

IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 244)

In re Linda Pickering :
Linda Pickering, :
Appellant, :
v. : DECISION
Carlisle Community School :
District Board of Directors, :
Appellee. ----- [Admin. Doc. #2061] -----

The above-captioned matter was heard on October 6, 1989, before a hearing panel composed of Mr. David H. Bechtel, special assistant to the Director of Education, and presiding officer at the designation of the Director; Mr. Robert Yeager, chief, Bureau of Area Colleges; and Dr. Joseph Wolvek, consultant, Bureau of Planning, Research and Evaluation. Appellant was present in person and represented by Ms. Jennie Flaherty, an administrative law judge with the Iowa Department of Inspections and Appeals. Appellee Carlisle Community School District Board of Directors [hereafter the District Board] was present in the person of Superintendent Dean Turner, and was represented by Ms. Kathleen Reimer.

An evidentiary hearing was held pursuant to Iowa Code chapter 290 and departmental hearing procedures found at Iowa Administrative Code 281--6. Appellant timely appealed a decision of the District Board, made at a special meeting on August 15, 1989, "to approve the proposed plan to build an administration building with basement."

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and the subject matter of the appeal now before them under Iowa Code chapter 290.

In early August of this year, a discussion item appeared on the District Board's agenda for August 8, characterized as "Construction II Project." The directors were advised of a proposal by Superintendent Turner to allow the District's high school building trades class to erect a new school administration building based upon preliminary drawings and cost estimates by the building trades instructor, Mr. Wayne Fleishman. After some discussion, a special meeting was set for August 15, 1989, for the District Board to vote on the project.

Only the Board President, Carroll Hunter, and two of the remaining four directors were present to vote at the special meeting. On a 2-1 vote, the Board approved the proposal, specifying that the building would

include a basement, one of the options they were given by the Superintendent based upon Mr. Fleishman's sketches and estimates. No directives were made regarding compliance with Iowa Code chapter 23 related to public improvements. The applicability of chapter 23 is at issue in this case.

Some concerned citizens contacted Superintendent Turner, the Department of Education, and possibly other sources in an attempt to determine whether the District must comply with chapter 23 under the circumstances present here, where the project would be built primarily with the so-called "67 1/2 cent levy," the schoolhouse fund, supplemented by approximately \$11,700¹ to come from the site levy fund. Superintendent Turner also attempted to obtain clear answers to the questions raised by Appellant and others, but no source contacted was able to say with certainty that chapter 23 applied, that a school building could be erected by students with the District in the role of general contractor or "project manager," or that the expenditure from the site levy was appropriate under the circumstances. Although the instructor and superintendent originally believed construction could be started as soon as school was in session in early September, Superintendent Turner proposed delaying construction until these issues could be resolved. The District Board voted on September 19, 1989, to stay all construction until the appeals were final.²

In prior years, the building trades class had been involved in the construction of the Carlisle Public Library (1980 or 1981), donating the labor, to build the library, and had built some ten individual homes and done a number of smaller projects in the community. The public relations benefits and good will that accrued to the District as a result of the students' work, particularly on the library project, was remarkable, and a desire for a resurgence of that positive feeling lay in part at the base of the plan this time.

Mr. Fleishman knew, of course, that there would be a number of projects associated with the construction of the new administration building that his students would be unable to perform. Those projects were to be let for bids. The total project was broken down by Mr. Fleishman into some seventeen separate contracts, each under \$25,000 per his estimate. See Appellee's Exhibit 11. However, the total cost of the building, even if built by the students, is an estimated \$147,825, but may easily total between \$129,000 and \$140,000. The parties agree that the total cost of the project clearly exceeds \$25,000.

Mr. Fleishman, the building trades instructor, has had his own construction business in Carlisle with another contractor for

¹ Initially, Mr. Fleishman believed that site improvements would cost \$30,000, but that figure was subsequently reduced to \$11,700.

² In addition to her appeal here, Appellant, Ms. Flaherty, and other Carlisle citizens also filed a Petition with the State Appeal Board as contemplated by Iowa Code section 23.3. A hearing was held on September 21, 1989, resulting in a decision on October 17, 1989, ordering the District to conduct a public hearing on the proposed construction prior to letting bids or undertaking construction, and to obtain voter approval before spending site funds for building construction.

approximately 10 years. He was aware that his preliminary plans would be insufficient to build the administration building, so he contacted Mr. Robert Brierly, with Brierly Architects of Des Moines, who has worked for the District on several occasions over the past 35 years. Mr. Brierly would complete the blueprints for the project and make certain the plans met Code specifications related to, for example, handicapped accessibility, fire exits, etc. At the time of the hearing, these specifications had not been completed,³ but Mr. Brierly testified that he believes Mr. Fleishman's individual and total estimates were reasonable.

Mr. Brierly also responded to questions regarding a school district serving as its own general contractor and answered that he had never heard of a school being a general contractor, but acknowledged that the "project manager" (a term the Appellee characterized as synonymous with "general contractor") is often the owner of the land or building to be built, and that neither law nor practice within the construction profession requires any qualifications for that position. He also testified that to his knowledge, no bond would be posted by the school for this project, and that no bond was posted by the District on the community library in 1980-81. The purpose of the bond-posting requirement, he believed, is to protect the owner against the failure or default by the contractor.

