

John Alden Bauer, III
109 Ashton Hill Drive
Columbia, SC 29229

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JUN 05 2017

SC Court of Appeals

June 5, 2017

David T. Duff, Esquire
3700 Forest Drive
Suite 404
Columbia, SC 29204

Re: John Alden Bauer, III v. Beaufort Co. Sch. Dist.
Appellate Case No. 2016-000955

Dear Mr. Duff;

I have learned that at the hearing I will have only five (5) minutes to correct any mis-statements that you may make. It would save time if you would omit obvious factual errors.

List to follow.

But here is one such outrageous passage from your brief containing 5 flaws:
“Although not entered into evidence, there was some discussion regarding the June 5, 2014 School Board meeting minutes. As the discussion makes clear, the document included a list of non-named employees (‘Employee A, B, C ... ‘) whom the board voted to terminate. While Bauer initially assumed he was one of those employees; he was assured he was not, and he appeared to concede that he was not one of the unnamed employees.” (Supp. R. p. 466, lines 13-25; Supp. R. p. 468, lines 10-13).

Was this willfully incorrect? RE: ***“As the discussion makes clear, the document included a list of non-named employees (‘Employee A, B, C... ‘)”*** The document (minutes of June 5, 2014) includes no such references to **“Employees A, B, C...”** contrary to your assertion. See last paragraph of the minutes. (attached as page 3)

The board did not vote to terminate **“Employees A, B, C”** contrary to your assertion. See last paragraph of the minutes. (attached as page 3)

The **“Employees A, B, C...”** references in the board hearing were simply what the April 1, 2014 minutes (not June 5) could have contained if there were multiple decisions to be made, contrary to your assertion. **Supp. R. p. 466**, attached as page 4.

In **Supp. R. p. 466, lines 13-25**, attached as page 4. Aside from the false statements, you have again confused the meetings of April 1, 2014, and June 5, 2014. Why so careless?

In **Supp. R. p. 468, lines 10-13**, attached as page 5, again refers to April 1. Lines 17-19 make it clear that in the June 5 meeting **“Employee A is John Alden Bauer...”**

The April 1, 2014 meeting, by law (Teacher Employment and Dismissal Act ("TEDA") 410, attached as page 8) should have been the meeting where my status was considered, which is why I brought it up at the 2015 hearing. Your article on Brown v. James, last paragraph, attached as page 7, together with TEDA 410, makes the point that I should have been reinstated when the Board failed to act before April 15, 2014 (S.R. pp. 837-838).

Both Dr. Moss and Alice Walton identified me to be "Employee A",, referenced in the June 5, 2014 meeting, contrary to your assertion; and the Moss letter of June 6, 2014 (your own exhibit #41) the day after the meeting, identifies me as the one terminated employee, contrary to your assertion. As you know Moss confirmed the finality of termination (without a hearing) on June 16 and the termination papers were executed as of July 1, 2014, "per Alice Walton". That was never disputed by your client at the 2015 hearing.

The Board was well aware that they had fired me prior to any hearing. As Advice Counsel why would you not explain to them that they had violated TEDA 460 and Brown v. James, a case in which you were on the losing side?

If the Board needed *reminding* that there had been no hearing prior to termination, Alice Walton so testified. (S.R. p. 471, line 15)

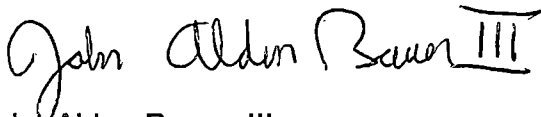
As a layman I am astonished at the seemingly persistent violations of truth committed by highly recompensed attorneys. Is deception and sophistry worth \$827,000 and counting, to the district and to its insurers?

All of this is especially painful and harmful after 17 unblemished years in service and more than three (3) years of litigation, and knowing that administrators testified that I was a good teacher and that they were willing to work with me again.

The second promise in our Federal Constitution is to "establish Justice". The judges oath is "Justice and only Justice."

Knowingly lying is not the pledge of your profession.

Very truly yours,



John Alden Bauer, III

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Superintendent's summary, Board of Education special called meeting - June 5, 2014

Vice Chair Mary Cordray called the meeting to order at 4:20 p.m.

Pledge of Allegiance

Board members agreed to discuss the proposed 2014-15 budget first, then go into executive session to discuss a personnel issue.

Superintendent Moss and Chief Operations Officer Phyllis White presented an overview of proposed increases to the 2014-15 budget. The need for the budget as proposed was due to increases in benefits for employees, state-mandated step increases for staff, an increase in student enrollment and instructional initiatives. The initial budget sent to County Council was \$192.8 million.

Dr. Moss and Ms. White presented several budgetary options for Board members to discuss as they worked to develop a reduced proposal to present to County Council. After Board members discussed various options, Ms. Bush moved to direct the superintendent to propose \$1.5 million in 2014-15 budget reductions. The reductions would be achieved by utilizing new, recently approved state funding for literacy coaches, greater efficiencies in school bus transportation, ending the Teacher Advancement Program and delaying the expansion of some CATE programs. The reductions would lower the district's budget proposal to \$191,398,015. The motion passed 7-4.

