

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2013-CP-40-1897
Appellate Case No. 2016-000211

RECEIVED

OCT 12 2016

SC Court of Appeals

Kim Murphy.....Appellant,

v.

Richland-Lexington School District No. 5 by and through its Board of Trustees by and through
Counsel to the Board of TrusteesRespondent.

INITIAL BRIEF OF APPELLANT

J. Lewis Cromer, Esquire (#1470)
J. Lewis Cromer & Associates, L.L.C.
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Appellant

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN DETERMINING THAT APPELLANT IS NOT A RESIDENT OF RICHLAND COUNTY?
- II. WHETHER OR NOT THE RESPONDENT BOARD HAD THE LEGAL AUTHORITY TO REMOVE APPELLANT FROM OFFICE?
- III. DID THE LOWER COURT ERR IN CONCLUDING THAT THE RESPONDENT BOARD'S HEARING PROCEDURES PROVIDED APPELLANT DUE PROCESS OF LAW?

STATEMENT OF THE CASE

Appellant, Kim Murphy, was elected to the Richland-Lexington School District No. 5 Board of Trustees as a Richland County Trustee in November 2010. The Board's Chair, Robert Gantt, sought a determination from the Director of the South Carolina State Budget and Control Board's Division of Research and Statistics, Bobby Bowers, concerning whether Appellant resided in Lexington or Richland County in October 2012. Mr. Bowers made findings that Appellant resided in Lexington County.

The Board designated retired Circuit Court Judge G. Thomas Cooper, Jr. to conduct an evidentiary hearing concerning Appellant's residency and her qualifications to serve as Board trustee, and to issue findings and recommendations to the Board. Appellant made an appearance at the evidentiary hearing held on February 15, 2013, to object to the proceeding, but did not otherwise participate.

Judge Cooper issued written findings and recommendations to the Board on March 14, 2013. Judge Cooper concluded that Appellant resided in Lexington County and that the Board had the authority to remove her from office under S.C. Code Ann. § 59-19-60. The Board held a special meeting on March 19, 2013, to receive and review Judge Cooper's findings, and to make a determination on Appellant's qualifications to serve on the Board. The Board voted to remove Appellant from office at the conclusion of the meeting.

Appellant filed an appeal asking the Circuit Court to reverse her removal from the Board of Trustees on March 28, 2013. The Honorable DeAndrea G. Benjamin, Circuit Court Judge, heard that appeal on September 11, 2014. Judge Benjamin affirmed Appellant's Removal from the Board of Trustees, by an order dated October 30, 2014. Appellant filed a Motion to

Reconsider the Judgment on Appeal on November 5, 2014. Judge Benjamin denied Appellant's Motion for Reconsideration on January 8, 2016. This appeal follows.

FACTS

Appellant was elected to the Richland County seat on the Respondent Board in November 2010 as a Richland County Trustee.¹ (Order Affirming the Appellant's Removal from the Board of Trustees at 2). An unidentified source informed the Chairman of the Board, Robert Gantt, in October 2012 that a fraction of the property where Appellant resides was located within Lexington County. *Id.* Robert Gantt, after waiting two months, contacted the South Carolina State Budget and Control Board ("SCB&CB") to request an official finding of the location of Appellant's residence. (Resp't Appeal Br., Ex. 1: Order of Removal Pursuant to S.C. Code § 59-19-60).

Judge Cooper was commissioned by the Board to hear the matter on February 15, 2013, and decided that Appellant was a resident of Lexington County. (*See* Hr'g Officer's Findings and Recommendation). Witnesses at that hearing testified that the SCB&CB did not conduct surveys of Appellant's property prior to the hearing. (February 15, 2013 Hr'g Transcript at 50, l. 16). The Respondent Board adopted Judge Cooper's findings and voted to remove Appellant from the Respondent Board on the basis that she was not a resident of Richland County on March 19, 2013. (Resp't Appeal Br., Ex. 1: Order of Removal Pursuant to S.C. Code § 59-19-60).

Nevertheless, Respondent argued that the SCB&CB conducted a detailed review of Appellant's residence and concluded that Appellant's property fell within Lexington County. (Resp't Appeal Br. at 1). SCB&CB employees admit, however, that as late as February of 2013, when the evidence was being put forth regarding the issue, a commission had not been formed

¹ Notably, Appellant ran for a Board seat years prior to her successful election in 2010. No one challenged Appellant running during her initial attempt or during her 2010 campaign.

for the purpose of hearing the disputed county line issues per Title 4 Chapter 5 of S.C. Code Ann. (Appellant's Appeal Br., Ex. D: Email Exchange). The SCB&CB also conceded that its suggestions regarding the boundary lines are not mandatory upon Lexington or Richland County.² *Id.*

Appellant was then and is still considered a resident of Richland County; Appellant paid Richland County taxes; and Appellant was registered to vote for Richland County.³ (Appellant's Appeal Br., Ex. A: Appellant's Richland County Vehicle Tax Statement, 2014). Numerous government officials regarding assessment and residency have assigned Appellant's residency to Richland County. Appellant voted in Richland County as recently as the election primary of 2014. (Appellant's Appeal Br. at 3). Appellant pays vehicle taxes in Richland County. (Appellant's Appeal Br., Ex. A: Appellant's Richland County Vehicle Tax Statement, 2014). When Appellant first secured approval for the subdivision layout for her property, Lexington County officials approved the proposed layout using approximate county lines, which revealed that Appellant's property was located in Richland County. (Appellant's Appeal Br., Ex. B: Certification Letter). A certified plat of Appellant's property also indicates that its location lies within Richland County. (Appellant's Appeal Br., Ex. C: Certified Plat). Appellant relied upon Richland County's determination that she was in fact a resident of that county when she applied

² The same exchange offers an example of a boundary dispute between two other South Carolina counties. In that case, the SCB&CB employee states that the counties did not accept the findings of the SCB&CB relative to the dispute.

³ A hearing was held on Friday, Oct. 7, 2016, wherein Appellant was ruled to be a voter/elector of Lexington County. However, that order may be appealed by Appellant's counsel in that matter. Nevertheless, that order would not undermine the instant appeal, as the proper procedures for assessing county lines were not followed with respect to Appellant until as recent as October 7, 2016, or pursuant to statute, never.

for and successfully campaigned to run in the Respondent Board's election to represent Richland County constituents.⁴ (Appellant's Appeal Br. at 4).

STANDARD OF REVIEW

An appeal from a school board decision to the circuit court or the Court of Appeals should be considered *de novo*. See e.g., S.C. Code Ann. § 59-19-60 (stating, "[t]he matter in controversy shall be tried by the circuit court judge, de novo, with or without reference to a master or special referee"); *Lexington Cnty. Sch. Dist. One Bd. Of Trustees v. Bost*, 282 S.C. 32, 34, 316 S.E.2d 677, 678 (1984) (stating, "[t]he appeal to the circuit court from the decision of the County Board of Education should be a trial de novo in which the record of proceedings below is admitted as evidence but not accorded deference. Section 59-19-560 requires the circuit judge to try these cases as equity cases"). This court should review the Circuit Court's order with the same standard applied by the Circuit Court. The standard of review, therefore, is *de novo*. Thus, the Court can find facts in accordance with its view of the preponderance of the evidence and correct errors of law. *Id.*

ARGUMENT

The Circuit Court held that: (1) Appellant is not a resident of Richland County and therefore, not qualified to hold the office of Board trustee; (2) the Board had legal authority to remove Appellant from office mid-term; and (3) the Board's hearing procedures provided Appellant due process of the law. (Order Affirming the Appellant's Removal from the Board of Trustees). Appellant is a resident of Richland County and qualified to serve; the Board was not authorized to remove her; and Appellant was not afforded Due Process. The Circuit Court's ruling is reversible for the reasons that follow.

⁴ See 1987 S.C. Acts 287, charging the Richland County Election Commission and Board of Voter Registration with the task of determining the qualifications of individuals seeking election for Richland County seats on Respondent's Board. The same entity qualified Appellant to hold the seat and run for the election on two separate occasions.

I. APPELLANT IS A CITIZEN AND RESIDENT OF RICHLAND COUNTY.

Appellant is a lawful resident and voter of Richland County. She was properly elected to represent the constituents of Richland County on the Respondent Board, after being certified by Richland County to run. Appellant's removal on the grounds that she is not a Richland County resident was unlawful and improper. Thus, Appellant respectfully requests that this Court reverse the Circuit Court's Order affirming Appellant's removal.

Appellant offered sufficient evidence to prove that her residence is located in Richland County. Appellant presented evidence that she relied on the Richland County Election Commission and Board of Voter Registration's determination that she was a resident of Richland County when she applied for and successfully campaigned for a Richland County seat in Respondent's election. (Appellant's Appeal Br. at 4). Moreover, Lexington County officials approved the proposed layout of her property using approximate county lines and determined that Appellant's domicile was located in Richland County when Appellant secured approval for the subdivision layout of her property. (Appellant's Appeal Br., Ex. B: Certification Letter). Further, Appellant's property has been shown to be located in Richland County by virtue of a certified plat.⁵ (Appellant's Appeal Br., Ex. C: Certified Plat). Also, Appellant voted in Richland County as recently as the 2014 primary election. (Appellant's Appeal Br. at 3). Last, Appellant has paid taxes to Richland County, not Lexington County. (Appellant's Appeal Br., Ex. A: Appellant's Richland County Vehicle Tax Receipt).

Respondent argued that the SCB&CB conducted a "detailed review" of Appellant's residence and concluded that Appellant's property falls within Lexington County lines.

⁵ The existing statute requires that upon reestablishing a county boundary, the South Carolina Geodetic Survey (SCGS) shall certify its work through a certified plat signed and sealed by a licensed South Carolina Professional Land Surveyor and approved by the Chief of the SCGS. *See* S.C. Code Ann. § 27-2-105 (2014). Murphy's residence has been shown to be in Richland County by virtue of a certified plat.

However, the evidence indicates that SCGS had not even conducted surveys of Murphy's residence at the time of the hearing giving rise to this matter. (Appellant's Appeal Br., Ex. D: Email Exchange). SCGS found that Appellant's property was located within Lexington County without conducting a detailed review of the property, and thus, the Respondent should not have removed Appellant based on that finding. Moreover, SCGS failed to follow the appropriate statutory procedure to reestablish the county boundary after deciding that Murphy lived in Lexington County, and thus, Murphy was still a resident of Richland County at the time of her removal. *See e.g.*, S.C. Code Ann. § 27-2-105 (2014); S.C. Code Ann. § 27-2-105 (1976). Therefore, Respondent failed to establish that Murphy was a resident of Lexington County at the time of her removal, and the Circuit Court erred by affirming her Removal from the Respondent Board. That decision is reversible.

II. THE CIRCUIT COURT ERRED REMOVING APPELLANT, AN ELECTED OFFICIAL, FROM OFFICE.

The Circuit Court erred in holding that the Board's determination that Appellant lived in Lexington County was enough to establish cause to remove Appellant in the middle of her term. Although the case law in this area is sparse, the existing authorities indicate that Respondent did not have authority to remove Appellant in the middle of her term.

It is well recognized that "[s]chool officers whose terms of office are fixed and definite generally are not removable without cause, unless there is a constitutional or statutory authority therefor." *See e.g.*, 78 C.J.S., *Schools and School Districts*, § 135; S.C. Code Ann. § 59-19-60; *State ex rel. Lyon v. Rhame*, 92 S.C. 455, 75 S.E. 881, 882 (1912) (stating, "[t]he power of removal from office ... is not an incident of the executive office, and it exists only where it is conferred by the Constitution or by the statute law, or is implied from the conferring of the power of appointment"); *State v. Wannamaker*, 213 S.C. 1, 48 S.E.2d 601 (1948) (stating, "[i]f

an officer holds office for a fixed term, summary removal is not authorized.... [t]he right to hold an office during a fixed term unless removed for cause may be overcome only by an unequivocal grant of power from the Legislature to remove at pleasure”).

