STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT D. HOBBY,	:	CASE NO. 1977-6
Appellant,	:	
vs.	:	
TIFT 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, attached hereto, and, after a vote in open meeting,

DETERMINES AND ORDERS, that the decision herein of the Tift County Board of Education to terminate the contract of Robert D. Hobby, Appellant herein, be, and is hereby, affirmed.

This 16th day of August, 1977.

Thomas K. Vann Jr.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT D. HOBBY, Appellant, vs. TIFT COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1977-6 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

On February 28, 1977, the Tift County Board of Education (hereinafter "Local Board") voted to terminate the contract of Robert D. Hobby (hereinafter "Appellant") for good and sufficient cause. Appellant was serving as a principal in the school system and became involved in an incident with the parents of a student in the school. An investigation was made by the superintendent and evidence was obtained concerning the incident. During the investigation, the superintendent discovered other factors which caused him to recommend that Appellant be terminated. On January 13, 1977, the superintendent wrote

to Appellant that he was going to recommend that Appellant's contract be terminated for good and sufficient cause. The superintendent listed four specific charges against Appellant, namely:

> "1. Drinking or under the influence of alcohol at the school.
>
> "2. Improper advances, telephone calls and suggestions to female members of the faculty working under your supervision.
>
> "3. Unduly absenting yourself from the school during working hours.
>
> "4. Failure to maintain discipline and provide for the protection and best interests of the students under your supervision."

Thereafter, on January 19, 1977, the initial charges were supplemented with a written list of fourteen (14) specific charges, thirteen (13) of which related to the four initial charges plus a charge relating to becoming involved in a highly publicized relationship of a questionable nature with the parents of a student in the school.

The matter was referred to the Professional Practices Commission for hearing, and, after a continuance requested by Appellant, a hearing was held on February 14, 1977. The hearing examiner for the Professional Practices

Commission found that the Local Board had carried the burden of proof with respect to only four (4) of the fourteen (14) charges. These four were:

1. Being under the influence of alcohol during working hours during the school year 1975-1976.

2. Failure to adequately maintain discipline in the halls and classrooms during school years 1975-1976 and 1976-1977 (2 charges).

3. Being involved in a highly publicized relationship with the parents of a student in the school during the school year 1976-1977.

In an order dated February 24, 1977, the Professional Practices Commission concurred with the report of the hearing examiner and recommended the termination of Appellant's contract for the school year 1976-1977 and immediate dismissal. On February 28, 1977, the Local Board accepted the findings and recommendations of the Professional Practices Commission and ordered the termination of Appellant's contract as of March 1, 1977.

This appeal was then made to the State Board of Education. Appellant set forth fourteen grounds for reversing the Local Board. These grounds are discussed in Parts II and III of this report.

PART II

FINDINGS OF FACT

1.

Appellant was charged with being under the influence of alcohol at the school during working hours on numerous occasions during the scholastic year 1975-1976. The hearing examiner concluded from the testimony of the witnesses that sufficient evidence was available to sustain the charges. The evidence consisted of testimony by several teachers that they noticed the odor of alcohol on Appellant's breath, that his face was flushed, and on at least one occasion a witness felt his actions indicated that he had been drinking. The former superintendent testified that he had counselled Appellant in March 1976, regarding drinking when he noticed the odor of alcohol on Appellant's breath a day or so after the Local Board had discussed Appellant's reappointment. At that time, Appellant denied that he had been drinking, but stated that he was taking some toothache medicine. The former superintendent also testified that there was an odor of alcohol on Appellant's breath at a football game in the fall of 1976.

The State Board of Education follows the principle that if there is any evidence to support the findings of the local board, then the decision of the local board will not be overturned. The record discloses that there was evidence from which the trier of fact could conclude that Appellant was under the influence of alcohol during the working hours during the school year 1975-1976.

2.

Appellant was charged with failing to adequately maintain discipline in the halls and classrooms during the scholastic years 1975-1976 and 1976-1977. He was also charged with failing to adequately maintain discipline and supervision in the mornings during the arrival of buses unloading children at the school during the scholastic years 1975-1976 and 1976-1977. The hearing examiner found that the Local System had carried the burden of proof in sustaining the charges.

A review of the record indicates that discipline in the halls and during the time of the arrival of the buses in the morning was lacking. The children were fighting when they arrived in the morning and continued to be rowdy when they entered the

school. The teachers complained about the discipline at the faculty meetings, but Appellant felt that the maintenance of discipline was primarily the responsibility of the teachers. As a result, the discipline within the school was lacking.

Appellant attempted to characterize the lack of discipline as a difference in philosophy between Appellant and the teachers. There was, however, a lack of discipline in the school which the Local Board could find to be the responsibility of Appellant as the principal of the school, regardless of whether the lack of discipline resulted from a difference in philosophy or some other reason. There is, therefore, sufficient evidence in the record to permit the Local Board to find that Appellant failed to adequately maintain discipline in the halls and classrooms and during the arrival of the buses unloading the children at the school.

3.

Appellant was charged with becoming involved in a highly publicized relationship of a questionable nature with the parents of a student at the school during the scholastic year 1976-1977. The hearing examiner found that the Local Board had carried the burden of proof required to support the charge.

