

ALLEN DYER

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-42

## OPINION

### INTRODUCTION

Mr. Allen Dyer, a member of the Howard County Board of Education (local board) has requested a ruling declaring that the local board has no authority to fund transportation for nonpublic school students and a ruling that restricting nonpublic school transportation to parochial students is unconstitutional. The local board filed a Motion to Dismiss. Mr. Dyer has responded to the Motion.

### FACTUAL BACKGROUND

In the FY 2010 Budget, the Howard County Board of Education included \$520,260 to pay for the transportation of nonpublic students. That expenditure represents 8/1000<sup>ths</sup> of 1% of the total school budget of \$656,694,110. (Motion to Dismiss at 4-5). Howard County Board of Education, pursuant to Policy 5200, p. 4 § IVA, applies its transportation policy to "all students, public and nonpublic, for whom bus transportation is provided by Howard County School System." *Id.* at 2 fn. 2.

### STANDARD OF REVIEW

In declaratory ruling cases, this Board exercises its independent judgment to interpret public school laws and State Board regulations. COMAR 13A.01.05.05(E).

### LEGAL ANALYSIS

The issuance of a declaratory ruling by this Board requires the existence of an underlying case or controversy. In the declaratory ruling context, the "case or controversy" requirement means that there is an actual underlying dispute between the parties. *See, e.g., Gatt v. Anderson*, 297 Md. 42, 45-46 (1983). In this case, Mr. Dyer disagrees with the actions of the Howard County Board concerning payment for transportation of nonpublic school students. We have serious doubts whether such disagreement between Board members creates the underlying case or controversy required to support a declaratory ruling. It is our view, however, that, even if such

disagreement were sufficient to create a case or controversy, Mr. Dyer lacks standing to bring this case. Mr. Dyer asserts several types of standing - as a citizen taxpayer and as a board member. None bestows standing.

### *Taxpayer Standing*

A taxpayer has standing to sue when he can show some special damage or special interest distinct from the general public. *Citizens Planning and Housing Assoc. v. County Executive of Baltimore County*, 273 Md. 333, 339 (1974). This Board has interpreted taxpayer standing to require “a showing that the action being challenged results in a pecuniary loss or an increase in taxes.” *C. Scott Stone v. Carroll County Board of Education*, Maryland State Board of Education (MSBE) Order No. 09-04 (July 21, 2009), citing *Stovall v. Secretary of State*, 252 Md. 258, 263 (1964). “The test is whether appellant reasonably may sustain a pecuniary loss or a tax increase . . . .” *Citizens Planning and Housing Association v. County Executive of Baltimore County*, 273 Md. 333, 344 (1974). Appellant does not allege that he will sustain an individual pecuniary loss and he has not alleged any statement of fact, other than an unsubstantiated belief, which would lead a reasonable person to conclude that an expenditure of \$520,260 in a school budget of \$656,694,110 (representing 8/1000<sup>ths</sup> of 1% of the total budget) might lead to a tax increase. Mr. Dyer does not have taxpayer standing to bring this action.

### *Horns of a Dilemma Standing*

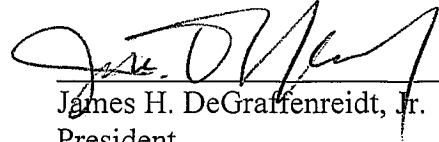
Mr. Dyer alleges that, as a member of the county board, he is subject to suit for violations of the Civil Rights Act of 1964 and “could be found personally liable for damages” for participating in “policies or practices prohibited by the *Fourteenth Amendment*. (Italics in original) (See Petition, p.7, ¶14). He believes that using public funds to pay for transportation of parochial students is illegal. (Reply at 3). Thus, he believes he is on the horns of a dilemma and that the Court of Appeals decision in *State’s Attorney of Baltimore City v. Baltimore*, 274 Md. 597 (1975), provides standing to bring this action. It does not.

The Court of Appeals has made it clear that the only type of official who can invoke the “horns of a dilemma” standing doctrine is an administrative official who is charged with carrying out the duty prescribed in the challenged statute. See *State of Maryland v. Burning Tree Club, Inc.*, 301 Md. 9, 19 (1984). In that case, the court reviewed previous cases involving the horns of a dilemma standing doctrine. In each one, the person with standing was the head of the local or state government office required to enforce the statute - - for example, Directors of Finance in tax cases; Commissioner of Housing in a Code enforcement case. *Id.* at 19-26.

Mr. Dyer is not an administrator who is directed to implement the transportation plan. He is a board member who, through his vote, adopts or rejects policies and budgets. It is the school administrators who must follow the board’s policies and implement the budget directives. Mr. Dyer is not the type of official who can invoke the horns of a dilemma standing doctrine.


CONCLUSION

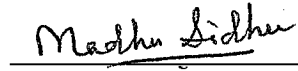
For all those reasons, we dismiss the request for declaratory ruling.

  
James H. DeGraffenreidt, Jr.  
President

ABSENT  
Charlene M. Dukes  
Vice President

  
Mary Kay Finan

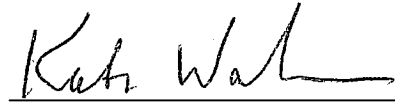
  
S. James Gates, Jr.

  
Madhu Sidhu

ABSENT  
Guffrie M. Smith, Jr.

  
Donna Hill Staton

ABSENT  
Ivan C.A. Walks

  
Kate Walsh

December 10, 2009