

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHARLES B. HUTCHESON

Appellant,

v.

DEKALB COUNTY BOARD OF  
EDUCATION,

Appellee.

CASE NO. 1980-5

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 DeKalb County Board of Education herein appealed from is hereby affirmed.

Mrs. Kjorlaug, Mrs. Oberdorfer and Mr. Smith dissented.

Messrs. McClung and Foster were not present.

This 8th day of May, 1980.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

1980

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHARLES B. HUTCHESON,	:	CASE NO. 1980-5
	:	
Appellant,	:	
	:	
vs.	:	REPORT OF
	:	
DEKALB COUNTY BOARD OF	:	HEARING OFFICER
EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

Charles Hutcheson (hereinafter "Appellant") has appealed from a decision by the DeKalb County Board of Education (hereinafter "Local Board") to suspend him from his position as a principal for five days without pay following a finding by a tribunal of three persons appointed pursuant to Ga. Code Ann. §32-2101c(e) that Appellant had impeded the Local Board in an investigation by not disclosing all facts known to him when he appeared before the Local Board as a witness. Appellant's appeal claims that the evidence did not support the charges, the tribunal was not objective, and that he was denied due process. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II  
FINDINGS OF FACT

This case arises from an investigation by the Local Board into the activities of a number of school employees in contributing to the legal defense fund of a member of the Local Board who was involved in litigation concerning his right to hold a seat on the Local Board. The Local Board maintained that the contributions violated a regulation that prohibited employees from participating in any political activity or contributing to the campaigns of any candidates for the Local Board. Appellant was one of the first witnesses to appear before the Local Board as it conducted its investigation.

On July 24, 1979, the Local Board gave a written notice to Appellant that it had tentatively decided to suspend him without pay for ten days because he willfully failed to tell them he had received a contribution from another employee for the legal defense fund. Appellant requested a hearing on the matter in a letter dated July 30, 1979. On September 5, 1979, the Local Board gave Appellant a written list of the charges and witnesses. The hearing was conducted on January 10, 1980 before a tribunal of three persons with educational experience appointed by the Local Board pursuant to Ga. Code Ann. §32-2101c(e). The tribunal issued its decision on January 14, 1980 and recommended that

Appellant be suspended for ten days without pay. The tribunal found that Appellant had received money for the legal defense fund from another employee and had wilfully impeded the Local Board's investigation by denying he had received any money. The Local Board adopted the findings of the tribunal on January 18, 1980, but reduced the punishment to suspension for five days without pay. Appellant appealed to the State Board of Education on February 5, 1980.

At the time of the incident, Appellant was the chairman of an association of school administrators. He called an informal meeting at a restaurant for the purpose of discussing the finances of the group. During the meeting, there was also a discussion about the possibility of raising a legal defense fund for the member of the Local Board. Approximately a week later, Appellant was attending another meeting when another employee approached him at the end of the meeting and gave him a sealed envelope with the words "This is from instruction." Appellant opened the envelope the next day and discovered that it contained \$100.00. Four days later, Appellant was called before the Local Board and questioned under oath for approximately one hour. During the questioning, he was asked whether he had solicited or received any money for the board member who was involved in litigation. Appellant denied that he had solicited or received any money. Following his

appearance before the Local Board, Appellant called the employee he had received the money from and asked if it was for the legal defense fund. When he determined that the money was for the legal defense fund, he attempted to return it to the employee, but the employee told him there was nothing wrong with keeping it for the fund.

The employee who gave Appellant the money was called before the Local Board and testified he had given Appellant \$100.00 for the legal defense fund. Appellant was then recalled by the Local Board and he admitted he had received the money, but maintained that at the time of his first appearance he was unaware the money was for the legal defense fund.

### PART III

#### CONCLUSIONS OF LAW

Appellant's appeal sets forth three contentions why the Local Board's decision should be reversed. The first contention is that the evidence presented to the tribunal does not support the charges. The second contention is that the hearing tribunal was not impartial because one of the members was a former member of the Local Board and the two other members were co-workers with one of the Local Board members who testified against Appellant. The last contention is that Appellant

failed to prove the charges made against him. The last contention is that Appellant was denied due process because the decision to suspend resulted from his appearance before the Local Board when no charges were pending, a transcript was not made, there was no opportunity to cross-examine witnesses, and he did not have time to secure legal counsel.

As Appellee points out, Appellant failed to raise the issue of the tribunal's impartiality at the time of the hearing. If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made. See, e.g., Vowell v. Carmichael, 235 Ga. 387, 219 S.E.2nd 732 (1975). A review of the record does not disclose any bias on the part of the tribunal members. Appellant's contention, therefore, is improper and does not present a reason for reversing the Local Board's decision.

Appellant also did not raise any issue at the hearing that he had in any way been denied due process. The record shows that the Local Board gave Appellant a hearing, and gave him all of the required notices. None of Appellant's due process rights were violated because a transcript of Appellant's appearances before the Local Board was unavailable. The essential hearing in this case was the hearing before the appointed tribunal and not Appellant's initial appearances before the Local Board. The Local Board's decision to suspend

was tentative. When Appellant requested a hearing on the charges, he was given notice of the charges, a transcript was prepared, he was given the opportunity to present witnesses on his behalf and cross-examine the witnesses against him, and he was given the right to be represented by counsel. The Hearing Officer, therefore, concludes that none of Appellant's due process rights were violated.

Appellant's principal contention is that the Local Board failed to prove the charges made against him. The charges made were that Appellant intentionally suppressed the truth and misled the Local Board when he testified under oath that he had no money which had been raised for the Local Board member who was involved in litigation, and "in spite of repeated inquiries by Board members, you made no comment as to your having any funds." Appellant argues that the testimony of the Local Board members who were called as witnesses was inconclusive whether he was ever asked if he had received any funds for the Local Board member. Appellant also points to the inconsistency among the Local Board members when one testified Appellant was asked the question about the funds several times and two members testified Appellant was asked the question once. He claims that the testimony, therefore, did not support the charge that "repeated inquiries" were made whether he had received any money. The record, however, includ-

ing the testimony referred to by Appellant, shows that he was asked, at least once, whether he had received any money and he replied in the negative. The tribunal, therefore, could conclude that Appellant was asked a question by the Local Board and that Appellant gave an answer which was in fact incorrect. There are several mitigating circumstances from which the tribunal could have determined Appellant did not wilfully attempt to mislead the Local Board because he did not know the purpose of the money he had in his possession. Other circumstances, however, could have caused the tribunal to decide otherwise. For example, Appellant attempted to contact the employee who had given him the money in order to determine its purpose. Appellant also states in his appeal that before his appearance before the Local Board he considered the possibility of the money being for the legal defense fund. There is, therefore, some evidence from which the tribunal could decide that Appellant's actions were wilfull and that Appellant did not disclose the proper information to the Local Board when he was questioned. The State Board of Education follows the "any evidence" rule which provides that if there is any evidence to support the Local Board decision, then the decision will not be disturbed on appeal. Antone v. Greene County Bd. of Educ., Case No. 1976-11. The Hearing Officer, therefore, concludes that the evidence presented supports the decision of



the Local Board and no grounds for reversal exist based upon insufficient evidence.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of the parties, it is the opinion of the Hearing Officer that the decision of the Local Board is within the statutory authority of the Local Board; Appellant was not denied any due process rights, and there was evidence submitted from which the tribunal hearing the charges could find that the allegations had been proven by the Local Board. The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education to suspend Appellant for five days without pay be sustained.

  
L. O. BUCKLAND  
Hearing Officer