

**Suffolk County Community Coll. v County of
Suffolk**

2008 NY Slip Op 33064(U)

November 10, 2008

Supreme Court, Suffolk County

Docket Number: 15118-2008

Judge: Melvyn Tanenbaum

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XIII SUFFOLK COUNTY**

PRESENT:

Hon. MELVYN TANENBAUM
Justice

MOTION #001- CASE DISP _____
R/D: 042808
S/D 070208

SUFFOLK COUNTY COMMUNITY COLLEGE and the
BOARD OF TRUSTEES OF THE SUFFOLK COUNTY
COMMUNITY COLLEGE,

PLTF'S/PET'S ATTY:
GERMANO & CAHILL P.C.
4250 VETS MEM HWY, STE 275
HOLBROOK, NY 11741

Petitioner-Plaintiffs,

- against -

THE COUNTY OF SUFFOLK,

Respondent-Defendant.

DEFT'S/RESP'S ATTY:
CHRISTINE MALAFI, ESQ.
SUFFOLK COUNTY ATTORNEY
H. LEE DENNISON BUILDING
100 VETERANS MEMORIAL HIGHWAY
HAUPPAUGE, NY 11788

Upon the following papers numbered 1 to 15 read on this motion for an order pursuant to _____

Motion/Order to Show Cause and supporting papers 1-11 ; Notice of Cross Motion and supporting papers _____ Notice of
Affidavits and supporting papers 12-13 Replying Affidavits and supporting papers 14-15 Answering
_____ (and after hearing counsel in support and opposed to the motion) it is, Other

ORDERED that this CPLR Article 78 petition by petitioner SUFFOLK COUNTY COMMUNITY COLLEGE ("SCCC") and the BOARD OF TRUSTEES OF THE SUFFOLK COUNTY COMMUNITY COLLEGE ("BOARD") brought on by Order to Show Cause (Costello, J.) seeking an order and judgment pursuant to CPLR Sections 7801, 7803 & 7806 & 3001 in the nature of mandamus compelling respondent THE COUNTY OF SUFFOLK ("COUNTY") to comply with the requirements of Education Law Section 6304 and 8 NYCRR 600 et seq. and a judgment declaring the February 9, 1996 "Plan C Agreement" between the parties void and illegal is determined as follows:

Petitioner "SCCC" is a community college established in 1959 and governed by the State University of New York's ("SUNY") Board of Trustees pursuant to Article 126 of the Education Law. Pursuant to the provision of 8 NYCRR 600 et seq., the "SUNY" Board is authorized to adopt regulations governing the operations and financing of petitioner. The 30 New York State community colleges are funded by the state, the local sponsor and student tuition revenue. Respondent SUFFOLK COUNTY is "SCCC's" local sponsor and is required to provide at least one third or as much as is necessary to support the college. This proceeding questions the degree of administrative control exercised by the respondent over the college during the funding process.

On February 9, 1996 the parties entered into the "Plan C" Agreement which defines the present financing relationship between the "COUNTY" and "SCCC". The Agreement sets forth procedures for the college's operating and capital budget requests including the purchase of supplies and goods by "SCCC" through County contracts; monthly reports; use of the County Department of Law for legal services, use of the County Treasurer as the college treasurer and use of other County services. The Agreement provides that it may not be modified, amended or terminated without the consent of the County and "SCCC" subject to the approval of the County Legislature.

On July 18, 2007 and October 3, 2007 "SCCC" representatives met with "COUNTY" officials to formally request that the "Plan C" Agreement be terminated. On January 11, 2008 "SCCC" Board Trustees sent a letter to the Suffolk County Legislature demanding termination of the "Plan C" Agreement. The "COUNTY" has taken no action with respect to the "Plan C" Agreement.

This petition seeks an order in the nature of mandamus to compel the "COUNTY" to abide by the mandates set forth in Article 126 of the Education Law and a declaratory judgment declaring that the February 9, 1996 "Plan C" Agreement is null and void since it violates public policy. In support petitioners submit a verified petition and a verified reply together with an affidavit from "SCCC's" Chairman of the Board of Trustees and an affidavit from a member of the "SCCC" Board who served from 1991-2003. Petitioners claim that the 1988 amendments to Education Law Section 6304 together with the SUNY Board of Trustees amended 2003 regulations (8 NYCRR 600 et seq.) require termination of the "Plan C" Agreement since the Agreement is inconsistent with those laws. Petitioners maintain that under the terms of the Education Law Sections 6304 & 6306, the "COUNTY" does not have authority: 1) to assert line-item approval over the college budget; 2) to pre-audit approval of college expenditures; 3) to prohibit the "SCCC" Board from making intra-budget fund transfers; and 4) to otherwise control "SCCC's" fiscal affairs. Petitioners claim that the legislative intent of the 1988 Education Law amendments and the 2003 amended regulations (8 NYCRR 600 et seq.) was to guarantee the fiscal independence of community colleges and argues that the Court of Appeals decision in County of Westchester et al. v. Board of Trustees of the State University of New York, 9 NY3d 833, 840 NYS2d 746 (2007) upholds the regulatory plan granting college trustees control of the budget and operation of colleges.

