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NO. A08-1114

State of Minnesota
In Court of Appeals

Matthew J. Look on behalf of his minor son,
John P. Dehen on behalf of his minor daughter, and
Matthew J. Look and John P. Dehen on behalf of those
City of Ramsey residents similarly situated,

Plaintiffs-Appellants,

vs.

PACT Charter School,

Defendant-Respondent.

RESPONDENT'S LETTER BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

The question presented is whether a charter school that is located in a city must provide an enrollment preference for residents of that city (a "Residential Preference") under a statute that only applies if a charter school is located in a "town." Minn. Stat. § 124D.10, subd. 9 (2007). The district court concluded that the Residential Preference did not apply because the word "town" is not ambiguous, is used in numerous Minnesota Statutes as "a term of art to describe a specific form of local government," and does not include cities. (A6.) The district court's well-reasoned decision should be affirmed.

PACT's enrollment policy, which has been periodically approved by the Minnesota Department of Education, applies a Sibling Preference for siblings of current students and a Proximity Preference for an applicant who lives within two miles of the school but more than five miles from the next closest public school. (RA 26 ¶¶ 6 and 7.)[1] PACT does not apply a Residential Preference for applicants that reside in the City of Ramsey. (RA 26 ¶ 8.)[2] Class openings are filled first by applicants who have a Sibling or Proximity Preference. The remaining openings are filled by a lottery of all other applicants. (RA 26-27, ¶ 9.)

This action was initially commenced by Matthew Look on behalf of his minor son. Look alleged that he had applied for his son's admission for kindergarten at PACT. (Complaint ¶ VI.) Look, a resident of Ramsey, sought an order requiring PACT to give a

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[1] These two preferences are required for all charter schools (Section 124D.10, subd.9).

[2] This preference is only required for a charter school that is located in a "town" that does not have a public school for the same grade.

Residential Preference to all kindergarten applicants that resided in Ramsey. (Complaint, March 6, 2008, p. 7.)

On April 15, 2008, PACT conducted its lottery for applicants for the kindergarten class of 2008-09. Look's son was chosen for admission in the random lottery and Look's claims arguably became moot. PACT then consented to the amendment of the complaint to add Look's attorney, John Dehen, as a plaintiff. Dehen's daughter had likewise applied for admission to the kindergarten class, but her application was not drawn high enough in the lottery to allow enrollment for the next school year. (Amended Complaint, May 1, 2008, p. 3.)

1. The word "town" has a clear and well-established meaning when used in Minnesota Statutes and is not ambiguous.

Appellant begins his argument at the end rather than the beginning of the proper analysis. He relies on extrinsic evidence to suggest some doubt about the legislature's intent in using the word "town." But Minn. Stat. § 645.16, provides that such extrinsic evidence cannot be considered if "the words of the law in their application to an existing situation are clear and free from all ambiguity." And, under case law, extrinsic evidence can only be used "to solve doubt, not to create it." *Rice v. City of St. Paul*, 208 Minn. 509, 519, 295 N.W. 529, 534 (1940) ("legislative history may not be used to support a construction which adds to, or takes from, the significance of the words employed").

The district court correctly found that the word "town," as used in Minnesota Statutes, is not ambiguous, but "is a term of art describing a specific form of local government." (A.6). Accordingly, the district court correctly concluded that it could not

consider extrinsic evidence and that the Residential Preference, which only applied to Charter Schools located in a town, did not apply to PACT because PACT is located in the City of Ramsey. (A 7).

Appellants are incorrect in suggesting that "[n]either party disputes that 'town' has more than one meaning." (Appellants' Letter Argument, p. 2). PACT has always argued that the word "town," when used in a statute, has a single, plain meaning that does not include cities. (RA 2, 10-13, 57 and 61-65). The statutory use of the word "town" is narrow and exclusive. Towns are "organized" by a petition to the County Board (Minn. Stat. § 379.01) and 45 statutory pages are devoted to describing the legal powers and attributes of a town (Minn. Stat. Chapters 365-368). The word "city" is also narrow and exclusive. A city is "incorporated" by submitting a petition to the director of the State Office of Strategic Long-Range Planning (Minn. Stat. § 414.02) and 71 statutory pages are devoted to describing the legal powers and attributes of a city (Minn. Stat. Chapters 410-416). When the legislature has intended to include all forms of local government, it has used broader terms such as "local governmental unit," which includes "any county, city, town, school district," etc. (Minn. Stat. § 473.121, subd. 6) or "municipality," which sometimes includes a town (Minn. Stat. § 462.352) but sometimes includes only cities and not towns (Minn. Stat. § 414.011).

