

Judge Long Dissolves Injunction Asked Against the School Board

North Carolina
Rockingham County.
In the Superior Court
August Term, 1921.
J. W. Fagge, et al
vs.
G. W. Martin, Chm., et al.

This cause coming on for hearing before the undersigned at this term, it appears that heretofore His Honor, Judge Lane, granted the plaintiffs a temporary restraining order, the terms of which are set out in said order which is of record; and the said cause was made returnable before the undersigned and the plaintiffs now insist that this restraining order should be made permanent and continued until there is a hearing before the jury.

The contentions of the plaintiffs and the defendants are set forth in the pleadings filed and in certain affidavits which have also been filed and in certain affidavits which have also been filed and appear in the record. There was contention made by the plaintiffs as to what were the resolutions and records made by the defendant Board of Education of Rockingham County which were material points controverted by the defendants; and in order that the Court might be informed with accuracy as to what had been actually done by the Board from time to time with regard to the school district or building of a school house, the Court finally addressed a communication to the Board of Education of Rockingham County, of date August 15th, 1921, which is made a part of this judgment, and requested the Board to answer, over their signatures, which the Board promptly did on the same date, and signed the same and also made oath to their report so made to the Court, setting forth what had actually happened before the Board from time to time and which is also made a part of this judgment.

The Court did not understand from counsel of plaintiffs during the argument that they contended that the defendants had acted in bad faith or abused their powers or discretion with regard to the matters complained of, but did, seriously, question the regularity of their action and the accuracy of the resolutions as passed by the Board or finally adopted by the Board; and also contended that it was unlawful to establish a new district or school, under the circumstances.

The Court finds that the report made on August 15th, 1921, in response to the Court's letter to the Board, contains an epitome of the facts and circumstances with regard to the resolutions passed and finally resolved by the Board, and that the same is also substantially set forth in Exhibit "A," attached to this judgment and also made a part of the judgment of the Court.

Upon these findings of fact, the Court finds that the defendant did not create a new district, but simply made provision for the building of a branch school house in the district, and to be erected as a part of the school system for Leaksville Township and within the boundary of a district heretofore created and established. The Court can not and does not find that the defendant Board acted in bad faith or with corrupt purpose, but, on the other hand, the Court finds that the Board acted according to its judgment and without misconduct and in good faith and guided by what the Court above has said heretofore where there is no violation of law nor abuse of powers or discretion, this Court is of opinion that it is not proper for it to interfere with the judgment of the defendants in the location of a school house when there has been no misconduct on the part of the defendants, as was said

in Pickler vs. Board of Education 149 N. C., 221. "This is a matter that should be left to the sound judgment of the school authorities. In the absence of misconduct or violation of some provision of the Statutes, the action of the school authorities, in dividing townships into school districts and in erecting and maintaining school buildings cannot be supervised or restrained by the Courts." Guided, also, by what the Court said in Pemberton vs. Board of Education, 172 N. C., 554. "The Statute to prescribe a limitation upon the County Board of Education in laying out new school districts, was not intended to interfere with their judgment as to the location of a school house, without misconduct on their part. The provision applies to the location of a school house which is properly a matter resting in the sound judgment of the local authorities, except when there is shown to be some misconduct requiring judicial correction."

The Court, therefore, dissolves the injunction, and orders that the plaintiffs pay the costs in this action, to be taxed by the Clerk.

B. F. LONG,
Judge Presiding.

Wentworth, N. C.,
August 15th, 1921.

To His Honor, Judge B. F. Long,
Judge Presiding at the August
term of the Superior Court of
Rockingham County.

Dear Sir: Complying with request made by your Honor, copy of which is hereto attached, as to what was actually done by the Board of Education of Rockingham County and what was actually put upon the minutes of said Board, concerning the school established between Spray and Draper, the said Board of Education would respectfully show:

That at a meeting of the Board of Education of Rockingham County held on March 7th, 1921, it was ordered that the County Superintendent investigate the necessity of establishing a new school district between Spray and Draper and if said district could be established according to law, that Messrs. Deshazo, McIver and Plinchum be elected as committeemen, such action being based upon the application of a number of citizens for the creation of a new school district Southeast of Smith river, between Spray and Draper. That L. N. Hickerson, the Superintendent of Schools for Rockingham County, was directed by the said Board to make a thorough investigation of conditions in said community with reference to the need of a school and report his recommendations to the Board at its next meeting.

That at the meeting of the County Board of Education of Rockingham County on the 4th day of April, 1921, L. N. Hickerson, Superintendent, reported that he had ascertained that a new district, as applied for, could not be formed according to law; that he had made a thorough investigation of conditions and had canvassed the territory referred to and recommended and advised that said territory is in District No. 3, Leaksville Township, which included the town of Draper and adjacent territory; that the present school facilities in District No. 3 were and are inadequate for the accommoda-

tion of the children of said district at present, and will be inadequate for the increasing demand for school facilities in said district on account of continued growth and increasing population in said district. That the Superintendent reports that there are more than seventy children of school age in said community and advises that it is desirable and necessary that a branch school be established in said District No. 3 at a convenient and proper place in said territory, the same to be of permanent construction and to cost approximately five thousand dollars. And, it appearing to the Board that an offer was made by The Spray Water Power & Land Company to give the necessary land on which to build said school and that the same company had offered to contribute one thousand dollars in cash toward the construction of said building; and the Board, being of opinion that it is necessary to build said branch school for the accommodation of the children of said community, and found as a fact that his report and recommendation of the Superintendent of said conditions in that community were correct and proper.

Thereupon it is ordered by the Board that said branch be established and that the building be constructed at a point near the residence of Mrs. Cox, which point had been pointed out to the Superintendent of Schools and that the Superintendent of Schools secure deeds to the necessary land and that said building should cost approximately five thousand dollars and the sum of four thousand dollars and the sum of a school building above referred to, the said building to be built of brick and in accordance with the State plans. That the purpose and desire of the Board of Education was to provide for a school by legal method within the territory referred to, to meet what the said Board of Education ascertained to be a public necessity.

And the Board of Education would further respectfully show: That the notation on the Minute Book of the Board, of its meeting of March 7th, 1921, referring to the establishment of a new school district between Spray and Draper, is a correct statement of what happened with reference to the same at said meeting. That the notation on the minute book of said Board of its meetings of April 4th, 1921, which statement

is set forth in the affidavit of L. W. Clarke and G. C. Gammon with reference to said school is incorrect, the same being placed on the minute book by the stenographer in the absence of the Board and the secretary and said notation is not and never was a true record of what the Board did with reference to said school and was never approved or signed by the Board and never became any part of the record.

That at a meeting of the Board on July 5th, 1921, the Board caused the minutes of the meetings of March 7th, 1921, and April 4th, 1921, to be read and made such corrections as were necessary to show what was actually done by said Board with reference to said school; that after such corrections were made, the minutes were unanimously approved by the Board and signed by the Chairman and Secretary.

Respectfully submitted,
G. W. Martin, Chairman, Eugene Irvin, B. F. Mebane, A. D. Hopkins, C. P. Wall.

North Carolina,
Rockingham County.

G. W. Martin, B. F. Mebane, Eugene Irvin, A. D. Hopkins, and C. P. Wall, each being duly sworn, says: That the foregoing statement contains a true recital of the action of the Board with reference to the establishment of a branch school referred to in the pleadings in this matter.

Sworn to and subscribed before me this the 15th day of August, 1921.
F. R. MITCHELL,
Justice of the Peace.

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Train 32—Augusta to Washington, due 11:05 pm
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