

MELVIN RAWLES,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 08.42

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Prince George's County Board of Education (local board) to deny him an exemption from Prince George's County Public School (PGCPS) Administrative Procedure No. 4160 which prohibits PGCPS employees from acting as vendors providing services for the school system or any school. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the Motion and the local board has submitted a surreply.

FACTUAL BACKGROUND

Appellant is a teacher employed by Prince George's County Public Schools. He also performs disc jockey services as a secondary job. For over twenty years, Appellant has performed disc jockey services throughout Prince George's County and the Prince George's County Public School System. He performed these services prior to and during his employment as a teacher with PGCPS. (Rawles Letter, 3/17/06).

Local Board Policy No. 0109 contains "Basic Commitments" with regard to prohibiting conflicts of interest by members of the local board, school officials and school employees. Among other things, Policy No. 0109 prohibits these individuals from being "employed by a business entity that is under the authority of the school system or that has or is negotiating a contract of \$1,000 or more with the school system."

By letter dated January 14, 2005, Doris A. Eugene, Chair of the Local Board's Ethics Panel, advised Appellant that the disc jockey services that he was providing to various public schools in Prince George's County violated local board Policy No. 0109 because, as a PGCPS employee, that policy prohibits him from acting as a vendor for the school system. The PGCPS Auditor thereafter provided evidence that Appellant continued to perform disc jockey services subsequent to Ms. Eugene's letter advising Appellant to refrain from doing so. (Letter from Burnett, 12/28/05).

The matter was reviewed during a conference with Appellant on September 29, 2005. Present at that conference was John Robinson, Director of Labor Relations and Personnel Operations, Roland Otey, Labor Relations Specialist, legal counsel for the school system and legal counsel for Appellant. There was a second conference on November 9, 2005. At the conferences, Appellant maintained that he did not violate Policy 0109 because no one disc jockey job for a school reached the \$1,000 threshold provided for in the policy. (*Id.*)

During the conferences, the parties discussed the local board's promulgation of Administrative Procedure No. 4160 on March 10, 2005, subsequent to Ms. Eugene's letter to Appellant. Administrative Procedure No. 4160 prohibits employees of the PGCPS from acting "as vendors providing services for the school system or any school, including, but not limited to, Disc Jockey services, computer and graphics services, catering, printing, decorating/design services, or musician services." Appellant requested that he be exempted from Administrative Procedure No. 4160 so that he could continue to provide disc jockey services to the public schools in the County. He explained that he had been performing such services prior to his employment with PGCPS, while employed as a teacher with Washington, D.C. Public Schools. (*Id.*)

By letter dated December 28, 2005, Howard A. Burnett, then Interim Chief Executive Officer, advised Appellant that his request to be exempted from Administrative Procedure 4160 was denied. He told Appellant that he was prohibited from providing disc jockey services to any Prince George's County Public School or office. He also advised Appellant that he was not taking disciplinary action against him for any prior conduct that may have violated local policy or procedure. (*Id.*)

Appellant appealed Mr. Burnett's decision to the local board. The local board heard oral argument on the matter on June 22, 2006. On August 24, 2006, the local board upheld Mr. Burnett's decision.

Appellant then filed suit in the Circuit Court for Prince George's County, erroneously bypassing the State Board. On joint request by the parties, the Circuit Court stayed the matter to allow Appellant to exhaust his administrative remedies before the State Board. In Circuit Court, the local board agreed that it would not raise the issue of timeliness as a basis for dismissing the appeal before the State Board.

Appellant filed this appeal with the State Board on March 14, 2008.

ANALYSIS

State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. Md. Code Ann., Educ. 4-205(c); COMAR 13A.01.05.02B(1)(a). The thirty days run from the later of the date of the order or the opinion issued explaining the decision. COMAR 13A.01.05.02B(1)(b). An appeal is deemed transmitted

within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3).

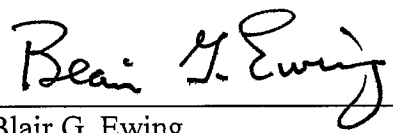
The local board issued a written decision on August 24, 2006. The appeal should therefore have been filed with the State Board by Monday, September 25, 2006. However, the appeal was received by the State Board via fax on March 14, 2008. More than a year past the deadline.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Educ. of Prince George's County*, 3 Ops. MSBE 139 (1983). We do not find any such circumstances here. The local board's Order specifically provided Appellant notice that he could appeal the local board's decision to the State Board within thirty days of the date of the order. Appellant mistakenly filed an appeal of the local board's decision with the Circuit Court for Prince George's County within those thirty days rather than pursuing the appeal to the State Board. Appellant's error does not amount to an extraordinary circumstance that would merit an exception to the thirty day deadline.

Although the local board did not file a motion to dismiss the appeal for untimeliness, and apparently agreed in court not to raise it as a basis for dismissal, the State Board is permitted to dismiss an appeal on this basis on its own accord. *See* COMAR 13A.01.05.03. Because Appellant did not file his appeal of the local board's decision with the State Board within the time period prescribed in COMAR 13A.01.05.02B, the State Board lacks jurisdiction over the appeal.

For these reasons, this Board dismisses the appeal as untimely. It is so Ordered this ___ day of August, 2008.


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August 26, 2008