PUBLIC EDUCATION

Public Education: School Boards & Superintendents

***McCalister v. School Board of Bay County*,**
971 So. 2d 1020 (Fla. 1st Dist. App. 2008)

School boards do not have statutory authority to reject a superintendent's recommendation to transfer a principal unless good cause exists that raises questions as to the principal's ability to perform in the position for which he or she is recommended. Further, school boards do not have the statutory authority to extend contracts beyond the terms that were initially based on the written recommendations of superintendents.

FACTS AND PROCEDURAL HISTORY

The Superintendent of Bay County School District, James E. McCalister, Jr. (Superintendent), recommended Larry Bolinger (Bolinger) for the vacant principal position at Bay County High in 2005. The Superintendent allegedly entered into an oral agreement to allow Bolinger to remain as principal of Bay County High until his expected retirement in four years. During Bolinger's first year as principal he raised the performance level of the school from "D" to "C," and was involved in an incident concerning the school's selection of valedictorian.

Following the incident, the Superintendent recommended transferring Bolinger to another school. The School Board of Bay County (School Board) rejected the recommended transfer as not in Bay County High's best interests and because the transfer violated the Superintendent's agreement that Bolinger would remain at Bay County High until he retired in four years. Following the transfer rejection, the School Board and Bolinger entered into a written contract for Bolinger to serve as principal of Bay County High for the 2006–2007 school year. The Superintendent challenged the School Board's rejection and petitioned for a formal administrative hearing. The School Board submitted a proposed order to the administrative law judge (ALJ) that rejected the transfer and enforced the alleged oral agreement between the Superintendent and Bolinger to retain his current position for four

years. The ALJ adopted the School Board's proposed order. The Superintendent appealed to the First District Court of Appeal.

ANALYSIS

The First District held that the School Board improperly rejected the Superintendent's recommendation and overstepped its authority by adding an additional year to Bolinger's term of employment.

A school board's authority to act on a superintendent's nominations and transfer recommendations is limited in scope. Section 1012.22 of the Florida Statutes limits a school board to an acceptance or rejection of superintendent recommendations based on good cause, but under no circumstances may a school board mandate that a superintendent keep an individual in a particular position. Thus, the School Board's review was limited to Bolinger's ability to perform in the position for which he was nominated, and it could not rely on any consideration of Bolinger's suitability for his current position. The court concluded that there was no evidence demonstrating Bolinger's inadequacy for the recommended position; therefore, the School Board lacked good cause and statutory authority to reject the recommended transfer.

Further, the court held that a school board's contracting authority must be based upon a written nomination from the superintendent and may not initially exceed a three-year term. The School Board relied upon the alleged oral agreement between the Superintendent and Bolinger and ordered the Superintendent to retain Bolinger in his current position for four years. However, the court rejected this action, holding that a school board is authorized "to enter into contracts with principals based on the *written recommendation* of a superintendent . . . [and those contracts] cannot initially extend past the three-year requirement." *McCalister*, 971 So. 2d at 1027 (emphasis in original). Thus, the School Board's extension of Bolinger's employment was improper because it was not based on a written recommendation and it exceeded the statutorily authorized period of original employment. Any extension past the original contract must be accomplished through written recommendation, and renewals beyond an initial three-year contract must be authorized through execution of a second contract. Accordingly, the court reversed the decision of

the School Board and the ALJ, allowing the transfer and disallowing the oral contract's extension.

SIGNIFICANCE

McCalister clarifies the process that superintendents and school boards must follow to transfer principals or to enter into and extend the contracts of principals. Specifically, school boards can reject a transfer for good cause only in relation to the principal's ability to perform the duties of a new position and may not base a rejection on one's performance in a current position. Further, the school board is the contracting agent for the school district but needs a written recommendation from the superintendent to extend the contract of a principal. However, *McCalister* does not address whether its holding applies to other school-district employees.

RESEARCH REFERENCE

- 46 Fla. Jur. 2d *Schools, Universities, and Colleges* §§ 182–183 (2006).

Matthew Ransdell

Public Education: Statute of Limitations

***LaMorte v. State of Florida*,**
984 So. 2d 548 (Fla. 2d Dist. App. 2008)

The statutory extension of the statute of limitations for offenses that a public officer or employee commits while in office applies to public school teachers. Thus, charges for offenses that occur during the teacher's employment may be brought up to two years after the teacher's employment ends.

