

## FOUNDING AND MANAGING SCHOOLS AND EDUCATION INSTITUTIONS AS A TASK FOR LOCAL GOVERNMENT UNITS: LEGAL ASPECTS

**Alina Miruć**

University of Białystok, Faculty of Law  
Mickiewicza 1, 15 – 213, Białystok, Poland

**Abstract.** *The Polish education law indicates foremostly local government entities (communes, counties, self-governing provinces) as subjects entitled to found and run schools and public institutions. The Statute of 7 September 1991 on Education System (further referred to as SES) enumerates tasks of local administration in education. Moreover, it constitutes a basis for the division of educational tasks between local government units on particular levels.*

*The objective of the article is to demonstrate legal solutions and the role of self-government administration in performing educational tasks which manifest in managing and founding schools and education institutions. Also important general issues concerning the essence, sources and methods of public task performance by administering entities are the subject of analysis.*

**Keywords:** *education, education institutions, local government entities, commune, county, self-governing province, public tasks.*

**Raktažodžiai:** *švietimas, švietimo institucijos, vietos valdžios institucijos, savivaldybė, apskritis, regioninė savivalda, viešieji uždaviniai.*

### 1. Introduction

An important sphere, which fits the boundaries of the legally determined independence of the local government entities [10, p. 233]. Tendencies to decentralize school and education institution management in favor of the local government are not

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*Alina Miruć* – Balstogės universiteto Teisės fakulteto Viešojo administravimo katedros bei Baltstogės aukštosios viešojo administravimo mokyklos Viešojo administravimo fakulteto lektorė, dr. (PhD).

El. paštas a.miruc@uwb.edu.pl arba a.miruc@wp.pl

*Alina Miruć* – University of Białystok, Faculty of Law, Department of Public Administration, Dr. (PhD) lecturer. Lecturer at Higher School of Public Administration in Białystok, Faculty of Public Administration, lecturer.

E-mail: a.miruc@uwb.edu.pl arba a.miruc@wp.pl

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reduced to communes, since in the light of the law the category of so-called educational organs, founding and managing schools and education institutions embrace communes (*gmina*), counties (*powiat*), self-governments of provinces (*województwo*), organs of state administration and legal entities [13].

Equal opportunities in access to education are to a great extent provided by local governments at all levels, through managing public schools and education institutions. The SES determines the entities which are allowed to be the organs in managing schools and educational institutions as well as what rights and responsibilities are therefore assigned to them. First of all, a managing organ has to meet the requirement of legal personality. Such entities are those of the local government, which are also entities of public law, existing and performing tasks to the benefit of the whole self-governing community and not to the benefit of any group of private people. Therefore, the ban on managing non-public schools and education institutions by them seem logical. As the result of the local government reform, the State practically passed the entire duty of school and education institution management to local government entities. Leaving some entities of the educational system at the discretion of other entities is a sort of exception to the rule then. Article 5 of SES, and further ones, constitute the basis for the assignment division between local government entities at particular levels.

Thus, in accordance with Article 5 paragraph 3 of SES, local government entities may found and manage public schools and education institutions exclusively. They may also found and manage schools and institutions whose management belongs to the duties of an appropriate minister but on the basis of an appropriate agreement.

The objective of this paper is to demonstrate the role of local government administration in the implementation of educational assignments involving managing and founding schools and educational institutions. To achieve this aim some general issues, connected with the essence, sources and ways of public task performance by administering entities, are also subject to analysis.

## **2. Essence, sources of public assignments and their implementation**

According to A. Błaś, the state has its right to exist since it is an entity working actively and obliged to perform public tasks. It has to perform tasks, because otherwise it becomes a structure with no right to exist. Thus the law-determined public assignment is the responsibility of public administration and other administering entities, which are expected on the basis of the legal norm to implement them. The substantial scope of these assignments changes along with the aims of the public administration determined within the framework of the functions performed by the state [9, p. 95]. First, it is worth noting that generally in the science of administration law the tasks (assignments) are defined as normative commitments of the public administration to implement a law-determined public aim through specific application of specific means. In texts of legal acts the notion of public task (assignment) is not con-

nected with taking a particular action but rather a number of actions of one or more types.

In the doctrine scholars have many times expressed their opinions on the understanding of the notion “task.” According to J. Borkowski it is the legal regulations that determine tasks and properties of administration organs. Tasks are assigned by the determination of aims to which the activity is supposed to lead [2, p. 95]. Błaś adds that the notion of “task” is strictly connected with the element of obligation. M. Tabernacka claims that a task is not only an order of an abstract action without its legal context [11, p. 81 - 95]. She adds that a task cannot be authorizing to take legal action forms alone without pointing at the situation in which a particular action should be taken. Thus if we talk about a model construction of the public task in point, it should be definitely connected with the construction of competence. This is justified by the fact that public task is a legal duty and in the state of law constitutes a normatively determined aim of administration organs’ activities.

In the state of law, a citizen, as a direct or indirect addressee of provisions or actions of administrative organs which make up a derivative of public tasks, has the right to claim the performance of the duty which results from the public task. Thus, if a task is defined as a public task, there should be a normative definition of the aim of an action as well as a specific determination of competence or the definition of the organ obliged and also entitled to act and pointing at a legal form of action.

By and large, a public task is a normatively determined duty of action on the part of administrative entities, to perform, in the light of legally determined competence, an appropriate organ is entitled to legal forms of action, either of executive or non-executive nature. Public tasks in the state of law have to be determined by the commonly binding statutory law and cannot be determined in executive acts of the public administration itself. The constitutional definition of public administration tasks is foremost aimed at the exclusion of the executive power from creating public tasks, because the latter is expected to carry out the tasks determined in the Constitution and ordinary statutes. It is worth emphasizing that the constitutional regulation of citizens’ rights is an absolute guarantor of bringing these rights to life by the entities performing legally determined public tasks. Obviously the Constitution of the Republic of Poland does not define all the tasks of the public administration. It has statutes in particular fields of public administration to specifically determine its tasks in such spheres as: welfare, education, health care, protection of cultural heritage. Thus, regardless of what is the subject of public administration tasks, they include active planning, organizing, implementing and controlling of the implementation of the tasks which were determined by the commonly binding law. Although the Constitution of the Republic of Poland is undoubtedly a factor that stabilizes public administration tasks, the importance of ordinary statutes, according to A. Błaś, increasingly rises, and statutory delegations give an opportunity to broadly decide on the range of public tasks by the very administrative organs that are expected to accomplish the above-mentioned tasks.

It is important to remember that the legal construction of a public task also includes one element, which is legal obligation. This element of the construction of a

public task should be considered in both broad and narrow approach. As for the broad approach to the obligation, the State (as the doctrine of administrative law rightly determines) cannot freely eliminate its legally imposed public tasks. Thus the reduction of the State's tasks is possible and occurs when the Constitution and statutes clearly decide so, and it is not just an act of the political will of the ruling party. It is clear that a public task is understood as a legal obligation.

The problem of carrying out public tasks appears important. The implementation of a public task itself is a complex process of performing material administrative law norms, taken in order to carry out the legal obligation of public administration which is included within, obviously in the forms proper for administration law. However, the forms of the administering entities' activity other than the ones in the public law provisions are not excluded [5, p. 30]. In the performance of public tasks, the administrative power cannot reduce laws and liberties assigned for the citizen in the Constitution. Thus, it is worth emphasizing that the borderline of public administration actions in performing public tasks is not only the law which determines the scope of the tasks and organizations for performing them, but also constitutionally determined and legally protected civil rights and liberties [1, p. 140]. The legal norms determining public tasks are characterized by the fact that they are a source of administrative obligations. Public administration organs may concretize them but they cannot make such norms themselves. Thus in the state of law, the public administration does not administer public tasks.

Administering entities, as the entities which are entitled by legal provisions to perform public tasks in its objective sense, may be divided into three groups [6, p. 473]. Group 1 are the organs of public administration, their basic responsibility being to carry out the administrative function of the state. They are permanently separated within the administrative machine of the State, equipped exclusively with competence and having an opportunity to apply coercive measures. The other group is made up of the organs of local government, which perform functions within public administration, either their own or the commissioned ones. The third group embraces the entities which perform commissioned functions of public administration and are situated outside the organizational structure of public administration (public entities and private entities).

To carry out the tasks legally assigned to public administration, its structure should be clear and transparent, and the division of competences and tasks stable. Currently, as J. Zimmermann rightly emphasizes, we deal with the so-called competence disorder of public administration organs and other entities while carrying out public tasks [12: 128-129].

Considering the above-mentioned reflections in the legal construction of public tasks, one may distinguish the following components: the determination of a public task by the valid statutory law; the implementation thereof in the forms (both executive and non-executive) determined by the valid law; the performance according to the legally determined procedures, the financing by public resources provided by the State and subjecting its performance to the control of State organs.

### 3. The commune's educational tasks

As a result of the education system reform founding and managing, many types of schools and institutions were passed to the commune. Communes, as basic entities of local government, found and manage public kindergartens, primary and lower secondary schools. As the result of the takeover of almost all education by the appropriate levels of local government, it became possible for them to carry out their own education policy, which takes into consideration local conditions in accomplishing general aims and educational tasks which were determined by the State.