Petitioners specifically claim that the "Plan C" Agreement violates the Education Law and SUNY regulations as a result of the "COUNTY's" interference with the administration of the college through imposing fiscal restraints and policy decisions which are solely the prerogative of the "SCCC" Board. Petitioners contend that the local sponsor is authorized to increase or decrease the lump sum of its annual contribution and to require periodic audits and reports but that the "COUNTY" cannot unilaterally modify line item appropriations from the college budget and cannot impose restrictions on the manner in which the college "BOARD" uses the County's funds once the appropriation has been completed. Petitioners assert that the "COUNTY's" refusal to recognize the fiscal independence of the College threatens "SCCC's" accreditation by the Middle States Commission on Higher Education ("MSCHE"). Petitioners claim that "MSCHE" representatives visited the college from March 4 through March 7, 2007 and issued a report which jeopardizes "SCCC's" accreditation based upon the "COUNTY's" excessive oversight and management of the college's fiscal affairs threatening the integrity of the college and required a monitoring report by September 1, 2008. It is petitioners contention that the threat of the loss of accreditation affects all "SCCC" students and has forced "SCCC" to commence this proceeding to terminate the "Plan C" Agreement.

Petitioners assert that by entering into the 1996 "Plan C" Agreement "SCCC" did not and could not waive its statutory rights under the Education Law, the SUNY Trustees regulations and the Court of Appeals decision in County of Westchester v. Board of Trustees of the State of New York since as fiduciaries of a government entity "SCCC" cannot contract away such rights. Petitioners claim that in order to maintain academic standards, public authorities responsible for the administration of state financed schools may not surrender statutory obligations. Petitioners contend that the entire "Plan C" Agreement is null and void and not severable in part. Petitioners claim that the "COUNTY" would retain its fiscal oversight authority pursuant to the requirements set forth in Education Law Section 6304 and 8 NYCRR 600.2.

In opposition respondent submits a verified answer and claims that the existing "Plan C" Agreement continues to define the commitment and obligations of the parties and argues that neither the 2003 SUNY Board of Trustees' Regulations nor the Court of Appeals decision in County of Westchester supra. invalidate the terms of the "Plan C" Agreement. Respondent claims that when the "COUNTY" and "SCCC" entered into the "Plan C" Agreement they intended to be bound by its terms irrespective of any changes in law. Respondent contends that the agreement is renewable yearly and may only be modified and/or terminated by legislative approval. Respondent claims that both parties to the 1996 agreement were aware that changes in law could occur and negotiated the contract terms intending to bind each other regardless of possible future changes in law. Respondent asserts that the Court should not invalidate the agreement or attempt to re-write its terms since the contract was intended to bind both parties. Respondent claims that even if the Court determines that certain provisions are invalid such finding does not warrant invalidating the entire agreement.

Respondent argues that the agreement is not contrary to public policy since it strikes a balance between the college's goals for fiscal autonomy and independence and the municipality's interest in maintaining a reasonable degree of influence to safeguard the public purse. Respondent denies that the intention of the statute (Article 126 of the Education Law) is to eliminate the municipality's oversight and argues that the existing agreement should not be rewritten merely because certain changes were enacted by the SUNY Board of Trustees seven years after the signing of the agreement. Respondent maintains that "SCCC's" remedy under the terms of the parties agreement is either to again exercise the termination option by convincing the County Legislature to pass a resolution terminating the agreement or to offer to negotiate amendments to the existing agreement to be approved by the Legislature. Respondent claims that there is no imminent threat to "SCCC's" accreditation since the "MSCHE's" 2007 report gave an overall highly positive evaluation to the college. It is respondent's position that although the report did criticize the "COUNTY's" level of fiscal oversight, "MSCHE" recommended renegotiating "Plan C" and did not state that the agreement must be dissolved.

CPLR Section 3001 provides:

Declaratory judgment.