The conclusion that the legislature uses the term "town" advisedly and narrowly is shown by legislative changes to the rules of statutory construction. Prior to 1941, those rules required the word "town" to be read to include cities unless that would be repugnant to the statute's intent. Minn. Gen. St. 1878, Ch. 4, § 1; 1927 Mason's Minn. Stat. 10933.

But that rule was repealed in 1941 and replaced by a rule that separated the definitions of the various forms of local government. 1941 Minn. Laws C. 492, §§ 46 (repealing Section 10933 of 1927 Statutes) and 44 ("When a county, town, city . . . is mentioned, without any particular description, it imports the particular county, town, city . . . appropriate to the matter"; now Minn. Stat. § 645.44, subd. 3 (2007)).

2. Appellants' "extrinsic" evidence is not probative.

When the words of a statute are clear, the court "has neither the need *nor the permission* to engage in statutory interpretation." *Mut. Serv. Con. Co. v. League of Minn. Cities Ins. Trust*, 659 N.W.2d 755, 760 (Minn. 2003) (emphasis added) (holding that a police squad car was not a "motor vehicle" under the no-fault insurance act because the legislature excluded vehicles with exempt plates). But even if extrinsic evidence were considered, the evidence offered by Appellants is not probative of a contrary legislative intent.

More specifically, the administrative interpretation of the statute by the Minnesota Department of Education is not entitled to deference where the question is a matter of law and the words of the statute are plain. *State v. Northwestern Bell Tel. Co.*, 304 N.W.2d 872, 876 (Minn. 1981) ("Administrative interpretations are not entitled to deference when they contravene plain statutory language . . ."). Further, legislative intent cannot be derived from the opinions of a single legislator, even the author of the law *In re Welfare of D.C.*, 486 N.W.2d 375, 381 (Minn. 1992) ("It is well established that a lone legislator is not competent to testify about the intent of a statute, even if he or she authored it.")

Appellants misread the Black's Law Dictionary definition of "town." Although that definition provides three alternative meanings, each is distinguishable from and excludes a city:

> "town. 1. A center of population that is larger and more fully developed than a village but that (traditionally speaking) is not incorporated as a city. 2. The territory within which this population lives. 3. Collectively, the people who live within this territory. Cf. CITY."[3] (Emphasis added.)

The "Cf. City" signal is used to identify a "related but distinguishable term." Guide to Black's Law Dictionary (8th Ed. 2004).

3. If the use of the word "town" was a legislative mistake, it is for the legislature to correct it.

Appellants suggest that the use of the word "town" conflicts with Senator Neuville's intent to have the law applicable to the City of Nerstrand and is too limiting because there are only six charter schools located in towns. If Senator Neuville chose a word that did not express his intent, he may have made a mistake. But, the other 200 legislators who voted on the bill did not know Senator Neuville's unexpressed intent. They did know what the word "town" meant when used in the statutes. In any event, it is for the legislature to determine whether a mistake has been made and whether it should be corrected. In fact, in the 2008 Session of the Legislature, a bill was introduced as Senate File 3871 that would have deleted the word "town" and substituted the word "municipality," effective for the 2008-2009 school year. This recognizes that the word

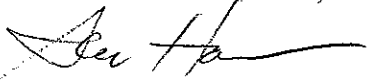
[3] The reference to "this population" in alternative 2 incorporates the definition of alternative 1 of a center of population that is "not incorporated as a city," and the reference to "this territory" in alternative 3 incorporates the definition of alternative 1 of a center of population "that is not incorporated as a city."

"town" is narrowly defined and does not include all municipalities. But the bill did not become law. The court should not make a revision that the legislature failed to make.

PACT relies on its memoranda to the district court, attached in the appendix. For the reasons detailed therein, and summarized here, the judgment of the district court should be affirmed.

Dated: 8-12-08

BRIGGS AND MORGAN, P.A.

By 

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