

GLEN PAYNE,

Appellant

v.

DORCHESTER COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-32

OPINION

INTRODUCTION

Glen Payne (Appellant) appeals the decision of the Dorchester County Board of Education (local board) to censure him. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant joined the local board in 2009 after being appointed by the county council to fill the remainder of another board member's term. He was elected to a four-year term in 2010 and re-elected to a second term in 2014. Appellant formerly served on the Dorchester County Council and is a retired Maryland State Police officer. (Appeal).

In August 2014, the local board appointed a two-member special committee to investigate allegations of improper conduct by Appellant. Appellant was initially accused of improperly contacting a local mayor and the county health department concerning mold and other environmental issues in a local school without board authorization.¹ The investigation later broadened to consider other allegations of misconduct by Appellant. The committee issued a report in January 2015 in which it concluded that Appellant "acted outside of his duties as a Board member and attempted to act as either the information office, the superintendent, or an independent investigator." (Appeal, Ex. 3). The report recommended action against Appellant, observing that "[i]f everyone acted in this manner we would have true anarchy." (Appeal, Ex. 3). The matter was referred to counsel for the local board in March 2015 for further investigation and recommendations. (Motion, Glenn Bramble Affidavit; Record, Ex. 12).

On April 14, 2015, counsel for the local board issued a memorandum summarizing the investigation's findings. (Record, Ex. 16). The investigation detailed four allegations that were ultimately included as part of the censure.

First, Appellant was accused of acting in a "rude and derogatory" manner at local board

¹ Although the committee and local board counsel investigated this incident, it did not form the basis for the censure.

meetings. In an email dated November 14, 2014, a former board member complained about Appellant using a “loud, confrontational, and demeaning tone” when talking with school system staff and other board members. During a 2012 board meeting, the former board member said Appellant began verbally attacking him after he tried to get Appellant to lower his voice and moderate his tone. (Record, Exs. 10, 16). Board Vice President Glenn Bramble reported he, along with Superintendent Wagner, “had to physically restrain [Appellant] from engaging in a physical confrontation” with the other board member. (Motion, Bramble Affidavit).

Second, Appellant wrongly accused a school principal of being depicted in a nude photograph he received from a member of the community. In June 2014, Appellant presented Superintendent Wagner with a photograph showing four naked women sitting on a couch. He demanded that the superintendent conduct an investigation because one of the women looked like a certain school principal. Appellant declined to reveal who provided him with the photograph, which local board investigators discovered was available on several pornographic web sites. Superintendent Wagner interviewed the principal, who denied she was depicted in the photo. She pointed out that the woman in the photo had an ankle tattoo; the principal did not. Superintendent Wagner concluded the allegation was unfounded. The principal explained to local board investigators that Appellant had a prior grudge against her and another family member who also worked for the school system. She reported that Appellant made unannounced visits to her school and had questioned teachers and other staff members about her performance. Superintendent Wagner confirmed that Appellant had previously expressed negative opinions to him about the principal and her family member. (Record, Ex. 16).

Third, Appellant discussed school discipline issues with the county sheriff that were under the jurisdiction of the local superintendent. The sheriff confirmed he had spoken with Appellant regularly about school issues, in part because of Appellant’s law enforcement experience. Their conversations included a discussion of fighting at North Dorchester Middle School in 2014. (Record, Ex. 9). Although the sheriff said that Appellant called him to discuss the matter, Appellant denied making the call. (Record, Ex. 11). The investigatory report does not provide specifics of the student conduct matters that were at issue. (Record, Ex. 16).

Finally, Appellant inspected a school work site with contractors who were disputing the amount of money owed to them by the school system. In 2014, the local board hired a contractor to demolish the former North Dorchester Middle School building. The contractor, in turn, hired a sub-contractor to perform some of the demolition, site clean-up, and grading work. The sub-contractor performed the work under the contract but became aware of a problem with drainage at the site. The sub-contractor proposed a solution to the problem to school officials, but became frustrated after repeated attempts to schedule a meeting with school officials to discuss the plan in detail were unsuccessful.² The sub-contractor went forward with the plan and then submitted an invoice for \$14,800 to the local board to pay for the work. After school officials declined to pay the invoice, the contractor invited Appellant to tour the work site. The sub-contractor claimed that Appellant told him that his company should be paid for the work that was done, but Appellant explained that he did not have the authority to authorize payments. Appellant