A removal for cause operates as a limitation upon the power to remove. *Walker v. Grice*, 162 S.C. 29, 159 S.E. 914, 916 (1931). Statutes allowing removal are penal in nature and must be narrowly construed. *See e.g.*, Op. Att’y Gen., January 14, 2015; Op. Att’y Gen., March 30, 1983. The term “cause” is found in many removal statutes throughout the country and has developed a common and ordinary meaning over the years. *See* Op. Att’y Gen., July 1, 1999. The Office of the Attorney General stated in one of its opinions:

[c]ause is a flexible concept that relates to an employee's qualifications and implicates the public interest; cause for discharge has been defined as some substantial shortcoming that renders the person's continuance in office in some way detrimental to the discipline and efficiency of the service and which the Law and sound public policy recognizes as good cause for no longer holding the position; or, as sometimes stated, dismissal for cause is appropriate when an employee's conduct affects his or her ability and fitness to perform his or her duties. The phrase for cause in this connection means for reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. Relatively minor acts of misconduct are insufficient to warrant removal or discharge for cause. The cause must relate to and affect qualifications appropriate to the office, or employment, or its administration, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. Neglect of duty, inefficiency, and the good faith abolition of a position for valid reasons are all legally sufficient causes for removal. (Footnotes omitted).

Id. (quoting 63C Am.Jur.2d, *Public Officers and Employees*, § 183 (1997)). Section 59-19-60 “requires far more than a mere allegation for removal of a school board member.” *See* Op. Att’y Gen., January 14, 2015.

Here, Respondent did not have cause to remove Appellant from her position on the Board. Appellant did not have any substantial shortcoming rendering her continuance in office detrimental to the discipline and efficiency of the service. Respondent claimed that Appellant's removal was based on the determination that Appellant lived in Lexington County, instead of Richland County. However, Respondent Board did not prove that Appellant lived in Lexington County. The appropriate governmental agencies here determined that Appellant resided in Richland County for the purposes of all legal rights and obligations at the time she was elected, such as voting, paying taxes, and running for the Respondent Board to represent Richland County constituents. (Appellant's Appeal Br., Exs. B & C). The Respondent's finding that Appellant was not a resident of Richland County was not enough to constitute cause for her removal. Therefore, Respondent did not have authority to remove Appellant, and the Circuit Court's decision should be reversed.

III. THE LOWER COURT ERRED IN FINDING THE RESPONDENT BOARD HAD GIVEN APPELLANT DUE PROCESS.

The Respondent denied Appellant due process through the misapplication of the statute governing the resolution of county line disputes and the failure to follow the statutory procedure. The statutory procedure for removal of school officers is mandatory and must be followed. *See* 78 C.J.S., *Schools and School Districts*, § 135. This Court should reverse the Circuit Court's decision because of its failure to follow the statutory authority, described below.

Respondent applied the wrong version of the statute governing county lines to resolve the county line dispute. The statute in effect when Appellant was elected and when she was removed stated, "[t]he South Carolina Geodetic Survey on a cooperative basis shall assist counties in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys." S.C. Code Ann. § 27-2-105 (1976). SCGS served primarily as a

mediator between the two counties under that version of the statute. *Id.* The legislature amended Section 27-2-105 in 2014 after Murphy's removal. *See* S.C. Code Ann. § 27-2-105 (2014). The amendment eliminated the requirement that the SCGS assist the counties in defining and monumenting the location of the boundaries and gave SCGS the authority to determine the county boundaries by analyzing archival and other evidence and performing field surveys geographically, subject to an appeal by either party to the Administrative Law Court. *Id.*

Here, the Respondent did not follow the statutory procedure of the 1976 statute by acting as a mediator between the two counties. Instead, Respondent applied the 2014 statute and allowed the South Carolina Geodetic Survey to resolve the county line dispute without meeting or assisting the two counties, even though the 2014 statute was not in effect when Appellant was elected for the Richland County seat or when she was removed. The 2014 statute should not have been applied retroactively to determine whether Appellant qualified as a Richland County resident at the time of her election and at the time of her removal. *See* S.C. Const. art. 1, § 4 (prohibiting ex post facto laws).

