STATE BOARD OF EDUCATION

STATE OF GEORGIA

THOMAS AND VIRGINIA : FISHBURNE, :

BOARD OF EDUCATION,

:

Appellants, :

CASE NO. 1995-18

vs. :

: DECISION : HARRIS COUNTY :

:

Appellee. :

This is an appeal by Thomas and Virginia Fishburne (Appellants) from a decision by the Harris County Board of Education (Local Board) that they are not residents of Harris County and, therefore, must pay tuition if they want their children to attend the Harris County schools. Appellants claim that the Local Board erroneously based its decision on the basis of property ownership rather than intent. The Local Board's decision is sustained.

Appellants own a business in Harris County, but they own a house in Talbot County on which they claimed a homestead exemption until the day before the hearing before the Local Board. In addition, Appellants claimed they were renting a house in Harris County for which they paid \$150.00 per month. Other than the rental house, Appellants do not own any property in Harris County. The house in Talbot County was not being rented and Appellants were frequently seen at the house. The Harris County Tax Commissioner refused to sell automobile tags to Appellants based upon the Commissioner's determination that Appellants were not residents of Harris County. Based upon these factors, the Local Board decided that Appellants were not residents of Harris County and that they would have to pay tuition if they wanted their three children to attend the Harris County schools.

Appellants claim that the Local Board erroneously rested their decision on property ownership and did not consider Appellants' intent to make Harris County their residence. "The standard for review by the State Board of

Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

The record in this case shows that there was evidence from which the Local Board could conclude that Appellants were not residents of Harris County. In addition to the property ownership, there was Appellants' filing of a homestead exemption in Talbot County and the Harris County Tax Commissioner's determination that Appellants were not residents of Harris County. There was, therefore, objective evidence that did not support Appellants' stated subjective intent. The State Board of Education, therefore, concludes that the Local Board's decision was not arbitrary or capricious and was supported by some evidence.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision is supported by some evidence and is neither arbitrary nor capricious. The Local Board's decision, therefore, is SUSTAINED.

This 8th day of June, 1995.

Robert M. Brinson Vice Chairman for Appeals