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Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001308-MR

COMMONWEALTH OF KENTUCKY, STATE BOARD
FOR ELEMENTARY AND SECONDARY EDUCATION;
GENE WILHOIT, IN HIS OFFICIAL CAPACITY AS SUCCESSOR
TO THOMAS BOYSEN, AS COMMISSIONER OF EDUCATION;
AND MICHAEL KING, FORMER ACTING SUPERINTENDENT
OF THE LETCHER COUNTY SCHOOLS FOR AND DURING
THE ADMINISTRATION OF THE LETCHER COUNTY SCHOOL
SYSTEM BY THE KENTUCKY STATE BOARD FOR
ELEMENTARY AND SECONDARY EDUCATION — APPELLANTS

v.

APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 95-CI-00194

TRUMAN HALCOMB; AND
PHILLIP BROWN — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: JOHNSON, MINTON AND TACKETT, JUDGES.

JOHNSON, JUDGE: The Commonwealth of Kentucky, State Board for Elementary and Secondary Education (State Board) has appealed from an order of the Letcher Circuit Court entered on March 28,

2002, which found that Truman Halcomb and Phillip Brown, the appellees herein, had not received notice of their scheduled hearing date in accordance with the procedural requirements of KRS[1] 161.765(2). The trial court ordered that Halcomb and Brown be reinstated to their former positions and that the State Board provide compensation to Halcomb and Brown for "all lost wages and other benefits" since their "wrongful termination."[2] Having concluded that the procedural notice requirements of KRS 161.765(2) were not followed, but that the trial court erred by ordering the State Board to compensate Halcomb and Brown with back-pay, we reverse and remand for further proceedings.

The relevant facts of this case are not in dispute. Halcomb and Brown were both employed by the Letcher County Board beginning in approximately 1963. Halcomb began his employment as a classroom teacher, was promoted to assistant principal in 1981, and eventually assumed an administrative position as elementary supervisor in 1986. Brown also began his employment as a classroom teacher, but was later promoted to assistant principal, principal, and finally to secondary supervisor.

[1] Kentucky Revised Statutes.

[2] The trial court ordered the Board of Education of Letcher County, Kentucky (Letcher County Board) to reinstate Halcomb and Brown to their former positions. The Letcher County Board appealed that order in a separate appeal (2002-CA-001375-MR) which has been dismissed pursuant to a settlement agreement.

Brown was employed as secondary supervisor for approximately 19 years.

On June 9, 1994, the State Board and the Letcher County Board entered into an agreed order whereby the Letcher County Board would become a "state-managed district" pursuant to KRS 158.785. The basis for this agreed order was that an audit of the school system had revealed a pattern of ineffective and inefficient administration of the school district. Specifically, the audit disclosed that a continuous decline in student enrollment within the school system had resulted in an instructional oversight problem, i.e., the administrator to student ratio was excessive. Initially, the Letcher County Board was permitted to actively participate in the development and implementation of an improvement plan.

Shortly before the State Board and the Letcher County Board entered into the agreed order, but subsequent to the finding that the Letcher County school system had deficiencies with regard to instructional oversight, Michael King, then-interim superintendent of Letcher County Schools,[3] recommended combining four central office positions into three "new" positions. In addition, King recommended that Halcomb and Brown be laterally transferred into two of these three positions.

[3] King's position as interim superintendent lapsed when the Letcher County Board resumed local control of the school district.

However, on April 24, 1995, King was called to meet with, among others, then-Commissioner of Education Dr. Thomas Boysen.[4] At this meeting, a decision was made to eliminate five positions in the central office, two of which were held by Halcomb and Brown. By individual letters dated April 24, 1995, Halcomb and Brown were informed that their respective positions were being abolished pursuant to the school district's reorganization plan. These letters also informed Halcomb and Brown that they were being demoted to the position of classroom teacher.[5]

By identical notices dated May 2, 1995, Halcomb and Brown informed King pursuant to KRS 161.765(2), that they were requesting a hearing regarding their respective demotions. By letters dated May 5, 1995, King sent Halcomb and Brown notices acknowledging receipt of their requests for a hearing. Specifically, King's letters stated in pertinent part as follows:

> In accordance with KRS 161.765, your hearing is being scheduled for May 15, 1995, which is 20 days after you received notice and a written statement of the grounds for demotion on April 25, 1995.

[4] Commissioner Boysen was succeeded by Wilmer Cody in 1996, who was later succeeded by Gene Wilhoit in 2000.

