

IN THE MATTER OF
EDUCATION ARTICLE
§4-201

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 18-41

OPINION

INTRODUCTION

The Board of Education of Baltimore County (local board) has petitioned for a Declaratory Ruling “explaining the true intent and meaning” of Education Article §4-201(c)(2), the statute governing the State Superintendent’s role in the appointment of a local superintendent.

FACTUAL BACKGROUND

On April 25, 2018, the local board appointed Verletta White as superintendent. On April 27, 2018, the State Superintendent disapproved the appointment citing an “ethics violation relating to Ms. White’s failure to disclose outside income she received from consulting work” which the State Superintendent called “a serious breach of trust with the public in general and the education community in particular.” The State Superintendent also noted that an audit that the State Board had requested the school system to conduct had not been completed. The State Superintendent voiced her belief that the audit could “provide critical facts in deciding whether to approve Ms. White as permanent superintendent.”

The local board asked the State Superintendent to reconsider her decision. On May 31, 2018, the State Superintendent declined that request and reiterated her disapproval of the appointment. Almost seven months later, the local board has requested the State Board to issue a Declaratory Ruling to explain the true intent and meaning of Education Article §4-201, the statute that governs the role of the State Superintendent in approving or disapproving an appointment of a local superintendent.

That statute states:

- (c) *Qualifications.* – (1) An individual may not be appointed as county superintendent unless the individual:
- (i) Is eligible to be issued a certificate for the office by the State Superintendent;
 - (ii) Has graduated from an accredited college or university;
- and
- (iii) Has completed 2 years of graduate work at an accredited college or university, including public school administration, supervision, and methods of teaching.

(2) The appointment of a county superintendent is not valid unless approved in writing by the State Superintendent.

(3) If the State Superintendent disapproves an appointment, he shall give his reasons for disapproval in writing to the county board.

Educ. Art. §4-201(c)

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

LEGAL ANALYSIS

(A) Declaratory Ruling vs. Advisory Opinion

Initially, we address the procedural posture of the request before us. It is framed as a Petition for Declaratory Ruling. This Board may issue a declaratory ruling “on the interpretation of public school law or regulation of the State Board that is material to an existing case or controversy.” COMAR 13A.01.05.02(D). A “case or controversy” exists when at least two parties are in a dispute over a matter. *See, e.g., Harford County v. Schultz*, 280 Md. 77, 81 (1977). Our declaratory ruling cases demonstrate that requirement. *See, e.g., Edward Burroughs v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-23 (2011) (declining to issue declaratory ruling in a controversy between board member and local board); *Anne Arundel County Council v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 14-16 (2014) (issuing a declaratory ruling in a budget dispute between County Council and local board). Here there is only one party before us, the local board. There is no “case or controversy.” We cannot, therefore, exercise jurisdiction within the declaratory ruling context.

Yet, we recognize that the law directs the State Board “to explain the true intent and meaning” of the education laws and regulations even when there is no case or controversy pending. Educ. Art. §2-205(e). Procedurally, when there is no case or controversy an Advisory Opinion is the appropriate form for such a decision. An Advisory Opinion is an opinion by a court or administrative body upon a question raised by a public official in the absence of a case or controversy. It is an opinion that states the legal rule on a particular matter. It adjudicates nothing. *See, e.g., USLegal.com, Advisory Opinion Law and Legal Definition*, <https://definitions.uslegal.com/a/advisory-opinion>, (visited 11/14/18); *Britannica.com, Advisory Opinion*, <https://www.britannica.com/topic/advisory-opinion>, (visited 11/14/18).

In only one instance in the past, this Board issued a ruling on the meaning of a law absent a two-party case or controversy. In that case, the Prince George’s County Board of Education asked if its Bylaws concerning reimbursement for travel expenses conformed to Educ. Art. §3-1003(b)(1)&(2). Although the local board couched its request in terms of Petition for Declaratory Ruling, this Board, without comment on whether a “Declaratory Ruling” was the appropriate legal vehicle to use to decide the case, opined on the true intent and meaning of Educ. Art. §3-

1003(b)(1)&(2). *See In Re: Prince George's County Travel Funds*, MSBE Op. No. 17-04 (2017). That decision, in hindsight, should have been issued as an Advisory Opinion.

We will follow that procedural track here and issue an Advisory Opinion, not a Declaratory Ruling.

(B) True Intent and Meaning of Education Article §4-201(c)

As we read the statute, there are two specific processes set forth governing the selection of a local superintendent. The first is the appointment process. The second is the process to validate the appointment.

Appointment Process

The law at issue makes clear that the local board has the sole power to “appoint” a superintendent. Educ. Art. §4-201(b)(3)(“[T]he county board shall appoint the county superintendent between February 1 and June 30.”) The same law goes on to say that an individual may not be “appointed” as superintendent unless he/she meets three qualifications:

- is eligible for a Superintendent’s certificate;
- has graduated from an accredited college or university;
- has completed 2 years of graduate work at an accredited school, including specific courses.

Educ. Art. §4-201(c)(2).

Given that the only body entitled to appoint a superintendent is the county board and that an individual may not be “appointed” unless he/she meets the three statutory qualifications, it is our view that meeting those three qualifications is a prerequisite to appointment, and it is the local board’s responsibility to confirm that the person it appoints meets those qualifications *before* it requests the State Superintendent to “validate” the appointment.

The Validation Process

The statute explains that the “appointment” of a local superintendent is not “valid unless approved in writing by the State Superintendent.” Educ. Art. §4-201(c)(2). The Baltimore County Board of Education argues that the Superintendent’s authority to validate the appointment is constrained to a review of whether the appointed individual meets the three statutory qualifications. In essence, validation is just a check on whether the local board did its job to appoint an individual who was qualified under the narrow requirements of the statute.

Of course, historically when the Superintendent considers the validity of the appointment, she reviews whether the appointee meets the statutory qualifications. That has been standard operating procedures for years. But, that does not necessarily mean that the validation process is so narrowly constrained.

The question before us is whether the Legislature intended to limit the State Superintendent to validating that the local board correctly checked credentials or whether it intended her role to be a broader one. To answer that question we turn to the rules governing statutory interpretation.

Statutory interpretation begins and ends with ascertaining the intent of the Legislature. *Stickley v. State Farm Fire & Cas. Co.*, 431 Md. 347, 358 (2013). The first level of that inquiry involves the plain language of the statute. The plain language of the statute often manifests the legislative intent. *State v. Bey*, 452 Md. 255, 265 (2017). In ascertaining intent, we do not read the words of the statute in a vacuum. *Lockshin v. Semsler*, 412 Md. 257, 275 (2010). Instead, we interpret the language in light of the “context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute.” If the statutory language, read in context, “is unambiguous and clearly consistent with the statute’s apparent purpose” the inquiry will “ordinarily” end, “and we apply the statute as written, without resort to other rules of construction.” *Lockshin*, 412 Md. at 275.

If, however, the statute is ambiguous, we must “resort to other recognized indicia” of legislative intent, such as “the structure of the statute...; how the statute relates to other laws; the legislative history, including the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it; the general purpose behind the statute; and the relative rationality and legal effect of various competing constructions,” *Witte v. Azarian*, 369 Md. 518, 525-26 (2002). In doing so, we must avoid interpretations that are “absurd, illogical, or incompatible with common sense.” *Lockshin*, 412 Md. at 276. Finally, where a statute is “remedial in nature,” it must be “liberally construed...to effectuate [its] broad remedial purpose...” *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 424 (2016)(internal quotation marks omitted).

The local board argues that, by viewing the whole statutory scheme, the plain language of the statute reveals a narrow role for the State Superintendent. Specifically, they assert that the role is narrow because Section 4-201(c) is titled “Qualifications;” the statute lists only the three qualifications in section (c)(1); and the State Superintendent’s validation power follows immediately thereafter in (c)(2). Thus, they reason that it is implicit in the structure of the statute that the State Superintendent can only review the three qualifications and must approve any applicant who meets the three qualifications.

We are not convinced that that argument establishes that the words of the whole statute point unequivocally to a narrow role for the State Superintendent. Indeed, we believe section (c)(3) could lead to a contrary conclusion. That section of the statute states, without any limitation, that the State Superintendent may disapprove an appointment, and in doing so, must provide her “reasons” in writing. That section could be interpreted to open the door to a broader role allowing the Superintendent’s “reasons” to go beyond an appointee’s failure to meet the three qualifications.

Suffice it to say, the plain words of the statute itself do not provide clear answers to the question before us. We have, therefore, delved into the history of the statute.

