

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

Community Academy of Philadelphia	:	
Charter School	:	
	:	Docket No. CAB 2011-05
Motion to Quash by Philadelphia	:	
School District School Reform	:	
Commission	:	

OPINION

I. Background

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by the Community Academy of Philadelphia Charter School (“CAPCS”). The appeal is based on the Philadelphia School District School Reform Commission’s (“SRC”) alleged failure to timely approve CAPCS’s charter renewal application. The SRC has filed a Motion to Quash (Dismiss) the appeal for lack of jurisdiction. The motion was argued before CAB.

CAPCS operates within the Philadelphia School District. It received its original charter approval in 1997 and charter renewals in 2001 and 2006. In early 2011, CAPCS sought renewal of its charter as it was due to expire on June 30, 2011. The Philadelphia School District is presently governed by a School Reform Commission (SRC).¹ The SRC is comprised of five commissioners. During CAPCS’s latest renewal process, the SRC had one vacancy. Consequently, the SRC consisted of only four commissioners. In February and April of 2011, the SRC voted 2-1 to grant renewal of CAPCS’s charter, with the other sitting commissioner

¹ Upon a declaration that a first class school district is distressed, pursuant to section 6-691, a School Reform Commission is established. 24 P.S. § 6-696(a). The School Reform Commission is an instrumentality of a first class school district and exercises the powers of the school board. *Id.*

recusing himself. However, the SRC did not issue CAPCS a charter renewal, declaring the vote had no legal effect.

CAPCS filed this appeal with CAB on June 2, 2011 because it thought its charter was going to expire by operation of law on June 30, 2011. After a June conference call, the Philadelphia School District sent CAPCS a letter to confirm that CAPCS would remain in operation through the pendency of the proceedings. In its appeal, CAPCS asserts that CAB has jurisdiction to determine whether the renewal application should be granted based upon the SRC's failure to renew or deny its charter by June 30, 2011. CAPCS requests that CAB review the SRC's vote and enter an order directing the SRC to renew CAPCS's charter.

The SRC responded to the appeal. In addition, it filed a Motion to Quash the appeal on jurisdictional and timeliness grounds. The SRC argues that CAB does not have jurisdiction over CAPCS's appeal because CAB's jurisdiction in a charter renewal case is statutorily limited to denials or revocations of applications, and the SRC neither denied nor revoked CAPCS's charter. Rather, it did not act on the application. Alternatively, the SRC asserts that even if CAB does have jurisdiction over the appeal, CAPCS's appeal was untimely since it was not filed within thirty (30) days of the SRC's April vote.

CAPCS filed a brief in opposition to the motion. CAPCS argues that CAB does have jurisdiction over its appeal because the SRC's characterization of its vote as "non-action" is the equivalent to the SRC not renewing its charter. In addition, CAPCS asserts that its appeal is timely because CAB has not promulgated any rules related to the time for taking an appeal from nonrenewal or revocation decisions.

II. Discussion

The Charter School Law states that a “charter shall be for a period of no less than three (3) nor more than five (5) years and may be renewed for five (5) year periods upon reauthorization by the local board of school directors of a school district or the appeal board.” 24 §17-1720-A.

The first issue raised in the SRC’s Motion to Quash is whether CAB has jurisdiction to review the SRC’s vote and to order the SRC to renew CAPCS’s charter. The SRC argues that CAB lacks jurisdiction because CAB’s jurisdiction is limited to the exclusive review of decisions to not renew or revoke a charter in cases of an existing charter school. 24 P.S. §17-1729-A(d). CAB agrees. CAB does not have jurisdiction to review the SRC’s vote because it was not a decision to not renew or revoke CAPCS’s charter. On the contrary, the SRC voted on a motion to renew the school’s charter. Moreover, the parties’ dispute here is over the legal effect of a 2-1 vote of the 5-member SRC. CAB lacks jurisdiction over such a dispute. Also, CAB cannot order the SRC to renew CAPCS’s charter because CAB, as an administrative appellate body, does not have injunctive powers under law. Because the SRC has determined that its votes were of no effect, CAB takes the position that CAPCS’s charter renewal application remains pending before the SRC until the SRC acts upon the application by either approving or denying it.

The second issue raised in the SRC’s Motion to Quash is whether CAPCS’s appeal was untimely. Because CAB has concluded that it lacks jurisdiction over the appeal, CAB will refrain from addressing the alleged untimeliness of CAPCS’s appeal.

III. Conclusion

Based upon the above discussion, CAB finds that the SRC did not vote to not renew CAPCS's charter. Therefore, CAB concludes that it lacks jurisdiction over CAPCS's appeal and grants the SRC's Motion to Quash.

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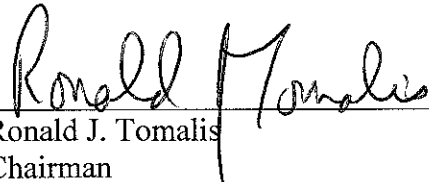
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ORDER

AND NOW, this 12th day of July, 2012, based upon the foregoing and the vote of this Board,² the Philadelphia School District School Reform Commission's September 2, 2011 Motion to Quash for lack of jurisdiction **IS GRANTED**.

For the State Charter School Appeal Board,



Ronald J. Tomalis
Chairman

² At the Board's October 25, 2011 meeting, the Motion to Quash for lack of jurisdiction of the Philadelphia School District School Reform Commission was granted by a vote of 6 to 0, with Members Barker, Lawrence, Marks, Munger, Tomalis and Yanyanin voting to grant.