

PART 111
DISCUSSION

On appeal, Appellant claims that it was error to permit any testimony concerning the presence of the “High Times” magazine in the house because such testimony violated her rights under the First Amendment, the testimony was so prejudicial that it denied her due process, and the Local Board improperly focused on the magazine to terminate her contract. Appellant’s arguments are all based upon the contention that she was charged with immorality because of the presence of the “High Times” magazine. The record, however, does not support the essence of Appellant’s argument. Appellant was not charged with immorality because of the presence of the “High Times” magazine; she was charged with immorality because of the presence of marijuana in her house. If the sole basis of the charges rested on the presence of the magazine, then Appellant’s arguments would have some validity. The record, however, shows that the drug agents found marijuana within and without the house and it was the presence of the marijuana that precipitated the charges. The State Board of Education, therefore, concludes that Appellant’s arguments that rest on the constitutionally protected right to possess a magazine are without merit.

Appellant next contends that she was denied equal protection under the law because the Local Board did not take any action against the Local Superintendent when he was charged with tampering with a jury. An equal protection argument, however, has to be predicated on similarly situated persons in similarly situated circumstances. *See, Ga. Dept. of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 876 (1989); *Person v. State*, 206 Ga. App. 324, 326 (1992). Appellant and the Local Superintendent are not similarly situated persons and they were not involved in similarly situated circumstances. Different statutes govern both the employment and the discharge of Appellant and the Local Superintendent. Additionally, there has not been any showing by Appellant that selective prosecution occurred because of discrimination against a constitutionally protected class. The State Board of Education, therefore, concludes that the Local Board did not violate Appellant’s equal protection rights when it terminated her contract.

Appellant next contends that the Local Board’s decision to terminate her contract was contrary to the weight of the evidence. Appellant contends that the raid by the drug agents was not aimed at her, but against her husband. She contends there was no testimony that she had any knowledge concerning the presence of marijuana in or about the house. In addition, numerous people offered evidence of Appellant’s good character.

“The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board’s decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).” *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In the instant case, there was evidence that marijuana was found in various locations within the house. If drugs are found in a house, the trier of fact can find joint possession. *See, Mobley v. State*, 190 Ga. App. 771 (1989).

As pointed out by the Local Board, the quantities of drugs involved indicated a drug distribution operation and the issue before the Local Board was whether Appellant was aware of the presence of the drugs. The record contains substantial evidence from which the Local Board could find that Appellant was aware of the drugs. The State Board of Education, therefore, concludes that the Local Board's decision is supported by the weight of the evidence.

Appellant's final contentions are that the Local Board improperly terminated her teaching contract because it was concerned that it would be unable to terminate her if she was acquitted in a criminal trial. The record contains some questions by members of the Local Board about Appellant's status if she was later acquitted in a criminal trial. The questions asked by the Local Board members, however, do not establish the basis upon which the Local Board made its decision. First, the record does not show that Appellant is facing any criminal action. Second, the outcome of an administrative action is not entirely dependent upon the outcome in a criminal action because of the different standards of proof. The questions can also be interpreted as an expression of concern that the termination action was taking place without a criminal conviction. The State Board of Education, therefore, concludes that the Local Board did not make its decision on the basis of any improper consideration.

PART IV DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board did not violate Appellant's due process rights, equal protection rights, or her rights under the First Amendment, that there was evidence to support the Local Board's decision, and that the Local Board did not act upon any improper considerations. The Local Board's decision, therefore, is hereby
SUSTAINED.

This 11th day of July, 1996.

Mr. Brinson, Mr. Sessoms, Mr. McGlamery, and Mr. Floyd were not present.
The seat for the eleventh District is vacant.

J. T. Williams, Jr., Chairman
State Board of Education