

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

AND  
ENTERED  
ON Oct 19 2002  
WESTCHESTER  
COUNTY CLERK

-----X  
PHILIP B. CHRISTE,

Petitioner,

**DECISION & ORDER**

-against-

Index No. 9855/02

THE BEDFORD CENTRAL SCHOOL DISTRICT  
BOARD OF EDUCATION,

Verified Petition dated: 6/5/02

Respondent.  
-----X

The following papers, numbered 1- 55, were read on Petitioner's application, by Verified Petition, for an Order and Judgment pursuant to CPLR Article 78, directing the Bedford Central School District Board of Education to conform fully with Public Officers Law, Article 7, Open Meetings Law, enjoining the Respondent from implementing Policy 5110 Attendance, and for such other and further and different relief as this Court may deem just and proper, together with costs, disbursements and fees.

Papers Numbered

Notice of Petition/Verified Petition/Exhibits A-C	1-6
Respondent's Verified Answer/Exhibits A-F	7-20
Respondent's Memorandum of Law	21-34
Petitioner's Reply/Memorandum of Law	35-45
Respondent's Responsive Affidavit/ Exhibits 1-4	46-52
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The Respondent conducts meetings of both its Board of Education (hereinafter the "Board") and also schedules meetings of its Finance Subcommittee. Admittedly, the provisions

of Article 7 of the Public Officers Law (the "Open Meetings Law") apply to meetings of both of these bodies. Petitioner now alleges that the Respondent is in violation of the Open Meetings Law by having a full quorum of Board of Education members attend Finance Subcommittee meetings, and by the Board's establishing a policy that its members are to be considered ex-officio members of all standing and special committees of the Board. Petitioner further alleges that these actions have been taken intentionally to permit the Board to conduct public business under the guise of the Finance Subcommittee in violation of the Open Meetings Law. Petitioner requests that this Court direct the Respondent to cease and desist conducting subcommittee meetings when a quorum of members of the Board are present, and to enjoin the Respondent from implementing its policy of declaring Board members to be ex-officio members of all subcommittees.

Respondent admits that four or more of its Board members were present at Finance Subcommittee meetings, and that the Board adopted the aforementioned policy, but specifically denies that the members of the Board gathered intentionally at the Finance Subcommittee meetings to conduct public business in violation of the Open Meetings Law. In addition to asserting that the Petitioner does not have the standing to institute the instant proceeding, Respondent goes on to claim that even if the Petitioner is found to have standing, the Petition fails to state a cause of action as a duly called meeting of the Financial Subcommittee, which consists of members of the Board, does not transform itself into a full meeting of the Board, due to the fact that a quorum of Board members are present. Furthermore, the assertion is made that the Board and its Financial Subcommittee have conducted business in compliance with all statutory mandates under the Open Meetings Law.

As an Affirmative Defense, Respondent asserts that Petitioner has not established that he has standing to bring the instant proceeding in accordance with Public Officers Law Section 107.

Public Officers Law Section 107 provides, in relevant part, that:

"Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules....."

The threshold issue for this Court to consider is whether the Petitioner fits the definition of an aggrieved person under the statute. As there is an absence of precedent under this statute as to the definition, this Court will look to other sources. An aggrieved party has been defined as one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly affected by a decree or judgment. BLACK'S LAW DICTIONARY 60 (5<sup>th</sup> ed. 1979) The word "aggrieved" refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation. BLACK'S, *supra*. For a person to be "aggrieved" under Town Law §267 and Village Law §7-712, it must be demonstrated that the person has been personally and adversely affected by the administrative determination. Douglaston Civic Association, Inc., et al. v. Thomas F. Galvin et al., Constituting the Board of Standards and Appeals of the City of New York, 324 N.E. 2d 317, 364 N.Y.S. 2d 830. This

Court submits that this Petitioner is not an "aggrieved" person under the Public Officers Law. Petitioner is not a resident within the Bedford Central School District, a fact which although not specifically admitted, is not denied, and is confirmed on his 2001 Federal Income Tax return, listing a home address of 53 Ironworks Hill Road, Brookfield, CT 06804. What Petitioner proffers to this Court as his legal standing to pursue this proceeding, is his "taxpayer" status by virtue of having an ownership interest in a limited liability company (hereinafter an "LLC") known as 295 Main, LLC, which owns property and has offices at 295 East Main Street, Mount Kisco.

As a general rule, a member of an LLC does not have personal liability for the debts, obligations or liabilities of the LLC, unless the operating agreement of the LLC provides otherwise. See, Limited Liability Company Law, 2001 Practice Commentaries by Bruce A. Rich and Cheryl Parsons-Reul, 5. D by at 15. Under the facts here, as the owner of property within the Bedford Central School District, it is the LLC that is charged with tax obligations, and, thus it is the LLC that has a stake in the procedures and the decisions of the Respondent, and consequently, whose pecuniary interest may be adversely affected by any decision. Although directed to by this Court to submit the operating agreement of the LLC, the Petitioner has failed to do so, leaving this Court no other alternative than to determine that it is the LLC, not the Petitioner who has standing to bring this proceeding. Since Petitioner, as an individual, is neither a resident of, nor can be classified as a taxpayer within the district in which the Respondent has jurisdiction over, he does not fit the definition of an "aggrieved" person under Public Officers Law §107, and cannot, therefore, as a matter of law, institute this proceeding.

Petitioner's application also falls short on the merits as it relates to the Open Meetings Law as he has not set forth a sufficient factual basis upon which to find that the Respondent acted in violation of it. Not only did Petitioner freely attend Finance Subcommittee meetings, but he fails to show how any action of the Respondent and/or this subcommittee was taken in violation of that law.

NOW, THEREFORE, it is hereby

ORDERED, that the Petition of Philip B. Christie, verified June 7, 2002, and filed under Index No.9855-02, is hereby dismissed pursuant to CPLR §7806; and it is further

ORDERED, that the application by the Respondent for costs and disbursements incurred in the defense of this proceeding is hereby granted and Respondent shall have judgment thereon upon submission of a Bill of Costs, to be filed with this Court on or before November 1, 2002.

Dated: White Plains, New York  
October 18, 2002



HON. BRUCE E. TOLBERT, A.J.S.C.

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