FACTS AND PROCEDURAL HISTORY

The appellant, James Peter LaMorte (LaMorte) pled no contest to three offenses including first degree felony and second degree felonies for sexual acts upon a child by a person in authority. LaMorte committed these acts against two students between 1984 and 1992 while he was a public school teacher and swim coach. LaMorte resigned from his teaching position in 2005 and was

charged with the three offenses later that year. The statute of limitations for a first degree felony requires commencement of prosecution within four years. Fla. Stat. § 775.15(2)(a) (1981–1983). For a second degree felony, the statute of limitations requires prosecution to commence within three years. Fla. Stat. § 775.15(2)(b) (Supp. 1990–1991). The state brought charges against defendant, LaMorte under Florida Statutes Section 775.15(3)(b), which extends the statute of limitations for offenses that public officials or employees commit while in office for two years after the time they leave public office or employment. Fla. Stat. § 775.15(3)(b) (1981–1983, Supp. 1990–1991).

Before LaMorte entered into a plea agreement, he filed motions to dismiss, arguing that the statute extending the statute of limitations was inapplicable to school teachers. The trial court denied the LaMorte's motion to dismiss. Following LaMorte's convictions for the first and second degree felonies, he appealed based on the trial court's denial of the motion to dismiss.

ANALYSIS

LaMorte argued that the statute of limitations section 775.15(3)(b)'s extension of the statute of limitations for acts committed while in public office was not applicable because public school teachers are not public officials. Further, LaMorte argued that the language of Florida Statutes Section 775.15(3)(b) was unconstitutionally vague.

The court considered the legislative history of Florida Statutes Section 775.15(3)(b) to determine the extent of the term "public office." Prior to 1974, the statute made reference only to offenses of officials during the official's term in office. Fla. Stat. § 932.465(3) (1973). However, the legislature amended the statute in 1974 to include the terms "misconduct in office" and "employee." Fla. Stat. § 775.15(3)(b). The court concluded this modification was intended to broaden the scope of the statute to include all public officials and employees, including public school teachers.

LaMorte further argued Florida Statutes Section 775.15(3)(b) is unconstitutionally vague and ambiguous because it excludes definitions for "public officer and employee" and "misconduct in office." The court disagreed, concluding that "the term 'public officer or employee' is clear on its face and needs no definition."

LaMorte, 984 So. 2d at 552. Moreover, the court concluded that the meaning of "misconduct in office" contemplated in the Florida Administrative Code is not ambiguous and encompasses conduct "which is so serious as to impair the individual's effectiveness in the school system." *Id.* Accordingly, LaMorte's convictions were upheld because they were based on misconduct in office and the charges were properly brought within two years of his resignation.

Judge Lanti's concurring opinion argued that the statute's plain meaning should control unless the result is unreasonable or contrary to legislative intent. Thus, the legislature is in the best position to rectify any inequity resulting from charging public employees nearly two years after their employments ceases for offenses that could have occurred in the early years of their employment.

Judge Altenbernd's dissent argued that the phrase "in office" is ambiguous in the statute. In Florida, public school teachers are exempt from Article II Section 5(b) of the Florida Constitution which mandates public officials to take an oath of office prior to taking their position. Additionally, the Florida statutes distinguish between school officers and instructional personnel such as teachers. Fla. Stat. §§ 1012.01(1), (2) (2007). Further, the dissent argued that the majority's reading of the statute promoted a disparity in the treatment of private school teachers versus public school teachers who commit the same crime.

SIGNIFICANCE

The court in *LaMorte* held that extending the statute of limitations for offenses based on misconduct by public officials or employees while in office or employment applies to a public school teacher who commits an offense in his or her capacity as a teacher. However, uncertainty lingers for other types of employees because the statute does not explicitly define who qualifies as a public official or employee. Further, any act of misconduct that occurred in office or employment, regardless of how many years ago the act occurred, may be subject to prosecution during the two years after the official or employee leaves such office or employment.

RESEARCH REFERENCE

- 15B Fla. Jur. 2d *Which Statute of Limitations Applies* § 3093 (2008).

Lindsey Anne Mack