

appealed the placing of a letter of reprimand in his file, and on February 12, 1981, he was notified that the Local Board would hold a hearing on March 2, 1981 to consider his appeal. On February 16, 1981, Appellant submitted his resignation to the Local Board, to be effective at the end of the school quarter on March 6, 1981. The next day, February 17, 1981, a list of charges to be heard at the hearing concerning the letter of reprimand was prepared by the Cobb County School System. On February 18, 1981, a letter was given to Appellant advising him that the Local Board proposed to discharge him on March 5, 1981, and that the hearing on the matter would be held on March 2, 1981. On February 19, 1981, Appellant submitted another letter of resignation which changed the effective date from March 6, 1981 to February 20, 1981. The Local Board advised Appellant that it rejected his resignation and would proceed with a hearing on the proposed termination and charges made against him.

Although Appellant objected and did not attend, the Local Board held a hearing on March 2, 1981, and entered its decision that Appellant's contract should be terminated, that the letter of reprimand should be retained in his personnel folder, and that the State Board of Education should be notified that Appellant's Professional Teachers Certificate should be revoked. Appellant appealed to the State Board of Education on March 18, 1981.

The contract between Appellant and the Local Board provided:

". . .this CONTRACT OF EMPLOYMENT shall not be terminated by the employee without the written consent of the employer. In the event that the employee does terminate this contract, whether by formal notice or by willful failure or refusal to continue serving without such written consent or emergency situation, the employer shall recommend to the State Board of Education that the certification of the employee be suspended in accordance with policies of the State Board of Education and the rules of the Professional Practices Commission."

"In the event of wrongful termination of the contract by the employee, it is agreed that the amount payable hereunder shall represent the monthly rate of salary for the number of months and days during which such employment has continued and services have been rendered."

PART III

CONCLUSIONS OF LAW

Appellant has requested the State Board of Education to find that the Local Board lacked jurisdiction over him, since he had submitted his resignation to the Local Board, and order that the hearing on his discharge be declared void and all findings and determinations of the Local Board be stricken from the records. Appellant contends the Local Board was limited in its powers by the contract of employment that existed between them. The Local Board contends the resignation was not effective until accepted by the Local Board.

An employment contract between a teacher and a local board of education is generally governed by the ordinary principles of contracts except where modified by the constitution and statutes. Oconee County v. Rowland, 107 Ga. App. 108. It is clear that the contract between Appellant and the Local Board provides that it can be unilaterally terminated by either the teacher or the Local Board. The contract language states:

"In the event that the employee does terminate this contract"

"In the event of wrongful termination of the contract by the employee"

If the employee terminates the contract, the Local Board then recommends that his teaching certificate be suspended. The Hearing Officer concludes that the plain wording of the contract provides that Appellant's resignation was effective on the date he requested, and, from that date forward, the contract was terminated, he no longer was an employee, and the Local Board no longer had any control or jurisdiction over him.

Ga. Code Ann. §32-2101c provides that a hearing will be held in order for a board of education to terminate the contract of a teacher. However, in the instant case, the contract was terminated when Appellant submitted his resignation, and there was, therefore, no subject matter for the

Local Board to consider in a hearing held under Ga. Code Ann. §32-2101c. The Hearing Officer concludes that the Local Board did not have the authority under the provisions of Ga. Code Ann. §32-2101c to conduct a hearing to consider the termination of a contract that was already terminated. The Local Board's argument that it could accept or reject Appellant's resignation goes to the question of whether the Local Board would request the State Board of Education to suspend Appellant's teaching certificate. The acceptance or rejection of the resignation would not have any effect on whether the contract was terminated, because the contract provides that the employee can terminate the contract by either formal notice or by wilfully failing to perform the assigned duties. The Hearing Officer, therefore, concludes that that portion of the Local Board's decision which provides for termination of Appellant's contract had no effect because the contract was previously terminated by Appellant's resignation, whether the Local Board accepted or rejected the resignation.

It is undisputed that Appellant resigned without the written consent of the Local Board. Under the terms of the employment agreement, the Local Board had the remedy of recommending to the State Board of Education that Appellant's certification be suspended in accordance with the policies of the State Board of Education and the rules of the Professional Practices Commission. If there is no question whether Appellant terminated the contract, any "hearing" conducted and

any decision reached by the Local Board in connection with determining if the State Board of Education should be notified would be conducted by the Local Board in an administrative capacity rather than in its quasi-judicial capacity. Such a hearing would not be a hearing conducted under the provisions of Ga. Code Ann. §32-910, and any decision reached would not be appealable to the State Board of Education. Appellant cannot, therefore, complain from that part of the Local Board's decision which recommended to the State Board of Education that his teaching certificate be suspended.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Local Board did not have jurisdiction over Appellant which would enable the Local Board to conduct a hearing under the provisions of Ga. Code Ann. §32-2101c, but that under the terms of the employment contract that existed between Appellant and the Local Board, it was agreed that the Local Board could recommend to the State Board of Education that Appellant's teaching certificate be suspended. The Hearing Officer, therefore, recommends that the decision of the Cobb County Board of Education terminating Appellant's contract be reversed, but

that that portion of the decision which recommends that Appellant's teaching certificate be suspended be sustained.

Appearances: For Appellant Bettye H. Kehrer; For Cobb County Board of Education - Richard H. Still.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer