IOWA STATE BOARD
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 46)

In re Mike Luse	:	
Mike Luse, Appellant,	:	
v.	:	DECISION
Southeast Warren Community School District, Appellee.	:	[Admin. Doc. #3127]

The above-captioned matter was heard on July 25, 1991, before a hearing panel comprising Billie Jean Snyder, consultant, Bureau of School Administration and Accreditation; Mr. James Tyson, consultant, Bureau of School Administration and Accreditation; and Kathy L. Collins, legal consultant and designated administrative law judge, presiding. Appellant Mike Luse was present in person, unrepresented by counsel. Appellee Southeast Warren Community School District [hereafter the District] was present in the persons of Superintendent Thomas Behounek and directors Ken Keeney and Gerald Junkins, and was represented by Ed McIntosh of Dorsey & Whitney, Des Moines.

An evidentiary hearing was held pursuant to departmental regulations found at 281 Iowa Administrative Code 6. Appellant timely appealed a decision of the board of directors [hereafter the Board] of the District made on June 4, 1991, to place two petitions on the ballot regarding the site for a new elementary attendance center. Authority and jurisdiction for the appeal are found at Iowa Code chapter 290.

I.
Findings of Fact

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.

The District lies in south central Iowa and encompasses, appropriately, the southeast corner of Warren County, jutting into a northern part of Lucas County. The District includes the towns of Milo, Lacona, and Liberty Center. Currently there are elementary schools in Milo (kindergarten through third grades) and Lacona (fourth through sixth grades), and the junior-senior high school, built in 1971, is located in Liberty Center. The District is arguably in need of a new elementary attendance center which would combine all elementary students into one building. The battle has waged since 1987 over whether a new elementary school should be built, and if so, (more to the point of the battle) where. Predictably, in a school district with three towns, there is a split as to where a new attendance center should be built. The controversy, however, has focused on either a Milo site or a Liberty

Center site. Because no single resolution has received enough votes (60 percent of those voting) in four separate elections, no attendance center has been approved or built.

Studies by the Department of [then] Public Instruction in 1982 and 1985 recommended a "central" site for the proposed elementary attendance center. Liberty Center is approximately equidistant from Milo and Lacona. Appellant and others formed the Central Site Committee advocating Liberty Center as the location for the new elementary school.

In population, Liberty Center is the smallest town of the three, with approximately 120 residents. Lacona's population is around 370, and Milo residents number 900.

In October, 1989, two measures were placed on the ballot. Proposition A asked the voters whether the District should incur indebtedness and issue bonds in the amount of $1,925,000 "to provide funds to defray the cost of a new elementary building"? Appellant's Exhibit 1. No site was mentioned, but all who testified stated that the assumption held by "everyone" was that if Proposition A passed, the site would be Milo. This assumption may have stemmed from the knowledge that if no site was mentioned, the Board has the power to declare the site, and the majority of directors at the time were believed to favor a Milo site and had purchased 15.5 acres in Milo adjacent to the current school site.

The second proposition (B) on the ballot asked the voters to approve the use of existing money in the schoolhouse fund remaining after the sale of bonds from a 1969 election for the building of a high school. Propositions A and B failed, falling over 10 percent short of the needed 60 percent. Appellant's Exhibit 7.

The next election was held in May, 1990, and included two elementary building propositions (A and B) along with two other spending and indebtedness propositions. Appellant's Exhibit 9. The two issues related directly to building an elementary school; Proposition A asked for a $2,900,000 bond issue to build in Milo, and Proposition B asked for $2,400,000 to build in Liberty Center. Id. The Milo site drew 53 percent voter support and the Liberty Center site drew 49 percent approval. Id. Thus, neither passed. The voters did approve the two propositions related to a bond tax and the application of proceeds from the 1969 bond issuance to the new elementary attendance center, so the stage was set. All that remained to be done was to pass a specific bond issue for a given amount to build an elementary attendance center.[1]

In November, 1990, the voters tried again. Three measures with sites appeared on the ballot asking for a new elementary attendance center. The first proposed $3,900,000 for two elementary buildings at Milo and Lacona, the existing sites. Appellant's Exhibit 8. It drew only seven percent voter support. Id. The second proposed $2,750,000 for a site in Liberty Center. It fell 15 percent short of passage. Id. The third proposition asked whether $2,900,000 should be spent for an elementary school in Milo. Id. It failed by only three percent. Id.

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[1] County Auditor Beverly Dickerson, who also is county commissioner of elections, testified at hearing that placing multiple sites on a school bond election ballot is unusual, and that the law doesn't require that a location even be included in the proposition.

