budget amount in question, "the clerk of the superior court shall act as arbitrator upon the issues arising between said two boards, and shall render his decision therein within ten days." [37]

Either board could appeal the clerk's decision to superior court within thirty days. [38] The statute also provided that "it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the salary fund and the fund necessary to pay interest and installments on bonds, notes, and loans." [39] The judge's findings were to be conclusive, and the judge's statutory mandate was to require the commissioners to levy whatever tax would be required to "provide the amount of the salary fund which he finds necessary to maintain the schools for six months . . . and the amount necessary to pay interest and installments" and so forth. [40] Except for the revision regarding debt service funding, the judge's role under the 1923 statute mirrored that of earlier statutes—after the new intermediary steps of the joint meeting and the clerk's arbitration. The 1923 statute also changed the wording regarding penalties: "Any board of county commissioners failing to obey such order and to levy the tax ordered by the court shall be guilty of a misdemeanor *and shall be fined or imprisoned in the discretion of the court.*" [41]

Under the 1923 statute, if the commissioners (but apparently not the school board) appealed the clerk's decision, they would have the right to a jury trial. [42] In the case of a jury trial, the statute charged the jury, in the place of the judge, with being finder of fact with regard to "what amount is needed to maintain the schools," but, oddly, it made no mention of the jury being finder of fact with regard to debt service. [43] Two other provisions in the 1923 statute are noteworthy for their recognition of the crucial need to avoid delay in resolving budget disputes. The first provision permitted the superior court judge to notify the governor that other pressing public business was scheduled before the court and required the governor then to call a special term of the superior court in that county to hear the dispute. [44] The second provision provided that, in the event of a mistrial or an appeal "which would result in a delay beyond a reasonable limit for levying the taxes for the year," the commissioners would be ordered to levy a tax sufficient to provide salary and debt service funds equal to those of the previous fiscal year. [45]

In 1933 the General Assembly redistributed the financial responsibility for school operations, in

general putting the burden for operating expenses on the state and the burden for facilities maintenance on the counties. [46] Counties were authorized—but not required—to supplement the state's current expense allocation. The effect was to reduce the county's obligations to provide financial support, and in 1954 [47] the supreme court heard and rejected the argument that because of this new division, the 1923 dispute resolution procedure was now "obsolete [and] superceded." [48] In that 1954 case the Onslow County school board invoked the statutory dispute resolution procedure. The two boards met in joint session and underwent arbitration by the clerk. [49] The school board appealed first the clerk's award and then the superior court judge's order. [50] The supreme court affirmed the superior court's ruling, holding that "no present necessity for the amounts budgeted as compared with the amounts allowed was clearly shown; and we cannot say that the court below made findings of fact arbitrarily or in abuse of statutory duty." [51]

The commissioners in effect prevailed in the dispute over the amounts, but they failed in their larger argument that the 1923 dispute resolution procedure was obsolete and superceded and should not be enforced. Even though the relative financial obligation of the county had been greatly eased—the county's obligation to support current operations was much reduced—the county still had obligations, and there was, the court said, still room for disputes between the school board and the commissioners: "It would seem, therefore, that whenever the positive duty rests upon the county tax levying authorities to provide the necessary funds the provisions and procedures of [the dispute resolution process] are applicable." [52]

After the 1923 statute, it was not until 1955 that another significant revision of the relevant statutes was undertaken.

Hastening the Process: The 1955 Statute

In 1955 the General Assembly rewrote the funding dispute statute, making a number of key changes. The revised statute increased the amount of detail required in school budget preparation, insisted on careful *line by line scrutiny* of the proposed budget, and underscored the urgency of quick resolution of school budget disputes. [53] It required that the school budget be prepared in substantial detail, including detailed outlays within the current expense fund, the capital outlay fund, and debt service. [54] The school budget was to be submitted to the commissioners by the fifteenth of June, using State Board of Education forms, and the commissioners were to report their action on the school budget by the tenth of July. [55] According to the statute, "it shall be the first duty of . . . boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges . . . in order to protect and preserve the investment . . . in the school plants," and if funds available were not sufficient, the commissioners were to provide the necessary funds by a tax levy. [56] If the physical plant of the schools could be maintained for less than the amount available, "it shall be in the discretion of . . . [the] board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in the current expense fund."[57]

