DOCUMENT RESUME

ED 105 641 EA 007 090

AUTHOR Urbigkit, Walter
TITLE What To Do Before You Are Sued When You Probably Will Be Sued.
PUB DATE Apr 75
NOTE 6p.; Paper presented at the Annual Convention of the National School Boards Association (35th, Miami Beach, Florida, April 19-22, 1975)

EDRS PRICE MF-$0.76 HC-$1.58 PLUS POSTAGE
DESCRIPTORS *Board of Education Role; *Boards of Education; *Court Litigation; Educational Administration; Elementary Secondary Education; Legal Problems; Legal Responsibility

ABSTRACT

School board members anticipating being sued for damages are advised to "keep cool, collected, quiet and inconspicuous." Publicly, a school board facing suit should employ an attorney for procedural matters, and announce intentions to fully investigate the problem. Privately, school board members must avoid making any statements that reflect bias, opinion, prejudice, or knowledge, since, during court proceedings, witnesses are often questioned to discover any prior orientations toward the case. The responsibility of school board membership requires one to take steps for self-protection. (Author/DW)

1975 NSBA CONVENTION/MIAMI BEACH, APRIL 19-22, 1975
SPEAKER Urbigkit CLINIC NO. A-6 PROGRAM p.21

PRELIMINARY DRAFT

MESSAGE FOR SCHOOL BOARD MEMBERS

WHAT TO DO BEFORE YOU ARE SUED

WHEN YOU PROBABLY WILL BE SUED

The text of my presentation might appropriately be entitled and concluded "Keep cool, collected, quiet and inconspicious."

We have had a little experience with damage law suits in our district and can reasonably expect that the experience has not been concluded. A probationary teacher who led a display in a school meeting where the speaker was a not very much lamented late Vice President, sued for damages and after a week's trial in Federal Court and a 15 minute consideration by the jury, the case was dismissed.

At the same time, there was a suit pending for personal damages against me and the superintendent for our public efforts in behalf of a bond issue and comments after passage and during litigation which were based upon libel, slander and our well-known bad character. This case disappeared on motion.

We later terminated an extremely well-known 17-year tenured social science teacher who happened to be president of the teacher's union, the second largest teacher's organization. The termination was reversed by District Court and is presently on appeal. The medium of communication at the time of our appeal reflected the submission in behalf of the teacher that if we appealed we could be expected to be personally sued under Civil Rights Act.

With these and other experiences as in the practice of law for 20 years, I have some suggestions.

Let's look at a couple of hypotheticals and then see what we might recommend. Harley Taught, teacher, senior high school, ten years' experience. Late one night you get the call he has been picked up as part of a general drug bust in a motel room in an unfortunate situation with a teen age female from one of his classes. In the same raid, Johnny Doctor's-Son, vice president of the senior class was also busted in the process of which he confessed that he had been in the process of peddling drugs in the school system as a general activity.

I am assuming, in connection with these two problems, that the statutory responsibility for teacher termination and student expulsion rests with the Board of Trustees.

My message, then, is summed up by what may come to be dreaded words in this field of personal damage suits against Trustees after termination or expulsion. The words are "voir dire". Two words, spelled v-o-i-r d-i-r-e, defined as to speak the truth and in law means preliminary examination on the part of a witness or juror to test his competency but more recently of a Board Member to test his bias, prejudice, interest or previous participation.

What this means is that what you first do before suit is filed you may later have to explain at the hearing itself and then finally testify about when you are individually sued for damages.

The message is keep cool, collected, quiet and inconspicious.

So what do you do, knowing that a law suit lies at the end of the rainbow if action is taken. I am assuming a propensity which may or may not be appropriate in the various districts, that the Board will feel morally required to terminate and expell in this factual case.

Generalized rules differ, of course, procedurally and practically in different areas but if possible, I would make the following specific recommendations:

1. The only formal action taken by the Board initially would be to employ an outside attorney as a representative of the District to compile evidence, examine the facts and report only to the Superintendent as to a final recommendation by the Board for termination and expulsion.

2. Request that the Board's attorney stay completely out of any factual questions but only be involved preliminarily in arranging procedural matters so that (a) some recommendation may be made for a preliminary decision by the Board without a presentation of evidence to the Board, if that's appropriate, and (b) so that the hearing can be scheduled with the Board's attorney acting as a legal advisor, not as a prosecutor and (c) clearly isolate to the extent possible any investigation of the factual situation from the Board. (d) The only public statement made individually or jointly would be that the noted action has been taken and the Board will not make a decision until an investigation has been completed.

In addition to these matters of public activity, it is singularly important for the Board Members to recognize that what they say privately may some day be the matter of cross examination in a public trial.

Even to your best friends, it is most desirable that statements not be made reflecting opinion, bias, prejudice or knowledge.

In one of my trips to the witness stand involving the teacher who led the semi-riot against Agnew, I was cross examined about comment I made over a cocktail as part of political convention

wherein we were discussing matters of general concern and specifically attitudes about education. Incidentally, there was never any secret but that I was more personally involved in that affair because I was present, as a witness, when it had occurred and no other board member had been there. The story may or may not be true, but it was said that one of the jurors had indicated that they would have liked to have assessed damages against me but felt that what I had done should not be attributed to the other six innocent board members.

Pragmatically, it is possible to say that many Federal judges and possibly state judges, too, have simply lost contact with the society which now exists, if in fact, they ever enjoyed that contact, but to make the statement does not resolve the problem since those people will continue as they have in the recent past, to write the law. That law is due process and fair hearing.

The next axiom which can be more vividly applied today but is not necessarily new, is that it is not what things are that is important but rather what people <u>think</u> things are or what the evidence seems to demonstrate the facts to be.

In conclusion, then back to vior dire. From the time that information comes to you indicating a possible teacher termination or student expulsion, you should recognize that at least once and perhaps twice you may be asked as a Board Member under oath to testify as to your own fairness. Neither perfection nor disinterest can and will be expected but off-hand comments, inadvisable discussion and prejudgment comments can come back to haunt severely. Do not fail to anticipate that the factors which produce undercover movies in accident cases can also produce special investigators and recriminating witnesses in this field of education.

As long as the generalized trend continues for the courts to run the school system, it is a great part of wisdom for Board Members to develop those attributes which will protect them if the liability suit ultimately comes.

In conclusion, I would say that if you assume to hold the position, you must presume to accept the responsibility. The text of my paper is intended to tell you to do what you can to protect yourself when you do what you must do to honor yourself but particularly to protect yourself from the backside.

Don't furnish the knife by a quip-comment -- or advance critique.