IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 237)

In re Transportation Services

Marsha Sears, Appellant,	:	
	:	DECISION
vs.	:	[Admin. Doc. 4609]
Ankeny Community School District, Appellee.	:	

The above-captioned matter was heard in person on July 5, 2005, before designated administrative law judge Carol J. Greta. The Appellant, Marsha Sears, was personally present; Ms. Sears chose to forego legal counsel. Appellee, the Ankeny Community School District, was represented by attorney Jeffrey A. Krausman. Also appearing on behalf of the Appellee were Superintendent Kent Mutchler and Board Secretary Kirk Naber.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

In this case Ms. Sears seeks reversal of a decision the local Board of Directors of the District made on April 24, 2005, to sell the District's bus fleet to a private student transportation company. This appeal was consolidated with another appeal brought by Ms. Sears (Admin. Doc. 4608) in which she seeks to overturn the Ankeny Board's decision to privatize its student transportation services.[1]

I.
FINDINGS OF FACT

Marsha Sears has standing to pursue this appeal as she is the mother of a student of the Ankeny Community School District. Her child is a student with a disability who receives transportation services between home and school.

Since its inception and through the 2004-05 school year, the District has provided directly its own student transportation with a fleet of vehicles owned by the District. On

[1] The decision in Admin. Doc. 4608 is a Director decision over which the State Board has no jurisdiction. In that case, the Ankeny Board's decision to privatize its student transportation services was appealed first by Ms. Sears to the Board of the Heartland Area Education Agency (AEA 11). After the AEA's Board upheld the decision of the Ankeny Board, Ms. Sears filed her appeal to Director Jeffrey pursuant to Iowa Code section 285.12.

April 11, 2005, the local Board voted to negotiate a contract with Durham School Services ["Durham"] whereby Durham is to provide all student transportation services for District, commencing with the 2005-06 school year. Immediately following that vote, the Board set a public hearing date of April 25 on the issue of the sale of "student transportation vehicles." (Minutes of meeting of 4/11/05, page 2.) The Board action taken on April 11 is the subject of the companion appeal to the Director. (See footnote #1.)

The newspaper designated by the District as its official newspaper is the *Des Moines Register.* The official notice of the public hearing that was published in the *Register* on April 14 stated as follows:

> Notice is hereby given that the Board of Directors of the Ankeny Community School District shall hold a hearing on April 25, 2005 at 6:00 P.M. at the Ankeny Community School District Administrative Office at 306 SW School Street regarding the following proposal to sell its school busses:
> "The Ankeny Community School District Board of Directors shall be authorized to sell the school district's school bus fleet, or such portion thereof as the Board may determine, to either an entity approved by the Board of Directors to provide bus service to the District or to such other entity as the Board may select. The Board retains the right to reject any or all offers received if, in the sole judgement of the School Board, such offers are not in the best interest of the school and the community. The board may act on the sale of any or all busses at any time after the close of the hearing on April 25, 2005."

A news article about this controversy was written by a reporter for the weekly *Ankeny Press Citizen* and appeared in that newspaper's April 20 edition. It was not an official notice of public hearing. At the end of the two-page article, the reporter stated, "A public hearing is scheduled for 7:00 p.m. Monday, April 25… ." This statement appears on page 12 of the newspaper.

Approximately 200 persons attended the public hearing on April 25. (Appellee's Exhibit 16.) The Board "heard those in favor and those opposed" to the sale of "District student transportation vehicles." (Minutes of meeting of 4/25/05, page 2.) No one at the hearing objected to the description of the property.

Ms. Sears did not speak at the public hearing because she relied on the news article in the *Press Citizen* that stated that the public hearing would commence at 7:00 p.m. She arrived at the meeting after the vote to sell the student transportation fleet had been taken. The only other parent from Ankeny who testified at this hearing stated that she was not aware that the *Press Citizen* had printed an erroneous time for the public hearing.

At the conclusion of the public hearing, the local Board passed the following resolution: "The Board approved the Ankeny Community School District to sell the school busses identified by Durham School Services L.P. in its proposal for Student

Transportation Services to Durham School Services L.P., and the Superintendent be authorized to execute the documents needed to transfer ownership of the busses, such transfer to occur after the parties have executed a contract for student transportation services and after the end of the current school year." The sale amount agreed upon by the District and Durham for the fleet was $831,063. (Appellee's Exhibits 4, 10.)

