| | |
|---|---|
| DR. IRIS T. METTS, ET AL., | BEFORE THE |
| Appellants | MARYLAND |
| v. | STATE BOARD |
| PRINCE GEORGE'S COUNTY BOARD OF EDUCATION, | OF EDUCATION |
| | Opinion No. 02-05 |

OPINION

This is a consolidated appeal concerning the termination of the employment of the Prince George's County School Superintendent Iris T. Metts by the Board of Education of Prince George's County ("the local board"). Two appeals were filed with the State Board, one by Dr. Metts and a second by the three local board members who voted against her termination, Doyle Neiman, Bernard Phifer, and Catherine Smith. The appeals allege that the termination of Dr. Metts by the local board is illegal and unenforceable because (1) under State law only the State Superintendent has the authority to remove a county superintendent and that authority may not be contracted away; (2) the local board failed to consult with the Management Oversight Panel ("MOP") prior to the termination as required by law; and (3) the local board failed to provide the required notice under the contract.

The local board has filed a Motion to Dismiss, or in the alternative, for Summary Affirmance maintaining that (1) the State Board lacks jurisdiction to review the local board's termination of Dr. Metts; (2) the three local board members lack standing to appeal the termination decision to the State Board; (3) Dr. Metts' employment contract allowing unilateral termination by the local board does not violate State law; (4) the local board did not violate State law by failing to consult with the Management Oversight Panel ("MOP"); and (5) the local board gave 45 days notice to Dr. Metts in accordance with her contract.

Appellants have submitted responses in opposition to the local board's motion. The parties presented oral argument to the State Board on February 11, 2002. Following deliberation on the matter, the State Board on the same date issued an order denying the motion filed by the local board, reversing the termination decision of the local board, and reinstating Dr. Metts to her position as county superintendent with no break in service. The order further indicated that the rationale for those decisions would be issued shortly. Accordingly, this opinion sets forth the rationale of the State Board for the decisions set forth in its order issued on February 11, 2002.

## FACTUAL BACKGROUND

The parties have stipulated to these facts: Dr. Iris Metts was hired by the Board of Education of Prince George's County in July, 1999, and signed an employment contract with the local board. On Saturday, February 2, 2002, the local board, by a vote of 6 to 3, passed a resolution terminating its employment contract with Iris T. Metts as Superintendent of Schools

for Prince George's County. On Sunday, February 3, 2002, the Circuit Court for Prince George's County issued a temporary restraining order, enjoining the Board from terminating Dr. Metts. The Court determined that prior notice was not given to the MOP. Dr. Metts and the three dissenting board members filed a request for expedited appeal to the State Board from the termination decision of the local board. The State Board agreed to hear the appeal on an expedited basis.

## ANALYSIS

### I. Jurisdiction

The local board asserts that the State Board is authorized to hear appeals pursuant to either § 2-205(e) or § 4-205(c) of the Education Article, Annotated Code of Maryland. The local board further asserts that neither statue provides a basis for State Board jurisdiction to hear this matter.

We concur that § 4-205(c) does not apply because jurisdiction under that statute is limited to matters arising within the authority of and initially decided by a local superintendent. *See Board of Educ. of Garrett County v. Lendo*, 295 Md. 55 (1982). Here the termination decision arose from and was initially decided by the local board.

With respect to § 2-205(e), the local board maintains that jurisdiction under that statute is limited to cases dealing with statewide issues such as statutes or regulations applicable to all local boards of education where no useful purpose would be served by requiring a lower level agency to decide questions of statewide applicability. The board argues that in the instant case no provisions of the Education Article that are within the jurisdiction of the State Board are implicated nor are there issues of statutes or regulations applicable to all local boards. For the following reasons, we reject the local board's narrow view of the breadth of our authority and find that we have jurisdiction to review this matter under § 2-205 of the Education Article.

