

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

GENEVA PRINTING CO. and DONALD C.
HADLEY,

Petitioners,

Index No.

-vs-

7510/81

SOUTH SENECA CENTRAL SCHOOL DISTRICT;
SOUTH SENECA BOARD OF EDUCATION; and
PRESIDENT, SOUTH SENECA BOARD OF
EDUCATION,

Respondents.

APPEARANCES:

NIXON, HARGRAVE, DEVANS & DOYLE
ROBERT C. BERNIUS, ESQ., Of Counsel
Attorneys for Petitioners

ARTHUR J. GOLDER, JR., ESQ.
Attorney for Respondents

D E C I S I O N

RICHARD D. ROSENBLOOM, J.

This is an application by petitioners pursuant to CPLR Article 78 and Public Officers Law Section 89(4)(b) to vacate a determination by respondents denying petitioners' request for a copy of a certain record. Respondents contend that the record requested is a personnel record and is inter-agency material which is exempt from disclosure under the Freedom of Information Law.

The record in question was created as a result of discussions between the Superintendent of respondent South Seneca Central School District, Harold E. Weibezahl, and James D. Tyler,

Principal of South Seneca Central High School. Weibezahl originally determined not to recommend Tyler for tenure. This fact and the reasons for his decision were the subject of news articles in the Finger Lakes Times, published by petitioners. Thereafter, Weibezahl changed his earlier determination and decided to recommend Tyler for appointment on tenure based on a "memorandum of understanding" signed by the two men. Petitioners' request for this memorandum was denied by respondents as was petitioners' appeal of that determination. An advisory opinion of the State of New York Committee on Public Access to Records concluded that the memorandum should be made available.

The Freedom of Information Law makes records of governmental agencies available for public inspection unless they come within an exemption provided by statute. The burden of proving entitlement to an exemption falls on the person asserting the exemption. (Public Officers Law Section 89(4)(b); Westchester News v. Kimball, 50 NY2d 575). In order for disclosure to be withheld, the material requested must fall squarely within the ambit of one of the statutory exemptions. (Fink v. Lefkowitz, 47 NY 2d 567).

The Committee on Public Access to Records was created by the Legislature to furnish advisory guidelines and opinions and to promulgate rules and regulations to implement the statute. (Public Officers Law Section 89(1)(b)). The Committee's inter-

pretation of the statute should be upheld, if not irrational or unreasonable. (Miracle Mile Assoc. v. Yudelson, 68 AD2d 176). Respondents have not demonstrated that the Committee's opinion in favor of disclosure is irrational or unreasonable.

The Court has made an in camera inspection of the "memorandum of understanding." It includes Weibezahl's evaluation of Tyler's professional performance and sets forth goals and expectations for the future. Respondents initially withheld disclosure on the grounds that the memorandum was a part of Tyler's personnel record. The document in question clearly addresses matters that are relevant to the performance of Tyler's official duties for the school district and therefore does not constitute an unwarranted invasion of personal privacy. (See Gannett Company v. County of Monroe, 59 AD2d 309, aff'd, 45 NY2d 954).

The principal justification relied on by respondents is that the memorandum is inter-agency material which is not statistical or factual tabulations or data, instructions to staff that affect the public or final agency policy for determinations. The crux of the memorandum is the direction and instructions given Tyler as to the performance of his job. The principal of a high school obviously deals regularly with teachers, the board of education and children enrolled in the school and instructions as to the performance of his duties must necessarily affect the public. Furthermore, the memorandum is the foundation for

Weibezahl's recommendation and the subsequent approval of respondents and therefore it constitutes a final agency determination.

Respondents have failed to establish that the record in question is exempt from the strong public policy in favor of free access to the records of government as expressed in the Freedom of Information Law. Respondents' decision denying petitioners' request for disclosure is vacated and respondents are directed to furnish a copy of the "memorandum of understanding" to petitioners forthwith. In addition, petitioners are entitled to the cost and disbursements of this proceeding.

Submit order.

Signed at Rochester, New York this ~~12~~ day of July 1982.



RICHARD D. ROSENBLOOM, J.S.C.