X (The Board then went into executive session to discuss a personnel matter. Out of executive session, the board made a motion to approve the superintendent's recommendation to terminate the employment of Employee A. Approved.

The meeting was adjourned at 6:15 p.m.

Betty Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Witness: Walton
Cross by Bauer

1 are in large groups. The meeting before that, we took
 2 his recommendation about several hundred employee
 3 contracts for the coming year. So I want you to
 4 understand where we are right now is, he made a
 5 conditional recommendation that you be dismissed;
 6 okay? That condition is based on your right to a
 7 hearing, which is where we are right now, okay?
 8 MR. BAUER: Okay. And I want to point out
 9 that, on April 1st, it was not just employee A. There
 10 were a list of teachers. But is he saying that I was
 11 not one of A, B, C, D, E, F, G? Is his -- would he be
 12 saying --
 13 CHAIRMAN EVANS: As I recall April 1st,
 14 2014, a year ago --
 15 MR. BAUER: Yes.
 16 CHAIRMAN EVANS: -- a little over a year
 17 ago, I believe we had three employees that were
 18 recommended for dismissal; okay?
 19 MR. BAUER: And you're saying that Mr. Bauer
 20 made --
 21 CHAIRMAN EVANS: You were not --
 22 MR. BAUER: Okay.
 23 CHAIRMAN EVANS: -- any of those, at my
 24 recollection is correct.
 25 MR. BAUER: I'd take your word for it, then.

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recommendation on June the 5th.

CHAIRMAN EVANS: I will tell you that I'm presuming that you're accurate.

MR. BAUER: Okay.

CHAIRMAN EVANS: Because I can't --

MR. BAUER: At least I got something right, maybe.

CHAIRMAN EVANS: -- really remember back in June 5th, 2014.

MR. BAUER: Okay. And I stand corrected. I assumed that employee A, since it was June the 5th and August 5th, was probably April 1st, but I stand corrected on that.

CHAIRMAN EVANS: Okay. Go ahead. Let's continue.

(VIDEO testimony resumes.)

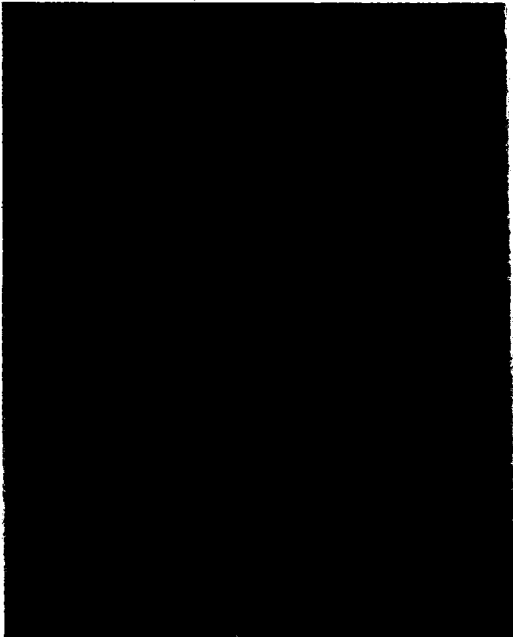
MR. BAUER: Yes. Employee A is John Alden Bauer, as proclaimed by Dr. Moss on his December 16th deposition.

MR. WILLIAMS: Again, we have the same objection.

BY MR. BAUER:

Q So would you have been the one required to inform me that I had a right to an appeal based --

A No.



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DUFF, WHITE
&
TURNER, L.L.C.

See next Page

COURT RULING ON EMPLOYMENT
DISMISSAL ACT

S.C. Court of Appeals Rules on Teacher Employment and Dismissal Act
Procedures

The South Carolina Court of Appeals recently issued a decision in a case that has broad implications for the teacher contract non-renewal process under the Teacher Employment and Dismissal Act. On July 21, 2010, the Court of Appeals issued a substituted opinion in the case of *Sharon Brown v. William B. James, Superintendent for Cherokee County School District*. In that case, the Court of Appeals ruled that the initial vote by the District Board of Trustees to accept Dr. James' recommendation that Ms. Brown's teaching contract not be renewed was the Board's "final action." As a result, the Court concluded that Ms. Brown could forego a Board hearing and proceed to appeal the Board's decision to circuit court. The Court disagreed with Dr. James' argument that the Board's initial decision to accept his non-renewal recommendation was subject to Ms. Brown's right to a full evidentiary hearing before the Board, at which time the Board's decision to uphold or reverse its initial vote would become its final decision.