The broad scope of the State Board's jurisdiction and authority under § 2-205 has been consistently described by the Court of Appeals as "a visitatorial power of such comprehensive character as to invest the State Board 'with the last word on any matter concerning educational policy or the administration of the system of public education.'" *See, e.g., Board of Educ. of P.G. Co. v. Waeldner*, 298 Md. 354, 360 (1984)(citations omitted.) The Court of Appeals has also repeatedly noted that "[t]he broad sweep of the State Board's visitatorial power has been consistently recognized and applied since the principle was first enunciated in 1879 in *Wiley v. School Comm'rs*, 51 Md. 401 (1879). *See, e.g., Shober v. Cochrane*, 53 Md. 544 (1880); *Underwood v. School Board*, 103 Md. 181, 63 A. 221 (1906); *Zantzinger v. Manning*, 123 Md. 169, 90 A. 839 (1914); *School Commissioners v. Morris*, 123 Md. 398, 91 A. 718 (1914); *School Com. of Car. Co. v. Breeding*, 126 Md. 83, 94 A. 328 (1915)." *Waeldner,* 298 Md. at 360.

In *Zeitschel v. Board of Education*, 274 Md. 69, 80 (1975), the Court described the State Board's visitatorial powers thusly:

> We think it beyond question that the power of visitation vested in the State Board is one of general control and supervision; it authorizes the State Board to superintend the activities of the local boards of education to keep them within the legitimate sphere of their operations, and whenever a controversy or dispute arises involving the educational policy or proper administration of the public school system of the State, the State Board's visitatorial power authorizes it to correct all abuses of authority and to nullify all irregular proceedings.

With respect to the original jurisdiction of the State Board under § 2-205, the Court in *Clinton v. Board of Education of Howard County,* 315 Md. 666, 676-77 (1989), recognized that:

> § 2-205 was intended by the General Assembly as a grant of *original* jurisdiction to the State Board, such that, in the limited instances enumerated in that section, a litigant could go directly to the State Board for a decision without the need for exhausting any lower administrative remedies. Since the category of cases involved deal primarily with statewide issues (*i.e.*, statutes and/or bylaws applicable to *all* county boards of education), no useful purpose would be served by *requiring* a lower level administrator or agency to decide a question of statewide applicability. *Board of Educ., Garrett Co. v. Lendo*, 295 Md. 55, 65, 453 A.2d 1185, 1190 (1982) (quoting, with favor, the *amicus* brief filed in that case by the Maryland State Teachers Association, Inc. [emphasis in brief]).

*Clinton*, 315 Md. at 676.

Here, Appellants have raised a fundamental question of interpretation of a statutory provision in the Education Article that has significant Statewide application: whether, under § 4-201(e), a local board of education may unilaterally remove a county superintendent, absent action by the State Superintendent of Schools. We thus find that § 2-205 of the Education Article vests jurisdiction in the State Board to interpret § 4-201 and its application to the facts at hand, and authorizes the State Board to exercise its visitatorial power to superintend the actions of the local board to keep it within the legitimate sphere of its operations.

II. Standing of Three Local Board Members

The local board argues that the three dissenting board members lack standing to bring this action. It is well settled that in order for an individual to have standing, he must show some "direct interest or injury in fact, economic or otherwise" in the matter in dispute. *See, e.g., McComb v. Montgomery County Board of Education*, 7 Op. MSBE 1105, 1108 (1998); *Adams v. Board of Education of Montgomery County*, 3 Op. MSBE 143, 149 (1983). Because Dr. Metts does have a direct interest and injury in fact in the matter, there is no dispute that she does have standing to bring this appeal. Moreover, since the issues raised by the three local board members

are identical to those raised by Dr. Metts, we find that it is not necessary for the State Board to determine the standing of the three local board members. We therefore decline to do so.

III. Appointment and Removal of County Superintendent

The comprehensive scheme governing appointment, compensation, tenure, and removal of a county school superintendent is set forth in § 4-201 of the Education Article.[1] This includes the requirement of a fixed four-year term, § 4-201(b); the requirement that a term commences on the first day of July, § 4-201(b); the requirement that a county superintendent holds over until a successor is appointed and qualifies, § 4-201(b); the requirement that the county superintendent must notify the local board if he or she is a candidate for reappointment, § 4-201(b)(3); the requirement that the board must act to reappoint an incumbent superintendent by March 1, § 4-201(b)(3); and the requirement that the State Superintendent must provide written approval of the hiring of a new superintendent or give reasons in writing for disapproval, § 4-201(c).

