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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1736-16T3

JEFFREY FISCHER,

Plaintiff-Respondent,

v.

ATTORNEY GENERAL OF THE STATE  
OF NEW JERSEY,

Defendant-Appellant,

and

NEW JERSEY DEPARTMENT OF EDUCATION  
and HALEDON BOARD OF EDUCATION,<sup>1</sup>

Defendants.

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Argued April 18, 2018 – Decided May 30, 2018

Before Judges Koblitiz and Manahan.

On appeal from Superior Court of New Jersey,  
Law Division, Passaic County, Docket No. L-  
4430-15.

Valentina M. DiPippo, Deputy Attorney General,  
argued the cause for appellant (Gurbir S.  
Grewal, Attorney General, attorney; Melissa H.

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<sup>1</sup> Plaintiff dismissed Haledon from the litigation on January 5, 2016. The trial court dismissed the New Jersey Department of Education on December 2, 2016.

Raksa, Assistant Attorney General, of counsel;  
Valentina M. Di Pippo, on the brief).

Stephen J. Edelstein argued the cause for  
respondent (Schwartz Edelstein Law Group, LLC,  
attorneys; Stephen J. Edelstein, on the  
brief).

PER CURIAM

In November 2013, Jeffrey Fischer was elected to the Manchester Regional High School Board of Education (Manchester Board) for a three-year term expiring in January 2017. In November 2015, Fischer was elected to the Haledon Board of Education (Haledon Board), serving grades K-8, for a three-year term beginning in January 2016. Manchester Regional High School District includes the Haledon geographic area, so that Haledon students go on to attend Manchester Regional High School. Fischer sought a declaratory judgment that he could simultaneously hold both elected offices in spite of N.J.S.A. 19:3-5.2, which prevents dual office-holding. The trial court found an ambiguity in the statute and issued a November 15, 2016 order granting relief. Based on our de novo review of the statute, we disagree and reverse.

On December 31, 2015, Fischer filed a complaint and order to show cause seeking a court order declaring that he could hold seats on both school boards "immediately," in order to be sworn into the Haledon Board on January 5, 2016. That same day, the

court denied his request for temporary relief and Fischer resigned from the Manchester Board and was sworn into the Haledon Board.

Fischer was elected again to the Manchester Board on November 8, 2016, while still serving on the Haledon Board, thus serving on two boards simultaneously. The court determined that N.J.S.A. 19:3-5.2 is ambiguous and the legislative intent of the statute was to prohibit the collection of two salaries and two pensions. The court also mentioned the desire to honor the will of the voters, considering Fischer ran unopposed for the Manchester School Board the second time.

N.J.S.A. 19:3-5.2 was approved by the New Jersey Legislature on September 4, 2007, effective February 1, 2008. N.J.S.A. 19:3-5.2(a) states: "For elective public office other than as provided in [N.J.S.] 19:3-5 or N.J.S. 40A:9-4, a person elected to public office in this State shall not hold simultaneously any other elective public office." N.J.S.A. 19:3-5 identifies certain federal, State and local "incompatible offices" that cannot be held simultaneously, regardless of whether the offices are elected or not. N.J.S.A. 40A:9-4(2) prohibits the practice of holding an elective county office and an elective municipal office at the same time, but permits members of the Legislature to simultaneously hold "any appointive office or position in county or municipal government." Pursuant to the definitions included in N.J.S.A.

19:1-1, "'any election' includes all primary, general, municipal, school and special elections . . . ." (Emphasis added.)

N.J.S.A. 18A:12-15<sup>2</sup> provides a process for filling vacant school board seats, including when the vacancy occurs due to the absence of candidates for election. N.J.S.A. 18A:12-15(a). Thus, necessity did not require that Fischer serve on two boards.

Fischer argues on appeal that election laws should be "liberally construed" as to not "render an election void for technical reasons." N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 183 (2002).

"The Legislature is presumed to be thoroughly conversant with its own legislation and the judicial construction placed thereon." Chase Manhattan Bank v. Josephson, 135 N.J. 209, 239-40 (1994) (quoting Quaremba v. Allan, 67 N.J. 1, 14 (1975)). "The court cannot write in an additional qualification which the legislature pointedly omitted in drafting its own enactment, or engage in

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<sup>2</sup> N.J.S.A. 18A:12-15(a) states:

Vacancies in the membership of the board [of education] shall be filled as follows:

a. By the county superintendent, if the vacancy is caused by the absence of candidates for election to the school board or by the removal of a member because of lack of qualifications, or is not filled within 65 days following its occurrence.

conjecture or surmise which will circumvent the plain meaning of the act." DiProspero v. Penn, 183 N.J. 477, 480 (2005).

We review issues of statutory construction de novo. State v. Goodwin, 224 N.J. 102, 110 (2016). Analysis begins with the plain language of the statute, which is the best indicator of the legislative intent. R.G. v. R.G., 449 N.J. Super. 208, 218 (App. Div. 2017). The court "ascribe[s] to the statutory words their ordinary meaning and significance." DiProspero, 183 N.J. at 492. The court's function is not to "presume that the Legislature intended something other than that expressed by way of the plain language." Bruqaletta v. Garcia, 448 N.J. Super. 404, 412 (App. Div. 2017). Where the plain language "leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources." Sterling Laurel Realty, LLC v. Laurel Gardens Co-Op, Inc., 444 N.J. Super. 470, 476 (App. Div. 2016) (quoting State v. D.A., 191 N.J. 158, 164 (2007)).

Fischer correctly points out that N.J.S.A. 18A:38-8.1, which is not explicitly referenced in N.J.S.A. 19:3-5.2 as an exception to the statute, requires limited dual-office holding where one school district sends students to another school district. N.J.S.A. 18A:38-8.1 states:

[I]n a school district which is receiving pupils from another district or districts pursuant to N.J.S. 18A:38-8, there shall be an additional member [of the board] as

provided pursuant to section 2 [] of this act to represent the board of education of each sending district. Any additional member shall be a member of the board of education of a sending district designated annually by the board of that district and shall be eligible to vote on the following matters before the receiving district board of education:

a. Tuition to be charged the sending district by the receiving district and the bill lists or contracts for the purchase, operation or maintenance of facilities, equipment and instructional materials to be used in the education of the pupils of the sending district;

b. New capital construction to be utilized by sending district pupils;

c. Appointment, transfer or removal of teaching staff members providing services to pupils of the sending district, including any teaching staff member who is a member of the receiving district's central administrative staff;

d. Addition or deletion of curricular and extracurricular programs involving pupils of the sending district;

e. Any matter directly involving the sending district pupils or programs and services utilized by those pupils;

f. Approval of the annual receiving district budget;

g. Any collectively negotiated agreement involving employees who provide services utilized by sending district pupils;

h. Any individual employee contracts not covered by a collectively negotiated agreement, if those employees provide or

oversee programs or services utilized by sending district pupils; and

i. Any matter concerning governance of the receiving district board of education including, but not limited to, the selection of the board president or vice-president, approval of board bylaws, and the employment of professionals or consultants such as attorneys, architects, engineers, or others who provide services to the receiving district board of education.

The statute directing a school board member of a sending district to sit on the board of a receiving district to consider primarily issues involving the sending district does not make the statute prohibiting dual service ambiguous. School board members may not be elected to two school boards, nor sit simultaneously on two boards absent statutory authority.

The Legislature specifically exempted volunteer board members of fire districts from the dual-office holding restriction. N.J.S.A. 40A:9-4(6). The Legislature could have included unpaid school board members as well in this exemption, but chose not to do so.

The statute prohibiting service in more than one elected office is not ambiguous. The Legislature may amend the statute if convinced a change is appropriate.

Reversed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION