North Jersey.com

Opinion: The long and winding road to school funding

Friday, April 15, 2011

BY CARL GOLDEN
The Record
Carl Golden, former press secretary for Govs. Thomas H. Kean and Christine Todd Whitman, is a s enior contributing analyst with the William J. Hughes Center for Public Policy at Richard Stockton College.

ABBOTT V. BURKE has become New Jersey's political version of "War and Peace" — a tale spanning decades, involving hundreds of characters, palace intrigue and a convoluted plot.

The opening lines in the next chapter will be written soon, when the Christie administration presents its argument in state Supreme Court that last year's reductions in state aid to public education did not violate New Jersey's constitution.

The administration will attempt to persuade the court to modify the recent findings by Superior Court Judge Peter Doyne, appointed by the high court as a special master to hear testimony in litigation that challenged the aid cuts. Doyne found the reductions to be unconstitutional — largely because of their disproportionate impact on low-income districts — but did not offer any remedy.

Retaining former Supreme Court Associate Justice Peter Verniero to present the state's case was a wise move by the administration, given Verniero's intimate knowledge of the issue (he argued on behalf of the state in a 1998 school funding case), as well as his particular insight into the working of the court.

Origins in 1972 battle

The initial challenge to the method by which the state provides financial support to local s chool districts came in 1972 and, since then, some 20 cases have been heard and decided. Virtually all turned on the question of whether state funding to at-risk districts — largely urban areas without the wherewithal to support local education on their own — was sufficient to provide students with a quality of education equivalent to their suburban neighbors.

Two years ago, the Supreme Court approved a revised funding formula, declaring it constitutional provided it was fully funded. With the aid cuts implemented last year, opponents argued it violated the court's finding and Doyne agreed.

Doyne rejected the state's assertion that it could not be clearly demonstrated that money translated into more favorable student outcomes and pointed out several times that the state had argued the opposite position two years earlier in its defense of the funding formula.

"Ironies abound," was the phrase he employed in his report.

He was sympathetic — indeed, on the verge of apologetic — in acknowledging the state's fiscal distress and taking specific note of the difficult challenges involved in supporting government's myriad activities and responsibilities at a time when resources had declined sharply as a result of an unprecedented national economic downturn.

His role, however, was limited to a determination of constitutionality and did not extend to offering recommendations to overcome the deficiencies he found.

The state Supreme Court, of course, is back

on familiar ground. It has been the arbiter of education funding challenges since the last quarter of the last century and has, in point of fact, been the driving force in determining the appropriate level of state aid during that time.

It is this latter fact which so infuriates the court's critics who accuse it of supplanting the executive and the Legislature — the branches of government elected by the people — and directing how much public money should be spent and where.

Critics have continually pointed out that because of the court's actions, 5 percent of school districts receive more than 50 percent o f the state aid and that per-pupil expenditures in some of those districts exceeds $25,000, while student performance has shown little significant improvement despite spending those sums.

The court's composition

The governor has expressed much the same sentiment, suggesting the only way to change

the court's approach was to change the court's composition, an action reserved to him through the authority to nominate its members.

The court has a great deal at stake as well. While it may agree with the sympathy expressed by Doyne over the state's difficult financial condition, its lengthy history in dealing with the funding issue cannot be discarded or ignored without dramatically undermining, if not destroying altogether, its credibility.

The four decades worth of established precedent was built one case and opinion atop another, and it is highly unlikely that the current court would move to knock the props out from beneath that history.

Both the governor and Verniero, whose lives and careers have been involved in the law, have a deep respect for the institution and understand more than most the sanctity of legal precedent and why it would not be overlooked by the court.

It has used the constitutional mandate for