[5] Neither Halcomb nor Brown was accused of any wrongdoing; their demotions stemmed solely from the decision to reorganize the central office in response to declining student enrollment.

The hearing was conducted as scheduled on May 15, 1995, before Debbie Hendricks, a hearing officer for the State Board.[6] Following the hearing, Hendricks rendered a decision upholding the demotions of Halcomb and Brown.

On May 25, 1995, after Halcomb's and Brown's applications for three other administrative positions within the school system were denied, both men served notice through King that they were electing to retire in order to avoid a reduction in their retirement benefits. In these letters, Halcomb and Brown informed King that although they were retiring, they were not waiving any of their rights with respect to the demotions.

On June 9, 1995, Halcomb and Brown filed a complaint in the Letcher Circuit Court, naming as party defendants the State Board, the Letcher County Board, King, in his official capacity as interim-superintendent, and Commissioner Boysen, in his official capacity as Commissioner of Education.[7] In their complaint, Halcomb and Brown alleged the following:

> 1. That they were denied due process of law under the Fourteenth Amendment to the United States Constitution and Section 2

[6] Three days prior to the date of the hearing, on May 12, 1995, Commissioner Boysen issued a written order notifying the Letcher County Board that Commissioner Boysen, through his appointees and management team, would be making "all decisions previously made" by the Letcher County Board, which effectively suspended all decision-making authority of the Letcher County Board.

[7] James Slone, who was also an administrator in the Letcher County school system, originally joined with Halcomb and Brown in their complaint, but he withdrew as a plaintiff prior to the entry of the order from which the State Board has appealed.

of the Kentucky Constitution when the named defendants failed to adequately provide them with a complete statement regarding the reasons for their demotions as required by KRS 161.765(2)(b).

2. That they were denied due process of law due to their assertion that Hendricks was "a legally biased hearing officer."

3. That in violation of KRS 161.765(2), the hearing was held less than 20 days after they had requested a hearing from King, which denied them an opportunity to prepare an adequate defense.

4. That no legal cause was shown which would have justified the demotion.

5. That in violation of KRS 161.765 and KRS 161.760, the named defendants failed to provide written notice of the final action taken following the hearing.

6. That Commissioner Boysen lacked the authority to demote Halcomb and Brown, thus rendering said demotions void.

On June 29, and July 3, 1995, the named defendants filed motions to dismiss, "on grounds of improper venue and lack of jurisdiction." They argued that since the State Board had been named as a party defendant, KRS 452.430 required the cause of action to be brought in the Franklin Circuit Court. On July 25, 1995, the trial court entered an order denying the motions to dismiss, after finding that venue was proper and that the trial court had jurisdiction over the matter.

On June 19, 1996, the named defendants filed a motion requesting that Judge Samuel T. Wright, III recuse himself from

presiding over the matter. As the basis for the motion to recuse, the named defendants pointed to a separate civil action in which the Letcher County Board and its members had filed suit against Commissioner Boysen and King, challenging the manner in which some decisions had been made with respect to the operation of the Letcher County schools.[8] The named defendants noted that in the prior action, Judge Wright had, sua sponte, recused himself on the basis of KRS 26A.015(2)(e), which requires recusal "where [the judge] has knowledge of any other circumstances in which his impartiality might reasonably be questioned." The named defendants argued that since some of the same parties were involved, Judge Wright should likewise recuse himself from presiding over the proceedings below in the instant case. Judge Wright denied the motion to recuse.[9]

On July 16, 1996, Halcomb and Brown filed an amended complaint, adding a claim that the same named defendants had failed to state "the true reasons" for the demotions, which, according to Halcomb and Brown, rendered the demotions void and denied them due process of law.

By an agreed order entered on August 27, 2001, the trial court bifurcated the claims of Halcomb and Brown. The trial court ordered that it would first hear arguments related

[8] 95-CI-00186.

[9] The date on which Judge Wright denied the motion to recuse is not clear from the record.

to any issues surrounding the appeal of their demotions before ruling on any other claims. After allowing the parties time to file briefs on the matter, the trial court entered findings of fact, conclusions of law, and judgment on March 28, 2002. Among other things, the trial court found that Halcomb and Brown had not received notice of the scheduled hearing date in accordance with the procedural requirements of KRS 161.765(2). The trial court thus ordered the Letcher County Board to reinstate Halcomb and Brown to their former positions and the State Board to provide compensation to Halcomb and Brown for "all lost wages and other benefits" since their "wrongful termination." This appeal followed.

