

BOARD OF EDUCATION
OF HOWARD COUNTY,

Appellant

v.

RENEE FOOSE,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR17-06

ORDER GOVERNING THE BOARD’S CONTRACT WITH SAUL EWING, LLP

On April 18, 2017, the Board of Education of Howard County (local board) filed a Motion for Reconsideration of a part of this Board’s Opinion issued on March 28, 2017. MSBE Op. No. 17-13. In that opinion we declared that “The local board has the authority to engage legal counsel by contract, subject to the superintendent’s written approval of the contract, which shall not be unreasonably withheld.” (*Id* at 10). The contract for legal counsel that was the subject of the dispute was the contract with Daniel Furman, Esq.

It appears that the board’s contract with Saul Ewing, LLP, the firm representing the board in the current litigation between Dr. Foose and the board at the State court level and before this Board, was recently submitted to the superintendent for her approval. The superintendent has not approved the contract, but instead asked a multitude of questions about it. (Motion for Reconsideration, Ex. 8).

The local board argues that the superintendent’s authority to approve contracts does not extend to the Saul Ewing contract because the superintendent has a personal, adverse interest in the matter. We agree.

It has long been recognized that where a public official has decision-making authority, she must recuse herself from deciding those matters in which she has a personal or pecuniary interest. In *Montgomery County Bd. Of Appeals v. Walker*, 228 Md. 574 (1962), the Maryland Court of Appeals explained this principle as follows:

Influences which could affect the mind of one in a position of public trust are so subtle and difficult to appreciate, that in the end our decision must be guided by the general principle that *no public officer who has a personal or pecuniary interest, direct or indirect, in the outcome of a case should participate in that matter...* ‘Even when conduct would not actually produce distrust in the minds of others but might only create a suspicion of unfairness in the mind of the party to which the decision was adverse, it is far better ‘that no room be given for suspicion or cavil.’” (*Id.* at 581)

We need not belabor the point. It is clear to us that Dr. Foose must recuse herself in this contract approval matter. It is equally clear to us that none of her staff can be delegated the approval power. Therefore, the Saul Ewing contract must, by nature of the circumstances here, fall outside the requirement for approval by the superintendent.

We urge the superintendent to be especially cognizant of the potential for conflict of interest in matters such as this. It is both a matter of ethics and integrity.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice President

Michele Jenkins Guyton

Stephanie R. Iszard

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