The authority for the removal of a county superintendent is set forth in § 4-201(e):

> (1) The *State Superintendent* may remove a county superintendent for:
> (i) Immorality;
> (ii) Misconduct in office;
> (iii) Insubordination;
> (iv) Incompetency; or
> (v) Willful neglect of duty.
> (2) Before removing a county superintendent, the State Superintendent shall send him a copy of the charges against him and give him an opportunity within 10 days to request a hearing.... (emphasis added).

In construing the meaning of a statute, the Court of Appeals has instructed that:

> '[t]he cardinal rule is to ascertain and carry out the real legislative intention. The primary source of legislative intent is, of course, the language of the statute itself.' *Tucker v. Fireman's Fund Insurance Co.*, 308 Md. 69, 73, 517 A.2d 730 (1986). In some circumstances, we need not look beyond the statutory language to determine the legislative purpose. 'Sometimes the language in question will be so clearly consistent with its apparent purpose (and not productive of any absurd result) that further research will be unnecessary.' *Kaczorowski v. Mayor and City Council of Baltimore*, 309 Md.

[1]The Baltimore City Public School System is exempted from § 4-201. The appointment and removal of the Chief Executive Officer of the Baltimore City Public School System is governed by § 4-304 of the Education Article.

> 505, 515, 525 A.2d 628 (1987); *see also Morris v. Prince George's County*, 319 Md. 597, 603, 573 A.2d 1346 (1990). Nonetheless, the 'meaning of the plainest language' is controlled by the context in which it appears.... *Kaczorowski, supra*, 309 Md. at 514, 525 A.2d 628.

*State v. Pagano*, 341 Md. 129, 136 (1996). *See also Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 128 (2000); *Chesapeake and Potomac Tel. Co. of Md. v. Dir. of Fin. for Mayor and City Council of Baltimore*, 343 Md. 567, 578 (1996) (in statutory construction, where words are clear and unambiguous, the inquiry ends.)

Applying these principles of statutory construction to § 4-201(e), we find that the plain meaning of the statutory provision is unambiguous: the authority to remove a county superintendent is specifically given to the State Superintendent. As noted above, if the statutory language is clear, unambiguous, and consistent with the purposes of the legislation in general and the particular provision being interpreted, the inquiry ends at that point. *Sears, Roebuck & Co. v. Gussin*, 350 Md. 552, 561-62, 714 A.2d 188 (1998); *Philip Electronics North America v. Wright*, 348 Md. 209, 216-17 (1997). Generally courts will look beyond the plain language of a statute only when the plain language of the statute fails to reveal a particular intent. In those cases, courts look to the entire statutory scheme and consider the purpose of the particular statute. *Smack v. Department of Health and Mental Hygiene,* 134 Md. App. 412 (2000); *Department of Pub. Safety & Correctional Serv. v. Howard*, 339 Md. 357, 369 (1995).

Although we find that the words in § 4-201(e) are not ambiguous, we believe an examination of the entire statutory scheme for public elementary and secondary education further supports our interpretation that only the State Superintendent has authority to remove a county superintendent. We begin by noting that another section of the Education Article, in equally plain language, delineates the authority of a local board to remove personnel. Section 6-202(a) provides:

> (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:
>
> (i) Immorality;
>
> (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
>
> (iii) Insubordination;
>
> (iv) Incompetency; or
>
> (v) Willful neglect of duty.
>
> (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing....

Conspicuously absent from the list of those personnel the local board may remove is the county superintendent. This obvious omission of authority to remove the county superintendent further evidences the legislative intent that the State Superintendent is vested with the sole authority to remove a county superintendent. *See Shah v. Howard County*, 337 Md. 248, 255 (1995) (General Assembly's intention to omit something from a statute is evidenced by the express inclusion of that thing in other statutes).