² The school official who oversaw the project disputes the sub-contractor’s account of events. He recalled telling the sub-contractor that the drainage issue was within the scope of work envisioned by the contract, but that if it were not, that a new contract would need to be approved by the local board.

suggested the sub-contractor contact Superintendent Wagner. In a subsequent conversation with the school official, in which the official again declined to pay the invoice, the sub-contractor reportedly asked him, “Do I need to call back [Appellant]?” Appellant admitted to visiting the work site regularly because the school was in his district. He confirmed that he had received a tour of the site from the contractor and sub-contractor, but maintained that he referred them to Superintendent Wagner when they began talking to him about payments. (Record, Ex. 16).

On April 16, 2015, the local board voted 4 to 1 in favor of censuring Appellant. The censure listed the four incidents described above and expressed the local board’s “disapproval of [Appellant’s] statements and actions.” Appellant was the sole board member to vote against his censure. (Record, Ex. 17 and 18).

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

A local board of education does not have the statutory authority to issue fines, suspensions, expulsions, or reprimands to its members. A local board does, however, have “the power to adopt a resolution that, while having no formal legal effect as a sanction, criticizes what the Board perceives as improper conduct.” *Burroughs v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-23 (2011) (quoting 65 Op. Att’y Gen. 347, 350 (1980)). We have previously stated that reversing a censure decision from a local board would be appropriate only if the censure were an “egregious abuse of discretion or were blatantly illegal and discriminatory.” *Id.*

Appellant raises several arguments against his censure, which we shall address in turn.

Unlawful procedure

Appellant argues that the two local board members who formed the committee to investigate him should have recused themselves from voting on his censure. He maintains it was improper for them to have voted after they already issued a report in which they expressed their opinion that he should be disciplined for his behavior. If they had recused themselves or abstained from voting, there would not have been an absolute majority in favor of censure. This is because the local board consists of only five regular members, in addition to two non-voting student members. Additionally, Appellant argues that it was a violation of due process for the local board not to provide him with advance notice of when the censure would be considered by the board.

The local board responds that the censure was a “legislative” act, not a quasi-judicial one,

and that board members are not prohibited from investigating and pre-judging a legislative decision. In support, the board cites to a 1997 Opinion of the Attorney General that concludes recusal is proper in a quasi-judicial proceeding if a member has pre-judged the issue in controversy. 82 Md. Op. Atty. Gen. 94 (1997). The opinion distinguishes, however, between quasi-judicial acts and those that are legislative in nature. *Id.* The opinion concludes that a body's discipline of one of its own members "is a core legislative act." *Id.* (citing *Whitener v. McWatters*, 112 F.2d 740, 741 (4th Cir. 1997)). The opinion reasons that when a member conducts a legislative act, "the member is allowed and even expected to 'prejudge' the merits of a pending proposal." *Id.*

In our view, the censure was a "legislative" act on the part of the local board and did not require the same type of due process protections required in a quasi-judicial proceeding.³ In *Burroughs*, we distinguished between censure, in which the local board takes no legal action against a board member, and a removal, in which a board member stands to lose an elected office and is entitled to full due process protections, such as notice and an evidentiary hearing. MSBE Op. No. 11-23. The censure of Appellant was a "legislative" expression by the board of its disapproval of one of its own members. The resolution had no legal effect. Because the matter was legislative, the two members who investigated Appellant's behavior were free to reach a conclusion regarding censure prior to their vote on the matter. Their participation in the vote was not illegal.

As to Appellant's argument concerning notice, we considered and rejected a similar claim in *Burroughs*. MSBE Op. No. 11-23. We determined that a local board member's ability to be heard during a board meeting in response to a censure motion was sufficient process. *Id.* As part of the censure investigation, Appellant was interviewed by the committee in November 2014 and February 2015 with counsel present. In addition, Appellant had the opportunity to speak out in response to the motion to censure him, but chose not to do so. Given that the censure was a legislative act without any legal effect, no further notice or opportunity to be heard was required.