We point out that the particular statutory provisions at issue were put in place in 1916, when the public education system was re-organized and the laws revised. *See Public Education in Maryland, 1916, A Report to the Maryland Educational Survey Commission*, published by forgottenbooks.com (2015) (often called the Flexner Report). That Report decries the lack of education qualifications of many of the local superintendents and the politicization of appointments both of superintendents and local boards. *Id.* at 42-44; 52-54. The Report

advocates for legislation to reorganize the education system. It makes recommendations for change by stating:

The defects in Maryland education to which we have now drawn attention arise partly from inferior organization due to poor laws, partly from inferior personnel, as a result of low educational ideals. Let us admit at the outset that unless the people of Maryland effectually demand that their educational officers should be chosen on the ground of fitness, and that political influence be eliminated, the mere rewriting of the statutes will not work any miracles. The rewriting of the statutes is, however, desirable, because statutes can be so drawn as to assist the people of the state in making their will prevail. On this assumption, what alteration should be made in the statutes dealing with the State Department of Education?

Id. at 155.

The statute passed in 1916 is remedial in nature. *See Pak v. Hoang*, 378 Md. 315, 325 (2003) (explaining that “statutes are remedial in nature if,” for example, “they are designed to correct existing law, to redress existing grievances and to introduce regulations conducive to the public good.”) A remedial statute must be “liberally construed...to effectuate [its] broad remedial purpose,” and any “exemptions” from the statute “must be narrowly construed.” *Lockett*, 446 Md. at 424. We will apply that statutory construction principle in interpreting the statute.

The 1916 statute contained provisions related to the timing of the appointment of a local superintendent and required the appointed superintendent to hold a certificate of administration and supervision issued by the State Superintendent. That statute also required written approval from the State Superintendent to validate the appointment. 1916 Maryland Laws, Ch. 506. That statute read in relevant part:

Chapter 4A.

The County Superintendent of Schools

72. The county board of education of each county shall appoint during the month of May a superintendent of schools for a term of four years, from the first day of August next succeeding his appointment, and he shall hold office until his successor qualifies. No person shall be eligible for appointment to the office of county superintendent of schools who does not hold from the state superintendent of school a certificate in administration and supervision as provided for in section 55 of this article, nor shall the appointment of any person by the county board of education to the position of county superintendent of schools be valid without the written approval of the State Superintendent of Schools.

Id.

The State Superintendent could issue a certificate “to persons who are graduates of a standard college or university, or who have had the equivalent in scholastic preparation; who

have completed in addition one graduate year's work in education at a recognized university, including public school administration, supervision, and method of teaching, or who have had the equivalent in scholastic preparation, and who have had two years' experience as a teacher." 1916 Maryland Laws, Ch. 506, §55. Thus, early on, specific education requirements and teaching experience were required to be eligible for the certificate necessary for appointment as a superintendent.

We note that the State Superintendent's approval of the appointment in writing is a separate and distinct requirement from the qualification for appointment - - a certificate in administration and supervision issued by the State Superintendent. If the possession of that certificate were all that was required to validate the appointment, the need for any approval in writing appears to us to be superfluous. It seems to us that the Superintendent's approval was to have some meaning beyond a mere check the qualification was met.

While the requirement of educational qualifications was a central focus of the new law, we are cognizant of the words of the Flexner Report calling for educational officers to be chosen "on the grounds of fitness." Fitness for the superintendency of a local school system may begin with educational qualifications, but, as a matter of sound education policy it does not necessarily end there. Of course, local boards are the first judge of the fitness of an appointee. But, a law giving approval authority to the State Superintendent on grounds other than educational qualifications effectuates the higher goals and purposes set forth in the Flexner Report.

In the 1920's, the statute was amended to add a provision explaining when the State would share in paying the salaries of local superintendents. The amendment called for the State to pay a share of the local superintendent's salary "only when the superintendent has met the full requirements in academic and professional training, namely graduating from a standard college or university plus one graduate year's work in education at a recognized university including public school administration, supervision and methods of teaching." *See* Md. Code Ann. Art. 77, §134 (1924). On the face of the amendment, the two qualifications seem tied only to salary, not the appointment. Yet, those educational requirements, in addition to teaching experience, were essential for eligibility for a superintendent's certificate which remained a requirement for appointment.

