

## BOARD'S RIGHT TO CENSURE OWN MEMBER UPHOLD

A recent decision of the Vermont Supreme Court upheld the right of a school board to censure one of its members. *LaFlamme v. Essex Junction School District and Essex Junction Prudential Committee*, No. 97-493 (Jan. 21, 2000). In Essex Junction, the Prudential Committee (hereafter "Committee") functions as the school board.

Over a period of time, other Committee members had found Mr. LaFlamme disruptive and difficult to work with. Among other things, he had made statements that they believed were inaccurate and offensive at a meeting of the Village Board of Trustees meeting. The Committee members tried to discuss these and other issues with Mr. LaFlamme, but were unsuccessful. They therefore explored the possibility of censuring him, and consulted with legal counsel. Two Committee members then drafted a censure motion.

At a subsequent regular Committee meeting, the Committee presented Mr. LaFlamme with the censure motion in executive session. The motion proposed to censure Mr. LaFlamme for violating the Vermont School Boards Association and National School Boards Association "Code of Ethics, district policy, and standards of good boardsmanship." Among other specific things, the motion stated that he had failed to uphold the following tenets of the codes of ethics: "(1) Attend all regularly scheduled board meetings insofar as possible, and become informed concerning the issues to be discussed . . . Mr. LaFlamme . . . failed to attend executive sessions at which information critical to sound decision-making was presented. (2) Abide by board decisions regardless of how individuals voted. Mr. LaFlamme spoke publicly against the board-approved draft budget. . . . (3) Listen to legal counsel and constructive criticism to protect the board and the school system from liability. Mr. LaFlamme has made public unsubstantiated allegations which have exposed the district to liability." Additional sections charged that he had acted without delegated authority and that he had not fulfilled his responsibilities with respect to subcommittee work.

In executive session, Mr. LaFlamme was told that the Committee would vote on the censure motion during the regular meeting, unless he was willing to discuss the Committee's concerns. He was not, so the executive session ended. At the open meeting, Mr. LaFlamme spoke in his own defense and disputed many of the allegations made in the motion. The Committee then granted the motion to censure by a vote of four to one.

Shortly thereafter, Mr. LaFlamme sued the Committee, raising four claims, one of which he later withdrew. The case went to a jury trial and the jury found against Mr. LaFlamme on two of the claims – failure to accommodate a handicap and denial of his free speech rights. However, the jury ruled in his favor on the remaining claim, alleging the denial of his right to procedural due process. The jury found that the Committee had damaged Mr. LaFlamme's reputation so severely that "his opportunity and ability to associate with others were significantly limited and that the damage resulted without due process of law." The Committee appealed to the Supreme Court on the grounds that as a matter of law, it should have won the case.

Before discussing the legal principles involved in Mr. LaFlamme's due process claim, the Court noted that Robert's Rules of Order govern the conduct of school board meetings, under 16 V.S.A. § 554. Robert's Rules allows reprimand as one of several disciplinary actions that an organization may take. As the Court explained, "Censure is a form of reprimand, defined [in Black's Law Dictionary] as '[t]he formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct.'" According to Robert's Rules, a reprimand could apply either to offenses committed during a meeting, or offenses committed by members outside a meeting. During the trial of the case in the Superior Court, the Superior Court ruled that the Committee had the right to censure Mr. LaFlamme for conduct that occurred during Committee meetings, but not for conduct that occurred outside a meeting. The Supreme Court did not decide whether the Superior Court was correct in this ruling, however, because it found that Mr. LaFlamme had not proved that he had been deprived of his due process rights.

The Court explained that the "stigma" that may result from a disciplinary action does not give rise to a due process claim so long as it only injures a person's reputation. In order to establish a due process violation, Mr. LaFlamme would have had to show that he had been deprived of either *liberty* or *property* without due process of law. Liberty interests include the rights of free speech and free association. In this case, the jury rejected Mr. LaFlamme's claim that his free speech rights had been infringed. The Court itself concluded that Mr. LaFlamme had not shown evidence of an interference with his right of free

association, noting that the Committee had not imposed any restrictions on his ability to associate with others.

Nor was Mr. LaFlamme denied a property interest. Even if school board members have a “property interest” in their membership on the board (which the Court did not rule on), in this case Mr. LaFlamme remained on the Committee for about a year after the censure, and then voluntarily resigned. The Committee did not remove him from office. Mr. LaFlamme had also charged that the Committee’s actions had prevented him from being elected a village trustee, a position for which he had run and lost. The Court found no property interest there. A property interest is created when a person has a “legitimate claim of entitlement” to a government benefit, not, as in this case, a “unilateral hope” of becoming a village trustee.

Because Mr. LaFlamme had not been deprived of either a liberty or property interest, he could not prevail on his due process claim and the Supreme Court therefore reversed the jury verdict in his favor.

Although the school board won this case, it is important to remember what the Supreme Court did *not* decide. It did not rule on whether it is proper to censure a board member for conduct that occurs outside a meeting, and it did not decide whether members of Vermont school boards have a “property interest” in their positions. (Members of local boards who by statute may only be removed “for cause” may have such a property interest). The Court did state clearly that censure, as a form of reprimand, is permissible under Robert’s Rules of Order. If your board has voted to adopt Robert’s Rules and you wish to censure a board member, consult carefully with your town attorney before taking any action.

*VLCT News*, February 2000