Abuse of discretion

Appellant maintains that the matters raised by the censure were mere political disputes over "divisions of power" and it was an abuse of discretion to censure him for his differing views on local board matters. He argues that none of the incidents warrant his censure. In response to the allegations of "rude and derogatory" behavior, Appellant argues that the incident cited in the censure took place in 2012 and it was unreasonable to chastise him for actions so far in the past. He maintains that if it was inappropriate to demand an investigation into the nude photograph, that Superintendent Wagner would have said something to him at the time. Appellant contends that the evidence only shows he discussed student discipline issues with the sheriff on one occasion and that it is not an "ongoing or recurring problem." Finally, he argues that he acted appropriately by referring the contractors to the Superintendent to discuss payment issues.

The legal memorandum prepared by counsel for the local board found that Appellant

³ Although local boards of education are able to perform "legislative" acts, they are part of the executive, not legislative, branch of government.

violated multiple provisions of Local Board Policy 100.4. That policy requires board members to listen to and respect one another; respectfully and responsibly voice their opinions without making disparaging remarks against other members or school system staff; recognize that the assignment of employees to specific positions is within the purview of the local superintendent; understand that the superintendent is charged with the operation of the schools; and avoid taking individual actions that imply one has the authority of the board itself.

In reviewing the actions cited by the local board, we conclude that there was no abuse of discretion by the board in issuing a resolution of censure. All of the allegations involve a violation of local board policy. Appellant acted unprofessionally by berating a fellow board member and school staff during open meetings, including having to be physically restrained by the superintendent and board president. Motivated by prior animosity towards the principal and her family, he improperly demanded an investigation based on a nude photograph that did not actually depict her. Such action we find particularly offensive and demeaning to the principal, if not misogynistic. Appellant spoke with law enforcement on at least one occasion concerning student discipline issues that should have been left to the local superintendent. He also met with contractors at a school work site and gave the impression that he supported their efforts to seek money from the school system, improperly injecting himself into a contract dispute.

The common thread of these allegations is of a local board member who oversteps the bounds of his oversight authority and attempts to directly handle and investigate school system matters. These incidents were not merely minor political disagreements, as Appellant argues, but instead constitute troubling behavior on the part of a board member who appears unaware of the negative impact his actions have on the board and local school system. It was not unreasonable for the local board to view these as legitimate areas of concern and to express its disapproval.

Contrary to sound education policy

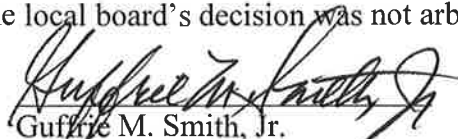
Appellant argues that the local board's censure was contrary to sound educational policy because the time spent investigating him could have been better spent addressing other educational issues facing the school system. As described above, the local board found legitimate reasons to be concerned about Appellant's actions and the impact his conduct could have on the board's ability to function.

Public embarrassment

Appellant objects to the fact that the censure was read aloud during a board meeting and that the board president sent the censure decision to all school system employees. The point of censure is that a public body is expressing its disapproval of the actions of one of its members. By its very nature, this will be embarrassing for the public official who is censured. Because the censure criticized Appellant's actions towards school system employees, it was not unreasonable for the local board to share its censure decision with them.

CONCLUSION

For all of these reasons, we conclude that the local board's decision was not arbitrary, unreasonable, or illegal.


Guffie M. Smith, Jr.

President

Absent

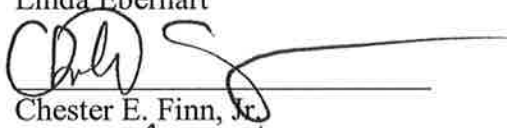
S. James Gates, Jr.

Vice-President

Absent

James H. DeGraffenreidt, Jr.


Linda Eberhart

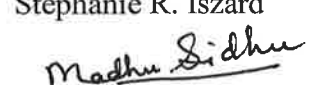

Chester E. Finn, Jr.

Absent

Larry Giammo


Michele Jenkins Guyton

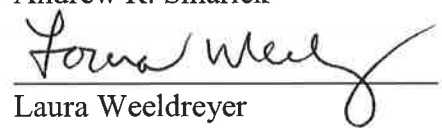
Stephanie R. Iszard


Madhu Sidhu

Madhu Sidhu

Absent

Andrew R. Smarick


Laura Weeldreyer

September 22, 2015