

STATE OF NORTH CAROLINA
COUNTY OF BURKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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

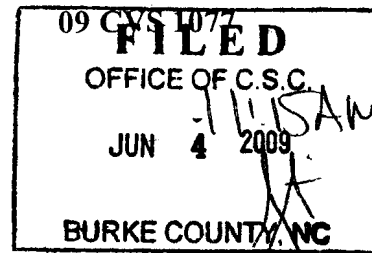
Plaintiffs,)

COUNTY OF BURKE,)
Intervenor Plaintiff,)

v.)

BURKE COUNTY BOARD OF)
EDUCATION,)

Defendant.)



ORDER DENYING MOTION
OF COUNTY OF BURKE TO
INTERVENE

This matter came on for hearing before the undersigned judge of the Superior Court, in Burke County, upon the County of Burke's Motion to Intervene under Rule 24 of the North Carolina Rules of Civil Procedure. A hearing was held on June 3, 2009. The County of Burke was represented by its attorney G. Redmond Dill, Jr. Attorney Richard A. Schwartz represented the Defendant.

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

FINDINGS OF FACT

1. The individually named 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. The County of Burke (hereafter "Applicant") claims an interest in the subject matter of this action, and has filed a Motion to Intervene pursuant to N.C. Gen. Stat. §1A-1, Rule 24.
4. 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.

5. 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.

6. 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."

7. 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.

8. 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.

9. Applicant claims no interest relating to the transaction which is the subject of this action, nor is it so situated that the disposition of this action may, as a practical matter, impair or impede its ability to protect its interests.

10. Applicant admits that it has no statutory standing to proceed in this matter.

11. Applicant admits that its interests, if any, are no different from those of taxpayer Plaintiffs in this action.

12. The Defendant has not undertaken any action or expenditure complained of by the County of Burke.

13. There is no claim or showing that the financial interests of Plaintiffs or of the County of Burke will be directly or adversely affected by any of the matters pled in the Complaint or Intervenor Complaint.

NOW, THEREFORE, the Court makes the following:

CONCLUSIONS OF LAW

1. In all suits and actions against a local Board of Education, the actions of the Board shall be presumed to be correct and are entitled to such legal presumption in accordance with N.C. Gen. Stat. §115C-44(b).

2. 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.

3. Plaintiffs have not demonstrated a likelihood of success on the merits of their case.

4. Plaintiffs have not demonstrated that any illegal or unlawful action has been taken by the Defendant.

5. Plaintiffs have not shown that they are in a position to suffer any harm or that they have suffered any harm as a result of any actions taken by the Defendant or complained of by the Plaintiffs.

6. Plaintiffs have not demonstrated that they are going to suffer any immediate harm.

7. Plaintiffs have not pled any supporting facts or otherwise demonstrated that they are likely to sustain irreparable loss unless an injunction is issued.

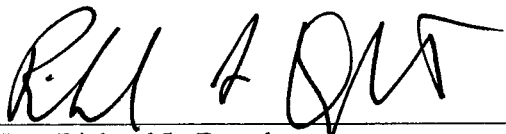
8. The County of Burke has no standing in this matter.

9. The County of Burke has no statutory right to intervene in this action.

10. Any interest claimed by the County of Burke is adequately represented by the existing parties.

IT IS THEREFORE ORDERED that the Motion to Intervene by the County of Burke is hereby DENIED.

This, the 4 day of June, 2009.



Hon. Richard L. Doughton
Superior Court Judge Presiding