

IOWA STATE
BOARD OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 373)

In re Concerned Citizens for Education :

Rhonda Reeder, et al., :
Appellants :

v. : **DECISION**

Lawton-Bronson Community School District, Appellee. : **[Adm. Doc. # 3766]**

This is the consolidation of two appeals brought by Rhonda Reeder on behalf of *the Concerned Citizens for Education*, a group in the Lawton-Bronson Community School District. Both matters were heard together on June 20, 1996, before a hearing panel comprising Klark Jessen, consultant, Office of the Director; Roger Stirler, bureau chief, Bureau of Internal Operations; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, *Concerned Citizens for Education*, was represented by Rhonda Reeder; Dorothy and Wallace Sorensen; Walter Reinholdt; and Judith Holmes, all of whom reside in Lawton, Iowa. These citizens represented themselves. The Appellee, Lawton-Bronson Community School District [hereinafter the "District"], was represented by Attorney Jim Hanks of Klass, Hanks, Stoos, Stoik, Mugan, Villone & Phillips, L.L.P., Sioux City, Iowa.

A hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Appellant citizens seek reversal of two decisions by the Board of Directors [hereinafter the "Board"] of the District made on March 12, 1996, and April 11, 1996, respectively. These citizens object to actions taken by the District Board at these meetings to pursue the purchase of property and construction of a new school building pursuant to a bond issue "approved" earlier by residents of the District.

Authority and jurisdiction for this appeal are found in Iowa Code section 290.1 (1995).

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.

On December 19, 1995, the Lawton-Bronson Community School District held a school bond election with the following propositions presented to the voters:

Question A: Shall the Lawton-Bronson Community School District, in the counties of Woodbury and Plymouth, State of Iowa, be authorized to contract indebtedness and issue general obligation bonds in an amount of not to exceed \$5,075,000, to provide funds to defray the cost of building and furnishing a new building in Lawton on the 6.9 acres of the Zenor property east of the football field to replace the present Lawton School Building?

Question B: Shall the Lawton-Bronson Community School District, in the counties of Woodbury and Plymouth, State of Iowa, be authorized to levy annually a tax exceeding two dollars and seventy cents per thousand dollars, but not exceeding four dollars and five cents per thousand dollars of the assessed value of the taxable property within said school corporation to pay the principal and interest on bonded indebtedness of said school corporation, it being understood that the approval of this proposition shall not limit the source of payment of the bonds and interest, but shall only operate to restrict the amount of the bonds which may be issued?

When the school bond election was held on December 19, 1995, more than 60% of the total vote was cast for Question A. However, less than 60% of the total vote (14 votes short) was cast for Question B so that proposition was defeated. This raised several legal issues for the District. As a result, State Representative Ralph Klemme sought an Attorney General's Opinion regarding the following three questions:

1. If the voters of a school district pass a school bond proposition submitted to them pursuant to Iowa Code Section 75.1 but defeat a school bond tax proposition submitted to them pursuant to Iowa Code Section 298.18, is the passage of the school bond proposition affected in any way by the defeat of the school bond tax

proposition? If the answer to this question is in the affirmative, then what effect does the defeat of a school bond tax proposition have on the passage of a school bond proposition?

2. If the voters of a school district pass a school bond proposition submitted to them pursuant to Iowa Code Section 75.1 but defeat a school bond tax proposition submitted to them pursuant to Iowa Code Section 298.18, is the board of directors of the district empowered to issue bonds and contract indebtedness as set forth in the school bond proposition, provided the taxes levied to pay the principal and interest on the bonded indebtedness do not exceed two dollars and seventy cents per thousand dollars of assessed value of the taxable property of the school corporation?
3. If the voters of a school district pass a school bond proposition submitted to them pursuant to Iowa Code Section 75.1 but defeat a school bond tax proposition submitted to them pursuant to Iowa Code Section 298.18, is there any time limitation or restriction on the re-submission to the voters of the school bond tax proposition, other than the limitations imposed by the applicable election laws?

By letter dated January 18, 1996, Charles J. Krogmeier, Executive Deputy Attorney General, advised Representative Klemme that the specific impact of the two different election results should be evaluated by bond counsel for the Lawton-Bond District. The letter further advised that under the rules governing issuance of an Attorney General Opinion, action on his request would be deferred pending receipt of further information regarding legal advice from bond counsel. (Exh. 3.) On February 7, 1996, Jim Hanks, attorney for the District, forwarded the Opinion letter from bond counsel to the Attorney General's Office. (Exh. 5.)

On February 12, 1996, the Concerned Citizens group submitted a petition to the Board of Directors. The petition requested that the Board "consider a bond election not to exceed the amount of \$2 million to remove 2 portable buildings, replace them with

classrooms and to remodel the existing Lawton building as necessary. This plan would also include extending the Bronson gymnasium on the north end to accommodate new locker rooms and additional seating." Although the petition did not recite that it was filed pursuant to any particular provision of the Iowa Code, the attorney for the Board noted that Iowa Code Sections 296.2 and 296.3 appeared to be most applicable to the petition.