Moreover, we find from our review of the statutory scheme in the Education Article that the legislature intended to design a hierarchical system in State elementary and secondary education that establishes the State Board and the State Superintendent as the final authority on educational policy and the administration of the public school systems of the State. While the local boards and local superintendents are charged with carrying out that policy, the manner in which they execute their responsibilities is subject to State oversight and review.

For example, in some counties, board members are appointed, pursuant to § 3-108(a). However, under § 3-108(d), it is the State Superintendent who may remove an appointed member of a local board under certain conditions and with the approval of the Governor. The due process procedures in § 3-108(b) afforded board members before removal mirror the due process procedures afforded a county superintendent in § 4-201.

Other counties, such as Prince George's, elect board members. But even those local board members who have been elected by the public are subject to removal only by the State Board under certain conditions.[2] Due process procedures for the removal of elected board members also mirror the due process procedures afforded to a county superintendent before removal.

Similarly, under § 6-202 as noted above, a local board, upon the recommendation of the county superintendent, may suspend or dismiss teachers, principals, supervisors, assistant superintendents, and other professional assistants who are afforded virtually the same due process procedures as are afforded a county superintendent prior to removal under § 4-201(e). Moreover, an appeal from a suspension or termination decision of a local board under § 6-202 may be taken to the State Board and the State Board's decision on the appeal is final.

Also as previously mentioned, under § 4-205(c) any decision arising within the authority of or initiated by a local superintendent may be appealed to the local board. Again, however, the local board's decision may be further appealed to the State Board. Thus, throughout the hierarchical scheme of the Education Article, the State Board and the State Superintendent consistently retain the final authority over the educational policy decisions and the administration of the public school systems by the local boards.

---

[2] *See* §§ 3-201(g), 3-302, 3-402(e), 3-501(e), 3-5A-01(e), 3-601(g), 3-701(e), 3-801(e), 3-902(g), 3-1101(i), 3-1102(h), 3-1201(e), 3-1301(d) and 3-1402. In two of these jurisdictions the approval of the governor is also required: §§ 3-501 and 1101.

A review of § 4-201 and its predecessor statutes demonstrates that as far back as 1916 the State Superintendent has been vested with the sole authority to remove a county superintendent. *See Public Laws of Maryland.*[3] Moreover, although the legislature has revised the Education Article numerous times since 1916, the removal authority of the State Superintendent has never been revised. We also note that in 1937 Attorney General Herbert R. O'Connor rendered an opinion on the authority to remove a county superintendent and concluded that the Governor was not authorized to hear charges against a county superintendent:

> The Public Education Laws provide that, while County Superintendents are appointed by County Boards of Education, they may be removed only by the State Superintendent of Schools; they may be removed only for "immorality, misconduct in office, insubordination, incompetency or willful neglect of duty". Written charges must be served upon the offending official and opportunity to be heard must be given. Code, Article 77, section 134.

The statutory scheme Attorney General O'Connor described is the predecessor statute to the current § 4-201(e). It is well settled that the legislature is presumed to be aware of the opinion of the Attorney General on a matter of interpretation of State statute and is deemed to have acquiesced in the interpretation if it remains long-standing. *See, e.g.*, *Scott v. Clerk of Circuit Court for Frederick County*, 112 Md. App. 234, 684 (1996); *Bd. of Exam'rs in Optometry v. Spitz*, 300 Md. 466 (1984). As we have noted, Attorney General O'Connor's Opinion was issued in 1937, and the legislature has not acted to overturn it by revising § 4-201(e).

For all of these reasons, we find that the General Assembly intended to give the authority to hire a county superintendent to the local board, but to reserve the authority to remove the county superintendent solely to the State Superintendent of Schools.