Appellant and others were understandably frustrated at this point. They met as a large group with the Board. Then they tried unsuccessfully to convince the Board to put only one issue on the ballot for the next election. Lacona resident and central site committee member Janet Bauer discovered two days after the November 27 election that a special Board meeting was being held on November 30 for the purpose of setting a date for the next election. She and her committee had not submitted a petition for another election, so the posted agenda and special meeting notice implied to her that the Milo site supporters may have already submitted a position. Not wanting to have their site excluded from the voting process, she and her fellow committee members circulated two petitions for signatures. The first sought a bond issuance for the purpose of building an elementary attendance center in Liberty Center. The second asked that an election be held in six months and that the Liberty Center proposal be the only proposition on the ballot.

At the November 30, 1990, Board meeting, the Board received all three petitions[2], but the directors refused to act on any of them at the time, instead scheduling another meeting for December 3. At that meeting, which was held on December 5 due to poor weather on the 3rd, the Board indicated it was the advice of its attorney to combine the two "central site" petitions. However, the Board did not agree to place only the Liberty Center petition on the ballot. It also accepted the no-site petition and set an election for May of 1991.

Mrs. Bauer then learned or discovered that the no-site petition did not contain the proper number of signatures, and this fact was brought to the Board's attention. The central site advocates' renewed hopes of being the only proposition on the ballot were dashed, however, when the Board set another special meeting (December 10) at which time they rejected the faulty petition but also accepted a substitute, corrected petition submitted by the Milo site advocates. The election was set for May 28, 1991.

That election not only failed to produce a passed bond issue, but it resulted in such irregularities that a challenge was issued to the unofficial results. The final tally indicated 49.56 percent of the voters voted yes for a $2,750,000 bond issue to build in Liberty Center, and 54.27 percent of them voted yes for a $2,900,000 proposition to build an elementary building without a stated site limitation.

Anticipating the possibility of nonpassage of either issue, the central site committee began to garner signatures to another petition for a Liberty Center elementary building even before the May 28 election. This petition, as had the previous one, asked that only one proposition be placed upon the ballot and that an election be scheduled for six months after the May 28, 1991 election. The petition was presented to the Board president on May 8, in the hope that it would be acted upon at the next board meeting, May 14. In the meantime, predictably, another petition appeared and then a third: the dual-site proposition that had only gathered 7 percent approval at the November, 1990 election was resurrected. Three directors (Dittmer, Griggs, and Greufe) had signed the dual-site petition. Appellant and Mrs. Bauer saw this third petition as

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[2] Milo proponents had indeed circulated a petition as Mrs. Bauer suspected, but the petition did not state a site.

being designed solely to pull support from the Liberty Center proposition. They also suggested at hearing, but did not claim, that it was inappropriate or improper for board members to sign a petition such as this.

At the June 4 special board meeting, the Board's attorney advised the directors that the preamble language in the Liberty Center petition was not binding on the Board, so they could ignore the language requesting (demanding) sole placement on the ballot. The attorney also advised the Board that it was the Board's call on taking the petitions in the order in which they came or accepting all of them. The Board voted 4-1 to accept all three petitions, subject to the necessity of even holding an election as the official results of the May 28 election had not been certified. The possibility existed that a recount would result in passage of one of the propositions.

From this decision Appellant appealed on behalf of himself and other citizens who signed the petition. The relief sought as a result of the hearing is for the State Board to order that the central site proposition be placed on the ballot at the next election.

Testimony at the hearing from County Auditor Dickerson established that the cost of a routine school bond election is $600-$700 per precinct. As there are three precincts in the District, the cost -- if unchallenged or uncontested -- of each election has been approximately $2,000 of District funds. Thus, since late October, 1989, the District has already expended close to $10,000 to resolve this issue, with another election scheduled before the conclusion of 1991.

The District is not seriously considering whole-grade sharing with any other districts in the near future.

II.
Conclusions of Law

The statutory process of bonded indebtedness is found at Iowa Code section 296.2, which reads as follows:

> Before indebtedness can be contracted in excess of one and one-quarter percent of the assessed value of the taxable property, a petition signed by a number equal to twenty-five percent of those voting at the last election of school officials shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose or purposes for which the indebtedness is to be created, and that the purpose or purposes cannot be accomplished within the limit of one and one-quarter percent of the valuation. The petition may request the calling of an election on one or more propositions and a proposition may include one or more purposes.

The purposes for which a school district may contract bonded indebtedness include the building of a school. Iowa Code §296.1 (1991). A school board can refuse a petition only if the required legalities are not met, or if the proposition "is grossly unrealistic or contrary to the needs of the school district." Iowa Code §296.3 (1991).

The issue before the hearing panel and State Board of Education is whether the Board's action of refusing to place Appellant's petition alone on the ballot of an upcoming election is an abuse of the Board's discretion. Appellant supports this allegation of abuse of discretion by pointing to the fact that each time petitions have been presented, Appellant's Liberty Center petition has been the first given to the Board and that Appellant (and the central site committee) has twice asked that this petition be placed alone.