The Employment and Dismissal Act, among other things, outlines the process a district should follow when a continuing contract teacher is not recommended for reemployment for the subsequent school year. The Act specifies that on or before April 15, the Board should "decide and notify" continuing contract teachers regarding their employment for the ensuing school year. In practice, this provision has been interpreted to mean that boards must act on a recommendation of non-renewal, and the teacher must be notified of that action, prior to April 15. The Act further states that a teacher who receives such notice is to be given the opportunity to request a hearing on the merits of the grounds for the contract non-renewal. If a hearing is requested in a timely manner, the hearing is to be held within fifteen days of the request, unless the parties agree to schedule the hearing at a later date so as to allow the parties adequate time to prepare for the hearing. Once the hearing is conducted, the Board

takes its final action by voting either to affirm or withdraw its initial decision of non-renewal. A teacher who disagrees with a board's final decision has the option under the Act to appeal to the local circuit court.

In *Ms. Browns* case, Dr. James notified her by letter dated April 17 that her teaching contract would not be renewed for the subsequent school year. Within fifteen days, Ms. Brown submitted a written request for a hearing before the Board. On April 24, prior to receipt of Ms. Brown's hearing request, the Board had voted to accept James' recommendation of non-renewal. Through her attorney, Ms. Brown agreed to waive the time requirement for scheduling the hearing, but then refused to respond to requests about scheduling. Ms. Brown's attorney was notified on two different occasions that if Ms. Brown did not respond to these inquiries, the District would regard her lack of cooperation as a voluntary withdrawal of her request for a hearing. Thereafter, on November 27, Ms. Brown's attorney was notified that the District considered her request for a hearing to be withdrawn and the case closed. Ms. Brown then filed suit in circuit court against Dr. James, claiming that he and the Board breached her contract by failing to follow the process outlined in the Employment and Dismissal Act. Dr. James filed a motion to dismiss Browns case on the grounds that Ms. Brown had not exhausted her administrative remedies under the Act, namely a Board hearing. The circuit court agreed and dismissed the case. Ms. Brown appealed the circuit court's ruling to the Court of Appeals, who reversed the circuit court and concluded that Ms. Brown qualified for an exception to the exhaustion of administrative remedies requirement. It is interesting to note that Ms. Brown failed to raise the issue of whether her contract should have been automatically renewed because, in this case, the Board did not take action on or before April 15.

The Court of Appeals' decision in *Brown* appears to be inconsistent with the common interpretation of the "decide and notify" and subsequent opportunity to request a hearing provisions of the Employment and Dismissal Act. In what has been a long-standing, state-wide practice, boards typically have voted on the non-renewal recommendation and notified the teacher of the right to a hearing on the merits, on or before April 15. If the teacher requests a hearing, the board takes what is considered to be its final action at the conclusion of the hearing, at which time the teacher may appeal the board's decision to the local circuit court. As a result of the ruling in *Brown*, school boards now may be required to conduct non-renewal hearings before ever taking action on the non-renewal recommendation. The unanswered question arising out of the *Brown* case is whether such hearings must be conducted prior to April 15. If so, districts will have to begin the non-renewal decision-making process much earlier in the school year, so that principal recommendations, notice and the hearing may all take place prior to April 15. Alternatively, Brown could be interpreted to allow boards not to take any action prior to April 15. Provided the teacher is notified by the superintendent on or before April 15 that he or she is being recommended for non-renewal and of his or her right to request a hearing on the recommendation, the hearing could then be scheduled after the 15th, provided the hearing is scheduled within fifteen days of the receipt of the request, or at a later date if agreed upon by the parties.

As a result of the Court's decision in *Brown*, it is clear that school boards may no longer make initial decisions to accept or reject a superintendent's non-renewal recommendation prior to an evidentiary hearing, if such a hearing is requested. What is not clear is whether hearings must be conducted prior to April 15, or simply the notice of the non-renewal recommendation and of the opportunity for a hearing is to be given prior to April 15. Board policies and practices will have to be examined and possibly modified, in light of *Brown*, if you have questions about the courses of action available at this point, or assistance with your policies and procedures, please feel free to contact this firm.

renewed annually for two additional years upon the successful completion of teaching and of the hiring district's induction program.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

SECTION 59-25-340. South Carolina adopted pedagogy examination.

A person who has received a passport certificate issued by the ABCTE, possesses an alternative route certificate, and has been initially hired by a school district must be required, as a condition for professional certification, to successfully pass the South Carolina adopted pedagogy examination.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

SECTION 59-25-350. Reports.

The State Department of Education shall submit annually by March thirty-first to the State Board of Education and the General Assembly the total number of individuals employed in South Carolina with a passport certificate issued by ABCTE by district and nonprivileged information collected on these individuals through the ADEPT reporting system.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

SECTION 59-25-360. Rights of persons hired pursuant to article.

A person who has completed all requirements of this article and has been hired by a school district has the same responsibilities and rights as other teachers hired by the district.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

ARTICLE 5.

EMPLOYMENT AND DISMISSAL

SECTION 59-25-410. Notification of employment for ensuing year, notification of assignment.

On or before April fifteenth of each year, the boards of trustees of the several school districts shall decide and notify, in writing, the teachers, as defined in Section 59-1-130, in their employ concerning their employment for the ensuing year. If the board, or the person designated by it, fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher shall be deemed to be reemployed for the ensuing year and the board shall issue a contract to such teacher as though the board had reemployed such teacher in