

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: APPEAL OF WILKES : CASE NO. 1977-13
COUNTY NAACP YOUTH :
COUNCIL :
:
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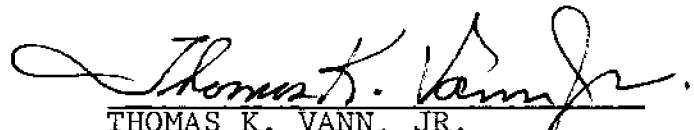
O R D E R

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

DETERMINES AND ORDERS that the appeal herein be, and is hereby, dismissed.

THE STATE BOARD OF EDUCATION has also considered the motion to intervene entered by Luke Terry, Daryl Hildebrant, Johnny Williams, Dale Peeler, and Shelton Gresham, and, based upon the dismissal of this case, hereby denies said motion.

This 10th day of September, 1977.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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IN RE: APPEAL OF WILKES	:	CASE NO. 1977-13
COUNTY NAACP YOUTH	:	
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	:	REPORT OF
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

On July 11, 1977, the Wilkes County Board of Education (hereinafter "Local Board") held an inquiry and heard testimony to determine whether a hearing should be held for the purpose of terminating the contract of a teacher within the system. The inquiry or probable cause hearing was held at the urging of the Wilkes County N.A.A.C.P. Youth Council (the "Council"). The Council charged that the teacher engaged in conduct which adversely reflected on his ability as a teacher. As a result of the probable cause hearing, the Local Board determined that there was insufficient evidence to hold a hearing to terminate the teacher. The Council appealed the Local Board's decision to not hold a hearing and the Local Board has moved to dismiss the appeal without the necessity of furnishing a transcript on the grounds that the Council was not a party to the probable cause hearing and

that no action was taken adverse to the Council which would afford a basis for an appeal to the State Board of Education.

PART II

CONCLUSIONS OF LAW

Ga. Code Ann. § 32-910(a) provides that the local boards of education "shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the construction or administration of the school law...." and that "when such board has made a decision, it shall be binding on the parties." Ga. Code Ann. § 32-910(b) then provides in part that

"Any party aggrieved by a decision of the local board of education shall have the right to appeal therefrom to the State Board of Education."

The appeal and the motion to dismiss raise an initial issue of whether there is a matter of local controversy in reference to the construction and administration of the school law. A local school board is charged with the responsibility and authority to conduct the affairs of a local school system. Ga. Code Ann. § 32-901. There are certain matters that come before a local school board that do not require or permit an appeal to the State Board of

Education. See, Eastwind Developers, Ltd. v. Bd. of Educ., 238 Ga. 587 (1977) (injunctive relief from damages to land). In the instant case, the specific question is whether an inquiry by a local board into charges against a teacher constitutes a controversy in reference to the construction and administration of the school law within the meaning of Ga. Code Ann. § 32-910. The Hearing Officer thinks that it does not.

There are very few decisions on what constitutes a matter of local controversy in reference to the construction or administration of the school law. Any time that a local board holds a hearing and takes evidence, and renders a decision with respect to the interpretation or construction of the school law, then an appeal can be taken to the State Board of Education. This means that in order for there to be an appealable decision: (1) the local board must sit as a tribunal to decide, (2) a matter of local controversy, (3) involving the interpretation or construction of the school law, (4) a hearing held, and (5) a decision rendered. In the instant case, however, the Local Board did not sit as a tribunal nor was there a matter involving the interpretation or construction of the school law. The Local Board made an

administrative decision that it was not going to act as a tribunal or hold a hearing. Under Ga. Code Ann. § 92-310, this administrative decision is not reviewable by the State Board of Education. See, Boney v. Bd. of Educ., 203 Ga. 152 (1947); Bryant v. Bd. of Educ., 156 Ga. 688 (1923).

The State Board of Education has previously held that the refusal of a local board to hold a hearing is a decision itself which is appealable to the State Board of Education and a local decision over which the State Board of Education has jurisdiction. Shoffeitt v. Lumpkin County Bd. of Educ., Case No. 1975-12 (Mr. Kilpatrick dissenting). The Shoffeitt case, however, involved the failure on the part of the local system to hold a hearing when the hearing was demanded by law in order to dismiss the employee. In the instant case, however, a similar requirement of law that a hearing be held does not exist.

It may be right, proper, and highly commendable that the citizens of a community take an active interest in the affairs of the school system. Similarly, however, a local board acts responsibly when it investigates charges made by the citizens. Nevertheless, the desire and involvement of the citizens and a determination by a local board that it cannot or will not act on the complaints of

the citizens does not raise the situation to one of local controversy involving the interpretation or administration of the school laws when a hearing is not demanded by the statutes. See, Bryant v. Bd. of Educ., supra.

Since a hearing has not been held regarding a local controversy involving the interpretation or administration of the school laws, there is no need for the Local Board to submit a transcript of the initial proceedings to the State Board of Education. The transcript would not add anything to the determination of this matter by the State Board of Education. Nor would a hearing by the State Board of Education serve any purpose.

PART III

RECOMMENDATION

Based on the appeal and the above conclusions, the Hearing Officer recommends that the State Board of Education dismiss the appeal without hearing or requiring the submission of a transcript by the Wilkes County Board of Education.



L. O. BUCKLAND
Hearing Officer