

IN THE  
COMMONWEALTH COURT OF PENNSYLVANIA

EDWARD JENNINGS AND  
MARY JENNINGS et al.,  
Plaintiffs

v.

PENNSYLVANIA HUMAN RELATIONS  
COMMISSION,  
Defendant

No. 978 C. D. 1975

PENNSYLVANIA HUMAN RELATIONS COMMISSION'S  
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS'  
ACTION SEEKING FINAL INJUNCTION

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ARGUMENT

- I. THE PROPOSED PLAN FOR THE DESEGREGATION OF THE PHILADELPHIA PUBLIC SCHOOLS WHICH WAS SUBMITTED TO THE COURT ON JULY 7, 1975 PURSUANT TO JUDGE WILKINSON'S ORDER OF OCTOBER 1, 1974 WAS NOT ADOPTED IN VIOLATION OF THE SUNSHINE ACT

The Pennsylvania Human Relations Commission believes and submits that the proposed plan submitted to the Court on July 7, 1975 pursuant to Judge Wilkinson's Order of October 1, 1974 was not adopted in violation of the Sunshine Act. The Commission believes and submits that the action of the Commission in developing and adopting the plan for submission to Judge Wilkinson

falls within the exemption the Sunshine Act grants to "formal action by the judiciary or judicial branch." Further, the Commission believes and submits that the activity of the Commission in developing the proposed plan does not constitute that "setting of any official policy" required to bring an action within the Sunshine Act but was rather, pursuant to the Order of the Court, another step in its exhaustive effort to implement and enforce long and clearly established Commission policy against de facto segregation in public education.

Judge Wilkinson's Order of October 1, 1974 involved for the Commission essentially a technical task, the "policy" considerations long having been established and set forth in the Commission's Desegregation Guidelines and its Recommended Elements of a School Desegregation Plan and the Commission's Final Order. Please see the Commission Memorandum of Law in Opposition to the Complaint in Equity seeking a Preliminary Injunction which was submitted to the Court prior to the Hearing of July 24, 1975 for a full discussion of these points.

The Plaintiffs of course argue that the closed meeting of June 29, 1975 at which the Commission considered and discussed the plan in detail was in fact within the purview of the Sunshine Act. Even assuming arguendo that the Commission's interpretation of the applicability of the Sunshine Act is incorrect and the exemption for actions of the judiciary does not apply and its preparation of

the plan pursuant to Judge Wilkinson's Order of October 1, 1974 was the setting of official policy under the Sunshine Act, this error would have been cured by the action of the Commission on June 30, 1975 of voting upon and adopting the plan.

In Erie Municipal Airport Authority vs. Automation Devices, Inc., 325 A. 2d 501 (1974), this Court assumed arguendo that a resolution passed by the Erie Municipal Airport Authority was voidable because it was not adopted in compliance with the similar Open Meetings Act, 65 P.S. §251, but held that the subsequent vote of the Authority at a later meeting cured the error.

That the ratification occurred after the instant action was filed and apparently in reaction to appellee's defense that the original resolution violated the Right to Know Act does not alter its effectiveness.

Although the Commission was not, as we have shown, required to adopt its proposed plan in accordance with the procedures of the Sunshine Act, it in fact did so. The plan was adopted at a public meeting of the Commission on June 30, 1975, which complied in all respects with the requirements of the Sunshine Act.

Indeed the Commission throughout its involvement with the School District of Philadelphia has conducted its activities fully in keeping with the obvious purpose of the Sunshine Act of avoiding government taking action in secret and affording to the public the

opportunity to scrutinize the activities of government and to influence or challenge governmental policies and action through established channels.

Although the Sunshine Act does not afford the public the right to participate in meetings of governmental bodies, the Commission has adopted rules permitting such participation. Indeed, as acknowledged by the Plaintiffs at the preliminary injunction hearing, the Plaintiff Jennings and the Plaintiff Netzel each addressed the Commission at its public meeting of June 30, 1974 after having heard the lengthy presentation of Dr. Foster about the plan. Each Plaintiff expressed the strong opposition of the organization they represented, the Citizen's Committee for Preservation of Neighborhood Schools, and themselves to the Commission's proposed plan and to any plan which would include substantial non-voluntary busing of children out of their school neighborhood. Nine months prior to the appearance of Plaintiffs Jennings and Netzel, two other representatives of the Plaintiff organization appeared at the October 1, 1974 meeting of the Commission and voiced their opposition to Commission desegregation policy as set forth in Commission's Final Orders against the Philadelphia School District and its Petition to this Court seeking enforcement of its Orders.

