

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF MONTANA

HEATHER McDOUGALL,)	OSPI 322-09
)	
Appellant,)	
)	
vs.)	
)	
TROY SCHOOL DISTRICT NO. 1,)	
)	
Respondent.)	

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

DECISION AND ORDER

The County Superintendent's dismissal of Heather McDougall's appeal is **AFFIRMED**.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Heather McDougall ("McDougall") filed a Notice of Appeal with the Lincoln County Superintendent on September 18, 2009. Troy School District No. 1 (Troy) moved to dismiss the appeal for lack of jurisdiction on September 29, 2009. On October 8, 2009, Ronald Higgins, Lincoln County Superintendent of Schools dismissed McDougall's appeal for lack of jurisdiction due to failure to file the appeal within time required by law.

McDougall appealed County Superintendent Higgins' decision to the Superintendent of Public Instruction by Notice of Appeal dated October 30, 2009.

STANDARD OF REVIEW

The State Superintendent of Public Instruction's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. § 2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125.

The State Superintendent may reverse or modify the County Superintendent's decision if substantial rights of the District have been prejudiced because the conclusions of law and order are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. Mont. 10.6.125(4).

The County Superintendent's decision that he did not have jurisdiction to hear the matter appealed to him was a conclusion of law. Conclusions of law are reviewed to determine if the interpretation of the law is correct. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990); *Baldridge v. Bd. of Trs.*, 264 Mont. 199, 205, 870 P.2d 711, 714 (1994).

MEMORANDUM AND OPINION

The issue on appeal is whether the County Superintendent has jurisdiction to hear this matter.

McDougall alleges that at a school board meeting on May 11, 2009, the Troy board discussed purchasing a new car to serve as a drivers' education car and for staff transportation, but no vote was taken authorizing the purchase. At the June 8, 2009 school board meeting, the board was advised a car had been purchased. McDougall alleges the new car was purchased without proper authorization according to school policy.

Troy Superintendent Brady Selle asked a Montana School Boards Association (MTSBA) attorney to hold a training session before the regularly scheduled board meeting on June 8, 2009 for which the MTSBA was paid \$2,907.52. McDougall alleges the training was held without board discussion or proper authorization.

McDougall further alleges that Troy applied for and received a Quick Start Energy Grant without following proper procedures for formal board approval as required by the grant application.

At a school board meeting held on August 10, 2009, the board was advised that Troy had used the Quick Start Energy Grant funds to purchase new windows and hire a contractor to install the windows. High School Principal Jeff Ralston was hired to finish the window project at the high school. McDougall alleges that Troy purchased the windows and hired an unlicensed contractor (Ralston) without following Troy's policy and state statutes.

The dates of Board action that McDougall refers to in her Notice of Appeal and argument,

are May 11, 2009, June 8, 2009 and August 10, 2009. The Notice of Appeal was filed with the County Superintendent on September 18, 2009, 39 days after the August 10, 2009 board meeting and nine days beyond the time limit for filing an appeal of decisions of the Board made at the last of these three board meetings. McDougall alleges this deadline does not apply, however, because the Board has not made a final decision. Under either scenario, this appeal fails due to timeliness.

Montana administrative law provides:

10.6.103 INITIATING SCHOOL CONTROVERSY PROCEDURE PROCESS

(1) A person who has been aggrieved by a final decision of the board of trustees of a school district in a contested case is entitled to commence an appeal before the county superintendent.

(2) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the board of trustees of the school district is made.

The County Superintendent has discretion to determine if a party filing an appeal has substantially complied with the requirements of filing a notice of appeal, but does not have discretion over the issue of timely filing.

10.6.105 COMMENCEMENT OF ACTION/REQUIREMENTS OF THE NOTICE OF APPEAL ...

(4) Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds for such action as the county superintendent deems appropriate, which may include dismissal of the appeal.

Decisions by the Superintendent of Public Instruction have consistently held that timelines are critical to jurisdiction.

A county superintendent lacks jurisdiction if the appeal is not timely, if the issue raised is not actionable, or if the county superintendent does not have subject matter jurisdiction to hear the matter. *Swecker v. School District No. 3, Blue Creek Elementary District*, OSPI 278-99 (2001).

That filing deadline is critical and if it is not met, the County Superintendent lacks jurisdiction to consider the appeal. "After the time allowed for appealing a school board's decision has passed, neither a County Superintendent, this Superintendent, nor a Court has the jurisdiction to set aside the board's act. Fuhrman v. Board of Trustees, Garfield County School District No. 1, OSPI 224-93 (1994).

By their very nature, statutes of limitation, like the one contained in Rule 10.6.103(2) are substantive, not procedural. *Denton School District v. Anthony Rebich*, OSPI 289-02 (2003)

Based on the dates of the board meetings set forth by McDougall in her Notice of Appeal, an appeal of any decision made by the trustees at those meetings is time barred.

McDougall argues, however, the appeal should not be dismissed for timeliness because she was negotiating with Troy for a resolution to the matter by the adoption of a new purchasing policy. Negotiations for resolution of a controversy do not stay a statute of limitations.

McDougall further asserts no final decision was made by the Board of Trustees on the grant, purchases or contracts listed in the Notice of Appeal filed with the County Superintendent and therefore the 30 day time period has not yet started. Under this argument, the time for filing an appeal has not yet begun to toll, and the issue shifts from improper board action to the question of whether Troy Superintendent Selle operated outside of the Troy district's policies and without proper authorization.

Superintendent Selle is an employee of the Troy district. The Board has the authority to "employ and dismiss administrative personnel...to carry out the various services of the district." § 20-3-324(2), MCA. "The district superintendent ... is the executive officer of the trustees, and subject to the direction and control of the trustees...". § 20-4-402, MCA. If the issue is with the Superintendent's actions, it is within the board's authority and duty to oversee his employment. The County Superintendent does not have jurisdiction over his alleged conduct.

20-3-210. Controversy appeals and hearings. (1) Except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county.

Montana law is clear in its requirement that the county superintendent can only hear controversies that arise as a result of decisions of the trustees. If there was no decision, the appeal must be dismissed for lack of jurisdiction.

Under either theory advanced by McDougall, the County Superintendent lacks jurisdiction to hear the appeal and the dismissal of the appeal is hereby AFFIRMED.

DATED this 26th day of March, 2010.

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 26th day of March, 2010, I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

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/s/ Beverly J. Marlow
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