

the IHSAA, which may be amended by referendum of the members. A board of control is in charge of the affairs of IHSAA and may interpret its rules.¹ The purpose of the Association is "to promote, develop, direct, protect and regulate amateur interscholastic athletic relationships between member schools and to stimulate fair play, friendly rivalry, and good sportsmanship among contestants, schools, and communities throughout the State." See, Constitution and Bylaws of the IHSAA, Art. II (1994-95).

The IHSAA has for numerous years sponsored and administered interscholastic boys' swimming contests and competition among its member schools. Diving has been a scheduled event in those contests. In June 1993, following extensive research and study, the IHSAA Board of Control voted to discontinue diving from the interscholastic swimming program it sponsors when 40 percent (40%) of the participating swimming schools no longer had a diving program. In March of 1994, a survey showed that 42% of the IHSAA member schools having a swimming program did not intend to offer diving during the 1994-95 school year. Consistent with the administrative directive of the Board of Control, Executive Director Bernie Saggau, notified each member and associate member school that diving would be eliminated from interscholastic high school swimming competitions administered or sponsored by the IHSAA.

As a result of the March 24, 1994, notification regarding the elimination of diving from the swimming competition, all swimming schools planned their interscholastic swimming participation in the IHSAA administered and sponsored contests with the understanding that diving would not be a part of the 1994-95 program. The notification from Bernie Saggau requested each of the school administrators to notify their high school swimming coaches of the elimination of diving. There is no evidence or indication that any member school made any preparation for a diving program during the 1994-95 swim season. In addition, no member or associate member school appealed the decision of the Board of Control to eliminate diving from the swimming competition.²

¹This organization and operation of the IHSAA was tacitly recognized and approved by the Iowa Supreme Court in Bunger v. Iowa High School Athletic Association, 197 NW2d 555, 557 (Iowa 1972).

²The appeal procedure is outlined in the Constitution and Bylaws of the IHSAA (1994-95) as follows:

Any member or associate member school aggrieved by any ruling or decision of the IHSAA or its officers or employees may appeal therefrom by directing its superintendent of schools to state the basis of its objections in writing together with a request for oral hearing addressed to the executive director.

Art. V, Constitution and Bylaws. There is no appeal to the Director of the Department of Education or the State Board for this type of action. Only eligibility decisions can be appealed to the Department of Education. See, 281--IAC 36.17.

The first swimming competition after the elimination of the diving event, occurred during the 1994-95 swim season which began on November 28, 1994. Shortly after the commencement of the swim season, the Petitioners herein brought an action in Scott County District Court, seeking a temporary injunction restraining the IHSAA from terminating or eliminating diving as an event in the swimming program for member schools during the 1994-95 swimming season. At the same time, petitioners sought a Declaratory Judgement from the District Court that the Athletic Association had no authority to drop the diving event from the swimming program which it sponsors for high school boys. Representatives of the IHSAA filed a Motion to Dismiss Petitioners' action on the grounds that the Petitioners lacked standing to appeal the Board of Control's determination to drop diving as a sponsored activity. The District Court of Scott County dismissed Petitioners' action on December 21, 1994. In so doing, the Court stated in part:

It is, therefore, ORDERED that the Motion to Dismiss filed by Defendants is granted as the Plaintiffs lack standing as they are not the real parties in issue. . . . Furthermore, it appears that the sports season for diving will end in approximately two months. It has not been shown that Plaintiffs sought any relief until recently, even though the decision of Defendant not to administer boys' diving was made about ten months ago and was widely known, at least by schools and coaches. No schools have challenged the Defendant's decision. Even these Plaintiffs have known of such for several months. The result is that the various school boards have not kept or engaged coaches or done anything else which is necessary to have boys' diving as an event for the current season [referring to the 1994-95 season], and it is not shown that the schools will do so if Plaintiffs are successful here.

Doerder v. IHSAA, Case No. 87199 (Scott County December 21, 1994).

On January 18, 1995, Petitioners filed a Petition for Declaratory Ruling with the Iowa Department of Education. A meeting was held between the parties on January 25, 1995, as provided for by 281--Iowa Administrative Code 3.4. In their request for a ruling, Petitioners contend that the IHSAA Board of Control's action in February 1994

arbitrarily eliminated diving as an event in the boys' swimming program for member high schools. The regulation had the effect of removing diving as an event in all interscholastic swimming

competitions between member schools in district, conference and state tournaments within the State of Iowa. . . . This discretionary regulation adopted by the IHSAA exceeded the administrative/ministerial nature of the rules it is authorized to prescribe and implement pursuant to Iowa Code and the Iowa School Rules, and Iowa Law.

(Petition for Declaratory Ruling, paragraphs 15 and 16.)

In contrast, the IHSAA argues that

Registered organizations as contemplated by the legislature in Code §280.13 have the specialized expertise to administer extracurricular interscholastic athletic competitions and contests, and make the sort of decisions of which [Petitioners] are complaining.

(IHSAA Brief in Resistance to Application for Temporary Injunction, filed in Scott County District Court, p. 9.)

Legal and Historical Background of the IHSAA

The Iowa High School Athletic Association was formed at a meeting of superintendents and principals on December 28, 1904. The Association had its origin in the Iowa High School Principals' Club which had drafted a series of rules and regulations "for the general and definite control of high school athletics throughout the State." Constitution and Bylaws of the IHSAA (1994-95) at p. 75. Minutes of the Board of Control meetings have been kept since that time.

