

HARFORD COUNTY ARTS
AND CULTURE
ALLIANCE,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-48

OPINION

INTRODUCTION

Appellants, the Harford County Arts & Culture Alliance and Ryan Nicotra, challenge the \$100 fee imposed on each student for participation in the extracurricular drama program. The Harford County Board of Education (local board) has filed a Motion to Dismiss to which the Appellants responded. The local board replied to the response and the Appellants further responded.

FACTUAL BACKGROUND

The \$100 fee imposed here is related to the budget decision of the local board. Specifically, on February 1, 2016, the Board approved an operating budget in the amount of \$591,494,289.00, in expenditures. This budget requested \$255,848,115.00 in funding from the county fiscal authorities. Subsequently, on May 24, 2016, the County Council of Harford County reduced the school budget by \$22,310. That is, the county fiscal authorities approved \$233,534,504.00 in county funding for the Board, rather than the \$255,845,115.00 requested by the Board.

On June 13, 2016, the Board met in open session. The agenda for this meeting included the decision on the fiscal year 2017 operating budget. In light of the above described shortfall in the amount of funding provided by the county fiscal authorities, the Board, on June 13, 2016, adopted a final operating budget for FY 2017 which reconciled the original operating budget approved on February 1, 2016, which requested \$255,845,115.00, from the county fiscal authorities, with the actual amount appropriated by the county fiscal authorities of \$233,534,504.00.

At this meeting, in an effort to increase revenues in order to reconcile its operating budget for fiscal year 2017, the Board approved a motion to implement a \$100.00 participation fee to be paid by student performers in extracurricular student drama productions. The action was effected by two separate motions. The first motion, made by Vice President Joseph Voskuhl, provided that students who participated in high school drama productions pay a participation fee of \$50.00. This motion passed by a vote of 8-1. Subsequently, at the same meeting, Mr. Voskuhl

made a motion that the above described participation fee be increased from \$50.00 to \$100.00 per student. FARMS students were exempted from paying the fee. This motion passed by a vote of 9-0. At the June 13, 2016 meeting, the Board, by a vote of 9-0, adopted a final operating budget for FY 2017 which included the \$100.00 extracurricular drama participation fee.

At the Board business meeting of June 27, 2016, the Board heard public comments from 51 attendees in opposition to the fee. After these public comments, Board member Mr. Alfred Williamson, made a motion to rescind the extracurricular drama participation fee. The motion failed by a vote of 5-3.

This appeal ensued.

STANDARD OF REVIEW

This case involves a quasi-legislative decision¹ of the local board – the approval of the Operating Budget. As this Board explained in *Citizens for a Responsible Curriculum, et al. v. Montgomery County Board of Education*, MSBE Opinion No. 07-30 (2007), in cases involving a quasi-legislative decision of the local board, the State Board will decide only whether the local board acted within the legal boundaries of State and federal law and will not substitute its judgment for that of the local board “as to the wisdom of the administrative action.” (citing *Weiner v. Maryland Insurance Administration*, 337 Md. 181, 190 (1995)).

LEGAL ANALYSIS

The local board moves to dismiss the appeal on two grounds. First, the board argues that the Appellants lack standing to bring the appeal. Second, the board argues that its action imposing the fee violated neither State nor federal law. We address each argument seriatim.

Standing

As a preliminary matter, the local board maintains that the appeal should be dismissed because Appellants lack standing. As the State Board noted in *Adams, et al v. Montgomery County Board of Education*, 3 Op MSBE 143, 149 (1983), the general rule on standing is that “for an individual to have standing, even before an administrative agency, he must show some direct interest of ‘injury in fact, economic or otherwise.’” *See also Schwalm v. Montgomery County Board of Education*, MSBE Opinion No. 00-10 (February 23, 2000); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996); *Way v. Howard County Board of Education*, 5 Op. MSBE 349 (1989). This showing of a direct interest or injury in fact requires the individual be personally and specifically affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency. *See Bryniarski v. Montgomery County Bd. of Appeal*, 247 Md. 137, 144 (1967).

¹ Quasi-legislative decisions include approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy; approving or disapproving an appointment; proposing or ratifying a constitution or constitutional amendment; proposing or ratifying a charter or charter amendment; adopting, disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law; approving, disapproving, or amending a budget; and approving, disapproving, or amending a contract. Md. Ann. Code Gen. Prov. §3-101(f) & (j).

