

Responsibility for updating pupil weighting formula

Jim DesMarais. Legislative Counsel

The testimony addresses the legal parameters of the General Assembly delegating to the State Board of Education or the Agency of Education the responsibility to determine the equalized pupil weighting factors

Separation of powers: The Supreme Court of Vermont summarized the three branches' powers: "Briefly stated, the legislative power is the power that formulates and enacts the laws; the executive power enforces them; and the judicial power interprets and applies them." In re D.L., 164 Vt. 223, 228 (1995).

Delegation doctrine: General Assembly is constitutionally prohibited from delegating its supreme legislative authority to another entity. "[I]t is a doctrine well established, and frequently reiterated by the courts, that the functions of the Legislature, which are purely and strictly legislative, cannot be delegated, but must be exercised by it alone."

- However, there is a distinction between a delegation of the power to make the law, which necessarily includes a discretion as to what it shall be, and the conferring of authority or discretion as to its execution, which is exercised under and in pursuance of the law.
- The former is prohibited, but the latter may be permissible.
- What this essentially means is that the Legislative Branch must formulate the State's policies through the laws it enacts, but by those laws, it may confer on other entities—such Executive Branch entities—the power to apply the general provisions of law to particular circumstances and situations, and may leave much of [the] detail to the discretion of those other entities.

Cases concerning delegation:

Waterbury v. Melendy, 109 Vt. 441 (1938). Vermont Supreme Court held as an unconstitutional legislative delegation a law that enabled the Public Service Commission to order the apportionment of expenses for flood control among the State and municipalities, based on the benefits obtained by those parties. The Court held the law to be an unconstitutional legislative delegation because it did not provide any standards the Commission needed to use to make those benefit and apportionment determinations. "The commission, in order to act, must say what the law shall be, and not merely exercise discretion as to its execution."

In re MVP Health Insurance Company, 203 Vt. 274 (2016). Challenge to 8 V.S.A. § 4062, which empowered Green Mountain Care Board to approve or deny health insurance rates in VT.

- 4062(a)(3) provides criteria GMCB will apply: "The Board shall determine whether a rate is affordable, promotes quality care, promotes access to health care, protects

insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State. In making this determination, the Board shall consider the analysis and opinion provided by the Department of Financial Regulation pursuant to subdivision (2)(B) of this subsection.”

- Argument was that 8 V.S.A. § 4062 was unconstitutional because it delegated the legislature’s core law making authority to the GMCB without sufficient standards to guide and constrain the Board’s discretion.
- VT Sup. Ct. rejected this argument and held that the law was constitutional because the GMCB’s discretion was curtailed by considerations of affordability, promotion of access to health care, insurer solvency, and fairness, as well as the requirement that it consider input of DFR. 203 Vt. at 284.
- VT Sup. Ct. held that “We ... [note] that in modern case law we have found that duly enacted laws represent an improper delegation of the Legislature’s law-making function only if they are devoid of any conceivable standard to guide and constrain discretion.” 203 Vt. at 280.

Conclusion: When the power to apply a statute is delegated to administrative officials, the General Assembly must provide the administrative officials with an intelligible principle or standards to adequately guide the administrative officials so that they will not legislate, but will find and apply facts in accordance with the policy established by the General Assembly.

Considerations for determining whether to delegate the responsibility to determine equalized pupil weighting factors:

- The weighting factors are currently in statute
- The weighting factors may have a significant effect on property tax rates, for example, the Pupil Weighting Factors Report dated December 24, 2019 simulates the effect of its recommended weights (Appendix A), which shows an:
 - increase in the equalized homestead tax rate by 90 cents for Norwich;
 - decrease in the equalized homestead tax rate by 96 cents for Granby.
- May be considered a policy matter given the possible impact and that the purpose of rulemaking would not be to fill in details or address unforeseen circumstances
- However, the VT Sup. Ct.’s standard that a delegation is valid unless it is devoid of any conceivable standard to guide and constrain discretion is a low bar
- If delegate, need to provide standards to guide administrative officials