Within the division made according to the criterion of universality of the use of school and institutions of various types, as well as their importance for satisfying a local community's needs, communes are assigned to found and manage public kindergartens, including those with integrated kindergartens and special kindergartens, primary and lower secondary schools, including those with an integrated group, except for art schools and schools by penitentiaries, reformatories and homes for detained juveniles, some forms of preschool education (so called small kindergartens), i.e. organizational entities propagating pre-school care, especially in the country, although with their activities very restricted in comparison with 'real' kindergartens.

Communes can also found and manage schools-public institutions of the commune range, whose management does not belong to the commune's own tasks, on the basis of an agreement with an entity of local government. (e.g. a county), for which the managing of a particular type of school or institution is its own task [8: 18-20].

As for art schools and institutions which secure care and upbringing for art students during their education away from home, and institutions providing trainings for art school teachers, communes may sign an agreement on this matter with the minister of culture and national heritage protection. A commune, within the framework of its own tasks, in agreement with the school superintendent, may found and manage public institutions for teachers' training and pedagogic libraries. One of a commune's tasks is also providing extra free Polish language training for those who are not Polish citizens, but are subject to compulsory schooling, and who cannot speak Polish or whose level of Polish is not sufficient to take benefits from education [4: 88-101].

These assignments are a commune's own tasks, so they are performed by the commune on its own behalf, on its own responsibility, independently and on the basis of its own financial resources. A commune is also obliged to secure appropriate conditions for the children of 6 to fulfill their obligation of one year's pre-school preparation. Therefore a commune council is expected to establish the network of commune-run kindergartens and pre-school classes in primary schools. The network should be established in such a way that all the six-year-old children who live in the commune, have opportunities to fulfill this obligation. The commune is responsible for supervision over the fulfillment of compulsory schooling by the young people of 15-18 years. Registries are obliged to send appropriate school principals information on a current register of children and teenagers of 3-18 years and potential changes [7: 81-82]

A commune, being an organ managing a school or an institution, is also obliged to secure safe and hygienic conditions of training, upbringing and care, educational aids and equipment to perform curricula, as well as to provide administration, financial and organizational service; renovations of educational buildings and investments within.

A commune has legislative and executive organs which perform the tasks within the competences of the organ managing a school or an institution. The commune council, as a legislative organ, passes the founding act and grants the school its first statute, passes a resolution on closing down a school or an institution, makes teams for administration, financial and organizational service, takes resolutions on creating and transformations of schools or institutions. A *wójt*, a mayor or a city president, as an executive organ, secures current conditions for a school or institution's activity, supervises their administration and finances, issues permits for founding a school or a public institution by a natural or legal person other than a local government entity, appoints and recalls persons who are not teachers for the post of school principal, appoints a *mianowany* or certified teacher for the position of school principal, and organizes and manages competitions for the position of school principal.

Communes are not, however, organs managing public special primary schools and special lower secondary schools (managed by counties), public art schools (managed by the minister of culture and national heritage) or schools by penitentiaries, reformatories and homes for detained juveniles (managed by the minister of justice).

#### **4. The role of a county (*powiat*) in the performance of educational tasks**

Within the framework of the compulsory educational task, a county (*powiat*) founds and manages: secondary schools, so-called profiled secondary schools (partly vocational), vocational schools, technical secondary schools, post-secondary schools, art institutions, special schools: primary and lower secondary, over-lower-secondary schools (except schools of regional and extra-regional importance), including those with integrated classes, educational institutions, including school youth shelters, sports schools, athletic schools, centers of lifelong learning, practical education and training centers enabling the acquisition and completion of general knowledge, vocational skills and qualifications, psychological and pedagogical centers and others, including specialist centers providing children, teenagers, families and teachers with psychological and pedagogical help, as well as centers of counseling on the selection of education and profession; youth educational centers, youth sociotherapy centers, special schooling and upbringing centers, special educational centers for children and teenagers requiring special organization of education, work methods and upbringing, as well as centers enabling mentally challenged children and teenagers with deficiencies or with disorders to fulfill their compulsory schooling; institutions providing care and upbringing for pupils studying away from home.

Public art schools and institutions which provide care and upbringing for students at art schools who study away from home and for whom the organ proper to

found and manage is the Minister of Culture and national heritage protection, may be managed by counties, on the basis of an appropriate agreement between this minister and the county.

Counties may also found and manage schools and public institutions of the countywide range, on the basis of an agreement with a local government entity (e.g. self-governing province), for which the management of a particular type of school is its own task. A county, within the framework of its own tasks, like a commune, may found and manage, with the superintendent's agreement, public institutions of teachers' trainings and pedagogical libraries.

### **5. Educational tasks of a self-governing province**

The Statute does not determine explicitly which schools and institutions are "of regional or extra-regional importance," sending the reader to the province development strategy. The province development strategy is resolved upon by the Province *sejmik* in the form of resolution. This inflicts on the provincial local government legal obligation to describe in the development strategy a plan of a network of public schools and institutions for which the province self-government is a managing organ. Thus, since the province's self-government was entitled to determine the strategy's provisions, which schools and institutions of regional and extra-regional importance should be managed by the provincial self-government within the framework of its own tasks, it partly decides on the scope of educational tasks to perform.

In education, a self-governing province founds and manages institutions of regional and extra-regional importance, to which the province development strategy refers to. These are the following: teachers' training centers, pedagogical libraries; public special: primary and lower secondary schools, post-lower secondary schools, including those with integrated classes, sports schools, athlete schools, educational-upbringing institutions, including school youth shelters, centers of lifelong learning, practical education and centers of professional trainings enabling acquisition and completion of general knowledge, professional skills and qualifications, psychological and pedagogical counseling centers, youth educational centers, youth sociotherapy centers, special schooling and upbringing centers, special educational centers for children and teenagers requiring a special learning organization, work methods and upbringing, as well as centers enabling children and teenagers of mental disorders with associated disabilities or with profound mental disorders to perform their obligatory schooling on all levels; institutions providing care and upbringing for students who study away from home.

A province also founds and manages public colleges for public servants. This task, as the only one, is called in the SES this entity of local government's own task.

## 6. The course of founding a school of public educational institution

Local government entities can found and manage public schools and educational institutions only. Legislative organs, or commune or county councils, take resolutions on founding a school or educational institution in the form of a founding act, which determines, inter al., the type of the school or the institution, its name and location. The founding act of a school where obligatory schooling is implemented, also determines its territorial range or a district, and in the case of a primary school, also its organizationally subordinate branches. The managing organs of the school inflict on it its first statute, which, along with the founding act, is sent to an locally appropriate superintendent. The foundation of a school or an educational institution by local government entities does not require a school superintendent's opinion.

Local government entities can found and manage schools and educational institutions, the management of which does not belong to their own tasks, after an agreement with a particular local government entity, for which managing a school or institution of this type is its own task. The delegation of their own tasks is possible within the same level only, or "downwards." The SES is devoid of provisions which would indicate that the questions connected with agreements between local government entities concerning delegating tasks involving founding and managing schools and educational institutions was regulated in a different way than in self-government system statutes. Hence the principles established there are binding on the ground of the Statute on Education. In effect, for example a commune cannot eliminate from the scope of its activity its obligatory tasks, i. e. founding and managing public schools and educational institutions.

### Conclusion

Managing schools and educational institutions is mainly a task for self-governing administration. As for other entities that manage schools and educational institutions, the SES introduces limits on their creation, resulting in the requirement of receiving a permit. In connection therewith, an appropriate organ of local government, having received a positive opinion of a school superintendent, issues an appropriate permit for the interested legal or natural person.

The idea of competence division among particular levels of local government seems necessary for the educational task to be performed as close to citizens as possible and with the fullest meeting their needs.

The main tasks of local government entities in managing schools and educational institutions include, inter al.: developing education development strategies in a commune, a county and a self-governing province; signing a founding act when founding a school (institution) and granting a statute to newly founded entities (Article 58, para 6 SES ); founding and managing schools and institutions (Art. 5 SES); determining in the statutes of new schools' principles and procedures in accordance with frame school statutes, creating entities for economic and administrative services

of schools and institutions, [3: 29-32]; establishing through communes and counties a network of public schools and institutions run by them (Art. 17 SES); supervising a school's financial and administrative activity; appointing a school's or institution's principal (Art. 36a para 1 & 2 SES), evaluating his/her work, issuing permits for founding non-public schools.

A commune, a county and a self-governing province can also develop, with their own resources, regional or local programs for leveling educational chances of children and teenagers, as well as supporting education of talented children and teenagers. In running these programs the entities of local government are partnered by the entities that carry out pro bono activities, e.g. non-governmental organizations.

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## **MOKYKLŲ IR ŠVIETIMO ĮSTAIGŲ STEIGIMAS IR VADYBA SAVIVALDOS VEIKLOJE: TEISINIS ASPEKTAS**

**Alina Miruć**

Santrauka

Vietos savivaldos subjektai priklauso tai subjektų grupei, kuri vykdo bei įgyvendina daug viešųjų uždavinių (funkcijų), įskaitant ir švietimo uždavinius. Kaip numatyta privalomuose teisės aktuose, vietos valdžios subjektai pirmiausia privalo leisti veikti viešosioms mokykloms. Lenkijos švietimo sistemos statusas (Švietimo įstatymas), priimtas 1991 m. rugsėjo 7 d., įpareigoja, kad švietimo funkcijos būtų padalytos tarp įvairių lygių vietos savivaldos institucijų.

Straipsnio tikslas yra parodyti, kaip pasiremamos teisiniais administraciniais sprendimais vietos savivaldos institucijos vykdo ir organizuoja švietimo funkcijas bei steigia švietimo įstaigas.