The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further to render such a judgment it shall state its ground."

An action is justiciable when the controversy presented touches the legal relations of parties having adverse interests from which harm is presently flowing or could flow in the future in the absence of a court determination of the parties' rights. The controversy must be capable of disposition and be presented in an adversarial context with a set of concrete facts (GOODWILL ADVERTISING v. STATE LIQUOR AUTHORITY, 14 AD2d 658, 218 NYS 2d 759 (3rd Dept., 1961)).

Petitioners have submitted sufficient evidence to prove that a justiciable action exists based upon the issue of whether the "Plan C" Agreement entered into by the parties must be invalidated as a result of changes in the law subsequent to the 1996 agreement.

Mandamus may be granted only to enforce a clear legal right (Klosterman v. Cuomo, 61 N.Y. 2d 525, 539 475 N.Y.S. 2d 247, 254 (1984); Matter of Legal Aid Society v. Sheinman, 53 N.Y. 2d 12, 16, 439 N.Y.S. 2d 882 (1981). It issues to compel the performance of official duty clearly imposed by law where there is no other adequate remedy (Hamptons Hospital & Medical Center v. Moore, 52 N.Y. 2d 88, 436 N.Y.S. 2d 239 (1980)). The duty must be positive and not discretionary, since mandamus does not lie to review the determination of public officers in matter involving the exercise of discretion or judgment (N.Y. State Inspection, Security & Law Enforcement Employee v. Cuomo, 103 A.D. 2d 312, 480 N.Y.S. 2d 1 (2nd Dept., 1984) aff'd 64 N.Y. 2d 233, 485 N.Y.S. 2d 719 (1984)).

As the Court of Appeals explained in KLOSTERMAN v. CUOMO, supra:

"What must be distinguished are those acts the exercise of which is discretionary from those acts which are mandatory but are executed through means that are discretionary. For example, the decision to prosecute a suit is a matter left to the public officer's judgment and therefore cannot be compelled (citation omitted). In contrast, when a town council is directed by statute to designate up to four newspapers having the largest circulation for the purpose of receiving city advertising, the court can compel the council to execute its statutory duty, but it may not direct the particular papers to be named" (citation omitted) (ID at 539).

Education Law Section 6304 (b) provides:

6. The local legislative body or board, or other appropriate governing agency, other than a community college regional board of trustees, shall provide the local sponsor's share of the community college operating and capital costs in conformance with such sponsor's annual budgetary appropriation, and shall direct that payment of all appropriations for maintenance of the college be made to the board of trustees of the college for expenditure by the board, subject to the terms and conditions of such appropriations appearing in such budget and to such local legislative body or board, or other appropriate governing agency, may deem proper to carry out the terms of the budget; provided that any local sponsor which, as of January first, nineteen hundred eighty-eight, provided for audit and payment of charges against the community college in the same manner as it provides for other charges against the local sponsor, may continue to do so for a period not to extend beyond September first, nineteen hundred eighty-nine.

Such local legislative body or board, or other appropriate governing agency, shall authorize the board of trustees of the college to elect a treasurer, establish a bank account or accounts in the name of the college and deposit therein moneys received or collected by the college, including moneys appropriated and paid by the local sponsor, moneys received from tuition, fees, charges, sales or products and services. And from all other sources. The board of trustees of the college shall, subject to the requirements specified in or imposed pursuant to this subdivision, authorize the treasurer to pay all proper bills and accounts of the college, including salaries and wages, from funds in its bills and accounts of the college, including salaries and wages, from funds in its custody. The treasurer shall execute a bond or official undertaking to the board of trustees of the college in such sum and with such sureties as that board shall require, the expense of which shall be a college charge.

The board of trustees of the college similarly shall authorize the treasurer to establish and maintain petty cash funds, not in excess of two hundred dollars each, for specified college purposes or undertakings, from which may be paid, in advance of audit, properly itemized and verified or certified bills for materials, supplies or services furnished to the college for the conduct of its affairs and upon terms calling for the payment of cash to the vendor upon the delivery of any such materials or supplies or the rendering of any such services. Lists of all expenditures made from such petty cash funds shall be presented to the board of trustees at each regular meeting thereof, together with the bills supporting such expenditures, for audit and the board shall direct reimbursement of such petty cash funds from the appropriate budgetary item or items in an amount equal to the total of such bills which it shall so audit and allow. Any of such bills or any portion of any of such bills as shall be disallowed upon audit shall be the personal responsibility of the treasurer and such official shall forthwith reimburse such petty cash fund in the amount of such disallowances.