Ms. Sears expressed concern that the sale price included more than vehicles. She offered into evidence a tool inventory (Appellant's Exhibit A) and a parts inventory (Appellant's Exhibit B) from the District's bus barn. Dr. Mutchler explained that he requested inventories to ensure that the items thereon would not be included in the sale to Durham. He also stated that the District intends to keep the tools for its maintenance department, but that parts will be sold – at prices yet to be determined – to Durham as needed. The items on the parts inventory range from air filters to washer fluid. The single most expensive part is a $175 alternator; the least expensive is a thirty cent fuse (of which there are eight). Dr. Mutchler stated that Durham would be allowed to use the tools owned by the District.

On May 24, 2005, the District and Durham entered into an agreement reproduced in pertinent part in the following box:

ANKENY COMMUNITY SCHOOL DISTRICT
Facility Lease Agreement

Facility Usage Agreement

This Agreement supplements the Agreement for Student Transportation (hereafter the "Transportation Agreement") between the Ankeny Community School District (hereafter the "District") and Durham School Services, L.P. (hereafter the "Contractor") dated May 24th, 2005. The term of this Agreement shall be the same as the Transportation Agreement and shall terminate upon any termination of the Transportation Agreement.

In consideration of the parties entering into the Transportation Agreement and in consideration of the mutual promises contained in this Agreement, the District and the Contractor agree as follows:

…

1. Beginning July 1, 2005 Contractor shall be permitted the non-exclusive use [of] that portion of the District's maintenance facility … located at 400 SW Pleasant Street in Ankeny.

…

5. The Contractor shall purchase from the District that portion of the existing inventory of parts as may be used on the vehicles purchased from the District.

…

7. When the maintenance facility located at 2017 SE Oak is completed, Contractor shall be required to use that facility for Ankeny bus maintenance and storage. The Contractor's use of the facility shall be non-exclusive … . The Contractor's use of the facility shall be limited to work on behalf of the Ankeny Community School District and no other business activity of the Contractor may occur on Ankeny's premises without the written permission of the District.

…

The agreement is dated May 24, 2005 and is signed by a representative of Durham and by the President of the Ankeny School Board.]

Dr. Mutchler testified that the District has no other "usage agreement" labeled as such, but that the District does lease other buildings it owns for non-exclusive purposes such as sports camps, church services, and periodic meetings of other non-school groups. The District does not lease any of its facilities to a third party for the use of the third party to the exclusion of the District; that is, the District maintains possession and control of all of its facilities, including the maintenance facility subject to the above agreement with Durham.

II.
CONCLUSIONS OF LAW

The State Board, in regard to appeals to this body, is directed by statute to make decisions that are "just and equitable." Iowa Code § 290.3. The administrative rules adopted by the State Board for appeals before it also state that the "decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." 281—IAC 6.17(2).

The standard of review, as first articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *Id*. at 369.

The points brought forth by Ms. Sears in this appeal are the following: (1) that a proper description of the property to be sold was not posted prior to the public hearing; (2) that the time of the public meeting was improperly posted; and (3) that the "usage agreement" between the District and the private provider is actually an unlawful lease.[2]

Whether the description of the property was defective

Iowa Code section 297.22 addresses the sale of property owned by a school district. The statute states that the notice published regarding the time and date of the public hearing "shall also describe the property." The public notice herein put the reader on notice that the Board was meeting to determine whether "to sell the school district's school bus fleet, or such portion thereof as the Board may determine."

The question of the adequacy of this above description is an issue of first impression, not only before this Board, but in any court of competent jurisdiction in Iowa. There are no cases addressing this question.

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[2] Ms. Sears also argued that vehicles purchased with special education funds should not have been included in the sale to Durham. This is an issue alleging misappropriation of federal funds, and is an issue over which the State Board of Education has no authority. Ms. Sears was directed in the course of this hearing to agency staff who could provide her with further information about special education funding.

Even in a vacuum, a reasonable interpretation of the description is that the local Board intended to sell up to all of the District's school buses. But it must be remembered that the April 25 meeting did not take place in a vacuum. The Board had, two weeks earlier, voted to privatize all of its student transportation service. Having no need to retain any of its school buses, the District used a reasonable description to alert the public that it intended to sell all such buses to Durham. The District was not required to list each bus separately in the public notice. We conclude that the description was adequate.

Whether the posting of the time of the public hearing was defective

The District was required, again by Iowa Code section 297.22, to publish "[n]otice of the time and place of the public hearing…at least once not less than ten days but not more than twenty days prior to the date of the hearing in a newspaper of general circulation in the district." The District did not publish a notice in the *Ankeny Press Citizen*, which is not the official newspaper of the District, but did so in the *Des Moines Register*, which is the District's designated newspaper for official announcements and legal notices.

