

STATE BOARD OF EDUCATION

STATE OF GEORGIA

RUTH DORSEY BENTON,	:	
	:	
Appellant,	:	
	:	CASE NO. 1997-14
vs.	:	
	:	DECISION
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Ruth Dorsey Benton (Appellant) from a decision by the Fulton County Board of Education (Local Board) to accept the recommendation of a tribunal to terminate her teaching contract on grounds of immorality and other good and sufficient cause because she was found in possession of marijuana. Appellant makes several claims concerning her due process rights, but the claims are without merit. The Local Board’s decision is sustained.

On June 12, 1996, Appellant was stopped for speeding in Coweta County. The officer smelled a strange odor coming from Appellant’s car and asked her if she was smoking marijuana. Appellant admitted that she had. The officer found marijuana and drug paraphernalia in Appellant’s car when he searched it. Appellant later entered a nolo contendere plea and was placed on probation. The arresting officer reported the incident to the Fulton County School System.

The Local Superintendent moved to terminate Appellant’s teaching contract and charged Appellant with immorality and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant asked for a hearing and the Local Superintendent appointed a tribunal from the Professional Practices Commission (PPC) to conduct the hearing.

During the hearing, Appellant admitted she had been smoking marijuana when she was stopped for speeding. She claimed she had started smoking marijuana in May, 1996, because of constant pain from a back injury. The Local System presented evidence that Appellant served as a drug counselor in her school and was paid extra for her duties. The tribunal found that Appellant was smoking marijuana and recommended termination of her teaching contract because of immoral conduct. The Local Board accepted the recommendation and Appellant appealed to the State Board of Education.

On appeal, Appellant does not deny that she was smoking marijuana. Instead, she takes issue with how she was arrested, how the Local System was notified, and the conduct of the hearing.

Appellant claims that the arresting officer should not have been permitted to testify as an expert witness regarding marijuana because he was not a trained forensic expert. The officer, however, had twelve years' experience handling drugs and taught dogs to detect marijuana. The State Board of Education concludes that the hearing officer did not abuse his discretion in permitting the officer to testify as an expert regarding the identification of marijuana.

Appellant claims that the Local Board failed to carry the burden of proof because the letter charging her with possession cited O.C.G.A. § 16-13-30(A) and 16-13-30(1). Sec. 16-13-30(A) makes it unlawful to possess a controlled substance and Sec. 16-13-30(J) makes it a felony to possess marijuana with the intent to distribute. The charge against Appellant, however, was that she was immoral because of her possession of marijuana. The question was never whether Appellant possessed a controlled substance or was guilty of a felony. The notice given to her by the Local Superintendent was sufficient to put her on notice that she was being charged with possession of marijuana at the time she was stopped for speeding and Appellant was able to present a defense against the charge. The State Board of Education concludes that the Local Superintendent's charge letter was sufficient to put Appellant on notice of the specific actions that constituted immorality.

Appellant claims that the hearing officer erred in letting her nolo contendere plea to be entered into evidence because such a plea cannot be used to impose any disability. Just as Appellant was not charged with immorality because of any criminal charges relating to her possession of marijuana, the fact that she entered a nolo contendere plea is immaterial to the charge of immorality because she possessed marijuana. Appellant also admitted during the hearing that she entered a nolo contendere plea. The State Board of Education concludes that there was no error committed in permitting the nolo contendere plea to be entered into evidence.

Appellant also claims that the Local Superintendent violated the provisions of O.C.G.A. § 20-2-795.1 because the report he received about Appellant was made by the police officer rather than by a parent or an employee of the school system. O.C.G.A. § 20-2-795.1 provides:

Superintendents shall make an immediate written report to the local board of education upon receiving a written report from any identified school system personnel or parent or custodian of a child enrolled in the school system that any school system educator has committed any of the following ...crimes .

O.C.G.A. § 20-2-795.1(a). Contrary to Appellant's claims, however, the language of the statute does not preclude a Local Superintendent from receiving reports from sources other than school personnel or parents and taking action based upon such reports. The State Board of Education, therefore, concludes that the Local Superintendent did not violate any statute by receiving a report from the arresting officer.

In *Dominy v. Mays*, 150 Ga. App. 187, 257 S.E.2d 317 (1979), the Court of Appeals upheld the dismissal of a teacher on grounds of immorality because she had been convicted of felony possession of marijuana and other drugs. In *Dominy*, the Court stated:

The proven fact of the teacher's possession of three dangerous drugs is evidence from which 'immorality' may be inferred, even in the absence of criminal purpose or intent. The board of education is not required to disregard the common non-prescribed utilization of these drugs or to hypothesize some improbable innocuous explanation for the teacher's possession of them.

150 Ga. App. at 187, 257 S.E.2d at 318. Appellant claims that Dominy does not apply to her situation because she was not charged with a felony and there was no knowledge in the community about the incident. As previously stated above, the issue was not whether Appellant was charged with a felony, but whether she possessed marijuana. Similarly, the general knowledge in the community was not in issue. The State Board of Education concludes that the Local Board could find that Appellant was immoral because she possessed marijuana.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not abuse its discretion and that the tribunal hearing was properly conducted. The Local Board's decision, therefore, is

SUSTAINED.

Ms. Willou Smith was not present.

This 10th day of June, 1997.

Larry Thompson
Vice Chairman for Appeals