1977 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-95, 1977 WL 24437

Office of the Attorney General

State of South Carolina
Opinion No. 77-95
April 4, 1977

***1** Mr. James L. Solomon, Jr.
Chairman
Board of Commissioners
Richland School District One
1616 Richland Street
Columbia, SC 29201

Dear Mr. Solomon:
Your letter of February 24, 1977, to Attorney General McLeod has been referred to me for a response. You have requested an opinion as to the authority (i.e. jurisdiction) of the Board of School Commissioners of Richland County School District One to reconsider a board decision terminating a former employee after a notice of intention to appeal and supporting petition have been served by the party aggrieved by its decision. Specifically, you state: 'The Board now has the request to reconsider its former action. However, prior to deciding if the matter will be reconsidered, the Board wishes an opinion regarding its jurisdiction in the matter.'

Upon consideration of the opinion letters filed with the Board by the opposing attorneys, Mr. Francis Mood and Ms. Jean Toal, Act No. 671 of 1976 (the Administrative Procedure Act) Section 21–247.5, Code of Laws of South Carolina, 1962, as amended, the Employment and Dismissal of Teachers Act (Sections 21–361–370.3), applicable case law and the policy issues necessarily involved in this determination, it is the opinion of this Office that the Board may presently reconsider the matter on its own terms, subject to appropriate legal requirements.

In the absence of specific statutory procedures, the following considerations seem determinative: (1) matters of local controversy in school affairs are committed to the management of the local trustees. Of course, the right of appeal to the courts is provided in several situations (in discipline matters, Section 21–774; the employment and dismissal of teachers, Section 21–368; and in general by Section 21–247.5). However, Stanley v. Gary, 237 S.C. 237, 116 S.E.2d 843 (1960) emphasizes the judicial policy in South Carolina in favor of deferring the resolution of school controversies to the local school authorities, thereby limiting court review and expressing a kind of judicial preference that school controversies be resolved by the school officials and boards entrusted with school management. (2) The conservation of judicial resources, a worthy and necessary objective which the South Carolina courts may be expected to endorse, is compatible with the above stated preference that school matters should be resolved by school officials. In other words, an administrative body, particularly a school board, will normally be given every opportunity to act prior to the time a court will take conclusive jurisdiction of a matter in controversy. Upon review a court will limit its inquiry to due process requirements (notice and hearing) and the basic question of whether the record includes evidence upon which the Board may properly base its decision. (3) South Carolina law specifically provides administrative bodies with the right to rehear matters in controversy [see Section 24(b) of Act No. 671 of 1976] and further provides that a reviewing court may remand a case for further proceedings [see Section 24(g) of Act No. 671]. (4) In an analogous situation, South Carolina trial courts may entertain a motion for a new trial, notwithstanding the pendancy of an appeal in the State Supreme Court. Mills v. Atlantic Coast Line Railroad Company, 82 S.C. 126, 63 S.E.2d 308 (1908).

***2** Our opinion does not require a detailed analysis of the Employment and Dismissal of Teachers Act. While this Office does not believe this act governs the employment and dismissal of administrators as administrators, there is certainly no prohibition against a local district extending its protection to other employees which appears to be the case in this instance. In any event, the

act's language providing that a decision of the Board is final need not be construed as foreclosing a Board from reconsidering or rehearing its own decision in light of new evidence or for any other reason which the Board deems appropriate.

In conclusion, it is the opinion of this Office that the Board of School Commissioners of Richland County School District One has jurisdiction to reconsider its decision terminating the employment of a former employee despite the filing of an appeal from that decision. Of course, the Board's jurisdiction is not endless or without limitation. While the mere filing of a Notice of Intention to Appeal with a supporting petition does not operate to preclude a reconsideration or rehearing, it would be entirely improper for any administrative agency to reopen a matter which a court has under advisement or is in the actual process of adjudicating without the express prior approval of the court.

Moreover this Office expresses no opinion as to the wisdom of a reconsideration nor any opinion on the merits of the particular controversy in question. Similarly this opinion is limited to the question of an appeal from a school board decision and has no applicability to other administrative bodies operating in accord with their own rules and regulations.
Sincerely,

Kenneth L. Childs
Assistant Attorney General

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