

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DON MOSLEY, ET. AL.,

Appellants

vs.

SUMTER COUNTY BOARD OF
EDUCATION,

Appellee.

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CASE NO. 1977-18

ORDER

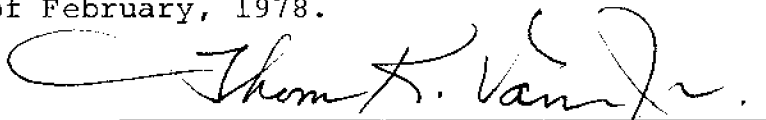
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 decisions of the Sumter County Board of Education herein appealed from, be and they are hereby affirmed. The supersedeas order entered by the Chairman on December 3, 1977, is hereby set aside.

Mrs. Huseman, Mrs. Oberdorfer and Mr. McClung dissented. Mr. Kilpatrick was not present.

This 9th day of February, 1978.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

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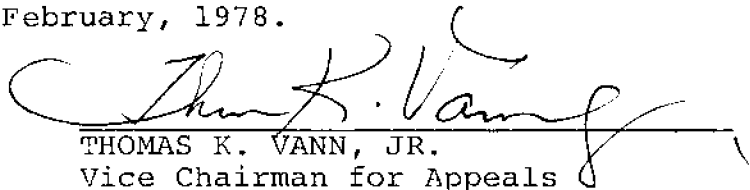
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EDUCATION,	:	REPORT OF
	:	
Appellee.	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision made after an October 27, 1977 hearing by the Sumter County Board of Education (hereinafter "Local Board") to reconfirm their decision of September 14, 1977, to enter into a written agreement with an architect for the preparation of plans and other architectural services in connection with the construction of an additional classroom building at one of the two high schools operated by the Local Board. Don Mosley and twenty-six others (hereinafter "Appellants") had filed a motion asking the Local Board to reconsider its decision and requesting a hearing on the decision to enter into the agreement, but their primary contention was that the classroom addition should not be constructed. The Local Board

determined, before the hearing, that the motion for reconsideration was not filed on time for any issue but the question of hiring the architect.

The Appellants have appealed the decision of the Local Board on the grounds that the hearing should not have been limited to consideration of the issue of whether the agreement should be entered into and that the decision to construct the classroom addition was erroneous. The Appellants have requested that the State Board of Education order a new hearing so that evidence regarding the construction of the classroom addition can be presented.

PART II

FINDINGS OF FACT

On July 20, 1977, the Local Board held a special meeting and adopted two motions which read:

1. "A motion was made . . . to negotiate with an architect to supervise the building of a 10 classroom building plus science lab and Home Ec. lab that can be used as classrooms plus adminsuite, teacher lounge and clinic for \$250,000.00."
2. "A motion was made . . . to employ Mr. William Cox as architect."

The minutes of the meeting disclose that one of the Appellants was present at the meeting as a visitor. The record also

shows that the construction of a classroom addition at one of the high schools operated by the Local Board was one of the topics of discussion. The only other topic of discussion shown in the minutes concerned the hiring of a new superintendent. The Local Board contends that the decision to build the classroom addition was made at the July 20 meeting. The Appellants argue that the decision was not made at the July 20 meeting. They argue that the only decision made was to negotiate with an architect and that this did not constitute a decision to construct the new classroom.

On August 17, 1977, the Local Board met and voted to set a millage rate which would provide enough money to construct the addition. Then, on September 14, 1977, the Local Board adopted a motion at its regular meeting to "enter into a contract agreement with Mr. William N. Cox, A.I.A." The motion was unanimously passed. The Appellants filed a motion for reconsideration on September 29, 1977, in which they asked the Local Board to reconsider the hiring of the architect and also requested an opportunity to present evidence that the building of the classroom addition was an erroneous decision in that the new classroom would unnecessarily cost the taxpayers additional money, was not consistent with the recommendations of an expert panel that the schools be consolidated, and would result in the continuation of defacto segregation within the county.

On October 12, 1977, the Local Board held a regular meeting and decided to hold a hearing on October 26, 1977 for the purpose "of acting on the motion by the Appellants concerning the Boards employment of Mr. William Cox, Architect, to prepare plans and drawings for a classroom building to be build at Union High School." A special meeting was then called on October 19, 1977 at which the Local Board passed a motion that "all testimony and evidence presented at the hearing scheduled for Wednesday, October 26, 1977 must be in regard to the employment of Mr. William Cox, Architect." The record discloses that the special meeting was called at 2:00 o'clock p.m. and held that evening. At the meeting, the Local Board determined that the motion for reconsideration was not timely filed in that it was filed more than thirty days after the decision had been made to build the classroom addition. No notice of the meeting was given to the Appellants and they were not given an opportunity to present any arguments concerning the scope of the hearing or the scope of the motion for reconsideration.

