

COLIN MURPHY, et al.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-23

OPINION

INTRODUCTION

The Appellants, Colin Murphy et al., filed a Request for Reconsideration of the Maryland State Board of Education's (State Board) decision in State Board Op. No. 15-36 in which the State Board affirmed the decision of the Anne Arundel County Board of Education (local board) permitting the construction and use of cell towers on public school property. The local board responded with a Motion to Deny the Request for Reconsideration.

FACTUAL BACKGROUND

On January 4, 2012, the local board reviewed the local superintendent's recommendation to award a contract for a Tower Leasing Program to Milestone Communications as an agenda item during its regularly scheduled meeting. The contract was expected to generate approximately \$5 million in revenue for Anne Arundel County Public Schools (AACPS) over a period of 10 years (Agenda Item, 1/4/12).

The contract with Milestone Communications was certified by a Master Agreement with the local board on July 23, 2012. The Master Agreement lasts for five years until July, 23, 2017 and allows either party the opportunity to seek renewal of the Agreement from the other party. (Master Agreement at 1-2). On July 31, 2014, members of the community filed 19 appeals with the State Board claiming that the local board's agreement to lease school property to Milestone Communications for cell tower construction violated the obligation of the local board to hold the property in trust for the benefit of the school system as set forth in §4-114(a)(1) of the Education Article. The case was transferred to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ) to resolve genuine disputes of material fact as to whether the local board acted within its authority by contracting for the construction of a cell tower on public school property. The tower has since been completed.

On April 21, 2015, the ALJ issued a proposed decision concluding that the local board's Master Agreement violated §4-114(a)(1). Both the Appellants and the local board filed exceptions to the ALJ's proposed decision and oral argument was heard on September 22, 2015.

On October 27, 2015, the State Board accepted the ALJ's Finding of Facts, but rejected the ALJ's Conclusion of Law and denied the Appellants' appeal. (Opinion 15-36). It found that the local board's decision to enter into the Master Agreement to lease school property was consistent with the local board's obligation to hold school property in trust for the benefit of the

school system as set forth in §4-114(a)(1). On November 27, 2015, the Appellants filed a Request for Reconsideration, asserting that the State Board's decision was grounded in mistakes and errors of law regarding §4-114(a)(1). The Appellants also alleged that "new facts material to the issues have been discovered subsequent to the [State Board] decision."

On December 15, 2015, the Appellants filed an appeal with the Circuit Court of Anne Arundel County.

STANDARD OF REVIEW

The decision to reconsider is in the sole discretion of the State Board. An original decision may not be "disturbed" unless there is proof that the decision resulted in a mistake or error of law or new facts material to the issues have been discovered or occurred subsequent to the decision. COMAR 13A.01.05.10

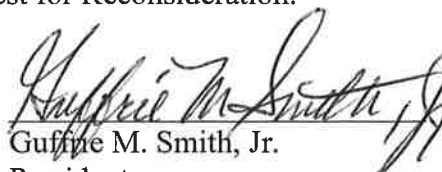
LEGAL ANALYSIS


The Appellants have filed a request for reconsideration with the State Board even though the Appellants are actively litigating the present case to the Circuit Court for Anne Arundel County. Jurisdiction for the Appellants' case cannot exist both with the State Board and the Circuit Court at the same time. *Visnich v. Washington Sub. San. Comm'n*, 226 Md. 589, 174 A.2d 718 (1961). The court reasoned that "the appellants could have dismissed their appeal, or the trial court could have required them to elect between going forward with the appeal or having the motion heard." *Id.* at 591. The State Board has also followed this principle. *Bowers v. Howard County Board of Education*, 4 Op. MSBE 351 (1986); *Kent County Board of Education v. Kent County Teacher's Association, Inc.*, MSBE No. 08-46 (2008). When the Appellants in *Bowers* filed a Request for Reconsideration and a circuit court appeal in the same day, the State Board ruled that "[o]nce the Appellants filed an order for Appeal in the Circuit Court, this Board lost the jurisdiction to entertain the Request for Reconsideration..." *Id.* at 352.

Here, the Appellants also have an overlapping Request for Reconsideration with the State Board and active appeal with a circuit court. Appellants will have to drop their appeal in the circuit court in order to be heard by the State Board. Currently, no such action has been taken. Thus, the State Board does not have proper jurisdiction to hear the Appellants' case.

CONCLUSION

For the reasons stated, we dismiss the Request for Reconsideration.


Guffie M. Smith, Jr.
President


S. James Gates, Jr.
Vice-President

Absent

James H. DeGraffenreidt, Jr.

Linda Eberhart

Linda Eberhart

Chester E. Finn, Jr.

Chester E. Finn, Jr.

Michele Jenkins Guyton

Michele Jenkins Guyton

Laurie Halverson

Laurie Halverson

Stephanie R. Iszard

Stephanie R. Iszard

Madhu Sidhu

Madhu Sidhu

Andrew R. Smarick

Andrew R. Smarick

Laura Weeldreyer

Laura Weeldreyer

June 28, 2016