There is little guidance in Iowa law to support Appellant's viewpoint on this exact issue. He referred the panel to two letter opinions of the state attorney general's office, dated May 4, 1981, and June 13, 1989. The earlier opinion concludes that a board of education has discretion to place two issues on the ballot governing the same proposition, and cited an Iowa case for an example of an abuse of discretion.

In Gibson v. Winterset, the Iowa Supreme Court found that a school board that had rejected a voter-initiated petition for a $500,000 bond issue in favor of running its own $800,000+ bond issue four times, despite repeated defeat, had abused its discretion. Gibson v. Winterset, 258 Iowa 445, ___, 138 N.W.2d 112, 115 (1965). Of course, that case is authority for the proposition that a school board cannot ignore a valid petition presented timely in favor of its own petition, a situation dissimilar to the one before us today. The 1981 Attorney General's (letter) opinion states,

> In effect, the court [in Gibson] seemed to be saying that there is great discretion that lies within the school board to present the issues in any rational order they so select. The board may, if it wishes, present both bond issues at once or the board may make a rational determination . . . to present the first bond issue and if that fails, to present the second. Consequently, it is our opinion that it is legal to have two separate referendum questions submitted on a single ballot, or the board may present one bond issue prior to the other, and if the first fails, they must timely submit the second ballot or face a potential mandamus action for arbitrary and capricious action.

1982 O.A.G. 108 (Hagen to Deluhery, #81-5-3L).

The second cited opinion is closer on point because it was sought at the time the citizens of Ballard Community School District, which contains the towns of Cambridge, Huxley, Kelley, and Slater, were facing a

situation extraordinarily similar to the facts before us in this case.[3] Four questions were submitted for Attorney General opinion, one of which is pertinent here. Ames Representative Teresa Garman asked, "When a school district receives two or more petitions which satisfy the requirements of section 296.2, in what order must the Board act on such petitions? . . ." The answer was that the school board "must schedule elections on multiple properly-filed petitions in the order the petitions are filed...[and] scheduling the election date within ten days of receipt is a mandatory duty . . . ." 1990 O.A.G. 25 (Donner to Garman, #89-6-5(L)).

Appellant cites this language as authority for the proposition he espouses: that the Board, receiving his petition first, should set it first, and alone. The problem with this application of the above-quoted language is that the opinion was written on the facts in Ballard, where the separate petitions were not filed on the same date as in this case, but came in several days apart. The difference is significant. If a meeting must be called within ten days of receipt of a valid petition and the petition is accepted and forwarded to the county commissioner of elections for placement on the ballot, a subsequent petition coming in days later is a second issue. The opinion continues, "[I]f there is an election on a similar provision already scheduled, the board's scheduling of the second election can be contingent upon the failure of the first."

The District officials testified that one reason for the directors' insistence upon placing both propositions on the ballot was to be consistent. They had always done so when the petitions were contemporaneously presented, and perhaps feared being accused of arbitrariness or favoritism if they rejected one petition for the next election. Consistency is certainly an appropriate basis for decisionmaking. It belies a claim of capricious action, for "arbitrary" and "capricious" are nearly synonymous terms that mean devoid of reason, marked by an absence of rationality. In effect, so long as there is a valid logical basis for making a decision, it cannot be said to be arbitrary and capricious.

While the hearing panel may not agree with the Board's position that having only one proposal on the ballot won't resolve this issue, we have no basis on which to overturn the Board. It seems to us the better approach would be to place a single issue on the ballot and if it fails, to follow it with another single issue ballot. That has the potential, of course, of extending to one year the time it takes to pass a bond issue (assuming one proposition or the other would pass), but even Appellant and his central site committee members agreed that if the voters reject Liberty Center, the central site advocates would then support the Milo proposition on the next ballot. The important fact is the need for an elementary school in the District.

Our job is not to substitute our judgment for that of the duly elected officials of the District; the State Board does not sit as a "super school board" on matters of purely local interest. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1986).

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[3] Separate petitions were received by the Ballard board with all three petitions containing differing dollar amounts and two of the three having multiple sites, all following a defeated bond issue for an elementary school or schools in two towns.

Any motions or objections not previously ruled on are hereby denied and overruled.

III. Decision

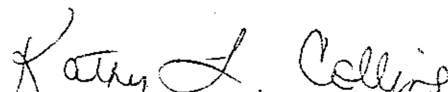
For the foregoing reasons, the decision of the board of directors of Southeast Warren Community School District made on June 4, 1991, is hereby affirmed. Costs of this appeal, if any, are to be certified pursuant to Iowa Code section 290.4 and are assigned to Appellant.

Appeal dismissed.

9-13-91
DATE

RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

September 4, 1991
DATE



KATHY L. COLLINS, J.D.
LEGAL CONSULTANT AND
ADMINISTRATIVE LAW JUDGE