STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHARLES L. MOORE,	:	
Appellant,	:	
v.	:	CASE NO. 1981-43
BIBB 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, 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 Bibb County Board of Education herein appealed from is hereby reversed.

AS A PART OF THIS ORDER, the State Board of Education wishes to make it clear that it in no way is intended to preclude a local board of education from considering conviction of a crime involving moral turpitude even though prior civil action has been taken by that local board of education.

This 11th day of March, 1982.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION MAR 9 1992

STATE OF GEORGIA

CHARLES L. MOORE,	:	
Appellant,	:	CASE NO. 1981-43
vs.	:	REPORT OF HEARING
BIBB COUNTY BOARD OF EDUCATION,	:	OFFICER
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Charles L. Moore (hereinafter "Appellant") from a decision of the Bibb County Board of Education (hereinafter "Local Board") to terminate his teaching contract after finding that he had willfully neglected his duties and for other good and sufficient causes. The appeal is based on Appellant's contention that he had previously been disciplined for the conduct used as the basis for his termination and the Local Board acted erroneously in considering the issue again. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

Appellant found a class ring on the school campus grounds during his lunch period on December 4, 1980. The ring was from another school and did not have any

identification on it. Rather than turning the ring into the central office, as dictated by the policies of the school, Appellant placed the ring in his pocket. When he left the school for the day, he stopped at a pawn shop and sold the ring for $37.16. A few days later, the principal and the security officer of the school questioned Appellant about the ring, and he readily admitted that he had found the ring on the campus and had sold it. Shortly thereafter, Appellant was told to appear before a meeting of the Local Board.

On December 18, 1980, Appellant appeared before the Local Board. The Local Superintendent gave Appellant a letter of reprimand. The letter of reprimand stated that Appellant's actions reflected poor professional judgment which could cause criticism of the school and the school system. The letter required Appellant to make restitution to the owner of the ring, and then stated: "With this accomplished no additional disciplinary action will be taken by the school system for this incident."

The following day, December 19, 1980, a warrant was filed against Appellant by the school secretary, charging him with theft by taking. The ring apparently belonged to a friend of the secretary and had been in the secretary's possession when it was dropped on the school grounds. An accusation was filed against

Appellant on March 26, 1981. The accusation changed the charge against Appellant from theft by taking to theft of lost or mislaid property. Appellant decided to plead guilty to the charge based upon the letter from the Local Superintendent that no further disciplinary action would be taken by the school system, and a judgment was entered against Appellant on September 18, 1981. The sentence required Appellant to pay a fine of one-hundred-fifty dollars and gave him a one-year probated sentence.

On September 28, 1981, the Local Superintendent notified Appellant that the Superintendent was recommending to the Local Board that Appellant's contract be terminated because of willfull neglect of duty and other good and sufficient cause. The hearing before the Local Board was scheduled for October 13, 1981. Appellant was also notified of the names of the witnesses and the basis for the charges. The charges concerned the December 4, 1980 finding and sale of the class ring and did not relate to Appellant's performance in the school. Upon conclusion of the hearing on October 13, 1981, the Local Board voted to terminate Appellant's contract for the remainder of the year. Appellant filed an appeal with the State Board of Education on November 3, 1981.

PART III

CONCLUSIONS OF LAW

The issue in this case is whether a teacher can be terminated when the teacher has already been disciplined for the offending conduct and has obtained a contract renewal during the interim between the first disciplinary action and the termination proceeding, even though the local board of education was aware of the conduct before offering the teacher a new contract. The Local Board argues that a local superintendent cannot bind a local board without proper authority to do so, and the issuance of a letter of reprimand by the superintendent cannot prevent the local board from conducting a hearing regarding the termination of a teacher. Appellant, however, argues that the Local Board is without authority to conduct any further disciplinary proceedings because of the doctrine of res judicata.

The doctrine of res judicata is set forth in Ga. Code §110-501:

> "A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue, or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered, until such judgment shall be reversed or set aside."

The courts have generally concluded that the doctrine is also applicable to administrative actions.

> "The doctrine of res judicata or estoppel by judgment is usually applied to a court proceeding, or quasi judicial proceeding, and not to administrative bodies . . . except in the administrative proceeding itself, or in appeals therefrom . . . ."
> Delta Airlines v. Woods, 137 Ga. App. 693, 696 (1976).

> "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose."
> United States v. Utah Construction & Mining Co., 384 U.S. 394, 421-22, 16 L.Ed.2d 642, 86 S.Ct. 1545 (1966).

Ga. Code Ann. §32-2105c provides that the local superintendent can issue a letter of reprimand to a teacher "for any valid reason." The teacher has the right to appeal the decision of the local superintendent to the local board for a hearing and the local board has the "right to either affirm the decision of the superintendent or to reverse it." The Local Board argues, in effect, that the Superintendent was acting on his own in issuing the letter of reprimand to Appellant and it cannot, therefore, be estopped from considering further disciplinary action. The argument, however, overlooks the fact that the letter of reprimand was issued with the full knowledge and tacit, or actual, approval of, and before, the Local Board. Appellant

appeared before the Local Board and the Superintendent when he received his letter of reprimand, was directed to make restitution, and learned that "no additional disciplinary action will be taken by the school system for this incident." In reliance upon the letter from the Superintendent and the acquiescence of the Local Board, Appellant pleaded guilty to the misdemeanor charge. The Local Board's argument would have considerably more weight if the Superintendent had issued the letter of reprimand without the Local Board's knowledge and if the Local Board had not issued Appellant a new contract after learning about the conduct. If the Local Board was concerned about the action taken by the Superintendent, it could have instituted termination proceedings in the initial instance on December 18, 1980, or it could have made a decision not to renew Appellant's contract for the 1981-1982 school year. Neither of these actions was taken.

The Local Board also argued that if a letter of reprimand from a local superintendent was conclusive in situations requiring disciplinary action, a superintendent could usurp all of the authority of a local board of education in disciplining teachers and other employees. Such would not be the case, however, if the local board was either unaware of the local superintendent's action, or the local board did not acquiesce in the the local superintendent's action. Ga. Code Ann.

§32-2101c, which covers termination, suspension, or demotion, does not limit who can bring charges against a teacher or other professional employee. Ga. Code Ann. §32-2102c and Ga. Code Ann. §32-2103c, both of which relate to nonrenewal of contracts, specifically state that the local board can make a tentative decision not to renew a contract. Charges could, therefore, be brought against a teacher or other professional employee by some party other than the local superintendent, and a local board could make a tentative decision not to renew a contract. If the local board did not acquiesce in a local superintendent's issuance of a letter of reprimand, the local superintendent would not be placed in the position of being able to usurp the powers of the local board.

The Hearing Officer, therefore, concludes that the Local Board is now estopped from conducting a termination hearing since it was aware of the action of Appellant, was present when the letter of reprimand was issued, and, even though it was aware of Appellant's conduct during the previous year, renewed his teaching contract for the 1981-1982 school year.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions,

the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the the Local Board of Education exceeded its authority in conducting a hearing on the termination of Appellant's teaching contract for the 1981-1982 school year because it was estopped by the previous actions taken by the Local Superintendent in issuing a letter of reprimand and Local Board's acquiescence in the Local Superintendent's action. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.

(Appearances: For Appellant - W. Terrell Wingfield, Jr., James David Dunham; For Local Board - Jones, Cork, Miller & Benton; W. Warren Plowden, Jr., Frank L. Butler, III.)

L. O. Buckland

L. O. BUCKLAND
Hearing Officer