In case of a disagreement over the school budget, the statute required the school board and the county commissioners to "arrange for a joint meeting of said boards within one week of the disagreement. At such joint meeting, the budget or budgets over which there is disagreement shall be gone over carefully and judiciously item by item." [58] If the joint meeting failed to reach an agreement, the

matter was to be referred to the clerk, as in the earlier statute, with the change that the clerk was to make a decision within five, rather than the earlier ten, days. [59] Similarly the right of appeal from the clerk's decision was limited to ten, instead of the earlier thirty, days, suggesting again a heightened sense of the importance of a speedy resolution. [60] The judge's role as finder of fact, and the procedure for interim funding in case of an appeal, remained intact as described in the earlier statute. [61] In case of an appeal, the 1955 statute added that "all papers and records relating to the case shall be considered a part of the record for consideration by the court." [62] Both the commissioners and the school board were empowered to demand a jury trial, and the jury was charged by the statute with the role of finder of fact regarding the current expense fund and the capital outlay fund. [63] As in a trial with the judge as finder of fact, the final judgment arrived at by the jury was deemed conclusive. [64]

In 1960 the North Carolina Supreme Court again considered an appeal from a school budget dispute that had included an attempted arbitration by the clerk. [65] The Whiteville city school board and the commissioners agreed that there was a need for a new high school building, but the commissioners did not agree that a new purchase of land was necessary. [66] Funds were available to the school board to construct a school building to replace a school that had burned down, but whereas the school board wanted to erect the new school on a new site, the county commissioners wanted the school board to use the site of the earlier building. Using the dispute resolution procedure, the school board and commissioners held a joint meeting to discuss the need for the new site. [67] After failing to reach an agreement, they submitted the dispute to the clerk, who found that the school board "had the power in their sound discretion to select a new site and to determine the necessity of such new site." [68] The commissioners appealed to superior court and demanded a jury trial. [69] The first question to the jury was whether the amount for the proposed site was a "fair and reasonable" amount, and the jury answered yes; the second question was whether the proposed expenditure was "reasonably necessary to maintain the schools," and the jury answered no. [70] The court therefore held that the commissioners were not obligated to supply the funds. [71]

On appeal, the supreme court affirmed the lower court's decision. The supreme court conceded that "[w]hen a new school is to be established and monies are available, the location of the site lies exclusively with the board of education." [72] Nonetheless the court held that "in the final analysis" the commissioners have "the right to determine what funds were necessary for the operation of the schools." [73] The court further held that, despite a number of statutory changes over the years, the basic philosophy regarding school budget creation and administration had not changed. According to the court, the school board's duty is "to evaluate their needs, apply to the board of county commissioners for funds to supply the needs, and when funds are appropriated, to spend the same within the designated classification, current expenses and capital outlay, as will best serve school needs."[74] The corresponding duty of the commissioners is "to study the request for funds filed with them by the board of education and to provide by taxation such funds, and only such funds, as may be needed for economical administration of schools." [75]

Standardizing the Process: The 1975 Act

The General Assembly in 1975 rewrote the chief school financial statutes, enacting the School Budget and Fiscal Control Act, which in large part is still applicable law. [76] The new act required that school boards operate under an annual, balanced-budget resolution; standardized the budget format;