In 1954, the legislature added a new provision to the statute that, if the Superintendent disapproved a local superintendent appointment she/he must submit reasons in writing to the local board. 1954 Maryland Laws, Ch. 27. The statute, as revised, stated:

142. (a) The County Board of Education of each county shall appoint during the month of May a Superintendent of Schools for a term of four years, from the first day of August next succeeding his appointment, and he shall hold office until his successor qualifies. No person shall be eligible for appointment to the office of County Superintendent of Schools who does not hold from the State Superintendent of Schools a certificate in administration and supervision as provided for in Section 97 of this Article, nor shall the appointment of any person of County Superintendent of School be valid without the written approval of the State Superintendent of School, PROVIDED, HOWEVER, THAT IF THE STATE SUPERINTENDENT OF SCHOOLS SHALL NOT APPROVE

OF THE PROPOSED APPOINTMENT OF A PERSON TO THE POSITION OF COUNTY SUPERINTENDENT OF SCHOOLS, HE SHALL CERTIFY IN WRITING TO THE COUNTY BOARD OF EDUCATION HIS REASONS FOR SUCH REFUSAL TO APPROVE OF THE APPOINTMENT OF SUCH PERSON. Provided that all County Superintendents of Schools holding office at the time when this Act shall take effect, shall continue to serve to the end of the term for which they were originally appointed, and until their successors qualify, unless removed, as hereinafter provided, all shall also be eligible for reappointment.

1954 Maryland Laws, Ch. 27, §142a. (Emphasis in the original).

No legislative history is available to explain the reason for adding the explicit reference to disapproval and the requirement that reasons for the disapproval be explained in writing. In our view, however, this amendment lends weight to the view that the State Superintendent's disapproval authority with "reasons" stated was meant to be broader than a qualification review.

In 1978, the Education Article was recodified – the 1978 recodification resulted in a reorganization of the statute into its current form, incorporating all three qualifications into one section.

(C) Qualifications.

(1) An individual may not be appointed as county superintendent unless he:

(i) Is eligible to be issued a certificate for the office by the State Superintendent;

(ii) Has graduated from an accredited college or university; and

(iii) Has completed 2 years of graduate work at an accredited college or university, including public school administration, supervision, and methods of teaching.

(2) The appointment of a county superintendent is not valid unless approved in writing by the State Superintendent.

(3) If the State Superintendent disapproves an appointment he shall give his reasons for disapproval in writing to the county board.

1979 Maryland Laws, Ch. 22; Md. Educ. Art. §4-201(c).

As the Revisor's Note to the 1978 recodification of the Education Article :

Revisor's Note

In subsection (c) of this section, the present language of Art. 77, §57(c) on the qualifications of county superintendents is combined with the present language of Art. 77, §57(a). Although the former provisions related only to state funding, the state funding provision is now obsolete. Since in actual practice the State Superintendent

does not approve county superintendents without these qualifications, these qualifications are included in subsection (c) of this section.

Revisor’s Note, 1978 Maryland Laws, Ch. 22.

With that statutory history in mind, keeping in mind the remedial nature of the statute, we lean more toward the view that the separate requirement for approval and the subsequently added separate reference to disapproval after giving reasons, both of which are set forth in the statute without limitations or restrictions, allow for “reasons” beyond the three qualifications to disapprove an appointment. We believe such a reading reflects the education policy set forth in the Flexner Report and effectuates the remedial purpose of the statute.

The local board worries that, if the Superintendent’s authority to disapprove is not bound tightly to the three qualifications, her authority would be exercised “without bounds or limits.” The board sets forth a variety of scenarios leading to conclusions that the State Superintendent could ultimately take over the authority of the local board to appoint a superintendent. We do not agree.

No administrator of a state agency, such as the State Superintendent, can exercise her authority outside the boundaries of reasonableness. Administrative decisions are subject to judicial review to determine if they are arbitrary, unreasonable, illegal, or an abuse of discretion. *See, e.g.,* Md. Rule §7-401; *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 576 (2005)(citing cases). An appellate review of the State Superintendent’s decision in this matter could have been taken, but it was not. Because we do not exercise appellate jurisdiction over decisions of the Superintendent, *see, e.g., In the Matter of Specialized Education Services*, MSBE Op. No. 16-22 (2016) (declining to rule on a petition couched as a request for declaratory ruling which was, in reality, an appeal of the State Superintendent’s decision), we exercise here our jurisdiction to explain the true intent and meaning of Ed. Art. §4-201(c), which we have done.

CONCLUSION

It is our view, as set forth in this Advisory Opinion, that the Superintendent’s authority to disapprove a county board’s appointment of a local superintendent extends beyond a review of the three statutory qualifications and can include other reasons.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

December 4, 2018