

[J-59-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ANTHONY BURGER,	:	No. 6 WAP 2005
	:	
Appellant	:	
	:	Appeal from the Order of the Court of
	:	Common Pleas of Washington County
v.	:	entered December 17, 2004 at No. 2001-
	:	562.
	:	
SCHOOL BOARD OF THE MCGUFFEY	:	
SCHOOL DISTRICT,	:	
	:	ARGUED: March 2, 2006
Appellee	:	RESUBMITTED: April 13, 2007

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: MAY 31, 2007

I join the outcome reached by the majority, but on a different basis. As I read the first sentence of Article VI, Section 7, it appears that “good behavior” is a necessary condition of maintaining office, but not a sufficient one. Thus, it should not be understood to limit the at-pleasure removal power set forth in the second sentence. Therefore, I agree with Mr. Justice Eakin that the majority’s interpretation appears to render the second sentence of questionable significance. See Dissenting Opinion, slip op. at 2 (Eakin, J.). Indeed, the insertion of this sentence into Article VI, Section 4 of the Constitution of 1874 (from which the present Section 7 was derived almost verbatim) was debated at length, and the delegates who spoke in favor of it expressed their intent that it should preclude the imposition of any delay or procedural safeguards relative to an appointing authority’s ability to expeditiously remove an appointed official that was dishonest or otherwise unfit for office. They reasoned that the public interest required

prompt removal powers without the invocation of potentially time-consuming procedural safeguards, and that this outweighed any potential harm occasioned by possible misuse of the removal power. See, e.g., DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1873, Vol. VII at 561 (remarks of Mr. Littleton); id., Vol. VIII at 124 (remarks of Mr. White); id. at 124-25 (remarks of Mr. Biddle). Others, who sought to amend the provision to permit procedural safeguards, were not successful in their efforts. See, e.g., id., Vol. V at 374 (remarks of Sen. Buckalew); id., Vol. VII at 560-61; Bowers v. Pennsylvania Labor Relations Bd., 402 Pa. 542, 562 n.5, 167 A.2d 480, 489 n.5 (1961) (Jones, J., dissenting).¹

In this regard, I am concerned that the majority’s interpretation may have the unintended consequence of permitting the General Assembly to impose similar “affirmative limitations,” Majority Opinion, slip op. at 9, upon the Governor’s at-will removal powers relative to statewide officials, particularly those who are not appointed for a fixed term. If indeed Section 7 affirmatively permits the General Assembly to limit

¹ In a parallel development, some delegates urged caution in the removal of elected officials, preferring to require impeachment instead of solely the “address of two-thirds of the Senate.” That suggestion was defeated as well, with one delegate who opposed the impeachment requirement explaining:

Take for instance your office of State Treasurer, who will be elected by the people. Immediately upon his election he may be discovered to be totally unfit for the office, or he may have designs upon the treasury, by the removal of its funds, and for which his security may be inadequate or insufficient as a remedy, and it may be important that he should be removed, and promptly[.] . . . The safety of the public interest may require prompt action. We are bound to suppose that extreme cases may arise.

DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1873, Volume III, at 231 (remarks of Mr. Darlington).

a school board's removal powers in the manner stated, there is no apparent principled basis to support a different construction as to the Governor or any other state-level appointing authority. In my view, permitting the Governor to be constrained in this manner would be contrary to the intent of the framers and the plain language of Article VI, Section 7.

Ultimately, however, I am able to join the result because I do not believe that Article VI, Section 7 was intended to apply to school district superintendents. Here again the debates are informative because they reveal that state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed; little attention was paid to the concept of local appointing powers and the manner in which their removal powers should or should not be constrained. I recognize that this Court has previously applied Article VI, Section 7 to some classes of local officials, see, e.g., South Newton Township Electors v. South Newton Township Supervisors, 575 Pa. 670, 838 A.2d 643 (2003) (applying the provision to a township supervisor); In re Petition to Recall Reese, 542 Pa. 114, 665 A.2d 1162 (1995) (same as to the mayor of a home-rule municipality), but it is not clear that those decisions took into account the Commonwealth-official versus local-official distinction. Because the present Constitution expressly authorizes the General Assembly to legislate in the arenas of local government and education, see PA. CONST. art. III, §14 (pertaining to a system of public education); id., art. IX (pertaining to local government), it appears most likely to me that the framers did not intend the general at-pleasure removal power contained in Article VI, Section 7 to constrain the General Assembly in its formulation of regulations concerning the hiring and firing school district superintendents.² It is on this basis that I

² I am aware that, in Weiss v. Zeigler, 327 Pa. 100, 103-05, 193 A. 642, 644-45 (1937), this Court suggested that the prior Article VI, Section 7 could apply to school district (continued . . .)

would reject the School District's constitutional challenge to Section 1080 of the Public School Code, 24 P.S. §10-1080.

(. . . continued)

superintendents. See generally Majority Opinion, slip op. at 11-12 (analyzing Weiss). Notably, however, the relevant portion of Weiss was dicta and, moreover, it relied upon In re Supervisors of Milford Township, 291 Pa. 46, 139 A. 623 (1927), which has since been overruled. See Reese, 542 Pa. at 124, 665 A.2d at 1167; see also South Newton Township Electors, 575 Pa. at 675, 838 A.2d at 646 (recognizing the overruling of Milford Township).