Education Law Section 6306 (2) provides:

2. The board of trustees of each community college shall appoint a president for the college, subject to approval by the state university trustees, and it shall appoint or delegate to the president the appointment of other members of the staff. The staff of a community college shall consist of the professional service and the non-professional service. The professional service shall include positions requiring the performance of educational functions in agriculture, home economics, liberal and applied arts and sciences, engineering, technical skills, crafts, business education, medicine, dentistry, nursing, academic administration, library service, student activities, student personnel services, and other professions required to carry on the work of the community colleges. The non-professional service shall consist of all positions not in the professional service. The board of trustees of each community college shall adopt curricula, subject to the approval of the state university trustees, prepare a budget and, with the exception of community college regional boards of trustees, submit such budget for approval by the local legislative body or board, or other appropriate governing agency and, subject to the general supervision of the state university trustees, discharge such other duties as may be appropriate or necessary for the effective operation of the college. . .

8 NYCRR § 600.2 provides:

§ 600.2 Introduction.

(a) The local sponsor shall be responsible for establishing the college, providing local financing, accepting title to college real property to be held in trust for the college's use and purposes, approving the budget total, and selecting the prescribed procedures for the audit of college funds.

8 NYCRR § 602.9 (a) provides:

§ 602.9 (a) Amendments to college operating budget requests.

(a) Within the total approved college operating budget, the college trustees may transfer appropriations from one function or object of expense account to another.

8 NYCRR § 604.1 provides:

§ 604.1 Responsibilities and duties of the local sponsor.

(b) Financing of the college. The sponsor, in approving the college budget shall provide one half (50%) or so much as may be necessary, of the amount of the capital costs, and at least one third (33.3%) or, in the case of a college implementing an approved plan of full opportunity, four fifteenths (26.7%), or so much as may be necessary, of the annual operating costs. Approval of the college budgets shall be in accordance with provisions of the standards and regulations of the State University trustees. The expenditure of budgeted funds shall be in accordance with the alternative auditing plans described in article 126 of the New York State Education Law. In addition, upon approval of the college's budget, the sponsor's governing body shall direct that payment of all sponsor appropriations for the community college be made within the college's fiscal year to the college's board of trustees for expenditure by the board and without pre-audit by the sponsor.

The issue presented is whether significant provisions of the 1996 "Plan C" Agreement violate the requirements of Education Law Sections 6304 & 6306 and sections of the SUNY Board of Trustees' regulations pursuant to 8 NYCRR 600 et seq., and if so, whether the "Plan C" Agreement must therefore be terminated.

The evidence shows that the "Plan C" Agreement contains numerous provisions clearly in conflict with the Education Law statute and the SUNY Board Regulations. Those provisions include:

Section 3(b) which provides that the college budget is subject to the Suffolk County Legislature's authority and discretion "as it (the Legislature) may deem proper to carry out the terms of the budget";

Section 3(c) provides that appropriation payments are to be made on an "as-needed" basis to be determined not by the college, but by the Suffolk County Executive, the college and the Suffolk County Treasurer (or "any two of them");

Section 3(e) provides that the college Trustees are obligated to notify the Suffolk County Executive and Suffolk County Legislature of budget alterations concerning college personnel within five days;

Section 4(b) restricts the college's authority to purchase items costing more than \$2500.00 to oversight by the County Department of Audit & Control;

Section 9(a) limits the college's ability to transfer in excess of \$10,000.00 "between and within appropriation" absent approval from the Suffolk County Executive's Office; Section 9(a) limits the college's ability to make such transfers to "not exceed 10% of the total college operating budget;

Section 10 denies the college the authority to fill employment vacancies not included in the operating budget;

Section 12 provides that the Suffolk County Executive may request that the college submit a written cost reduction plan seeking approval from the Suffolk County Legislature;

Section 14 grants authority to the Suffolk County Attorney to approve or disapprove the college's selection of counsel in certain situations;

Section 17 provides that the Suffolk County Department of Audit and Control approve college payroll procedures and services;

Section 22 designates the Suffolk County Comptroller as the college's chief fiscal officer;

Each of the provisions (recited above) conflict with the statutory and regulatory authority granted the College Board of Trustees pursuant to Education Law Sections 6304 (2)(4)&(6); 6306(2)&(7) & 8 NYCRR Sections 600.2(a);602.3(e); 602.9(a) & 604.1(b) and the Court of Appeals dicta in County of Westchester v. State University of New York, 9 NY3d 833, 840 NYS 2nd 746(2007) where, in ruling that the 2003 amended regulations "are not inconsistent" with the Education Law provisions, stated that "the effect of the amendments to the regulations was to eliminate a local sponsor's authority to veto line-item appropriations in a community college budget as proposed by the college's board of trustees, and to permit college boards of trustees to transfer appropriations among budget items without the local sponsor's approval." (id at 834-835). The sole issue to be determined therefore is whether the 1996 "CCUNTY/SCCC" Agreement remains enforceable since many of its provisions grant the respondent "CCUNTY" fiscal and managerial authority which are vested by statute and regulation in the petitioner COLLEGE BOARD OF TRUSTEES.

