

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

09 CVS 1077

COUNTY OF BURKE

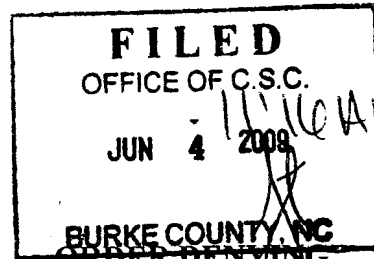
EDWARD T. PLYLER, JACQUELYN L. )  
WARD, BRUCE M. ERVIN, STEPHEN )  
W. RUDICIL; and Citizens and Taxpayers )  
Similarly Situated, )

Plaintiff, )

v. )

BURKE COUNTY BOARD OF )  
EDUCATION, )

Defendant. )



PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

This matter came on for hearing before the undersigned judge of the Superior Court, in Burke County, upon application of the Plaintiffs, in their Complaint, for a preliminary injunction prohibiting Defendant from terminating the superintendent contract of David Burleson prior to April 10, 2009, unless and until the Board complies with all of the conditions set forth in N.C. Gen. Stat. §115C-271(d); or unless the termination is for cause and made in accordance with N.C. Gen. Stat. §115C-274 and the contract terms. A hearing was held on June 3, 2009. Plaintiffs were represented by attorneys Lawrence D. McMahon, Jr. and Robert K. Denton. The Defendant was represented by attorneys Richard A. Schwartz and Jonathan Jones.

Based on the evidence received, the pleadings of the parties, including the Complaint, the arguments of counsel and applicable law, this court now makes the following:

FINDINGS OF FACT

1. The Plaintiffs are citizens and residents of Burke County, North Carolina.
2. The Defendant Burke County Board of Education is a body corporate, with the power to prosecute and defend suits for and on behalf of the Burke County Board of Education pursuant to N.C. Gen. Stat. §115C-36, -40, -44 and -47(2).
3. David C. Burleson (hereafter "Burleson") was elected by Defendant as Superintendent of the Burke County Schools for a four-year term commencing July 1, 2000, and thereafter entered into a written contract of employment with the Board, the terms of which stated that the contract would expire on June 30, 2004.

4. The Board has twice extended the term of Burleson's contract, most recently on April 10, 2006, for a term from April 10, 2006 through April 10, 2010.

5. On April 20, 2009, the Defendant approved a motion which provided that the contract of the Superintendent would not be renewed and "that it end June 30, 2009, in accordance [with] the General Statute."

6. The Plaintiffs allege that the General Statutes of North Carolina allow for the contract to extend as provided by previous action of the Board through April 10, 2010, and that any action to terminate the contract prior to that date will injure the financial interest of the Plaintiffs and similarly situated taxpayers who could be wrongfully subjected to the payment from their local and state taxes of sums to pay both the salary of a replacement Superintendent and the salary of Burleson. The Plaintiffs contend that an actual controversy exists as to: a. whether the Board's contract with Burleson is valid and enforceable beyond June 30, 2009; b. whether the Board has legal authority to terminate Burleson's contract before the contract term of employment has expired without meeting all of the conditions of N.C. Gen. Stat. §115C-271(d); and c. whether the Board has authority to enter into a contract to employ a new Superintendent when a valid contract with the current Superintendent remains in effect and has not been terminated in accordance with law.

7. The Plaintiffs claim to have standing to seek a declaratory judgment and injunctive relief regarding the validity of the Superintendent's contract, the authority of the Board to terminate that contract and the authority of the Board to hire a replacement Superintendent because of "the great possibility of financial loss to themselves and taxpayers similarly situated" if the Board attempts to contract with a replacement Superintendent and it is later determined that the contract with the current Superintendent is enforceable through its stated contract term since the Plaintiffs would in effect bear the costs of paying the salaries of two Superintendents at the same time.

8. There is no showing that the financial interests of Plaintiffs will be directly or adversely affected by any of the matters pled in their Complaint because no action has been taken yet and there is no irreparable harm at this time.

NOW, THEREFORE, the Court makes the following:

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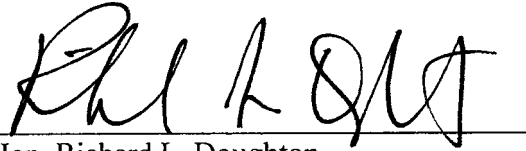
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CONCLUSIONS OF LAW

1. Plaintiffs such as individuals taxpayers in this action generally have no right to bring a suit in the public interest, in the absence of a showing of an unconstitutional, illegal or unauthorized action on the part of a governmental entity resulting in a direct and irreparable injury to the individual taxpayers.

IT IS THEREFORE ORDERED that Plaintiffs' application for a preliminary injunction is hereby DENIED.

This, the 4 day of June, 2009.

A handwritten signature in black ink, appearing to read "Richard L. Doughton", written over a horizontal line.

Hon. Richard L. Doughton  
Superior Court Judge Presiding