and set a timetable for development of the budget proposal and presentation to the commissioners. [77] If the school board determined that the amount budgeted by the commissioners was "not sufficient to support a system of free public schools," the now familiar two-step process was invoked: a joint meeting of the boards and arbitration by the clerk. [78] At the joint meeting, *"the entire school budget shall be considered carefully and judiciously,* and the two boards shall make a good faith attempt to resolve the differences that have arisen between them." [79] Whereas the 1955 statute had required that each item in the budget be gone over *"item by item,"* the 1975 act required that *"the entire school budget"* be considered. [80] The 1975 act added the requirement, left out of earlier statutes, that the two boards make a "good faith attempt" to resolve their differences at the joint meeting. [81] As in the 1955 statute, either board could refer the matter to the clerk acting as arbitrator, but under the 1975 act this was to be done within three days of the joint meeting rather than in five days. [82] As in 1955, the clerk had ten days in which to reach a decision; in addition the clerk was given explicit "authority to subpoena or issue any orders necessary to have appear before him any member [of either board] involved in the dispute and to require that the records of either board be presented to him for the purpose of arbitration of the issues." [83] As under the 1955 statute, either board had a right of appeal of the clerk's decision within ten days. The rules regarding this appeal, the right to jury trial, the role of the court as finder of fact with regard to the amount necessary to maintain the schools, and the conclusiveness of these findings remained unchanged. [84]

Experience over the years proved that these joint meetings rarely produced agreements. Although such meetings were at times congenial, it appears that by the time the joint meeting was held, positions were fixed on both sides and the meeting was not likely to achieve any movement by either board. [85] The best chance of avoiding litigation came *before* the joint meeting, during the commissioners' deliberation on the school budget request.

Another layer of local political concern was injected at the level of the clerk. The clerk is an elected official who operates in the same political waters as those affecting the two elected boards. It has been said that the clerk was in a no-win situation and that any decision would likely be an unpopular one, governed by political and personal pressures.

School boards faced two distinct disadvantages in the proceedings at the clerk level. First, clerks were almost universally willing to hear all evidence either side wished to produce, so that the commissioners were usually able—as they often have not been in superior court litigation—to present evidence of the potential tax impact of additional school funding as well as evidence of competing county obligations. Clerks may have found this evidence significant. And second, while the school board had no special authority to obtain information regarding the fiscal policies and budgetary constraints of the commissioners, the commissioners had, under Section 115C-429 of the North Carolina General Statutes (hereinafter G.S.), the right to obtain all data from the school board regarding actual and proposed expenditures as well as a detailed accounting of budgetary and fiscal procedures and policies. [86] In some cases the commissioners used this statutory authority, in conjunction with the clerk's willingness to admit any and all evidence, to effect a kind of "death by deposition" of the school board's attempt to receive increased funding. [87] In a dispute in Bladen County in which the clerk eventually did limit the scope of the commissioners' "discovery," the commissioners had requested that the school board provide a list of twenty-four types of documents, which included—in part—copies of the following: the past five years' actual and recommended school budgets, all minutes of official school board meetings for five years, itemized statements of

legal expenses for the current dispute, total utility costs, a statement of vehicular staff assignments, all computer service agreements, a detailed accounting of travel allowances, an analysis of "estimated costs of mowing grass," a statement of the criteria used in selecting the "employee of the month," a detailed specification of the capabilities of a proposed computer system upgrade, as well as detailed accounting of all financial institution accounts, salaries, and a line by line accounting of all budget items. [88] The clerk ordered production of all documents on this list but withdrew the order after attorneys for the school board objected, noting in passing that this was the second order to produce documents and that compliance with the first order, issued two days before the second, had required 256 hours of research to produce 192 pages of materials. [89]

To overcome these problems school board attorneys pursued several strategies. First, some of them tried to persuade the clerk to remove himself or herself from the process and appoint an independent mediator, thereby reducing the political pressure. Second, some attorneys worked to get a "split-the-difference" award from the clerk, attempting to put pressure on the commissioners to accept the result by placing on them the blame for costly litigation as a result of being unwilling to accept compromise. [90] Third, some attorneys, recognizing that the clerk's arbitration would not achieve a satisfactory result, seem to have bided their time in anticipation of an appeal and trial in superior court.

The Clerk's Right to Step Aside: 1989

In 1989 the General Assembly—apparently mindful of the difficulties in the clerk's role—amended the current codification of the dispute resolution statute [G.S. 115C-431(b)] to allow the clerk to step aside: "Within 10 days of the referral [by the two boards to the clerk], if the clerk in good faith determines that the dispute cannot be arbitrated, he shall transfer the matter to the superior court. . . ." [91] Just four years later the North Carolina Court of Appeals strongly condemned the dispute resolution procedure, characterizing it, as quoted at the beginning of this article, as "unworkable and impractical." [92] That comment came in a case involving a dispute in Cumberland County. The school board and the commissioners had held their joint meeting, and the school board had referred the dispute to the clerk for arbitration. The clerk had not stepped aside but had arbitrated, awarding part of the requested sum to the school board. The school board appealed to superior court, which granted a slightly higher award than that accorded by the clerk, and the commissioners appealed. [93] The court of appeals held that by the time the case had come up for appellate review, the matter was moot: the dispute concerned the 1992–93 school budget; it was referred to the clerk on July 6, 1992; the decision by the court of appeals was filed December 21, 1993; and the court therefore could not address it. [94]

The court noted that this decision would have far-reaching implications for the appellate process with regard to school budget disputes: "[O]ur decision effectively blocks almost all appeals to this Court under G.S. 115-431 and . . . any appeal of a disputed budget for a particular year will likely be moot by the time it reaches this Court." [95] Because of this, the court noted that "[s]olutions which provide a reasonable and practical dispute resolution method must be developed" and called for the General Assembly to develop and implement such a method, one that would provide "for an expedited review of budget disputes and which terminates on a local level." [96]

The Beginning of Mediation: 1996

In 1996 the General Assembly made two significant changes to the School Budget and Fiscal Control Act. [97] First, in recognition of the desirability of avoiding school budget disputes, the legislature made a recommendation to the two boards: "In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are *strongly encouraged* to conduct periodic joint meetings during each fiscal year." [98] Second, and more significantly, the legislature ended the role of the clerk as arbitrator in school budget disputes and created a new system of mediation. The amended act provided that, if the joint meeting failed to produce an agreement, either the school board or the commissioners could call for the appointment by the superior court of a mediator, to be appointed within five days of the call. [99] The mediator then would present recommendations for resolution of the matters in dispute within fifteen days. [100] No time limit was specified after the joint meeting for calling for the mediator. [101] The clerk's role as arbitrator had ended, and a new role was created for a mediator of the dispute. This new role was truly new; the mediator was not an arbitrator and thus not merely a replacement for the clerk. It was not within the mediator's power to render a *judgment* settling the dispute but rather to present *recommendations* for resolution of the dispute. [102] If either board rejected the mediator's recommendations, within five days of the mediator's recommendations either board could bring an action in superior court. [103] As under the 1955 and 1975 statutes, the rules regarding the action in superior court, the right to jury trial, the role of the court as finder of fact with regard to the amount necessary to maintain the schools, and the conclusiveness of these findings remained unchanged. [104]

School Budget Disputes: The 1997 Revision

In 1997 the new mediation process was revised and expanded and the role of the mediator substantially changed. [105] The 1997 mediation provisions changed the procedures for school budget dispute resolution in four significant ways. First, the two boards now have the right to select a mediator who is mutually acceptable rather than merely accept whatever mediator is appointed by the superior court. [106] Second, the mediator's role is dramatically changed from that designated in 1996 in that the mediator now has two roles. The mediator is first brought into the open joint meeting as a "neutral facilitator" whose statutory task is to aid in the gathering of facts relevant to the dispute, to solicit "positions and contentions" of the various parties to the dispute, and to facilitate "efforts to negotiate an agreement settling the boards' differences." [107] If the joint meeting fails to resolve the dispute, the mediator then acts as a mediator, commencing a mediation between the two boards. The mediator's work in fulfilling these statutory duties is regulated by Chapter 7A of the General Statutes but with a good deal of flexibility in that the mediation statutes can be "modified as appropriate and suitable." [108] The mediator has the authority to end the mediation process at any time if an impasse has been reached. [109] On the other hand, the mediator is constrained in that, in the event of an impasse, he or she is not allowed to make any recommendations. [110] Third, the statute now directs that the work of the mediator is to proceed through the use of "working groups" composed of the chair of each board (or designee), the school superintendent and county manager, the finance officer of each board, and the attorney for each board. The working groups are directed to cooperate with the mediator. And fourth, presumably to create an atmosphere conducive to frank and productive negotiations, the 1997 legislation takes steps to insulate the mediation process from public view and from direct media coverage. In an exception to the open meetings law, the working groups are to meet in closed session. [111] Also the mediator and the negotiation itself are protected from discovery should an agreement not be reached and litigation pursued. [112] Finally, in the event of an impasse,

the mediator is not allowed to make any comment on the character of the mediation other than that an impasse has been reached. [113]