The State Board raises several claims of error on appeal. We first address the State Board's argument that since it was named as a party defendant in Halcomb's and Brown's complaint, venue was not proper in the Letcher Circuit Court. In resolving this issue, we turn to KRS 452.430, KRS 161.765(2)(f), and the version of KRS 161.790(8) which was in effect when Halcomb and Brown filed their complaint in the Letcher Circuit Court.[10]

KRS 452.430 states in full as follows:

> An action against the Kentucky Board of Education, of this state, must be brought in

[10] Halcomb and Brown filed their complaint in the Letcher Circuit Court in June 1995. KRS 161.790 has since been amended twice, once in 1996 and again in 1998.

> the county that includes the seat of government.

However, KRS 161.765(2)(f) provides that where an administrator with three or more years of administrative service has been demoted,[11] the administrator may appeal the school board's decision to uphold a demotion in the manner as provided in KRS 161.790(8), which reads in part as follows:

> The [administrator] shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located. . . .

Hence, there appears to be a conflict in the above statutes. However, it is a well-settled rule of statutory construction that "when two statutes are in conflict, one of which deals with the subject matter in a general way and the other in a specific way, the more specific provision prevails."[12]

In the case sub judice, it must be remembered that the State Board was named as a party defendant because it had stepped in to perform the functions normally undertaken by the Letcher County Board. Therefore, while KRS 452.430 generally calls for suits brought against the State Board to be filed in the Franklin Circuit Court, KRS 161.765(2)(f) specifically addresses those situations where an administrator is appealing a local school board's decision to uphold a demotion.

[11] It is not disputed that both Halcomb and Brown had three or more years of administrative service.

[12] Travelers Indemnity Co. v. Reker, Ky., 100 S.W.3d 756, 763 (2003).

Accordingly, since the State Board was performing the functions of the Letcher County Board when it upheld the demotions of Halcomb and Brown, venue in the Letcher Circuit Court was proper under KRS 161.765(2)(f).

We next address the State Board's argument that Judge Wright should have recused himself from presiding over the proceedings below. In Stopher v. Commonwealth,[13] our Supreme Court stated:

> KRS 26A.015(2) requires recusal when a judge has "personal bias or prejudice concerning a party . . . [,]" or "has knowledge of any other circumstances in which his impartiality might reasonably be questioned." The burden of proof required for recusal of a trial judge is an onerous one. There must be a showing of facts "of a character calculated seriously to impair the judge's impartiality and sway his judgment." The mere belief that the judge will not afford a fair and impartial trial is not sufficient grounds for recusal [citations omitted].

In its brief to this Court, the State Board claims that Judge Wright should have recused himself (1) due to Judge Wright's previous recusal in a suit brought by members of the Letcher County Board against then-Commissioner Boysen and King; and (2) because of the State Board's assertion that "a judge looking toward future elections would find it exceedingly difficult to make unpopular rulings against the local power

[13] Ky., 57 S.W.3d 787, 794 (2001).

structure that had mismanaged the Letcher County Schools." In short, the State Board has failed to point to any specific facts which would tend to "impair [Judge Wright's] impartiality" or "sway his judgment." The State Board's mere belief that Judge Wright might not be impartial is not a sufficient basis for requiring his recusal. Accordingly, Judge Wright did not err by denying the motion for recusal.

Next, we turn to the State Board's claim that the trial court erred by concluding that Halcomb and Brown did not receive notice according to the requirements of KRS 161.765(2). The State Board argues that since Halcomb and Brown received notice of the grounds for their dismissal on April 24, 1995, the procedural requirements of KRS 161.765(2) were satisfied even though Halcomb and Brown were given only ten days to prepare for their hearing after the hearing date was established. We disagree.

Pursuant to the statutory scheme provided under KRS 161.765(2), the appeal of a superintendent's decision to demote an administrator with three or more years of administrative service must proceed in the following manner:

> (a) The superintendent shall give written notice of the demotion to the board of education and to the administrator. If the administrator wishes to contest the demotion, he shall, within ten (10) days of receipt of the notice, file a written statement of his intent to

> contest with the superintendent. If the administrator does not make timely filing of his statement of intent to contest, the action shall be final.
>
> (b) Upon receipt of the notice of intent to contest the demotion, a written statement of grounds for demotion, signed by the superintendent, shall be served on the administrator. The statement shall contain:
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> 1. A specific and complete statement of grounds upon which the proposed demotion is based, including, where appropriate, dates, times, names, places, and circumstances;
>
> 2. The date, time, and place for a hearing, the date to be not less than twenty (20) nor more than thirty (30) days from the date of service of the statement of grounds for demotion upon the administrator.
>
> (c) Upon receipt of the statement of grounds for demotion the administrator shall, within ten (10) days, file a written answer. Failure to file such answer, within the stated period, will relieve the board of any further obligation to hold a hearing and the action shall be final. The board shall issue subpoenas as are requested.

Thus, the above statutory scheme mandates that once an administrator notifies a superintendent of his desire to contest a demotion, the superintendent is required to provide the administrator with a statement of grounds for the demotion and

the date, time, and place for a hearing which is to be held not less than 20 days nor more than 30 days from the service of the statements of grounds for dismissal. One of the key requirements of this provision is that after a hearing date is set, an administrator is to be given no fewer than 20 days to prepare a defense based upon the stated grounds for demotion.

In the instant case, Halcomb and Brown received identical letters on April 24, 1995, which notified them of their demotions, and stated the grounds for the demotions. By letters dated May 5, 1995, Halcomb and Brown received notice that a hearing had been set for May 15, 1995. Hence, while Halcomb and Brown were aware of the grounds for their demotions for more than 20 days prior to the scheduled hearing date, they were not given 20 days to prepare their defense after the hearing date was established. Therefore, the notice requirements of KRS 161.765(2) were not satisfied.

The State Board's reliance on Estreicher v. Board of Education of Kenton County, Kentucky,[14] is misplaced. In Estreicher, our Supreme Court held that a notice provided to an administrator establishing a hearing date could incorporate by reference the grounds for the demotion that had been stated in previous communications.[15] However, in Estreicher, due to the

[14] Ky., 950 S.W.2d 839 (1997).

[15] Id. at 842.

granting of a continuance, the administrator was given more than 20 days from the date of the notice establishing a hearing date in which to prepare a defense.[16] The Supreme Court noted that under the facts of that case, the purpose behind the 20-day notice requirement, i.e., to "appris[e] [administrators] of the time available to prepare for the impending hearing," had been satisfied.[17]

However, in the case sub judice, Halcomb and Brown were not given 20 days to prepare a defense after being notified that a hearing date had been established. Although Halcomb and Brown were made aware of the grounds for their demotions on April 24, 1995, they were not notified that a May 15, 1995, hearing date had been established until May 5, 1995. Thus, Halcomb and Brown had only 10 days in which to prepare a defense. Accordingly, the trial court did not err by concluding that Halcomb and Brown had not received notice of the hearing date in accordance with the requirements of KRS 161.765(2).

We next address the State Board's argument that the doctrine of sovereign immunity precluded an award for damages against the State Board and any state officials sued in their

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[16] Id. at 843.

[17] Id. (discussing the 20-day notice requirement and stating that "we feel that the requirement of setting a time, date and place for a hearing embodied in KRS 161.765(2)(b)(2) protects administrators, apprising them of the time available to prepare for the impending hearing").

official capacities, and that the trial court therefore erred by ordering the State Board to pay Halcomb and Brown for "all lost wages and other benefits." We do not believe under the statutory scheme at issue herein that it is necessary to consider the doctrine of sovereign immunity,[18] but we do agree that the trial court erred by ordering the State Board to compensate Halcomb and Brown with back-pay.

As we mentioned previously, pursuant to KRS 161.765(2)(f) and KRS 161.790(8), an administrator with three or more years of service has the right to appeal a school board's decision to uphold his demotion in the circuit court in the county where the school district is located. In the instant case, when Halcomb and Brown filed their appeal in the Letcher Circuit Court, KRS 161.790(8) read in pertinent part as follows:

> The [administrator] shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located. The appeal shall be commenced by filing a petition against the local board of education and the superintendent. The petition shall state the grounds upon which the [administrator] relies for a reversal or modification of the order of termination of contract. Upon service or waiver of summons in the appeal, the tribunal, with the assistance of the chief state school officer, shall transmit to the clerk of the court for filing a transcript of the original notice of charges and a transcript of all evidence considered at the hearing before the tribunal. . . .

[18] See generally Yanero v. Davis, Ky., 65 S.W.3d 510 (2001)(discussing various immunity doctrines under Kentucky law).

> The court shall hear the appeal upon the record as certified by the tribunal and shall dispose of the appeal in summary manner [emphases added].

