

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT C. SALISBURY,	:	
	:	
Appellant,	:	
	:	
vs.	:	
	:	CASE NO. 1976-19
D. J. HARRISON, SUPERINTENDENT,	:	
THE BOARD OF PUBLIC EDUCATION	:	
FOR THE CITY OF SAVANNAH AND THE	:	
COUNTY OF CHATHAM,	:	
	:	
Appellees.	:	

ORDER

After due consideration of the record submitted herein and the Report of the Hearing Officer, attached hereto, it is the opinion of this Board that the Report of the Hearing Officer and the recommendations therein should be adopted except for Part II, Section 2, which holds that the Legislature did not intend to include the power to demote as a lesser included power within the power to terminate under the provisions of Ga. Code Ann. §§ 32-2101c and 32-2104c (a). It is the opinion of the Board that when an action is brought against a teacher, principal, or other employee who is under contract for a definite term, but who has been employed for less than three years, the local board of education has the power to demote such teacher, principal, or other employee. The language "shall be authorized" in Ga. Code Ann. § 32-2104c (a) is

not mandatory language, but permissive language.

The Board does, however, accept the remaining conclusions of the Hearing Officer and the recommendations contained in the Report. It is, therefore,

ORDERED, that this appeal be, and is hereby, dismissed.

This 10th day of March, 1977.



RICHARD NEVILLE
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT G. SALISBURY,	:	CASE NO. 1976-19
	:	
Appellant,	:	
	:	
vs.	:	
	:	
D. J. HARRISON,	:	REPORT OF
SUPERINTENDENT, THE BOARD OF	:	HEARING OFFICER
PUBLIC EDUCATION FOR THE CITY	:	
OF SAVANNAH AND THE COUNTY OF	:	
CHATHAM,	:	
	:	
Appellees.	:	

PART I

SUMMARY OF APPEAL

On May 19, 1975, the Appellant, Robert Salisbury, signed a contract of employment as a teacher with the Board of Public Education for the City of Savannah and the County of Chatham, Georgia (hereinafter "Local Board"), Appellee herein. The effective date of employment set forth in the contract was September 1, 1975. On September 8, 1975, the Superintendent orally informed Appellant that he was terminated. On September 11, 1975, the Superintendent sent a letter to Appellant informing him that a hearing on the termination

would be held before the Local Board on September 24, 1975. The hearing commenced on September 24, 1975, and on September 29, 1975, the Local Board entered a decision to demote Appellant from the supervisory position he held to a position of classroom teacher, with his pay to be continued at the level of his supervisory position until such time as the assignment to classroom teacher was made. The Superintendent was directed to make the assignment to the classroom teaching position as soon as practicable. On October 13, 1975, Appellant submitted an appeal from the decision of the Local Board to the State Board of Education through the Superintendent. On October 16, 1975, Appellant resigned effective October 20, 1975. One year later, on October 20, 1976, the appeal and record were sent to the State Board of Education.

The initial termination action by the Superintendent arose because of Appellant's failure to tell the Superintendent that he had had to make restitution of expense monies to the school system in which he had been previously employed and had also been subjected to a grand jury investigation. The appeal enumerates eight reasons and grounds for error in the decision of the Local Board. In summary, the reasons are:

1. The Superintendent exceeded his authority

- by orally terminating Appellant because a termination notice must be in writing.
2. The hearing was set for more than ten days after the date of the written notice.
 3. Section 1(a)(8) of the Fair Dismissal Law is unconstitutional because of vagueness and over breadth.
 4. The reasons and grounds set forth in the September 11 letter did not constitute good and sufficient cause for termination.
 5. The Local Board could not unilaterally terminate the Contract of Employment in the absence of a breach by Appellant.
 6. There were no grounds for the temporary suspension, termination, or demotion of Appellant.
 7. The decision of the Local Board was erroneous as a matter of fact and law.
 8. The Local Board did not have the power to demote Appellant under the provisions of the Fair Dismissal Law.

Appellant's brief stated that Appellant is now employed in another state and does not seek reinstatement, but asks that the State Board of Education reverse the

decision of the Local Board on ground number 8, above, and require the Local Board to pay all back salary due.

PART II

FINDINGS AND CONCLUSIONS

1.

Under the provisions of Ga. Code Ann. § 32-2101(g), the superintendent of a local school system can temporarily relieve a teacher or other employee under contract for a period of ten (10) working days pending a hearing by the local board. The suspension can be made in those cases where the circumstances indicate "that such teacher. . . could not be permitted to continue to perform his duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils or personnel." Ga. Code Ann. § 32-2101(g). Additionally, the section requires that "[i]n any such case, the superintendent shall notify the teacher. . .in writing of such action. . . ." The Appellant was orally notified on September 8, 1975 that he was suspended. The hearing date was later set for September 24, 1975 -- a period of twelve (12) working days after the initial suspension. The action of the Superintendent was contrary to the requirements set forth

in Ga. Code Ann. § 32-2101(g) and, therefore, were beyond his authority. The Appellant should not have been suspended or terminated for the entire period before the hearing by the Local Board. However, in view of the later actions by the Local Board and remaining findings and conclusions set forth herein, the failure by the Local Board to take any action with respect to the suspension was harmless error.