Mr. Nicotra alleges that he represents the Harford County Arts and Culture Alliance, a group of teachers who provide extracurricular drama programs in the school system. He alleges that members of the Alliance have requested to remain anonymous. There are no assertions in the record of direct harm or injury suffered by the Alliance per se. Thus, the Alliance has no standing to bring this appeal.

Mr. Nicotra alleges that he provides training and support to extracurricular drama teachers in the school system and that his continued “employment” by those teachers is dependent on student participation in the extracurricular drama program. We find that that assertion of harm is sufficient to confer standing on Mr. Nicotra alone.

Legality of the Decision

The Appellant argues that the decision to fill the budgetary shortfall by imposing the fee on extracurricular drama program participation was arbitrary and unreasonable. That, however, is not the standard we use to review this type of case which involves a quasi-legislative decision of the local board.

As we have explained in the past, governmental agencies, like this Board and local boards, “perform some activities which are legislative in nature and thus have been dubbed as quasi-legislative duties...[and also] “make factual determinations and thus adjudicate...in a quasi-judicial capacity.” *Department of Natural Resources v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 222 (1975). When courts review those two types of decisions, they use a different standard of review for each. Specifically, when “an administrative agency is acting in a manner which may be considered legislative in nature (quasi-legislative),...scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries...[When, however,] an agency is acting in a fact-finding capacity (quasi-judicial), the courts review the appealed conclusion by determining whether the contested decision was rendered in an illegal, arbitrary, [or] capricious...manner.” *Linchester Sand*, 274 Md. at 223; *accord Adventist Health Care, Inc. v. Maryland Health Care Comm’n*, 392 Md. 103, 117 n.12 (2006); *Fogle v. H&G Restaurant*, 337 Md. 441, 454 (1995); *Weiner*, 337 Md. at 190; *County Council of Prince George’s County v. Offen*, 334 Md. 499, 507 (1994).

That same standard of review, we believe, applies when this Board is called upon to review a decision of a local board. When the local board’s decision is quasi-legislative, the Board will decide only whether the local board acted within the legal boundaries of State and federal law. This Board will not substitute its judgment for that of the local board “as to the wisdom of the administrative action.” *Weiner*, 337 Md. at 190. When the local board’s decision is quasi-judicial, this Board will review that decision to determine, not only whether it is illegal, but also whether it is arbitrary, or unreasonable by asking whether a reasoning mind would come to the decision rendered. Even this review does not allow this Board to substitute its judgment for that of the local board’s. COMAR 13A.01.05.05.

The Appellant concedes in his filings that the board’s action was not illegal, and we concur. At least as to fees for participation in this extracurricular activity, there is no apparent violation of law. Although the State is required to provide a free public school education, as the Attorney General has opined:

[W]e cannot say whether Maryland courts would go as far as courts in some states in categorizing the activities that must be offered without charge. But, whatever the outer limits of Maryland’s “free public schools” guarantee, we are safe in saying that anything directly related to a school’s curriculum must be available to all without charge. To borrow the North Dakota Supreme Court’s formulation, whatever is an “integral part of the education system” must be free. *Cardiff v. Bismarck Public School Dist.*, 263 N.W.2d 105, 113 (N.D. 1978) (Emphasis added).

72 Op. Att’y Gen. 262, 267 (1987).

There is no doubt that the arts are an important part of our education system. The Appellant argues persuasively about the value of arts education in improving academic performance. He argues that imposing a fee on participants in the extracurricular drama program, was, thus, a bad decision. That may very well be true, but when the board’s quasi-legislative action is legal, we have no authority to substitute our judgment for that of the local board’s. We note that the board did reconsider the issue at a subsequent meeting and, after hearing from 51 opponents of the fee, voted 5-3 not to rescind the fee.

CONCLUSION

For all those reasons, we affirm the decision of the local board.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice President

Laurie Halverson

Stephanie R. Iszard

Rose Marie Li

Barbara J. Shreeve

Guffrie M. Smith, Jr.

Dissent:

Michele Jenkins Guyton

Madhu Sidhu

Laura Weeldreyer

Absent: Jannette O'Neill González

December 5, 2016