The local board contends that it has acted under its contract with Dr. Metts rather than exercised its statutory power, and maintains that Dr. Metts may negotiate and agree to a unilateral termination provision in her contract. However, in general, a statutorily imposed requirement cannot simply be waived by the parties in their own agreement. *See Enterprise Leasing v. Allstate*, 341 Md. 541 (1996)(lessor of motor vehicle was not relieved of financial responsibility for third-party claims resulting from negligent operation of rental vehicle by permittee of lessee even though permittee's operation of vehicle was in violation of express terms of rental agreement). In addition, a contract is unenforceable when enforcement of the contract would offend the essential purpose of the statutory scheme:

> In *United States v. Mississippi Valley Co.* ... the Court recognized that 'a statute frequently implies that a contract is not to be enforced when it arises out of circumstances that would lead

---

[3]Between 1904 and 1916 State law vested the State Board with the sole authority to remove a county superintendent. *Id.*

> enforcement to offend the essential purpose of the enactment.' The Court there approved the cancellation of a government contract for violation of the conflict-of-interest statute on the ground that 'the sanction of nonenforcement is consistent with and essential to effectuating the public policy embodied in' the statute.

*U.S. v. Acme Process Equipment Co.*, 385 U.S. 138, 145 (1966)(citations omitted).

Here, the statutory scheme as evidenced throughout the Education Article is a hierarchy between the local boards of education on one hand and the State Board and the State Superintendent on the other. We believe that permitting local boards to eliminate by contract the State Superintendent's sole authority to remove a county superintendent would offend the "essential purpose of" the statutory scheme for public elementary and secondary education. Furthermore, since the authority to remove the county superintendent was designed to protect county superintendents from removal for other than the grounds specified in the statute and with due process, a county superintendent cannot waive that protection by contract. *See Carter v. Exxon Co. USA, a Div. of Exxon Corp.*, 177 F.3rd 197 (3rd Cir. 1999) and *Solman Distributors, Inc. v. Brown-Forman Corp.*, 888 F.2d 170 (1st Cir. 1989)(those protected by the statute cannot contract away the protection provided by the statute.) For all of these reasons, we conclude that the right of removal is part of a statutory scheme and not simply a personal right of Dr. Metts that she may waive.

The local board further argues that this interpretation would "lock" the board and the county superintendent into a full four-year term. But that is not necessarily so. The county superintendent may, for example, resign or retire. The local board may request that the State Superintendent remove the county superintendent for one of the reasons set forth in the statute. The local board and the county superintendent may also negotiate a buy-out of the contract. A local board cannot, however, unilaterally remove the county superintendent.[4]

Finally, with respect to the validity of Dr. Metts' employment contract, we note that the contract contains a savings clause providing that if any clause of the contract is illegal under federal or State law, the remainder of the contract remains in effect. Accordingly, absent ¶ 12(v), the provision for unilateral termination, the remainder of Dr. Metts' employment contract with the Prince George's County Board of Education remains in full force and effect.

---

[4]We believe that suspending or placing the county superintendent on administrative leave is also not permitted. The power to suspend a public officer is generally considered as included in the power to remove the public official. *Burnap v. United States*, 252 U.S. 512 (1920). Since the local board does not have the authority to remove, we do not believe that it has the unilateral power to suspend. And while we do not know under what authority the local board might seek to place a superintendent on administrative leave, administrative leave is generally short in duration to address a specific problem in the workplace. *See* COMAR 17.04.11.17 (administrative leave for state employees may not exceed 10 work days in duration and only under three specified conditions.) Placing a county superintendent on extended administrative leave may therefore be a form of constructive removal.

IV. 45 Day Notice

Since the Circuit Court for Prince George's County has already ruled on this issue, we find the matter moot.

V. Prior Notice to the Management Oversight Panel

Given our ruling on the removal power of the local board, it is not necessary to reach this issue. We caution the local board, however, that actions taken without compliance with statutory requirements involving the Management Oversight Panel will render such actions void and unenforceable.

**CONCLUSION**

For these reasons, we reverse the unilateral termination decision of the Board of Education of Prince George's County.

_____
Marilyn D. Maultsby
President

_____
JoAnn T. Bell

_____
Philip S. Benzil

_____
Reginald L. Dunn

_____
Clarence A. Hawkins

_____
Walter S. Levin, Esquire

_____
Karabelle Pizzigati

_____
Edward L. Root

_____
Walter Sondheim, Jr.

_____
John L. Wisthoff

February 23, 2002