At the Board meeting held on March 12, 1996, the petition was publicly reviewed and discussed in light of Code sections 296.2 and 296.3. Basically, Section 296.2 allows a number of eligible voters to file a petition asking that a bond election be called. This petition must also state the purposes to be accomplished by the issuance of the bond. Section 296.3 requires the Board to fix the time of the election "unless the Board determines by unanimous vote that the proposition or propositions requested by a petition to be submitted at an election are grossly unrealistic or contrary to the needs of the school district. The decision of the Board may be appealed to the State Board of Education as provided in chapter 290" Id. (Emphasis added.)

Detailed minutes of the March 12th meeting provided the Board's response to the petition filed by the *Concerned Citizens* group at the previous Board meeting. In finding that the petition should be denied because the proposal was "contrary to the needs of the school district," the minutes showed that the Board considered several problems raised by the proposal. For one thing, the petition called for the remodeling of the school buildings at Lawton and at Bronson. The Americans With Disabilities Act and the regulations which implement this Act provide that any public school building which is altered after January 26, 1992, must, to the maximum extent feasible, be altered in such a manner as to comply with the accessibility guidelines of the Americans With Disabilities Act. The Board had been advised by its architect that the cost of remodeling to comply with the ADA and building code requirements would be approximately \$3,129,500.00. This estimated figure did not include the cost of construction of new classrooms, the cost of the removal of the 2 portable buildings, the cost of the remodeling of the Bronson gymnasium, the cost of construction of new locker rooms at Bronson, or the cost of providing additional seating at Bronson, all of which was called for by the petition. Since the petition called for the issuance of bonds not to exceed \$2 million, considering the cost of the project presented to the Board by its architects, the Board determined that the proposition requested by the petition was grossly unrealistic. In addition, the Board

had already studied the program needs of the District and had developed a project which it believed would meet the needs of the District. This proposition was submitted to the voters for funding and the voters approved the issuance of bonds for this project in an election held on December 19, 1995. Therefore, the Board found that the proposition requested by the *Concerned Citizens* in their petition was contrary to the needs of the School District. (Bd. Min. 3-12-96.)

The decision of the Board which occurred on March 12, 1996, was appealed by Appellant *Concerned Citizens* on April 5, 1996. In the Affidavit of Appeal filed by Rhonda Reeder on behalf of the *Concerned Citizens*, Appellants basically contest the evidence of the alterations required by the Americans With Disabilities Act and the lack of architectural documents to support the extent and cost of these modifications. We must affirm the District Board, however, because its decision to deny Appellants' petition was reasonable and supported by substantial evidence. In contrast, Appellant *Concerned Citizens* has introduced no evidence to contradict or refute the District Board's position.

On April 10, 1996, the Iowa Attorney General's Office responded to Representative Klemme's request for an opinion. At the outset, the Opinion stated that "[h]aving received copies of legal opinions on these questions from bond counsel and counsel for the school district, we have elected to respond by this letter of informal advice. (See generally, 61--IAC 1.5(5).) We concluded that the defeat of the second proposition did not affect the passage of the first proposition; that the school district may issue bonds and contract indebtedness pursuant to the first proposition and levy taxes to pay the principal and interest on the bonded indebtedness up to \$2.70 per \$1,000.00 of the assessed value of taxable property; and that no restriction, other than ones imposed by applicable election laws, prohibits resubmission of the second proposition to the voters." (Kempkes to Klemme, St. Representative, April 10, 1996). (Emphasis added.)

The day after the informal Attorney General Opinion was issued, the District met in special session. The purpose of the meeting was to consider calling a special election on the bond tax proposition. At this special meeting, held April 11, 1996, the resolution was unanimously passed by the Board which called a special election for Tuesday, May 14, 1996. This election would submit Question B to the qualified electors of the District, which had been previously defeated by 14 votes on December 19, 1995. (Bd. Min. 4-11-96.)

On April 15, 1996, Rhonda Reeder filed an affidavit of appeal to the State Board of Education. On behalf of the *Concerned Citizens*, she raised the the following five objections to the Board action taken on April 11, 1996:

Objection #1: We object to any referendum on a levy to be voted on in our community that pertains to a school building project before the time limit of six months from the last bond election of December 19, 1995, (Code 75.1);

Objection #2: We object to any kind of construction for a school building or expenditure for architectural fees at the present time [sic] that has been approved by the school board but does not have the approval of the voters in the school district. (Code 296.2);

Objection #3: We object to the School Board purchasing any property for a school building when they do not have the approval of the school district to build a new school building nor have the funds for such;

Objection #4: We object to the School Board's hiring of Attorney James Hanks to pursue opinions and not laws that do not address the needs of the school nor the wishes of the taxpayers in the School District.

Objection #5: We object to any actions made by the School Board that is [sic] solely based on an opinion by the Attorney General and not by the laws of the State of Iowa.

(Affidavit of Appeal 4-15-96.)

In addition to the State Board appeal, Walter Reinholdt and Wallace Sorensen¹ filed a petition for temporary injunction in the District Court for Woodbury County on May 6, 1996. (Exh. B.) Their petition was argued on May 9, 1996, and decided the next day. In denying the petitioners' request for a temporary and permanent injunction, the Court noted that "[h]ad Proposition A failed, chapter 75 specifically prohibits resubmitting within six months the Proposition 'or any proposal which incorporates any portion of the defeated proposal.'" Id. at 4. In contrast,

¹ They were joined by Marvin A. Norby who was not a party to the State Board appeal.

Proposition B contains no limitation on when the proposal can be resubmitted to the voters.² Therefore, the Court found:

no authority to impose a minimum time limit because the defeated Proposition B was on the same ballot as Proposition A. The Court concludes that Proposition A & B are distinct propositions. Plaintiffs' contention Proposition B cannot be resubmitted within six months of defeat is contrary to established law.

Id.

The election was held on May 14, 1996, and Proposition B was approved by the required 60% majority. (Exh. 12.) The objections raised by Appellant *Concerned Citizens* were brought to hearing on the 20th day of June, 1996, pursuant to Iowa Code chapter 290. The *Concerned Citizens* appealed to the State Board to stop the District from pursuing the construction of a new school building as approved by the voters of the District on December 19, 1995, and May 14, 1996.

Iowa Code Section 290.1(1995) provides for appeals to the State Board of Education by any "person aggrieved by a decision or order of the board of directors of a school corporation" The Standard of Review is *de novo*. The State Board "shall make such decision as may be just and equitable, which shall be final unless appealed from" Iowa Code Section 290.3. See, also, In re Jesse Bachman, 13 D.o.E. App. Dec. 363 (1996). "The decision shall be based on the Laws of the United States, State of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." 281-Iowa Administrative Code 6.11(2).

Evidence adduced at the appeal hearing persuaded the hearing panel that the District's actions at both the March 12, 1996, and April 11, 1996, board meetings were based upon the laws of the State of Iowa and in the best interest of education. For example, after the ambiguous election results of December 19, 1995, the District sought legal advice from counsel for the Board; bond counsel; and from the Iowa Attorney General's Office. The analysis of the legal issues involved resulted in consistent conclusions from all three resources. It was not even a close question: Question B could be resubmitted to the voters without waiting for six months and the voters' approval of Question B

² Except for the fact that the proposal cannot be resubmitted prior to the minimum period required for publication of notice.

would give the School District the authority to increase the school tax levy up to a maximum of \$4.05 per \$1,000.00 of assessed evaluation. Stated another way, while the passage of Question A on December 19, 1995, gave the School Board the "authority" to issue bonds up to \$5,075,000.00, the passage of Question B on May 14, 1996, gave the School Board the "means" to service such a debt. The ability of the Board to conduct the second election and to exercise its option to purchase real estate and proceed with the plans and specifications for the school project was also affirmed by the District Court for Woodbury County in its decision of May 10, 1996. Again, the District Board's actions were found to be legally justified under the provisions of both Iowa Code Section 75.1 and Iowa Code Section 298.18.

The position of the Appellant *Concerned Citizens* at the appeal hearing was that the District Board, assistant county attorney, and Judge James Scott (who issued the May 10th decision) improperly relied on the issuance of the Attorney General's Opinion. This was considered an error because the Opinion was not written by the Attorney General and was not a formal Opinion. Appellant contends that because the Opinion was an informal one, written by an assistant attorney general, as opposed to Tom Miller himself, it was not worthy of reliance.

We submit that if Appellant *Concerned Citizens* are not persuaded by the legal reasoning of a district court judge, the Attorney General's Office, and bond counsel for the District, they will not be persuaded by a decision of the State Board of Education that runs contrary to their personally held legal beliefs. However, there is no other decision for us to make. The District Board could not have been more thorough in its research of the legal issues raised by the December 19, 1995, election results. Therefore, we do not hesitate in affirming the actions of the District Board taken at both the March 12, 1996, meeting as well as the special meeting which was held on April 11, 1996.

All motions or objections not previously ruled upon are hereby denied.

III. DECISION

For the reasons discussed above, the decisions of the Lawton-Bronson Community School District's Board of Directors made on March 12, 1996 and April 11, 1996, are hereby recommended for affirmance. Any costs to be assessed in this appeal are assigned to the Appellant *Concerned Citizens*.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION