

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

ARTHUR J. HOGAN,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1979-19
	:	
TAYLOR COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

O R D E R


THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Taylor County Board of Education herein appealed from is hereby affirmed.

Mr. Lathem was not present.

This 8th day of November, 1979.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ARTHUR J. HOGAN,	:	CASE NO. 1979-19
	:	
Appellant,	:	
	:	
vs.	:	
	:	
TAYLOR COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	
	:	HEARING OFFICER
Appellee.	:	

PART I

SUMMARY OF APPEAL

Arthur J. Hogan (hereinafter "Appellant") filed his appeal from a decision by the Taylor Board of Education (hereinafter "Local Board") not to renew his contract as a federal projects writer for the 1979-80 school year. The basis for the appeal was that there were no legal grounds for not renewing Appellant's contract. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On April 11, 1979 the Local Board notified Appellant that his contract for the 1979-80 school year as a federal projects writer would not be renewed. Appellant,

on April 28, 1979, requested a statement of the reasons why his contract would not be renewed and requested a hearing. The Local Board gave Appellant the reasons and a list of witnesses on May 11, 1979. Appellant was also notified that the Local Board had requested the Professional Practices Commission to conduct the hearing. The hearing was held on June 4, 1979, and the Professional Practices Commission rendered its decision on July 3, 1979. The Professional Practices Commission recommended that the Appellant's contract as a federal projects writer not be renewed, but that he be offered an opportunity to be employed in another position during the 1979-80 school year. On July 12, 1979, the Local Board considered the recommendation of the Professional Practices Commission and decided not to renew Appellant's contract and not to offer him another position. An appeal was made by Appellant to the State Board of Education on August 9, 1979.

The Professional Practices Commission filed findings of fact and conclusions of law with its recommendation to the Local Board. The Professional Practices Commission found, in part, that:

- 1) The reasons for the nonrenewal were that Appellant was not a tenured employee and had no right to a renewal of his contract; the position of federal projects writer was abolished by a decision of the Local Board, and Appellant's services were no longer needed.

2) Appellant was first employed by the Local Board in 1966. From 1966 through 1970, he was a classroom teacher; during 1970-71 he was a half-time teacher and half-time coordinator; from 1971 through 1974 he was a full-time coordinator; and during 1974-75 he was a federal projects writer. During 1975, Appellant entered into a contract as a federal projects writer on a half-time basis, and maintained this position under contract through the school year ending in 1979.

3) Appellant was covered by the State Health Insurance Program and had benefits under the Teachers Retirement System.

4) Appellant held a teacher's certificate, DAS-5, and a DT-5 certificate.

5) The contracts for the years 1975 through the school year ending in 1979 were all contracts of a definite term.

6) The average daily attendance of the school system was projected to be reduced by 75 students for the next school year.

7) The position of Federal Projects Writer was terminated by the Local Board on April 9, 1979 and the work was not assigned to any other single person but was to be spread over many people in the system.

8) There were no plans by the Local Board to add an individual to fill the terminated position. The purpose

in eliminating the position was to reduce the costs of the total school program.

The Professional Practices Commission concluded that Appellant was a tenured teacher and that the first ground for nonrenewal did not have any merit. The Professional Practices Commission, however, found that since the position of federal projects writer had been eliminated, the grounds set forth in Ga. Code Ann. §32-2101c(a) were applicable and the Local Board had the authority and reasonably did not renew Appellant's contract. The Professional Practices Commission recommended that the Local Board should offer Appellant any position that it had available consistent with his certifications and his capabilities and talents, but if a position could not be found within 30 days after the start of the 1979-80 school term then the Local Board's decision not to renew the contract would stand.

The Local Board rejected the finding by the Professional Practices Commission that Appellant was a tenured teacher and determined that he did not have any rights under Ga. Code Ann. Ch. 32-21c. The Local Board also decided not to renew Appellant's contract and not to offer any other position within the school system.

PART III  
CONCLUSIONS OF LAW

Appellant contends on appeal that the only legal basis for not renewing his contract must be found in Ga. Code Ann. §32-2101c(a)(6) which provides for termination "for reduction of staff due to loss of students or cancellation of programs". Appellant contends that there was no showing that the program, i.e., federal projects writer, was eliminated in that it was being taken over by other employees, and there was no showing that there was any loss of students in the school system. Appellant, therefore, contends that the Local Board was without a legal basis for not renewing his contract.

The Local Board contends that the position Appellant held did not require a certificate and that, notwithstanding Appellant's holding of teaching certificates, he was not covered under the provisions of Ga. Code Ann. §32-2103c or §32-2102c. The Local Board predicates its contention on the wording of the statute which states that it is applicable to "a teacher or other professional employee certificated by the State Board of Education..." The Local Board, therefore, takes the position that none of the provisions of Ga. Code Ann. Ch. 32-21c are applicable to Appellant. The Local Board also argues that even if Ga. Code Ann. Ch. 32-21c is applicable to Appellant, the

provisions of Ga. Code Ann. §32-2101c(a), which provides the reason why a teacher or other employee may be terminated or suspended, is not applicable to Appellant since the non-renewal provisions of Ga. Code Ann. §§32-2102c and 32-2103c refer to §32-2101c only for the hearing process and not for the reasons. In other words, the Local Board maintains that in a nonrenewal situation, a local board can nonrenew the contract of a teacher without providing for any reasons and it is only in the case of a termination or suspension while the contract is in force and effect that it is necessary to provide reasons and fall within the statutory grounds set forth in Ga. Code Ann. §32-2101c(a).