The record discloses that the mother of one of the students was active in the parent-teachers association and Appellant apparently became attracted to her to the point that he would call her at her home during the day and have long telephone conversations with her. Appellant admitted that during the conversations, he asked her if she would love him if he were not principal of the school and otherwise carried on conversations that were characterized as similar to two adolescents on the telephone. The father of the student became aware of the relationship and tape recorded the telephone conversations. The father and the father's brother thereafter forcibly removed Appellant from the school one afternoon and at some distance from town severely beat Appellant and injured him to the point that he was hospitalized for several days. During the time of the beating, the father played the tape recording back to Appellant.

While he was in the hospital, Appellant told the superintendent and the district attorney what had happened and the reason for the beating. He stated to them that he deserved some of what happened to him, but not all, i.e., the beating. Appellant, on direct

examination during the hearing, stated that, "Basically, what I was saying was my conscience was hurting me, because I felt I was wrong to be involved to the extent that we were involved...." Subsequently, criminal charges were brought against the father of the student which resulted in his receiving a fine and a three year probated sentence.

As a result of the incident and the attendant rumors that he heard, the superintendent, who was beginning his first term, began an investigation. It was during this investigation that he learned of the discipline problems within the school and the fact that Appellant was observed by the teachers to be under the influence of alcohol during school hours.

The record contains direct testimony from which the Local Board could find that Appellant had engaged in a questionable relationship with the mother of a student in the school and as a consequence thereof, he had lost his effectiveness as a principal. The Hearing Officer, therefore, concludes that the Local Board sustained the burden of proof relating to this charge.

PART III

CONCLUSIONS OF LAW

Appellant has raised a number of objections to the Local Board's dismissal. The objections go to the validity of the procedures and the charges, and the sufficiency of the evidence. Appellant grouped the objections into four principal parts and this format will generally be followed.

1.

Appellant argues that insufficient notice of the charges was given. Additionally, Appellant argues that the Local Board adopted rules for dismissal which did not contain the causes for which he was dismissed and the dismissal was therefore improper. Appellant, however, did not raise any of these issues at the hearing before the Professional Practices Commission. If an issue has not been raised at the initial proceeding, it cannot be raised for the first time when the case is heard on appeal. See, e.g., Vowell v. Carmichael, 235 Ga. 387, 219 S.E.2d 732 (1975); Pitts v. General Motors Acceptance Corp., 231 Ga. 54, 199 S.E.2d 902 (1973). The notice and charges made by the Local Board must, therefore, be

deemed sufficient since they were not attacked at the initial hearing. It should, however, be noted that Appellant did receive two notices of the specific charges, one on January 13, 1977 and a second on January 19, 1977. Both of these notices were given more than ten days before the hearing. Since the notices were given to Appellant more than ten days before the hearing, they were issued timely.

2.

Appellant argues that the grounds for dismissal were too vague and indefinite and that the statutory basis for dismissal is unconstitutionally vague and indefinite. Again, the record discloses that these issues were not raised in the initial hearing before the Professional Practices Commission and they cannot therefore be raised for the first time on appeal.

3.

Appellant next urges that the decision to terminate was invalid because it was based upon hearsay and conclusionary evidence and impinged upon his freedoms of speech and association. In support of this objection, counsel for Appellant attacks the evidence supporting each of the charges upon which the Local Board ultimately dismissed Appellant.

Appellant first argues that there was no probative evidence that Appellant ever "drank any alcohol, intoxicating beverages or was under the influence of alcohol at his school at any time." With regard to the charge that Appellant failed to maintain discipline, it is urged that the facts merely reflect a difference in philosophy between Appellant and the teachers. Additionally, the charge is objected to on the ground that it is too vague and indefinite to qualify as a specific charge to dismiss. Appellant then objects to the charge that appellant became involved in a highly publicized relationship of a questionable nature with the parents of a student on the grounds that the evidence was hearsay, and that a dismissal based upon such a charge violated Appellant's freedoms of speech and association.

As previously stated (Part II, supra , there was evidence available to the Local Board that Appellant was under the influence of alcohol during school hours. The testimony regarding Appellant's condition was, for the most part, confined to the witnesses' observations. Such testimony does not constitute hearsay evidence. There was no requirement for the Local Board to produce witnesses who observed Appellant taking a drink of an

intoxicating beverage. The charge relates to being under the influence of alcohol during school hours, and such a charge can be sustained by testimony concerning the observed condition of Appellant. The Local Board, therefore, had sufficient evidence to sustain the charge that Appellant was under the influence of alcohol during school hours.

The charges that Appellant failed to maintain discipline in the school were similarly substantiated by the evidence. Appellant, however, also raises the issue that the charges were too vague and indefinite to qualify as a specific charge. This issue, however, was not raised at the hearing before the Professsional Practices Commission and cannot now be raised for the first time on appeal. Additionally, the charges were specific enough so as to enable Appellant to know what duty or responsibility he was alleged to have violated.

Appellant contends that the charge of becoming involved with the parents of a child in the school was not supported by competent evidence, and his dismissal on such a charge violated his freedoms of speech and association. As previously stated (Part II, supra), there was competent evidence regarding Appellant's

relationship with the parents. Also, this contention, which has been raised for the first time in this appeal, cannot now be heard by the State Board of Education for the first time.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer concludes that the Tift County Board of Education had the power and authority to dismiss Appellant and there was sufficient evidence to permit a dismissal. The Hearing Officer, therefore, recommends that the decision of the Tift County Board of Education dismissing Appellant be affirmed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer