

IOWA DEPARTMENT OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 139)

In re Petition for Declaratory Order

Great Prairie Area Education Agency,	:	
Petitioner,	:	DECLARATORY ORDER
for a Declaratory Order as to the former	:	
Russell Community School District and	:	
the Applicability of Specific Iowa Code	:	[Adm. Doc. #4681]
Provisions	:	
	:	

On or about August 12, 2008, and pursuant to 281—IAC 3.2, the above-named Petitioner filed a petition for declaratory order with the Iowa Department of Education. Notice of the petition was provided to the Iowa Association of School Boards [IASB], School Administrators of Iowa, the Iowa Department of Management [DOM], the Chariton Community School District, the Albia Community School District, and the Wayne Community School District. Of those entities, only the Chariton Community School District [Chariton CSD] filed a petition for intervention, which was granted. Although no other petitions for intervention were received, informal input was allowed from any interested person.

An informal meeting was held pursuant to 281—IAC 3.7 on September 8, 2008, which was attended by representatives of the Petitioner, IASB, DOM, and Chariton CSD. Notice of this meeting was provided to the same entities who received notice of the filing of the petition herein.

The Petitioner requests clarification regarding a number of issues associated with the de-accreditation of the former Russell Community School District [Russell CSD] and the merger of that former District's assets and liabilities with the Chariton Community School District. (See specifically subparagraphs a – m of paragraph 5.)

This petition arises in the wake of action taken by the State Board of Education on March 11, 2008 to remove the accreditation of the former Russell Community School District as of July 1, 2008. (See minutes of March 11, 2008 State Board of Education meeting at <http://www.iowa.gov/educate/content/view/1004/1542/>.)

Great Prairie Area Education Agency [GPAEA] is the intermediate education agency in whose territory the former Russell CSD existed. At the request of this agency and of the State Board of Education, GPAEA has played an invaluable role in overseeing the merger of the territory, other assets, and liabilities of the former Russell CSD.

Specifically, on March 24, 2008, the undersigned approved the recommendation of the Merger Committee to merge the territory, other assets, and liabilities of the former Russell CSD along county lines. Thus, the majority of the former Russell CSD territory is located in Lucas County, and was merged with the Chariton CSD. The Wayne County territory was merged with the Wayne CSD, and the Monroe County territory was merged with the Albia CSD.

The Iowa DOM has calculated the net taxable value of these territories as follows: Lucas County (Chariton CSD), 94.5%; Wayne County (Wayne CSD), 5.0%; Monroe County (Albia CSD), 0.5%.

Questions Posed by the Petitioner

(For the ease of the reader, we letter these to correspond with the Petition filed by GPAEA herein, although some questions have been paraphrased.)

a. Does Russell Community School District ["Russell"] continue to exist as a school corporation?

No. The action of the State Board of Education to remove Russell's accreditation status as of July 1, 2008, means that the District ceased to exist as a school corporation (or as any entity) as of that date. Pursuant to Iowa Code 256.11(12), a school district cannot exist without being accredited.

b. Is an audit required of Russell for the 2007-08 school year?

Yes, although it need not be a full audit. The Auditor of the State of Iowa ["AOS"] has agreed that his agency, pursuant to Iowa Code section 11.6, is the appropriate entity to review the finances of the Russell Community School District and to prepare a final reconciliation of all funds of the former district in lieu of a full audit. While it is necessary that the exact status of all school funds of Russell be known, the auditor need not make statements about irregularities or other matters generally covered in a traditional audit

c. Is a certified annual report (CAR) required of Russell for the 2007-08 school year?

Yes.

d. Who prepared and signs the CAR if required?

The Department of Education is ordering that GPAEA prepare and sign the CAR.

e. If Russell has outstanding unpaid obligations after June 30, 2008, whose responsibility are the debts? In what order should the same be paid?

To the extent that liabilities may exceed assets of the former Russell District, outstanding debts become the shared responsibilities of the three districts (Chariton, Albia, and Wayne) that received territory that formerly comprised Russell. Absent unanimous agreement of those three districts to the contrary, the allocation of the debts shall be identical to the allocation of the net taxable value of the territory each received. As noted above, DOM has calculated the allocation as follows: Chariton, 94.5%; Wayne, 5.0%; and Albia, 0.5%. Because Chariton has the lion's share of the allocation, unless the three districts unanimously agree to the contrary, Chariton shall act as fiscal agent for purposes of billing the other two districts for their shares of outstanding debts and making payments to Russell's creditors.

There is one notable exception to the above general rule regarding allocation of debts. Russell has outstanding unemployment claims. When Russell ceased to exist as a school corporation, its status as an employer also ceased to exist. Unlike a reorganization action pursuant to Iowa Code chapter 275, there is no successor school corporation to Russell. While the territory of the former Russell District has been attached to one of three contiguous districts (Chariton, Albia, or Wayne), none of these districts has a statutory obligation to employ any of the former Russell employees. The outstanding unemployment claims are not the responsibilities of any of these three districts. Because no educational agency is responsible for these outstanding unemployment claims, the Iowa Workforce Development (IWD) agency shall determine how these claims are to be honored. This Department previously has informed IWD that there is no successor school corporation to Russell.

f. If an audit of Russell results in a report of deficiency in the general or other funds, how is such deficiency addressed?

See responses to “e” and “h.”

g. Does Iowa Code section 275.31 authorize an entity to certify a tax levy against the property of the historic Russell District to satisfy deficits in the general or other fund of the District?

Yes.

h. What entity can certify an equalization levy per 275.31, and for what period of time?

Any school district that received assets of the former Russell District (the school districts of Chariton, Albia, and Wayne) may take advantage of the equalization levy, but the equalization levy may be imposed solely against the property of the historical Russell District located within the levying board’s district.

A levying board may take action to implement the equalization levy for just one school year at a time, but the board may vote to re-impose the levy more than once. That is, if the initial year of implementation of an equalization levy does not provide sufficient relief from the imbalance, the levying board may vote to impose the levy for the following school year also, etc. We believe that this interpretation is consistent with the Attorney General Opinion dated July 21, 1955.

i. What happens if there are surpluses in some funds of Russell and deficits in other funds?

The Department defers responding to this inquiry until the AOS financial reconciliation is known.

j. Can the Department of Education order the Iowa Department of Revenue and Finance to transfer all of the income tax surtax funds of the Russell 2007 physical plant and equipment levy (PPEL) and instructional support levy (ISL) solely to the Chariton Community School District [“Chariton”]?

The Department believes that income surtaxes should be allocated to the Chariton, Wayne, and Albia Districts based on the percentages discussed in “e” above.

k. If the 275.31 equalization levy may be levied for only one year, what entity would defend any taxpayer protest?

The entity that votes to implement the equalization levy, regardless of number of times deemed necessary by that board to do so, defends any taxpayer protest. The expenses in defending against any protest, including legal fees, are not a liability attributable to the merger. These expenses do not constitute a liability attributable to the merger because a determination to implement the equalization levy cannot be known with any degree of reasonable certainty at the time of merger, and certainly whether a taxpayer will file a protest is not knowable.

l. In what order should deficits in funds be eliminated upon receipt of funds from liquidated assets of Russell?

See response to “i” above.

m. Are the expenses necessary to demolish buildings formerly owned by Russell an expense that can be recovered by equalization levy?

Yes. If the Chariton board deems it advisable to demolish one or more buildings formerly owned by Russell, the costs of demolition and related expenses (e.g., asbestos removal) can be recovered by use of equalization levy. Unlike the expenses discussed above in "k," demolition and related expenses reasonably may be contemplated at the time of acquisition of the buildings in question.

This declaratory order has the same status and binding effect as a final order issued in a contested case proceeding.

Issued this 17th day of November, 2008.

/s/ _____
Judy A. Jeffrey, Director

APPENDIX

Iowa Code Provisions:

11.6 Examination of governmental subdivisions - consultative services - association of counties.

1. a. The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, the certified enrollment as provided in section 257.6, and the revenues and expenditures of any nonprofit school organization established pursuant to section 279.62. Differences in certified enrollment shall be reported to the department of management. The examination of a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 shall include an audit of the city's compliance with section 388.10. The examination of a city that owns or operates a municipal utility providing telecommunications services pursuant to section 388.10 shall include an audit of the city's compliance with section 388.10.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph "c", examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

256.11 Educational standards....10. The state board shall establish an accreditation process for school districts and nonpublic schools seeking accreditation pursuant to this subsection and

subsections 11 and 12. By July 1, 1989, all school districts shall meet standards for accreditation. ...

11. The director shall review the accreditation committee's report, and the response of the school district or nonpublic school, and provide a report and recommendation to the state board along with copies of the accreditation committee's report, the response to the report, and other pertinent information. The state board shall determine whether the school district or nonpublic school shall remain accredited. If the state board determines that a school district or nonpublic school should not remain accredited, the director, in cooperation with the board of directors of the school district, or authorities in charge of the nonpublic school, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards, and shall establish a deadline date for completion of the procedures. The plan is subject to approval of the state board.

12. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school district or school remains accredited. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected and shall make a report and recommendation to the director and the state board. The committee recommendation shall specify whether the school district or school shall remain accredited or under what conditions the district may remain accredited. The conditions may include, but are not limited to, providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district operation, in order to bring the school district into compliance with minimum standards. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected. If the deficiencies have not been corrected, and the conditional accreditation alternatives contained in the report are not mutually acceptable to the local board and the state board, the state board shall merge the territory of the school district with one or more contiguous school districts at the end of the school year. Division of assets and liabilities of the school district shall be as provided in sections 275.29 through 275.31. Until the merger is completed, and subject to a decision by the state board of education, the school district shall pay tuition for its resident students to an accredited school district under section 282.24. However, in lieu of merger and payment of tuition by a nonaccredited school district, the state board may place a district under receivership for the remainder of the school year. The receivership shall be under the direct supervision and authority of the director. The decision of whether to merge the school district and require payment of tuition for the district's students or to place the district under receivership shall be based upon a determination by the state board of the best interests of the students, parents, residents of the community, teachers, administrators, and board members of the district and the recommendations of the accreditation committee and the director. If the state board declares a nonpublic school to be nonaccredited, the removal of accreditation shall take effect on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

274.1 Powers and jurisdiction.

Each school district shall continue a body politic as a school corporation, unless changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained.

274.2 General applicability.

The provisions of law relative to common schools shall apply alike to all districts, except when otherwise clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation.

275.29 Division of assets and liabilities after reorganization.

Between July 1 and July 20, the board of directors of the newly formed school district shall meet with the boards of the school districts affected by the organization of the new school corporation, including the boards of districts receiving territory of the school districts affected, for the purpose of reaching joint agreement on an equitable division of the assets of the several school corporations or parts of school corporations and an equitable distribution of the liabilities of the affected corporations or parts of corporations. In addition, if outstanding bonds are in existence in any district, the initial board of directors of the newly formed school district shall meet with the boards of all school districts affected prior to April 15 prior to the school year the reorganization is effective to determine the distribution of the bonded indebtedness between the districts so that the newly formed district may certify its budget under the procedures specified in chapter 24. The boards shall consider the mandatory levy required in section 76.2 and shall assure the satisfaction of outstanding obligations of each affected school corporation. If the petition includes plans for the distribution of the bonded indebtedness, the exclusion of territory from the reorganized district does not require action pursuant to this section.

275.31 Taxes and appropriation to effect equalization.

If necessary to equalize the division and distribution, the board or boards may provide for the levy of additional taxes, which shall be sufficient to satisfy the mandatory levy required in section 76.2 or other liabilities of the districts, upon the property of a corporation or part of a corporation and for the distribution of the tax revenues so as to effect equalization. When the board or boards are considering the equalization levy, the division and distribution shall not impair the security for outstanding obligations of each affected corporation. Any owner of bonds of an affected corporation may bring suit in equity for adjustment of the division and distribution in compliance with this section. If the property tax levy for the amount estimated and certified to apply on principal and interest on lawful bonded indebtedness for a newly formed community school district is greater than the property tax levy for the amount estimated and certified to apply on principal and interest in the year preceding the reorganization or dissolution for a school district that is a party to the reorganization or dissolution, that had a certified enrollment of less than six hundred for the year prior to the reorganization or dissolution, and that approved the reorganization or dissolution prior to July 1, 1989, the board of the newly formed district shall inform the department of management. The department of management shall pay debt service aid to the newly formed district in an amount that reduces the rate of the property tax levy for lawful bonded indebtedness in the portion of the newly formed district where the new rate is higher, to the rate that was levied in that portion of the district during the year preceding the reorganization or dissolution.

For the school year beginning July 1, 1987, and succeeding school years, there is appropriated from the general fund of the state to the department of management an amount sufficient to pay the debt service aid under this section. Debt service aid shall be paid in the manner provided in section 257.16.

Not later than May 1 of each year, the department of management shall inform the board of the newly formed school district the amount of debt service aid that the district will receive and the rate of the property tax levy for the amount estimated and certified to apply on principal and interest on lawful bonded indebtedness in the portion of the newly formed district where the new rate would have been higher, and for the remainder of the newly formed district. The department of management shall notify the county auditor of each applicable county of the amount, in dollars and cents per thousand dollars of assessed valuation, of the property tax levy in each portion of each applicable newly formed school district in the county for the amount estimated and certified to apply on principal and interest on lawful bonded indebtedness, and the boundaries of the portions within the newly formed district for which the levies shall be made. The county auditor shall spread the applicable property tax levy for each portion of a school district over all taxable property in that portion of the district.