The Professional Practices Commission concluded that Appellant was a teacher or other professional school employee by virtue of the position of federal projects writer being educationally related, and Appellant exercised supervisory duties. Additionally, the Professional Practices Commission concluded that Appellant was tenured because 1) he was certificated; 2) his contract was for a definite term; 3) he had been an employee for more than three years, and 4) his activities were related intricately to the education process. The Professional Practices Commission, however, concluded that the projected reduction in the number of students and the desire to reduce operating costs were sufficient grounds for the Local Board not to renew Appellant's contract. The conclusions of the Profes-

sional Practices commission, therefore, adopted Appellant's position with regard to Appellant having tenure and receiving the benefits of the provisions of Ga. Code Ann. §32-2101c, but then adopted the Local Board's position that there were sufficient grounds for not renewing Appellant's contract.

The Hearing Officer has reviewed the recommendation of the Professional Practices Commission and concludes that the results obtained were correct. Appellant was a certificated teacher employed by the Local Board when he accepted the position of federal projects writer with the Local Board. As a teacher, he worked long enough to obtain tenure. He then remained as an employee of the Local Board without any break in service. It appears from the record that Appellant took the position of federal projects writer as a convenience to the Local Board, i.e., there is no evidence that the Local Board was attempting to dismiss Appellant from his teaching duties and then employ him in a position which did not require certification.

The Hearing Officer is of the opinion that the essential question to be determined is whether a tenured employee loses any rights by accepting another position with a school system. For example, does a teacher who is appointed as a principal lose the tenure status attained as a teacher? The principal, of course, would have the opportunity of establishing tenure as a principal. On the



one hand, the teacher who voluntarily vacates the tenured position arguably does lose the tenure status originally obtained and must reestablish the status in another position. On the other hand, the tenured teacher arguably does not lose the tenure status obtained as a teacher simply by accepting a new position. Ga. Code Ann. §32-2103c does not provide an answer in that it simply provides, in part:

"After a teacher or other professional school employee certificated by the State Board of Education who is employed under a contract for a definite term has been employed for three or more successive school years by the same local board of education, then the non-renewal of the contract of such teacher or other person or his demotion for the fourth or subsequent years shall be as provided by this section."

The remainder of the section sets out the procedures to be followed and does not offer any further explanation.

The language of the statute suggests that once a teacher or other professional employee has attained tenure status, then the status is retained. The statute does not speak in terms of a teacher or other employee remaining in the same position in order to retain the benefits of the statute. Instead, the statute says that after a teacher has been employed for three years, then the nonrenewal of the contract shall be as provided by the section. There is the requirement that the employment be for successive years so that a teacher who has a break in service after obtaining tenure status would not be entitled to be offered additional

contracts. It, therefore, appears that if a teacher has obtained tenure status, then the benefits of the statute attach so long as the teacher remains employed, whether as a teacher or in some other position. In the case of Gore v. Crim, 146 Ga. App. 132 (1978), a teacher who was tenured under the provisions of Ga. L. 1968, pp. 3697, 3700, was assigned to the position of television teacher. She was later reassigned to the position of classroom teacher. She claimed that her reassignment violated the tenure provisions, but the Court held that the statute was inapplicable because she "was not dismissed from her certificated position, which has remained throughout that of classroom teacher." Id. at 133. The Court thus took the view that the position of television teacher did not add or subtract anything from her position as a classroom teacher.

If the same rationale is applied to the instant case, Appellant's acceptance of the position of federal projects writer did not add or subtract anything from his position as a classroom teacher. Although his duties were different, he remained employed as a classroom teacher while performing as a federal projects writer. The contracts signed by Appellant refer to him as "teacher"; they required him to hold a valid certificate issued by the State Board of Education, and they provided that if he terminated the contract without the written consent of the Local Board, the Local Board would recommend his certificate be suspended.

It thus appears that the Local Board considered Appellant to be employed as a teacher who was assigned the duties of a federal projects writer. The Hearing Officer, therefore, concludes that Appellant was entitled to the benefits of Ga. Code Ann. §§22-2103c.

The Local Board argues that even if Appellant was entitled to the benefits of Ga. Code Ann. §32-2103c, the evidence presented shows that Appellant's contract was properly not renewed because of the reduction in staff due to loss of students or cancellation of programs. The Professional Practices Commission found that there was a loss of students and the cancellation of the program of federal projects writer. The Professional Practices Commission, therefore, concluded that the Local Board properly did not renew Appellant's contract.


Appellant has not shown any error on the part of the Professional Practices Commission. Appellant does argue that a reduction in the average daily attendance does not mean that there has been a loss in the number of students. The Professional Practices Commission, however, did find that the reduction in students was the cause of the drop in the average daily attendance and the testimony of the Superintendent supports the finding. The State Board of education follows the rule that if there is any evidence to support the findings of the local board, the decision of the local board will stand. Antone v. Greene County Bd.

of Educ., Case No. 1976-11. Since no clear error on the part of the Local Board has been shown, the Hearing Officer concludes that the decision of the Local Board was properly made.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the Local Board had the power and authority not to renew Appellant's contract and that nonrenewal was within the discretion of the Local Board. The Hearing Officer, therefore, recommends that the decision of the Taylor County Board of Education not to renew Appellant's contract be sustained.

  
\_\_\_\_\_  
L. O. BUCKLAND  
Hearing Officer