Freedom to contract between and among private parties is a bedrock principle of the American marketplace. American citizens enjoy a largely unlimited opportunity to exchange goods and services the benefits of which have contributed to our unprecedented high standard of living. Freedom to contract may however be limited when public authorities become involved since governmental entities have responsibilities beyond those of private individuals or corporations. Public authorities responsible for the administration of public school matters are subject to certain restrictive policies which reflect governmental interests and public concerns (Board of Education v. Areman, 41 NY2d 527, 394 NYS2d 143 (1977); Matter of Mehan v. Nassau Community College, 152 AD2d 313, 548 NYS2d 741 (2nd Dept., 1989)). As public servants College Boards of Trustees have a nondelegable responsibility to oversee, establish and maintain academic standards and their authority to contract away certain administrative and managerial duties is

limited (Board of Education v. Areman, supra.). Petitioners contend that the Education Law and Trustee Regulations now mandate that fiscal duties and responsibilities ceded to the respondent in the “Plan C” Agreement are no longer enforceable since such provisions implicate the academic integrity and independence of the college. Respondents claim that the College is free to enter into a cooperative contract which contains provisions that conflict with the statute and regulations provided the agreement is financially beneficial to the parties and taxpayers.

There can be no dispute that the present “Plan C” Agreement grants the respondent “COUNTY” financial and managerial discretionary authority which usurp petitioners statutory and regulatory powers (see Education Law Section 6304 & 6306). Such provisions are not legally sustainable since they grant the “COUNTY” fiscal management authority which the Education Law clearly requires be vested in the College Trustees. Although the “COUNTY” argues that the intent of these contractual provisions is solely for the public good to reduce costs, their implementation affects the academic integrity of the college since the agreement permits the local sponsor to make and/or influence educational decisions with respect to hiring personnel, purchasing items, appointing counsel and monetary allotments clearly beyond their statutory authority. As public officials responsible for a community college’s operations the Trustees can neither waive nor bargain away such duties and responsibilities imposed upon them by the Education Law. Nor is there any legal right for a local sponsor to assume such authority claiming it can do so for the public good without regard to the legislative plan which grants to the college the right to make independent academic decisions and grants to the local sponsor fiscal oversight of the overall budget.

The Court of Appeals decision in County of Westchester v SUNY, supra. in upholding the statutory and regulatory plan, confirmed that the plan permits greater fiscal independence for community colleges, eliminates the local sponsor’s authority to veto line-item appropriations from the college’s budget and enables college boards of trustees to transfer appropriations among budgeted items without the local sponsor’s approval. Moreover petitioners have submitted relevant evidence that the “Plan C” Agreement’s implementation has had a detrimental impact on “SCCC’s” accreditation based upon the Middle States Commission on Higher Education report which criticized the respondent’s excessive oversight and management of the college’s fiscal affairs as threatening the college’s academic integrity. Based upon this record there exists no basis to permit validation of an Agreement which is inconsistent with and violates substantial terms of the statutory and regulatory framework enacted pursuant to Education Law Sections 6304 & 6306 and 8 NYCRR 600 et seq.). The “Plan C” Agreement must therefore be declared invalid and unenforceable in its entirety. Petitioner’s application for a writ of mandamus is granted to the extent that the parties are directed to be in compliance with the requirements set forth pursuant to Education Law Sections 6304 & 6306 and the regulations set forth pursuant to 8 NYCRR 600 et seq. Accordingly it is

ORDERED and ADJUDGED that petitioner’s CPLR Article 78 petition -declaratory judgment application is granted. Enter judgment declaring that the 1996 “Plan C” Agreement is invalid, unenforceable and void and a judgment of mandamus ordering compliance by the respondent with the statutory provisions of Education Law Sections 6304 & 6306 and 8 NYCRR 600 et seq..

Date d: November 10, 2008

MELVYN TANENBAUM

J.S.C.