Even if the 2014 statute is applicable to Appellant's removal, Respondent similarly failed to follow the procedure established by that statute. That statute states:

(A)(1) Where county boundaries are ill-defined, unmarked, or poorly marked, the South Carolina Geodetic Survey on a cooperative basis shall assist counties in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys. The South Carolina Geodetic Survey (SCGS) shall seek to clarify the county boundaries as defined in Chapter 3, Title 4. The SCGS shall analyze archival and other evidence and perform field surveys geographically to position all county boundaries in accordance with statutory descriptions. Physical and descriptive points defining boundaries must be referenced using South Carolina State Plane Coordinates.

(2) If there is a boundary dispute between two or more counties, the SCGS shall act as the mediator to resolve the dispute.

(3) Upon reestablishing all, or some portion, of a county boundary, the SCGS shall certify its work and within thirty days of that certification:

- (a) provide copies to the administrator of each affected county;
- (b) provide written notification to affected parties;
- (c) provide notice and copies to the public through its official website and or other means it considers appropriate; and
- (d) notify as it determines appropriate, other affected state and federal agencies.

(4) For purposes of item (1), a certification for all or some portion of a county boundary means a plat signed and sealed by a licensed South Carolina Professional Land Surveyor and approved by the Chief of the SCGS.

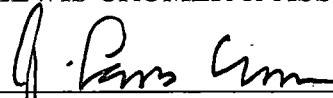
See S.C. Code Ann. § 27-2-105 (2014). SCGS failed to satisfy S.C. Code Ann. § 27-2-105(3) here in that it has not: certified its work; provided written notification to the affected parties; or provided notice and copies to the public through its official website and or other means it considers appropriate. SCGS has failed to follow the statutory requirements to change the county lines under either applicable statute. Therefore, Appellant was not provided due process and the Circuit Court's judgment should be reversed.

CONCLUSION

For the foregoing reasons, Appellant respectfully asks this Honorable Court to reverse the holding of the Circuit Court.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC



J. Lewis Cromer, Esquire (#1470)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Appellant

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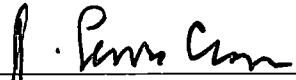
v.

Richland-Lexington School District No. 5 by and through its Board of Trustees by and through
Counsel to the Board of TrusteesRespondent.

PROOF OF SERVICE

I certify that I, the undersigned employee of J. Lewis Cromer & Associates, L.L.C., caused to have served Appellant's Initial Brief and Appellant's Designation of Matter to be Included in the Record on Appeal on Counsel for Respondent by depositing a copy of it in the United States Mail, postage prepaid, on October 12, 2016, addressed to John M. Reagle, Esquire CHILDS & HALLIGAN, P.O. Box 11367, Columbia, SC 29211-1367.

J. LEWIS CROMER & ASSOCIATES, LLC



J. Lewis Cromer, Esquire (#1470)
1418 Laurel Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Appellant

Columbia, South Carolina
October 12, 2016

**J. LEWIS CROMER
& ASSOCIATES L.L.C.**

ATTORNEYS AND COUNSELORS AT LAW

J. Lewis Cromer
Julius W. Babb, IV · J. Paul Porter
Ryan K. Hicks · Shannon M. Polvi

October 12, 2016

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SC Court of Appeals

Via Hand Delivery

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

**Re: *Murphy v Richland-Lexington School District 5*
Appellate Case No. 2016-000211**

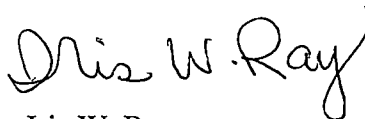
Dear Ms. Kitchings:

Enclosed please find the original and two (2) copies of the Initial Brief of Appellant, as well as Appellant's Designation of Matter on the above referenced matter. Also, enclosed are the original and one (1) copy of the Proof of Service. Please file the originals and return the clocked copies to our courier. By copy of this letter, I am serving counsel of record with a copy of same.

Should you have any questions and/or concerns, please feel free to call us. Thank you in advance for your assistance in this matter.

With kind regards, I remain

Sincerely,



Iris W. Ray
Litigation Paralegal

/iwr
Enclosures

cc: John Reagle, Esq.
Kim Murphy