

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000649-MR

CHARLES MITCHELL

APPELLANT

v. APPEAL FROM MENIFEE CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 13-CI-90072

BOARD OF EDUCATION OF
MENIFEE COUNTY, KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; COMBS AND DIXON, JUDGES,
DIXON, JUDGE: Charles Mitchell appeals from an order of the Meniffee Circuit
Court granting the Board of Education of Meniffee County (Board) declaratory
relief by finding several extensions to Mitchell's employment contract invalid.
After careful review, we affirm.

Mitchell was awarded three successive contracts of employment as Superintendent for the Menifee County Board of Education, each for a term of four years. There are no issues concerning the first two four-year terms, the second of which ended on June 30, 2007. Mitchell thereafter received the third contract for a four-year term, beginning July 1, 2007. The Board awarded the third four-year contract on June 21, 2007. The issues herein arise from the subsequent Board action aiming to extend Mitchell's contract pursuant to KRS¹ 160.350(4).

The third four-year contract which commenced on July 1, 2007, initially ended on June 30, 2011. Mitchell had by then served approximately eight years. During his ninth year, in June 2008, the Board unanimously approved a motion to extend Mitchell's contract by one year, stating that "this extension will end on June 30, 2012." The Board voted in four subsequent years to extend the "current contract" for an additional year. In all cases, the extension was reflected by a written document titled "Extension of Superintendent's Contract between the Superintendent and the Menifee County Board of Education," as well as in the Minutes of each board meeting.

The first extension was unanimously approved on June 25, 2008, for a term from July 1, 2008, through June 30, 2012. Subsequently, on June 24, 2009, the Board again unanimously approved a second extension from July 1, 2009, through June 30, 2013. The third extension approved on July 15, 2010, was also

¹ Kentucky Revised Statutes.

unanimously approved to extend Mitchell's contract to June 30, 2014. On March 17, 2011, by a four-to-one vote, the Board extended Mitchell's contract for a fourth time to continue through June 30, 2015. Finally, on May 17, 2012, the Board, by a three-to-one vote (one board member absent), approved a fifth one-year contract extension through June 30, 2016.

Accordingly, Mitchell's third appointment to a four-year contract term, which began on July 1, 2007, and was initially to end on June 30, 2011, was extended by Board action in successive one-year increments to June 30, 2016. At all times, however, there were only four years in each contract period.

The Board was comprised of members Ross, Lawson, Bryant, Mayer and Wells for the first three extensions unanimously granted (except that board member Wells may have missed the vote on June 25, 2008). Lawson, Bryant, and Wells continued to serve on the Board when extensions were awarded on March 17, 2012, for the fourth extension, and all voted in favor of those extensions. However, Ross and Mayer had by then been replaced by Board members Lane and Smith. Lane voted against the extensions in both 2011 and 2012. Smith voted yes in 2011 and was absent in 2012. By March of 2013, however, the Board was now comprised of three new board members, along with Lane, and Smith (who was the only board member left who had voted to extend Mitchell's contract). The newly elected Board voted not to extend Mitchell's contract further by a vote of three to

one (Smith continued to support Mitchell's extensions). Moreover, it thereafter filed a declaratory action to invalidate the extensions previously granted.

The new Board, in its summary judgment motion in the declaratory action, argued successfully that Mitchell's extensions were void because they were improperly granted. It primarily contended that, pursuant to KRS 160.350(4), an extension to Mitchell's contract could only have been granted "sometime in 2011, after serving nearly all of the four-year term" contemplated by subsection four. The Board argued that extensions should not have been granted every year after the Superintendent only served out one year of a newly created contract. Thus, it asserted, the rollovers approved in 2008, 2009 and 2010 were invalid. It further maintained that the final two extensions were invalid because the Board, as it was comprised in March of 2011 and May of 2012 when those extensions were granted, did not have appointing authority to grant the extensions. The Board pointed out that the terms of the appointing board members did not extend beyond the time when Mitchell's extensions were to begin.

Mitchell, on the other hand, argued that it made no difference when the year was added to his contract under the statutory provision in question. He asserted that the additional year, once added, became part of the "current term of employment," and could be added at any time before the expiration of the term.²

² Mitchell refers us to a letter from Assistant Attorney General, Timothy Crawford, to interpret KRS 160.350(4). However, the letter was not a formal Opinion of the Attorney General. Consequently, we see no precedential value in the views expressed therein.