The article that appeared in the *Ankeny Press Citizen* was not placed in that publication by any District personnel, but was written by a reporter for the newspaper. The District had no control over what the reporter printed. The error in the meeting time in the *Ankeny Press Citizen* is in no way attributable to the District.

Ms. Sears presented a 2003 survey conducted by the National Research Center, Inc., of Boulder, Colorado for the City of Ankeny. There was no evidence presented as to the number of persons surveyed. For the sake of argument, this Board will assume that the results were accurate and statistically reliable. Respondents were asked, "How important to you are the following sources of information about City [of Ankeny] projects and programs?" Below are the results as they relate to the *Press Citizen* and the *Register*[3]:

	Essential	Very Important	Somewhat Important	Not at all Important	TOTAL
Press Citizen	24%	48%	24%	4%	100%
Register	11%	43%	31%	15%	100%

Ms. Sears' argument that the above results lead to the conclusion that more citizens of Ankeny read the *Ankeny Press Citizen* than the *Des Moines Register* is not accurate. The question posed did not seek to compare head-to-head readership levels of the two publications, nor was the question geared toward Ankeny Community School District projects and programs. Rather, respondents were asked, source-by-source, how

[3] Five other sources were listed, including the City of Ankeny's web site, local TV news, local radio broadcasts, the city newsletter, and City Council meetings.

important was each medium to them as a source of City Hall news. Respondents were not asked to compare the media to each other as sources of information. Thus, the totals in each row equal 100%.

Even if the survey supported an argument that more District residents read the *Press Citizen* than the *Register*, the legal requirement is not to place official notices in the better read publication. The legal requirement is to post the official notice in a newspaper of general circulation in the District. The District complied with section 297.22 by placing its official notice in the *Des Moines Register*, which is a newspaper of general circulation in the District.

Whether the District failed to conduct a public meeting prior to entering into the lease or usage agreement with Durham

Finally, Ms. Sears complains that the local Board did not hold a public hearing before entering into the usage agreement with Durham. The usage agreement is an addendum to the District's agreement in chief with Durham. As earlier stated, the usage agreement contains a requirement that Durham use the District's maintenance facility for storage of the buses purchased from the District. The agreement also makes it clear that the District retains possession and control of the maintenance facility for its own uses.

We turn once more to Iowa Code section 297.22, which requires a public hearing before a school board may "lease for a period in excess of one year" any property belonging to the school. The critical question thus becomes whether another public hearing was required prior to the signing of the usage agreement.

Before examining section 297.22, we first note that we assume for the sake of argument that the agreement herein is a lease agreement. For reasons stated immediately below, however, we conclude it is not a lease subject to the provisions of section 297.22. We alternatively conclude that if it were subject to the statute, the provisions have been satisfied.

All of the case law and formal Attorney General Opinions annotated under section 297.22 indicate that this statute is intended to be used for leases wherein a school district relinquishes its own use of the property in question. Such is not the case here. The District affirmatively states in the agreement that Durham's use of the maintenance facility is *non-exclusive*. (Appellee's Exhibit 14, paragraph numbered 7 on final page thereof.) Dr. Mutchler testified that the District deliberately used this language because the District continues to use its maintenance facility for school purposes other than transportation.

The purpose of section 297.22 appears to be to ensure that a local school board has public input before entering into an agreement whereby the district gives up (by lease in this case) part of its property in return for a fair market rental for such leases.

Therefore, even if the lease herein were subject to the provisions of section 297.22, we conclude that the legislative intent has been accomplished. The District Board held several public meetings[4] at which the privatization issue was discussed, including two public meetings (April 11 and April 25) at which votes were taken. A reasonable person could conclude from those meetings that a lease or usage agreement was the logical next step. As to the agreement itself, far from prejudicing the District or any of its patrons, the lease agreement provides the District with a superior level of oversight regarding Durham's provision of transportation services to District students. Both the spirit and letter of the statute are intact.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Ankeny Community School District made on April 25, 2005 be AFFIRMED. There are no costs of this appeal to be assigned.

_____ _____

Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

_____ _____

Date Gene E. Vincent, President
State Board of Education

[4] The dates of the other Board meetings were March 14, March 28, and April 4; details appear in the decision to the companion case, Admin. Doc. 4608.