This version of KRS 161.790(8), which became effective on July 13, 1990, is significantly different than the previous version, KRS 161.790(6). From 1964 through July 12, 1990, KRS 161.790(6) stated in relevant part as follows:

> The [administrator] shall have a right to make an appeal both as to law and as to fact to the circuit court. . . . Such appeal shall be an original action in said court and shall be commenced by the filing of a petition against such board of education, in which petition the facts shall be alleged upon which the teacher relies for a reversal or modification of the order of termination of contract. Upon service or waiver of summons in said appeal, such board of education shall forthwith transmit to the clerk of said court for filing a transcript of the original notice of charges and a transcript of all evidence adduced at the hearing before such board, whereupon the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript of record of the hearing before the board of education and shall hold such additional hearings as it may deem advisable, at which it may consider other evidence in addition to such transcript and record. Upon final hearing, the court shall grant or deny the relief prayed for in the petition as may be proper under the provisions of KRS 161.720 to 161.810 and in accordance with the evidence adduced at the hearing [emphasis added].

After considering these statutory changes, we conclude that when KRS 161.790(8) was enacted in 1990, the General

Assembly intended to circumscribe the ability of a reviewing court to second-guess the personnel decisions of a superintendent and/or a local school board. For example, unlike the authority granted to a circuit court under the former KRS 161.790(6), pursuant to KRS 161.790(8), the circuit court was no longer authorized to take additional proof, nor was it permitted to "grant or deny the relief prayed for in the petition as may be proper under the provisions of KRS 161.720 to 161.810. . . ." Rather, by mandating that the circuit court conduct the appeal in a "summary manner," the Legislature provided for a form of judicial review as contemplated by American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission.[19] In American Beauty Homes, the former Court of Appeals held that in reviewing the action of an administrative agency, a court is limited to determining whether the agency's action was arbitrary by considering three primary factors, i.e., (1) did the agency act in excess of its statutory authority; (2) were the parties affected by the agency's action afforded procedural due process; and (3) is there substantial evidence in the record supporting the agency's decision.[20]

[19] Ky., 379 S.W.2d 450 (1964). See also Gallatin County Board of Education v. Mann, Ky.App., 971 S.W.2d 295, 300 (1998)(discussing judicial review under the 1990 version of KRS 161.790 and citing the American Beauty Homes decision).

[20] American Beauty Homes, supra at 456.

In the case at bar, our review of the record shows that the circuit court did not limit the manner in which it reviewed Hendricks's decision to that as contemplated by KRS 161.790(8) and American Beauty Homes. Rather, contrary to the procedure that was spelled out in KRS 161.790(8), the circuit court permitted the parties to engage in an extensive and protracted period of discovery. In addition, after determining that Halcomb and Brown had not received notice of their hearing date in compliance with KRS 161.765(2), the circuit court did not simply reverse Hendricks's decision and remand the matter for further proceedings. Instead, the trial court ordered that the State Board compensate Halcomb and Brown with back-pay. Simply stated, KRS 161.765(2) and KRS 161.790(8) do not contemplate that a school district's failure to comply with the procedural notice requirements of KRS 161.765(2) will entitle an administrator to receive back-pay. Rather, if the procedural requirements of KRS 161.765(2) are not satisfied, the proper remedy is a reversal of the school board's decision and a remand of the matter so that a hearing can be conducted in compliance with the requirements of KRS 161.765(2). Therefore, since a remand of the matter for further proceedings was the proper remedy for the procedural due process violation in question, the doctrine of sovereign immunity was not invoked.[21]

[21] If the statutory scheme applicable to administrators provided for payments

Halcomb and Brown have cited several cases in support of their contention that since they did not receive notice as contemplated by the requirements of KRS 161.765(2), the trial court was justified in awarding them with back-pay.[22] We disagree. In each of those cases cited by Halcomb and Brown, the procedural violations at issue occurred under different statutory provisions. In short, none of the cases relied upon by Halcomb and Brown stand for the proposition that the failure of a school board to follow the procedural notice requirements of KRS 161.765(2) will justify an award of back-pay.

Accordingly, we reverse that portion of the trial court's ruling ordering that Halcomb and Brown be compensated

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of lost salary, such as KRS 161.790(7) provides for teachers, then the argument could be made that the Legislature had specifically waived the defense of sovereign immunity as to these particular damages.