The first and only challenge to the IHSAA's authority as a governing organization occurred 68 years later in the case of Bunger v. IHSAA, 197 NW2d 555 (Iowa 1972). Bunger involved the validity of a good conduct rule which had been proposed by the IHSAA and adopted by its individual member schools. The rule in question rendered boys ineligible to participate in interscholastic athletics if found guilty of violating "the Beer Rule."³

The Iowa Supreme Court invalidated the IHSAA's good conduct rules because it found the Association lacked the necessary rule-making authority to promulgate such rules. The authority to provide for the "educational interests of the State is confided in the general assembly." Iowa Const., Art. IX, §15. Bunger at

³Other types of behavior were subject to discipline and sanctions but Bunger's specific challenge was to the so-called Beer Rule. This rule rendered a boy ineligible for various lengths of time if "found guilty of possession, consumption or transportation of alcoholic beverages or dangerous drugs. . . ."

559. The Court recognized the power of the legislature to delegate rulemaking authority to local school boards and the State Board of Education in order to "allow the board to make rules for its government and that of the ... pupils ... and require the performance of duties ... imposed by law and the rules." Id. The problem is, as the Court pointed out, that "a delegated power may not be further delegated by the person to whom such power is delegated, and that in all cases of delegated authority, where personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgement or discretion, the authority is purely personal and cannot be delegated to another unless there is a special power of substitution either expressed or necessarily implied." Bunger at 560 (citing to 2 Am. Jur.2d *Administrative Law*, §222 at 52.

Petitioners contend that the Board of Control's elimination of diving as an event in the swimming competition constituted the exercise of judgement and discretion reserved only for the State Board of Education's rulemaking authority. They analyze the elimination of diving as a sponsored activity to the IHSAA's decision to promulgate the "Beer Rule" that was challenged in the Bunger case. Petitioners contend that "[t]he elimination of diving as an event in boys' swimming competition is tantamount to the formulation of a discretionary rule altering the events of the sport, the scoring of the sport, and affecting eligibility." (Petition at par. 19.) Petitioners do concede, however, that the IHSAA is authorized, pursuant to the Administrative Rules promulgated by the State Board, to perform specific ministerial and administrative tasks which include:

[D]etermining the length of training periods in competition seasons for various sports; determining the number and type of state tournaments for various sports; schedule and conduct tournaments; and provide a final authority for determining the tournament eligibility for participants.

(Petition at par. 13.)

Nevertheless, Petitioners contend that the decision about whether or not to sponsor a given event or sport is beyond the authority of the IHSAA.

Conclusion

Petitioners' restrictive categorization of the function of the IHSAA would cripple high school athletics. The performance of the "specific ministerial and administrative tasks" which Petitioners concede the IHSAA is authorized to perform, all involve the exercise of some discretion and judgement on the part

of the Board of Control. The decision about whether or not to sponsor a specific sport or event within that sport does not differ significantly from the types of decisions just described. Even if there does not appear to be a clear case for deriving the authority to eliminate diving from the administrative rules, the Association's ability to do so could be derived from Iowa Code §280.13 which provides such authority by implication:

A public school shall not participate in or allow students representing a public school to participate in any extracurricular interscholastic athletic contest or competition which is sponsored or administered by an organization

Id. (Emphasis added.) By implication, therefore, the IHSAA, as an organization defined and meeting all of the criteria described by Iowa Code §280.13, has the ability to decide what to sponsor or, by implication, what not to sponsor, in interscholastic competitions.

Further support for this authority is evidenced by the history of the Association's practice in this regard. On at least seven occasions since the decision was rendered in the Bunger case, the IHSAA has acted to either sponsor or de-sanction a specific event or sport:

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| June 1972 | The Board of Control decided to terminate the State Indoor Track meets, the State Spring Baseball tournament, and the State Pentathlon meets. |
| June 1974 | The Board of Control decided to eliminate the State one-mile team race and to have a two-day State Golf Tournament. |
| June 1976 | The Board of Control voted to discontinue sponsorship of the State Gymnastics Meet after the 1976-1977 school year. |
| June 1983 | The Board of Control eliminated the sanctioning of the Pole Vault Event at the 7th/8th grade level at the end of the 1982-83 school year. |
| October 1985 | The Board of Control decided to no longer sponsor a State Series of Tournaments for Fall Baseball. |
| October 1987 | The Board of Control voted to change the boys' Cross-Country run distance from 2 miles to 5,000 meters. |

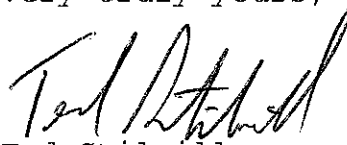
December 1992 The Board of Control officially sanctioned soccer starting with the 1993-94 school year.

Constitution and Bylaws of the IHSAA (1994-95) pp. 75-91.

The Board of Control of the IHSAA is the body most knowledgeable about which sports should be sanctioned and sponsored by the Association. That nine-member body is comprised of coaches, athletic directors, principals and superintendents who are the people most knowledgeable about the successful administration of interscholastic athletics. Certainly the State Board of Education cannot be expected to determine the types of sports and sporting events which are sponsored by the Athletic Association. That is why the State Board and the Athletic Association entered into a 28E Agreement by which the day-to-day operation, scheduling and administration of the sports programs were delegated to the Board of Control of the Iowa High School Athletic Association. The State Board saw fit to defer to the expertise of this body in making these decisions when that 28E Agreement was executed over 24 years ago; there appears to be no valid reason to disturb that relationship now.

There appears to be no reason to conclude that the Board of Control of the IHSAA lacks the authority to notify its members that diving would no longer be an event in sponsored swimming competitions effective during the 1994-95 school year.

Very truly yours,



Ted Stilwill
Acting Director

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