2.

Appellant was hired as a teacher under the terms of the contract of employment, and was given the position of project specialist. After the hearing, the Local Board did not sustain the Superintendent's action of terminating Appellant. Instead, the Local Board ordered the Appellant to be removed from the position of project specialist and given a position as a classroom teacher. The order of the Local Board states that the demotion was in "accordance with Ga. L. 1975, p. 360, Section 4, (b) (c). . . . [Ga. Code Ann. § 32-2104c(b)(3)]". Appellant claims that the Local Board did not have the power to demote under the statute.

Ga. Code Ann. § 32-2104c provides that a local board of education is authorized to (1) terminate, (2) suspend (for 60 days), or (3) reinstate a teacher under the provisions of Ga. Code Ann. § 32-2101c. Under the provisions of Ga. Code Ann. § 32-2103c, a local board is authorized

to (1) nonrenew a teacher's contract, (2) renew a teacher's contract, or (3) demote a teacher. Thus, a local board can demote a teacher only under the provisions of section 32-2103c, which applies only to teachers and other professional employees who have been employed under a contract for a definite term for three or more successive years. The Appellant herein, however, had not been employed for three years. The provisions of Section 32-2103c, therefore, were not applicable to the Appellant and the Local Board was not authorized to demote Appellant under Ca. Code Ann. § 32-2104c(b).

Any action against the Appellant necessarily had to be taken under the provisions of sections 32-2101c and 32-2104c(a). Section 32-2101c provides that the contract of employment of a teacher or other employee "may be terminated or suspended [emphasis added]" for eight listed reasons. In an action brought under section 32-2101c, a local board is given the power, in section 32-2104c(a), to terminate, suspend, or reinstate the teacher or employee. The local board, however, is not given the power to demote an employee or teacher.

The Local Board argues that if a board of education has the power to terminate, then the legislature surely intended to give a local board the lesser included

right of demoting a teacher or employee. The argument is made that to construe the statute otherwise places a local board in the position of having to wait until the end of the year to demote a non-performing employee, or in the alternative, to fire the person. The Local Board asks the State Board of Education to determine that the obvious intention of the legislature was to give local boards of education the power to demote as a lesser included power in the power of termination under section 32-2101c.

A basic tenet of statutory construction is that legislative intent should be gleaned from an act as a whole and not from isolated sections. See, Williams v. Bear's Den, Inc., 214 Ga. 240 (1958); City of Macon v. Ga. Power Co., 171 Ga. 40 (1930). All statutory construction should have as its goal the ascertainment of legislative intent, Gazan v. Heery, 183 Ga. 30 (1936).

An examination of the Fair Dismissal Act as a whole leads to the conclusion that the legislature did not intend to include the power to demote as a lesser included power in the power to terminate. In section 32-2101c(a), there is no mention of demotion, yet demotion is explicitly stated in section 32-2103c. Again, in section 32-2104c, the power to demote in an action brought under section 32-2101c is not given to a local board, but

it is given when an action is brought under section 32-2103c. It is apparent that the legislature was aware of the power to demote and was aware of the differences between sections 32-2101c and 32-2103c. The only conclusion that can be reached is that a local board does not have the power to demote in an action brought under section 32-2101c.

Since Appellant herein had not been employed for three years, an action against him would have to have been brought under section 32-2101c and the Local Board was restricted to (1) terminating his contract, or (2) suspending him without pay for a period of time not to exceed 60 days, or (3) reinstating him.

3.

Shortly after he was assigned to a position as a classroom teacher, Appellant resigned. He does not seek reinstatement, but asks for money damages. Under Ga. Code Ann. § 32-910, however, the State Board of Education can only review the decision of a local board. The State Board of Education is not granted the power to order that money damages be paid. The decision of the local board can only be affirmed or reversed.

In the instant case, Appellant's resignation has mooted all issues. If the decision of the Local Board is reversed with direction to enter a decision under

the provisions of sections 32-2101c and 32-2104c(a), the Local Board could enter a decision that the Appellant be reinstated but for the fact of the resignation and the waiver by Appellant of reinstatement as a remedy. The delay in processing the appeal to the State Board of Education was agreed to by the parties. Nevertheless, Appellant could have had a revised decision by the Local Board within the short period of time without resigning. The resignation, however, has eliminated the requirement for a revised decision.

PART III

RECOMMENDATION

Based on the findings and conclusions, the transcript, and the briefs and argument of counsel, the Hearing Officer has determined that the oral termination of the Appellant for a period in excess of ten working days was harmless error, and that the decision of The Board of Public Education for the City of Savannah and the County of Chatham, Georgia was also erroneous. The Hearing Officer, however, has also determined that the Appellant's resignation has mooted all issues to be reviewed by the State Board of Education, and the State

Board of Education does not have the power to award money damages. The Hearing Officer, therefore, recommends that this appeal be dismissed.

L. O. Buckland
L. O. BUCKLAND
Hearing Officer