STATE BOARD OF EDUCATION

STATE OF GEORGIA

CONCERNED CITIZENS OF DOUGHERTY COUNTY,	:	
Appellant,	:	
vs.	:	**CASE NO. 1999-64**
DOUGHERTY COUNTY BOARD OF EDUCATION,	:	**DECISION**
Appellee.	:	

This is an appeal by a group of citizens of Dougherty County who have associated themselves as the Concerned Citizens of Dougherty County ("Appellant") from a decision by the Dougherty County Board of Education ("Local Board") to locate a school in the northwest quadrant of Dougherty County. Appellant claims that the Local Board violated the Open Meetings Act, O.C.G.A. § 50-14-1, that the school was not properly included in the school district's facilities plan, that the site sits in a flood plain, that the site is too expensive, that the purchase of the site violates the Georgia Constitution, and that the Local Board acted improperly in approving the site. The Local Board's decision is sustained.

On August 3, 1999, the Local Board voted to purchase a tract of land called the Home Drive Site for an elementary school. Appellant objected and asked for a hearing before the Local Board under the provisions of O.C.G.A. § 20-2-1160 to express the objections and to have the Local Board reconsider its decision. On August 20, 1999, the Local Board proceeded with closing on the purchase of the Home Drive tract. At a hearing on August 30, 1999, the Local Board heard testimony from personnel of the school district and from Appellant. At the conclusion of the hearing, the Local Board decided not to change its August 3, 1999 decision to purchase the property. Appellant then filed a timely appeal with the State Board of Education.

Appellant claims that the Local Board's decision-making process has been tainted by political concerns, procedural irregularities, and substantive illegalities such that the State Board of Education should reverse the Local Board's decision. Specifically, Appellant claims:

1. That the hearing on August 30, 1999 was conducted in violation of the Open Meetings Law, O.C.G.A. § *50-14-1.*

2. Acquisition of the property was not a line item budget figure, nor was it contained in the current "Facilities Plan," as required by Rule 160-5-4-.01.

3. The site would serve only 100 students, while other sites would serve 400 to 500 students.

4. The site lies in a flood plain so that federal funding cannot be used under the provisions of 34 C.F.R. § 75.611 and the "Georgia Department of Education Regulations and Procedures to Comply with the Standards and Criteria of the National Flood Insurance Program," promulgated under Reg. *160-5-4-*. 16, is violated.

5. The site is too costly.

6. The contract of purchase of the site violates the Georgia Constitution because it provides for the use of school funds to build a lift station that will benefit the seller, and the lift station is to be conveyed to the City of Albany.

O.C.G.A. § 20-2-1160 provides that the State Board of Education can hear appeals from decisions of local boards of education that involve the construction or administration of school law. If a local board of education makes an administrative decision, or a decision that does not involve the construction or administration of school law, the State Board of Education does not have jurisdiction to review the decision under O.C.G.A. § 20-2-1160.

The only issues raised by Appellant that may involve the construction or administration of school law is whether Reg. 160-5-4-.0l was violated and whether the site is located in a floodplain, which results in a violation of Reg. 160-5-4-. 16. Reg. 1 *60-5-4-.0* 1 provides that local boards of education must submit facility plans to the State Board of Education every five years. The facilities plan is "a study of a local school system's present educational facilities and a five-year forecast of facility needs." Reg. 160-5-4-.01(1)(a). Local boards of education then have to follow the priorities they establish in the facilities plan once it is approved by the State Board of Education. Appellant claims that the Home Drive school was not on the approved facilities plan and, therefore, cannot be constructed. The record, however, shows that there was testimony that the school was contained on the facilities plan.

The record also shows that the Local Board received notice from the Department of Natural Resources that the proposed site was not located in a flood plain. Although there was some testimony that the site area had flooded in recent years, there was also testimony that the actual building site would be elevated before construction began. Since there was no other evidence that site was located in a flood plain, the Local Board could, in the exercise of its own discretion, determine that the site was not a prohibited flood plain site. "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, 242 S.E.2d 374 (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. 199114 (Ga. SBE, Aug. 8, 1991). Since there is evidence that the school was on the facilities plan, that the site is not in a flood plain, and that the actual building site would be elevated, the State Board of Education concludes that the Local Board's decision did not violate Reg. 160-5-4-.01 or Reg. 160-5-4-.16 and did not constitute an abuse of discretion.

Whether the August 30, 1999 meeting was conducted in violation of the Open Meetings Law, O.C.G.A. § 50-14-1, or whether the purchase violates the Georgia Constitution do not involve the construction or administration of school law. Similarly, questions concerning the cost of the site and the size of the population to be served involve administrative decisions rather than the construction or administration of school law. The State Board of Education, therefore, will not address these issues.

As previously pointed out in *Concerned Citizens Against School Site v. Cobb Cnty. Bd. of Educ.,* Case No. 1985-8 (Ga. SBE, Oct. 10, 1985), site selection involves an administrative decision that is clearly within a local board's discretion. Since they are administrative decisions, there will seldom be any questions that involve the administration or construction of school law.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board has not violated any school law or policy of the State Board of Education, and the Local Board did not abuse its discretion by refusing to retract its decision to purchase the Home Drive tract for an elementary school. Accordingly, the Local Board's decision is

SUSTAINED.

This 23rd day of February 2000.

Bruce Jackson
Vice Chairman for Appeals