At the beginning of the October 26, 1977 hearing, the attorney for the Appellants requested an opportunity to present witnesses to establish that the motion for reconsideration was timely filed. The Chairman ruled that the

Local Board had already decided that the motion was not timely filed and that the Board would not receive any evidence concerning whether the motion was timely filed.

During the hearing, however, evidence was presented concerning both the hiring of the architect and the decision to build the new classrooms. There was evidence that one of the Local Board members felt that only a tentative decision had been reached at the July 20 meeting and the September 14 meeting. There was also evidence that the Board Chairman felt that a decision had been made at the July 20 meeting. Therefore, notwithstanding the ruling made at the beginning of the hearing, the Appellants were permitted to introduce evidence concerning when the decision was made and whether their motion for reconsideration was filed on time. The Appellants were not, however, permitted to introduce any evidence concerning whether the classroom addition should be built.

Upon conclusion of the hearing, the Local Board decided to proceed with the hiring of the architect. The Appellants filed an appeal to the State Board of Education on November 11, 1977. Appellants also filed a motion for a supersedeas order from the Chairman of the State Board of Education on December 3, 1977.

PART III
CONCLUSIONS OF LAW

The only issue to be decided in this case is whether the Local Board improperly limited the hearing to consideration of the hiring of the architect. If the hearing was improperly limited, then another hearing should be held so that Appellants can present the additional evidence they have regarding the construction of the classroom addition. If not, then the decision of the Local Board should stand. The answer to the question rests with whether the motion for reconsideration was filed in time to take up any other issues.

The Appeals Policy, as amended August, 1976, provides in section 05-313 that in those situations where a local board makes an essentially legislative or executive decision without holding a hearing then

"the person aggrieved by such decision shall file a written motion for reconsideration with the local board within 30 days of the decision complained of, setting forth clearly and succinctly the reasons wherein such decision is complained to be erroneous."

There is, therefore, no need to hold a hearing on any matter that is essentially legislative or administrative in nature if the decision is not complained of within 30 days.

In the instant case, there is evidence in the record which supports the Local Board's contention that the decision to build the additional classroom space was made no later than July 20, 1977. The Board discussed the building, established the specifications and voted to employ a particular architect at the July 20 meeting. Additionally, the Board increased the millage rate so that sufficient funds would be produced to build the classrooms. In some instances these actions would be taken before making a final decision, but such actions are also entirely consistent with a decision to construct the building. The State Board of Education follows the rule that if there is any evidence to support the decision of the local board, then the State Board of Education will not interfere with that decision.

The decision to build the school, was, therefore, made no later than July 20, 1977 and it was necessary to file a motion for reconsideration no later than August 19, 1977 in order to contest this decision. The Appellants did not file their motion until September 29, 1977. It was, therefore, too late and the Local Board properly limited the issues to be decided at the hearing. If the Appellants had offered proof that the decision of the Local Board was illegal or represented an abuse of their discretionary power, then it would have been necessary to permit such evidence to

be heard. The Appellants, however, did not make such an offer, nor did they make any such offer in the appeal, their brief or in oral argument.

The Appellants also did not attack the qualifications of the architect that was hired and did not present any evidence that showed that it would be improper to hire an architect to render services. There is, therefore, no basis for the appeal. The decision is administrative in nature and there is nothing to indicate that the Local Board was acting illegally or abused its discretionary power.

The Local Board perhaps should have made the decision that the hearing would be limited to the question of hiring an architect at the beginning of the hearing and upon motion of counsel rather than at a meeting where Appellants were not in attendance. This action, however, did not cause any harm to Appellants because they were able to present evidence concerning whether their motion for reconsideration was filed on time with respect to the decision to build the additional classrooms.

PART IV

RECOMMENDATION

Based upon the record submitted, the briefs and arguments of counsel, and the above findings and conclusions,

the Hearing Officer recommends that the decision of the Sumter County Board of Education to employ an architect be sustained and that the supersedeas order entered December 3, 1977, be withdrawn.

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