Emerging Themes

To the extent that it is possible to generalize regarding the history of North Carolina statutes governing school budget disputes, it can be said that several concerns have demonstrably animated the relevant statutory changes. First, the legislature has over many years refined and codified both the form and categories of the school budget and the process for the budget's development. Second, the legislature has recognized the practical urgency of a speedy resolution of school budget disputes and over time has shortened the deadlines for various actions pursuant to the dispute resolution process. Third, and most important, it is clear that the legislature has increasingly recognized the importance of keeping school budget disputes out of court, to the extent that this is possible, on grounds of judicial economy, expense of litigation, and the danger of further harming relations between the local boards by adversarial litigation. This last consideration is clearly the rationale for the current mediation system set out in G.S. 115-431, a system whose practical impact on school budget litigation is just beginning to be felt.

Notes

1. N.C. GEN. STAT. § 115C-431(a) (hereinafter G.S.).

2. 1989 N.C. Sess. Laws ch. 493, § 2.

3. Cumberland County Bd. of Educ. v. Cumberland County Bd. of Comm'rs, 113 N.C. App. 164, 167, 438 S.E.2d 424, 426 (1993).

4. 1995 N.C. Sess. Laws (Reg. Sess. 1996) ch. 493, § 2.

5. SL 1997-222, § 1.

6. *An Act to Revise and Consolidate the Public School Law,* in PELL'S REVISAL OF 1908 vol. 2, ch. 89, § 4112 (1908).

7. *Id*.

8. *Id*.

9. PELL'S REVISAL OF 1908 ch. 89, § 4112 (Supp. 1911).

10. *Id*.

11. *Id*.

12. *Id*.

13. *Id*.

14. Chapter 89, § 4112 (Supp. 1911).

15. *Id*.

16. *Id*.

17. GREGORY'S SUPPLEMENT TO PELL'S REVISAL vol. III, ch. 89, § 4106(a)(8) (1913).

18. *Id*.

19. Board of Educ. v. Board of County Comm'rs of Granville County, 174 N.C. 469, 93 S.E. 1001 (1917).

20. *Id*. at 471, 93 S.E. at 1001.

21. *Id*. at 471-72, 93 S.E. at 1002.

22. *Id*. at 474, 93 S.E. at 1003. In a concurring opinion, Justice Brown argued that "the presumption should be in favor of the correctness of the county commissioners" and that the burden of proof lies with the school board to establish the inadequacy of the county commissioners' estimate. *Id*. at 476, 93 S.E. at 1004 (Brown, J., concurring).

23. N.C. CONSOL. STAT. ANN. vol. II, § 5488 (1919).

24. *Id*. It is worth noting that here the mandamus procedure was required not only in the case of a disagreement regarding the school budget, but also "in the event of the refusal of any board of county commissioners to levy said tax."

25. *Id*.

26. Board of Educ. of Yadkin County v. Board of Comm'rs of Yadkin County, 182 N.C. 571, 572, 109 S.E. 630, 630 (1921).

27. *Id*. at 572, 109 S.E. at 630-31.

28. *Id*. at 572-73, 109 S.E. at 631.

29. Lacy, Treasurer v. Fidelity Bank, 183 N.C. 373, 379-80, 111 S.E. 612, 615 (1922).

30. *Id*.

31. *Id*. at 381, 111 S.E. at 616.

32. *Id*.

33. *Id*. at 382, 111 S.E. at 616.

34. N.C. CONSOL. STAT. vol. III, § 5608 (1924).

35. *Id*.

36. *Id*.

37. *Id*. It should be noted that under the 1923 statute, the school board was allowed to dispute not merely the funding necessary to maintain the schools, but also the funding necessary for existing debt service.

38. *Id*.

39. Volume III, § 5608.

40. *Id*.

41. *Id*. (emphasis added).

42. *Id*. § 5609. *See also In re* May Budget of the Bd. of Educ. of Yadkin County, 187 N.C. 710, 122 S.E. 760 (1924) (applying this statute).

43. Volume III, § 5608.

44. *Id*.

45. *Id*.

46. School Machinery Act of 1933, ch. 562, 1933 N.C. Pub. Laws, 916.

47. Board of Educ. of Onslow County v. Board of County Comm'rs of Onslow County, 240 N.C. 118, 81 S.E.2d 256 (1954).

48. *Id*. at 126, 81 S.E.2d at 262.

49. *Id*. at 119, 81 S.E.2d at 257.

50. *Id*.

51. *Id*. at 123, 81 S.E.2d at 260.

52. *Onslow,* 240 N.C. at 127, 81 S.E.2d at 262.

53. 1955 N.C. Sess. Laws ch. 1372.

54. *Id*. Items in the current expense fund would include administrative salaries and travel, office expenses, teachers' salaries, utilities, maintenance staff, plant maintenance, workers' compensation and other fixed charges, and costs of auxiliary agencies.

55. *Id*.

56. *Id*.

57. *Id*. Under the 1955 statute, "when necessity is shown by [the school board], or peculiar local conditions demand, for adding or supplementing items of expenditure not in the current expense fund provided by the State, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure."

58. Chapter 1372; See Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975) (applying this statute).

59. Chapter 1372.

60. *Id*.

61. *Id*.

62. *Id*.

63. *Id*.

64. Chapter 1372.

65. *Id*. Whiteville City Admin. Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

66. *Id*.

67. *Id*. at 827, 112 S.E.2d at 540.

68. *Id*.

69. *Id*.

70. *Whiteville City Admin. Unit,* 251 N.C. at 827-28, 112 S.E.2d at 540-41.

71. *Id*. at 828, 112 S.E.2d at 541.

72. *Id*.

73. *Id*. at 829-30, 112 S.E.2d at 542.

74. *Id*. at 830, 112 S.E.2d at 542 [citing G.S. 115-80 (1955)].

75. *Whiteville City Admin. Unit,* 251 N.C. at 830, 112 S.E.2d at 542-43.

76. 1975 N.C. Sess. Laws ch. 437.

77. *Id*.

78. *Id*.

79. *Id*. (emphasis added).

80. *Id*.

81. Chapter 437.

82. *Id*. Note again that the five-day limit in the 1955 statute was itself a shortening of the earlier ten-day limit.

83. *Id*.

84. *Id*.

85. Possibly these meetings tended to be congenial at times *because* both sides were fixed in their positions and both recognized that nothing would be accomplished at a meeting by being anything other than congenial.

86. G.S 115C-429.

87. See Exhibit "A," Clerk's Order, Bladen County Bd. of Educ. v. Bladen County Bd. of Comm'rs (1993).

88. *Id*.

89. *Id*.

90. Conversely, an effective strategy for the county commissioners would have been to try to get the clerk to offer something over and above the allocated funds but less than half the difference and reserve their right to sue, thereby putting the burden on the school board to either accept the compromise award or explain to the public why they were willing to spend county funds to litigate.

91. 1989 N.C. Sess. Laws ch. 493

92. Cumberland County Bd. of Educ. v. Cumberland County Bd. of Comm'rs, 113 N.C. App. 164, 167, 438 S.E.2d 424, 426 (1993).

93. *Id*. at 164-65, 438 S.E.2d at 424.

94. *Id*. at 166, 438 S.E.2d at 425.

95. *Id*. at 167, 438 S.E.2d at 426.

96. *Id*.

97. G.S. 115C-426.2.

98. *Id*. (emphasis added).

99. *Id*.

100. *Id*.

101. *Id*.

102. § 115C-426.2.

103. *Id*.

104. *Id*.

105. SL 1997-222, s. 1.

106. G.S. 115C-431.

107. *Id*.

108. *Id*.

109. *Id*.

110. *Id*.

111. § 115C-431.

112. *Id*.

113. *Id*.

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