[22] See Settle v. Camic, Ky.App., 552 S.W.2d 693 (1977)(holding that the school board had failed to follow the requirements of KRS 161.760); Harlan County Board of Education v. Stagnolia, Ky.App., 555 S.W.2d 828 (1977)(upholding the trial court's order that assistant principal be reinstated to former position after determining that evidence supported the trial court's finding that the school board had acted arbitrarily under the former KRS 161.162, and that the school board should have conducted a hearing pursuant to KRS 161.765); Miller v. Board of Education of Hardin County, Ky.App., 610 S.W.2d 935 (1980)(determining that the school board had failed to follow the requirements of KRS 161.760)(superceded by statute, see KRS 160.390 and KRS 161.760); Stafford v. Board of Education of Casey County, Ky.App., 642 S.W.2d 596 (1982)(determining that the school board had failed to comply with the requirements of KRS 160.380); Banks v. Board of Education of Letcher County, Ky.App., 648 S.W.2d 542 (1983)(determining that the school board had failed to the follow the requirements of KRS 161.760)(superceded by statute, see KRS 160.390 and KRS 161.760); Daugherty v. Hunt, Ky.App., 694 S.W.2d 719 (1985)(upholding the trial court's order that former principal be paid the same salary he received as principal during the succeeding year following his demotion due to the school board's failure to follow the requirements of KRS 161.760)(superceded by statute, see KRS 160.390 and KRS 161.760); Board of Education of McCreary County v. Williams, Ky.App., 806 S.W.2d 649 (1991)(upholding the trial court's award of damages based upon the school board's failure to follow the requirements of KRS 161.760(3)).

with back-pay. In addition, since we have concluded that Halcomb and Brown did not receive notice according to the requirements of KRS 161.765(2), we remand to the trial court with instructions to further remand this matter for a hearing in compliance with the procedural requirements of KRS 161.765(2). Following this due process hearing, if Halcomb and Brown desire to appeal the school board's new decision, they may do so pursuant to KRS 161.765(2)(f). Finally, if the Letcher Circuit Court is once again asked to review the decision of the school board, it must conduct the review according to the American Beauty Homes standard discussed above.[23]

[23] The circuit court should also be mindful that "[t]he decision of whether to demote an administrator under KRS 161.765 is left "to the sound discretion of the local superintendent and board of education," and the stated grounds for demotion are valid as long as "those grounds [are] not [ ] arbitrary or unreasonable or otherwise [ ] violative of a right protected by the State or Federal Constitutions." See Miller, 610 S.W.2d at 937. Furthermore, in Hooks v. Smith, Ky.App., 781 S.W.2d 522, 523-24 (1989), this Court stated:

> The appellant argues that she had a property interest in her job and that she has been denied due process of law under the fourteenth amendment because of the statute's failure to forewarn her of the kind of conduct which would result in demotion. The problem with this argument is that under the statutory scheme, unlike a teacher, see KRS 161.740, a school administrator, even one who has completed three years administrative service, is not ever granted a "continuing service contract" as an administrator. This court has spoken of an "administrator with tenure[.]" Strictly speaking, however, an administrator has been given no right of tenure to an administrative position and may be removed from such position by the local board of education upon recommendation of the superintendent for any reason not offending some right protected by the state or federal constitutions or KRS 161.162.[23] At best, the statute gives an administrator with at least three years experience an additional procedural opportunity to convince the board of the lack of

Based on the foregoing, the order of the Letcher Circuit Court is reversed and this matter is remanded for further proceedings consistent with this Opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT, STATE BOARD FOR ELEMENTARY AND SECONDARY EDUCATION:

Albert B. Chandler III
Attorney General

D. Brent Irvin
Assistant Attorney General
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLANT, STATE BOARD FOR ELEMENTARY AND SECONDARY EDUCATION:

D. Brent Irvin
Assistant Attorney General
Frankfort, Kentucky

BRIEFS FOR APPELLANT, BOARD OF EDUCATION OF LETCHER COUNTY:

Michael J. Schmitt
Jeffrey M. Baldwin
Paintsville, Kentucky

BRIEFS FOR APPELLEES:

Arthur L. Brooks
J. Follace Fields, II
Lexington, Kentucky

ORAL ARGUMENT FOR APPELLEES:

J. Follace Fields, II
Lexington, Kentucky

> merit in the superintendent's recommendation of demotion, or that it violates a constitutional or statutory right. In short, our statutory scheme does not appear to have created a "property interest" in a school administrator in continued employment as an administrator, although it does secure the right to certain procedural safeguards [citations omitted].