BEFORE THE STATE OF MONTANA

SUPERINTENDENT OF PUBLIC INSTRUCTION

NOEL D. FURLONG, Appellant,	)	DECISION AND ORDER
v.	)	OSPI 13-81
SCHOOL DISTRICT NO. 5, Respondent.	)	

This is an appeal from a decision of the Flathead County Superintendent of Schools rendered November 20, 1981. The Appellant, Noel D. Furlong, timely appealed 'this matter, Briefs were filed and oral argument was heard on April 5, 1982 before me. The matter was deemed submitted at that time and I now render my decision

I have adopted the standard of review set forth in Section 2-4-704, MCA, as a standard of review which I will apply to decisions of County Superintendents. That statute provides:

> (1) The review shall be conducted by the court without a jury and shall he confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may he taken in the court. The court, upon request, shall hear oral argument and receive written briefs.
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> (2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
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> (g) because findings of fact, upon issues essential to the decision, were not made although requested. (emphasis supplied)

Factually Mr. Furlong's dispute with the school district arises out of a trip which he took with the approval of the School District to Denver, Colorado in March, 1981. The dispute centers around the travel claim submitted by the Appellant on April 23, 1981 and its compliance or non-compliance with certain board policies concerning travel reimbursement.

After an extensive hearing before the Board of Trustees the Appellant was ordered to make reimbursement to the School District, lost his department chairmanship, and had restrictions placed upon his ability to travel at District expense.

That decision was appealed to the County Superintendent who made, among others, this conclusion of law:

> **3.** Noel Furlong intentionally or unintentionally violated the policy of the Board of Trustees in submitting a claim for expenses which he did not incur. (emphasis supplied)

Section 20-4-207, MCA, provides for dismissals of teachers under contract. It provides that "the trustees of any district may dismiss a teacher before the expiration of employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees." The record in this matter clearly reflects that the violation of a board policy is the only basis for the imposition of discipline under Section 20-4-207, MCA.

While the statute is not entirely clear, I do hold that lesser forms of discipline than dismissal may be imposed upon a finding of "immorality, unfitness, incompetence, or violation of the adopted policies of such trustees."

While the School District did find such a violation, the above conclusion of law by the County Superintendent is inadequate to permit any discipline whatsoever under Section 20-4-207, MCA.

Section 20-3-324, MCA does not provide the Board of Trustees with an additional weapon to discipline employees including tenured teachers. It was legal error for the County Superintendent of Schools to partially base his decision upon that statute.

While I therefore must reverse the decision of the Flathead County Superintendent of Schools, I must note for the record that County Superintendent's "Rationale for Decision" attached to his

Decision and Order does for the most part describe accurately something that both parties to this appeal could have worked out much earlier, easier, and with much less effort had they behaved in a more mature fashion. School controversies, I am sure, were intended to exclude matters such as this one. I hope that in the future both parties will learn to approach a misunderstanding with a little more reason and a lot less confrontation.

The decision of the Flathead County Superintendent of Schools is reversed, except insofar as the $145.00 which all parties agree should have been and has been repaid by the Appellant to the School District.

DATED April 13, 1982.