The trial court, ruling on the summary judgment motion, agreed with the Board. It determined that only the first extension to Mitchell's contract was valid. Nevertheless finding that both parties had detrimentally relied on the second and third extensions in the mistaken belief as to their legal validity, the trial court therefore concluded that those extensions were to be honored through the conclusion of the contract term of June 30, 2014. All further extensions were deemed null and void. It is from this order that Mitchell appeals.

On appeal, Mitchell essentially argues the trial court erred in its interpretation of KRS 160.340(4). Mitchell contends that subsection four provides "clear statutory authority" allowing a board of education authorization to grant an unlimited number of one-year extensions to a superintendent's contract. As he was eligible, having completed a four-year contract within the same school district, Mitchell had met the only requirement of the statutory provision which entitled him to the extensions.

Mitchell now asserts that "[w]hen the Board granted one-year extensions pursuant to KRS 160.350(4), the Board did not create a new four-year contract. Rather, the Board added one year to the . . . existing four-year contract." He further maintains that he had met the only limitation provided in subsection one—that the superintendent must not have more than four years of a current term left to serve at any given time (presumably including the extension). It would seem to us that Mitchell is using circuitous logic. On the one hand Mitchell argues the

Board is not creating a new four-year term with the addition of the extension, and yet he then bootstraps the extension year to the term in order to calculate the time left in his “current” term so that another one-year extension may be added. The statutory provision clearly does not allow more than one-year extensions per current term. Therefore, the only way for Mitchell’s extensions to be valid would be for new four-year “current terms” to be created by each extension. Thus, the question before us is whether subsection four permits a board to change “current terms.”

The office of school superintendent and the offices of school board members are intricately linked. School superintendents must work closely with the members of boards of education. KRS 160.370 provides:

The superintendent shall be the executive agent of the board that appoints him and shall meet with the board, except when his own tenure, salary, or the administration of his office is under consideration. As executive officer of the board, the superintendent shall see that the laws relating to the schools, the bylaws, rules, and regulations of the Kentucky Board of Education, and the regulations and policies of the district board of education are carried into effect. He may administer the oath required by the board of education to any teacher or other person. He shall be the professional adviser of the board in all matters. He shall prepare, under the direction of the board, all rules, regulations, bylaws, and statements of policy for approval and adoption by the board. He shall have general supervision, subject to the control of the board of education, of the general conduct of the schools, the course of instruction, the discipline of pupils, and the management of business affairs. He shall be responsible for the hiring and dismissal of all personnel in the district.

The sole responsibility for the appointment of school superintendents is vested in the local board of education, after consideration of screening committee recommendations. KRS 160.350(1). The decision regarding appointment and length of terms involves unique considerations due to the public nature of the position and of the boards of education which appoint them.

The length of the terms of school superintendents is strictly governed by this statute. KRS 160.350(1) provides, in relevant part, as follows:

[E]ach board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following the individual's appointment. The appointment may be for a *term* of no more than four (4) years.

(Emphasis added). The maximum four-year superintendent terms provided for under subsection one correspond to the length of the terms of members of boards of education. All school board members are elected from the districts in which they reside to four-year terms. KRS 160.210. This interrelation is reflected in long-standing precedent holding superintendent appointments invalid where the terms of the board members in office at the time of appointment did not extend beyond the date when the term of the superintendent was set to begin. *Maynard v. Allen*, 276 Ky. 485, 124 S.W.2d 765, 768 (Ky. 1939). *See also Board of Education of McCreary County v. Nevels*, 551 S.W. 2d 15, 18 (Ky. 1977); *Farley v. Board of Education*, 424 S.W.2d 124, 125 (Ky. 1968). Such a requirement

obviously is intended to make superintendents more accountable to the currently elected members of its boards, thereby making superintendents ultimately accountable to the electorate.

Consequently, the term set by boards of education for the length of employment pursuant to KRS 160.350, is strictly enforced. As noted by the trial court herein, “a board of education [is] without power to create a new term before the end of and out of the previous term.” *Board of Education of Pendleton Co. v. Gulick*, 398 S.W.2d 483, 487 (Ky. 1966). *See also Childers v. Pruitt*, 511 S.W.2d 233, 234 (Ky. 1974). Of great import is the definition of the meaning of “term” as found in KRS 160.350. The court in *Gulick* determined that a “term” is “a fixed and definite period of time.” It then affirmed older precedent holding that, once a term is fixed, the board loses control over the term thus created. *Gulick*, 398 S.W.2d at 485-486. In so doing, *Gulick* quoted from *Board of Education of Boyle County v. McChesney*, 235 Ky. 692, 32 S.W. 2d 26, 28 (1930):

When a power is given and has been exercised, and the repository of the power has no further control over the subject, except to remove the appointee for cause, the appointing power is exhausted and may not be reconsidered. . . Thus the appointment became complete, and the power of the board for the time being was exhausted.

Mitchell argues, however, that *Gulick* applies only in appointments of superintendents under subsection one, not to the one-year extensions permitted under subsection four. However, we see nothing that would exempt subsection

four from the holding in *Gulick*. The Board, on the other hand, argues that ambiguity exists now in the statute as subsection one clearly states that a superintendent's appointment cannot be for a term of more than four years, whereas subsection four now permits the creation of a five-year contract should the rollover provision be exercised. We cannot agree with the Board's interpretation of subsection four either, however.

Apparently, the application of the "roll-over" provision of subsection four is an issue of first impression in Kentucky jurisprudence. KRS 160.350(4) was added by the Kentucky General Assembly in 2000, and became effective July 14, 2000. It provides as follows:

After the completion of a superintendent's first contract or after four (4) years whichever comes last, the board of education may, no later than June 30, extend the contract of the superintendent for one (1) additional year ***beyond*** the ***current term*** of the employment.

(Emphasis added).

As we have previously discussed, once a term is created, a board of education is without authority to change it. Thus, once the Board herein appointed Mitchell to the third four-year term, from July 1, 2007, to June 30, 2011, it lost any power to change that four-year term. The adoption of KRS 160.350(4) does not change the rule laid out in subsection one. It merely permits a board to *extend* the ***contract*** of the superintendent, ***not the term***. The one-year extension is ***beyond***

the current term, and in no way changes the current term. In essence, the additional year would amount to a new one-year term under the same contractual provisions.

Consequently, we see no merit in Mitchell's claim that he was entitled to the multiple yearly successive extensions granted herein. The extensions could not operate to change the dates of the term previously set. Thus, only the first and second extensions could possibly meet the statutory requirements. While subsection four does not provide an exact timeline as to when a board may exercise the rollover provision--merely that it must "no later than June 30"-- the timing of the board's action must nevertheless coincide with the board members' terms in office as set out in *Maynard and Farley, supra*. While the statute is silent as to whether successive extensions are permitted under subsection four, what is clear is that only one extension is permitted per "current term of employment," which is for the first extension, as we have previously addressed, the four-year term from 2007-2011.

The second extension could not have been valid at the time initially awarded for the reasons previously addressed. However, given the fact that the Board continued to vote for further extensions to Mitchell's contract, pursuant to the holding of the court in *Farley*, it may be deemed to have ratified the second extension it granted on May 17, 2012. 424 S.W. 2d at 125. This second extension would meet the requirement of subsection four in that the Board voted for a one-

year extension within the current one-year term—being the term of the first extension—and before June 30, 2012, when the first extension was set to expire. Thus, as in *Farley*, there would be no issue as to the appointing authority’s power to grant an extension since the Board members’ terms would not end prior to the beginning of the new term granted by the second extension. We agree with the trial court that all other extensions were invalid.

For the foregoing reasons the Order of the Menifee Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rebecca D. Graham
Mt. Sterling, Kentucky

BRIEF FOR APPELLEE:

Dana Daughetee Fohl
Lexington, Kentucky

Jonathan C. Shaw
Paintsville, Kentucky

AMICUS CURIAE BRIEF FOR
KENTUCKY ASSOCIATION OF
SCHOOL ADMINISTRATORS AND
KENTUCKY ASSOCIATION OF
SCHOOL SUPERINTENDANTS:

Winter R. Huff
Monticello, Kentucky