The Commission policy with respect to school desegregation has been to order a school district found to be in violation of the Human Relations Act to prepare and submit a desegregation plan. The Commission so ordered the Philadelphia School District on June 7, 1971.

Almost five years later, the School District has not submitted an acceptable plan. The record in this case strongly reflects the patience and forbearance exercised by the Commission and this Court in the face of delay, misrepresentation and non-compliance by the School District. The timetable in the final order for school desegregation has long since passed.

With this background, the Court on October 1, 1974, having repeatedly ordered the School District to submit a plan which complied with the Commission Amended Final Order, again directed the School District to submit its own plan. This time, in addition, it ordered the Commission to prepare a plan which would carry out the provisions of the Commission's own Final Order.

The Commission Final Order, it should be recalled, required the plan to "eliminate the racial imbalance" in the School District. Judge Wilkinson's Order of October 1, 1974 directed the parties to prepare "definitive plans for the desegregation of the public schools of Philadelphia."

The Commission, whose Petition to Enforce its Amended Final Order triggered this entire process culminating in the October 1, 1974 Order, was not being asked to formulate a new policy to deal

with the unlawful segregation in the Philadelphia School District. It was being asked to assist the Court in its efforts to obtain compliance with the Commission Final Order by drawing up for the first time a plan to carry out the Commission's long-standing policy.

The Plaintiffs are on record, and have vigorously informed the Commission, as strongly opposed to any plan that would require so-called "forced busing" of students to schools other than their neighborhood schools. It is apparent that the racial imbalance of the Philadelphia Schools cannot be eliminated without substantial busing. In any event, Section 9 of the Pennsylvania Human Relations Act vests in the Commission the authority to order such affirmative action which in its judgement effectuates the purposes of the Act.

In addition, the Plaintiffs were granted leave to intervene in the enforcement proceeding against the Philadelphia School District. As such, they participated as a party in the evidentiary hearing on the plans submitted by the Commission and the School District and in the argument before the Court en banc. They and the public have been afforded every opportunity to address the merits of the Commission's proposed plan and to attempt to influence the Court's policy.

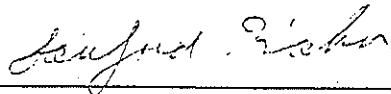
The Plaintiffs seek an injunction barring the Court from considering the Commission's proposed plan. Such an order would of course only further delay and frustrate the efforts of the Court, as well as of the Commission.

CONCLUSION

The Commission respectfully submits that its analysis of the applicability of the Sunshine Act is correct. Even if the Chancellor disagrees, it is hoped that the Chancellor will find that the Commission acted in good faith and that its view of the law was reasonable.

The Commission respectfully prays the Chancellor, in balancing the equities of this matter, to weigh what is at most a technical violation of the Sunshine Act, where there has been no reasonable showing of injury suffered by the Plaintiffs, against the public interest in securing compliance with the Order of the Court, and to dismiss this complaint and deny the relief prayed for.

Respectfully submitted,



SANFORD KAHN, General Counsel

2/11/76

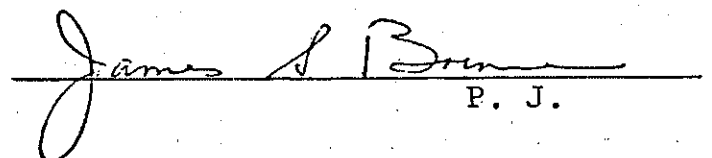
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PENNSYLVANIA HUMAN RELATIONS :  
COMMISSION, :  
Defendant : NO. 978 C. D. 1975

ORDER

NOW, July 10, 1975, upon consideration of plaintiffs' application for preliminary injunction, hearing thereon is hereby fixed for July 24, 1975, at 11:30 a.m., in Courtroom Number One, Sixth Floor, South Office Building, Harrisburg, Pennsylvania.

Plaintiffs shall promptly serve defendant or its counsel with a copy of this Order and shall thereafter promptly file of record an affidavit of service of same.

  
P. J.