

RENDERED: MAY 16, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2002-CA-001906-I
AND
NO. 2002-CA-002307-I

KEITH YOUNG, Individually and
in His Official Capacity as
Superintendent of Adair County
School District

MOVANTS

ON MOTIONS FOR RELIEF UNDER CR 65.07 FROM ADAIR CIRCUIT COURT
v. HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NOS. 02-CI-00166 & 02-CI-00167

SCOTT HAMMOND, JANET HUTCHESON
JOHN PECK, CANDACE STOCKTON,
DEBRA WIMMER, Individually and in
Their Official Capacities as Members
of the Adair County High School
Council; and MICHAEL AKIN

RESPONDENTS

OPINION and ORDER
DENYING INTERLOCUTORY RELIEF

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; COMBS and JOHNSON, JUDGES.

EMBERTON, CHIEF JUDGE. Keith Young, individually and in his
official capacity as Superintendent of Adair County School
District, has filed motions for interlocutory relief pursuant to

CR¹ 65.07. Scott Hammond, Janet Hutcheson, John Peck, Candace Stockton, Debra Wimmer, individually and in their official capacities as members of the Adair County High School Council,² as well as Michael Akin, have filed responses thereto. Young has moved to consolidate the two motions and it is hereby ORDERED the motion be GRANTED.

Young asks this Court to dissolve two temporary injunctions issued by the Adair Circuit Court. The first, issued on August 27, 2002, orders him to submit to the Council all the applications he received for the position of principal at Adair County High School. The position became vacant after Young demoted Akin. Young handed over to the Council three applications he recommends for consideration, but refused the Council's request for the remainder of the applications, which he does not recommend, including that of Akin.

The second injunction was issued on October 29, 2002, after Young complied with the first injunction³ by transmitting all applications to the Council, and after the Council decided to recommend Akin for appointment, but Young refused to complete

¹ Kentucky Rules of Civil Procedure.

² Site Based Decision Making Council.

³ This Court denied a stay of enforcement of the temporary injunction by order entered September 16, 2002.

the hiring process. The injunction orders Young to immediately place Akin into the position of principal at Adair County High School "even though Young does not recommend him" and further orders that Young "shall not intimidate, harass, attempt to demote or terminate Akin's employment as Principal prior to bringing the matter before this Court."

The controversy before us focuses on construction of certain language found in KRS⁴ 160.345(2)(h), as highlighted below:

From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2)(i)10 of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. **If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent.** When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall

⁴ Kentucky Revised Statutes.

select the trainer to deliver the training. **Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process.** Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. **The superintendent shall provide additional applicants upon request when qualified applicants are available[.]**

In support of its decision entered August 27, 2002, the trial court relied upon OAG⁵ 95-10 to construe the phrase "qualified applicants" as appears in the last sentence of the statute to mean:

. . . a person who meets the standards of statutes, regulations, and any existing school board policies, in addition to having the proper certification and an acceptable criminal background check.

The trial court also relied upon OAG 01-07 to support the conclusion that the role of the superintendent in the process of hiring a school principal is "non-discretionary and ministerial" and that "[t]he decision to hire a principal is vested in the Council." The court held that Young's refusal to submit all applications, including that of Akin, to the Council violated the Council's right to select the best applicant available for the position and violated Akin's right to have his

⁵ Opinions of the Attorney General of Kentucky.

application considered by the Council, thereby causing both to suffer immediate and irreparable harm.

In his motions for interlocutory relief, Young argues that KRS 160.345(2)(h) gives a superintendent the exclusive authority to decide which applicants for a principalship are qualified for submission to the Council's consideration and that an applicant, even when certified for the position, is not qualified unless also recommended by the superintendent. It is his position that the statute does not give the Council the right to consider applications other than the ones he recommends to it, or to Akin the right to have his un-recommended application submitted to the Council for consideration. Young finds support for this argument in KERA's⁶ recent legislative history. He insists that any other interpretation of the statute nullifies its express requirement that "the school council shall select the new principal from among those persons recommended by the local superintendent."

In their response, the Council and Akin emphasize the last sentence of KRS 160.345(2)(h) uses the term "shall" to apply to the superintendent's function in providing additional applications upon a Council's request. They point out that the

⁶ Kentucky Education Reform Act. Specifically, Young refers to unsuccessful attempts by the Legislature in 1996, 1998, and 2000, to amend KRS 160.345(2)(h).

sentence refers to "qualified," rather than "recommended," applicants, and that it does not exclude principals from its application. Like the trial court, the Council and Akin rely upon OAG 01-07 and the language therein which attributes to a superintendent a "non-discretionary ministerial role" in the process of providing additional candidates to the Council for its consideration. They contend that the only interpretation that gives meaning to that last sentence in the statute is the one that construes it to mitigate the superintendent's discretion in selecting a principal, and that such interpretation promotes the intent of the Legislature, when it passed KERA, to establish a system of checks and balances.

The Court has considered the parties' arguments and the appended record and is of the opinion that the Adair Circuit Court did not abuse its discretion when it issued the two temporary injunctions at issue here.

The date of entry of this order is contemporaneous with the date of rendition of this Court's *en banc* opinion in Robinson v. Back, Appeal No. 2001-CA-001933-MR. In that case, the trial court agreed with Superintendent Back's argument, which is also the argument made by Superintendent Young in the case before us, that an applicant for a principalship is "qualified" pursuant to KRS 160.345(2)(h) only if also "recommended" by the superintendent. In reversing the trial

court, we held that its interpretation of the statute cloaked the word "qualified" with a meaning not stated therein, and was inconsistent with KERA's objective to eliminate nepotism and favoritism from Kentucky's school systems through the decentralization of decision-making authority.⁷ Rather, this Court held that construing KRS 160.345(2)(h) to mean that a superintendent is required to provide a school council with all applications for a principalship that the council requests, so long as the applicants have all qualifications required by statute, dovetails with KERA's stated objective.

We adopt this Court's opinion in Robinson v. Back and incorporate it herein by reference. Therefore, it is ORDERED that the motions for interlocutory relief be DENIED. The motion of the Kentucky School Board Association for leave to file a supporting memorandum as *amicus curiae* is DENIED.

JOHNSON, JUDGE, CONCURS.

COMBS, JUDGE, DISSENTS.

ENTERED: May 16, 2003

/s/ Thomas Emberton
CHIEF JUDGE, COURT OF APPEALS

⁷ Seminal case law pertinent to this matter includes Rose v. Council for Better Education, Inc., Ky., 790 S.W.2d 186 (1989), and Board of Education of Boone County v. Bushee, Ky., 889 S.W.2d 809 (1994).

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