

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALZADIE COPELAND, :
 :
 Appellant, :
 :
 vs. : **CASE NO. 2001-31**
 :
 HARRIS COUNTY :
 BOARD OF EDUCATION, :
 :
 Appellee. : **DECISION**

This is an appeal by Alzadie Copeland (Appellant) from a decision by the Harris County Board of Education (Local Board) that her position as a member of the Local Board was vacant because she had moved out of the district that she was representing. The appeal is dismissed because the State Board of Education lacks jurisdiction to consider the decision.

On January 11, 2001, the Local Board conducted a hearing to determine whether Appellant had moved out of the district she was elected to represent, District 1, into another district. Appellant lived with her parents before October 1999 when she moved into another district. Appellant claimed that she moved while her parents renovated their house. The repair work took several months and in July 2000 the house burned so she was still living outside District 1 at the time of the hearing. Appellant claimed that she never intended to change her domicile, but, instead, planned to return when the repair work was completed. The Local Board voted to declare her seat vacated. Appellant then appealed to the State Board of Education.

O.C.G.A. § 45-5-1 provides:

(a) All offices in the state shall be vacated:

(3) By decision of a competent tribunal declaring the office vacant;

(5) By the incumbent ceasing to be a resident of the ... district for which he was elected;

(b) Upon the occurrence of a vacancy in any office in the state, the officer or body authorized to fill the vacancy or call for an election to fill the vacancy shall do so without the necessity of a judicial determination of the occurrence of the vacancy. Before doing so, however, the officer or body shall give at least ten days' notice to the person whose office has become vacant ... *The decision of the officer or body to fill the vacancy or call an election to fill the vacancy shall be subject to an appeal to the superior court;* and nothing in this subsection shall affect any right of any person to seek a judicial determination of the eligibility of any person holding office in the state. The provisions of this subsection shall apply both to vacancies occurring under this Code section and to vacancies occurring under other laws of this state.

O.C.G.A. § 45-5-1. (Michie, 1990 Ed)(emphasis added).

O.C.G.A. § 20-2-51 provides:

(a) No person shall be eligible for election as a member of a local board of education who is not a resident of the school district in which that person seeks election and of the election district which such person seeks to represent. ...

(b) Whenever a member of a local board of education moves that person's domicile from the district which that person represents, such person shall cease to be a member of such local board of education, and a vacancy shall occur.

O.C.G.A. § 20-2-51 (Michie, 1996 Ed.).

O.C.G.A. § 20-2-54.1(a)(2) provides:

(a) In all instances where local laws applicable to local boards of education do not provide otherwise, a vacancy occurring for any reason on a local board of education shall be filled as follows:

(1) If the vacancy occurs more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then such vacancy shall be filled for the unexpired term of office at a special election to be held on the same date as said general election preceding the general election at which a successor will be elected to a new full term of office; and in this case the remaining members of the board of education shall, by majority vote, select a qualified person to fill the vacancy until the person elected at such special election takes office; and

(2) If the vacancy does not occur more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then the remaining members of the local board of education shall, by majority vote, select a qualified person to serve for the remainder of the unexpired term.

O.C.G.A. § 20-2-54.1 (Michie, 1996 Ed.)

O.C.G.A. § 45-5-1 establishes that the body authorized to fill a vacancy has the power to do so without a judicial determination that a vacancy exists. If the body declares that a vacancy exists, then the decision can be appealed to superior court. With respect to local boards of education, O.C.G.A. § 20-2-54.1 provides that it is the local board itself, or, more precisely, the remaining members of the local board, that is the body designated to fill a local board of education vacancy. Thus, vacancies on a local board of education have to be determined by the local board and the local board's determination is appealable to superior court.

Appellant argues that the Local Board exceeded its authority in holding a hearing to determine that a vacancy existed. Appellant argues that the Local Board is authorized, under O.C.G.A. § 20-2-1160, to conduct hearings only with respect to the interpretation and construction of school law, and whether a vacancy exists is not a matter of school law but a matter of election law. Appellant argues that a probate judge, rather than the Local Board, should have determined whether a vacancy exists. Appellant's argument, however, overlooks the provisions of O.C.G.A. § 45-5-1, which, through the provisions of O.C.G.A. § 20-2-54.1, directs the Local Board to determine whether a vacancy exists. The Local Board's January 11, 2001 hearing, therefore, was conducted under the provisions of O.C.G.A. § 45-5-1 rather than under the provisions of O.C.G.A. § 20-2-1160. The State Board of Education only has jurisdiction to consider appeals that arise from hearings conducted under the provisions of O.C.G.A. § 20-2-1160. The State Board of Education does not have any jurisdiction to review the Local Board's decision concerning a vacancy because (1) the hearing, and decision, was not conducted under the provisions of O.C.G.A. § 20-2-1160, and (2) O.C.G.A. § 45-5-1 vests jurisdiction over vacancy appeals with the superior court.

Based upon the foregoing, it is the opinion of the State Board of Education that there is no statutory authority for the State Board of Education to review the Local Board's determination that a vacancy exists on the Harris County Board of Education and the State Board of Education, therefore, is without jurisdiction to consider an appeal of such decision. Accordingly, the appeal is hereby, DISMISSED.

This _____ day of May 2001.

Bruce Jackson
Vice Chairman for Appeals