On September 10, Superintendent Turner submitted the preliminary plans for the building project to the Department of Education for review pursuant to Iowa Code section 297.7, although in August District representatives admitted to Ms. Flaherty, Appellant's representative in this hearing, that the construction would be undertaken in late August or early September.

II. Conclusions of Law

Appellant raised two issues in her affidavit and at hearing: Whether Iowa Code chapter 23 applies to student-constructed public buildings, and whether the planned expenditure of \$11,700 (or thereabouts) from the site fund required a vote of the people of the District.

At the outset, we note that the State Appeal Board, in its ruling on October 17, concluded that the answers to both questions above are in the affirmative. The Appeal Board issued the following order:

The State Appeal Board orders the Carlisle Community School District to conduct a public hearing on the proposed construction project, as required by section 23.2, before the School District begins the bid letting procedures and before construction starts. The State Appeal Board also orders the School District to follow the prescribed bidding requirements as provided in section 23.18, The Code. Further, the State Appeal Board orders the Carlisle Community School District to obtain voter approval before site funds are used to construct the proposed administrative building.

³ The plans for the site development were completed by this witness or his firm.

Order of State Appeal Board, page 6.⁴

A. Does Chapter 23 apply to the facts of this case?
 In the school laws of Iowa (Title XII), one chapter entitled
 "Schoolhouses and Schoolhouse Sites" states as follows, in pertinent part:

Construction, renovation and repair of school
 buildings -- review of plans -- aviation programs.

1. Sections 23.2 and 23.18 are applicable to the
 construction and repair of school buildings. Before
 construction of a school building for which the cost of
 construction exceeds twenty-five thousand dollars, the
 board of directors of a school district shall send a
 copy of the plans to the building consultant in the
 department of education for review. . . .

Iowa Code §297.7(1) (1989). The clear import of this section is to direct
 the District to chapter 23, specifically sections .2 and .18. Those
 provisions read as follows:

Notice of hearing.

Before any municipality shall enter into any contract
 for any public improvement to cost twenty-five thousand
 dollars or more, the governing body proposing to make
 the contract shall adopt proposed plans and
 specifications and proposed form of contract, fix a
 time and place for hearing at the municipality affected
 or other nearby convenient place, and give notice by
 publication in at least one newspaper of general
 circulation in the municipality at least ten days
 before the hearing.

Iowa Code §23.2 (1989). (A "public improvement" is defined in section
 23.1 to mean "a building or other construction work to be paid for in
 whole or in part by the use of funds of any municipality." Iowa Code
 §23.1 (1989). "Municipality" includes a school district. Id.)

When bids required -- advertisement -- deposit.

When the estimated total cost of construction,
 erection, demolition, alteration or repair of a public
 improvement exceeds twenty-five thousand dollars, the
 municipality shall advertise for bids on the proposed
 improvement by two publications in a newspaper

⁴ The panel and State Board hereby notify the parties in this case that
 we intend to take official notice of the Order of the State Appeal Board
 issued on October 17, 1989, involving the identical questions before
 this panel. The authority for this lies in Iowa Code section
 17A.14(4). We also make the determination at this time that fairness to
 the parties does not require giving them an opportunity to contest the
 fact of official notice taking. The order is a matter of public record,
 and our decision herein refers to but does not necessarily agree in all
 aspects with the Order. We do not believe the Appeal Board's findings
 and conclusions are binding on the State Board of Education in its
 determination of these issues.

published in the county in which the work is to be done. The first advertisement for bids shall not be less than fifteen days prior to the date set for receiving bids. The municipality shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if in the judgment of the municipality bids received are not acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied, in a separate envelope, by a deposit of money or a certified check or credit union certified share draft in an amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The municipality shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks, share drafts or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check, share draft or deposit of money of the successful bidder shall be returned upon execution of the contract documents. This section does not apply to the construction, erection, demolition, alteration or repair of a public improvement when the contracting procedure for the doing of the work is provided for in another provision of law.

Iowa Code §23.18 (1989)(emphasis added).

Although another Code section deals with student-constructed buildings, there is no language establishing a separate "procedure for the doing of the work" in that Code provision. See Iowa Code §297.22 (1989) (. . . "The board of directors of a school corporation may sell, lease, or dispose of a student-constructed building . . . and may purchase sites for the erection of additional structures, by any procedure which is adopted by the board.) Thus, although Iowa law recognizes the practice of having students build houses or other buildings, there is no specific authority to bypass the bidding and advertising laws or the public hearing requirement of chapter 23.

We therefore conclude as a matter of law, as did the State Appeal Board, that this project is not exempt from the public hearing or other legal requirements related to public improvements, and that the District Board needs to follow those procedures. Accord, Istari Constr., Inc. v. City of Muscatine, 330 N.W.2d 798 (Iowa 1983); West Harrison Community School v. Board of Pub. Instruction, 347 N.W.2d 684 (Iowa App. 1984).

B. Does Iowa Code section 297.5 require a vote of the people of Carlisle before the site levy funds can be expended for this project?

As noted above, the State Appeal Board concluded that such a vote would be necessary "before site funds are used to construct the proposed administration building." We agree with that proposition to the extent that it is limited by the use of funds "to construct the . . . building." Section 297.5 reads, in pertinent part, as follows:

Tax.

The directors in a high school district maintaining a program kindergarten through grade twelve may, by March 15 of each year certify an amount not exceeding twenty-seven cents per thousand dollars of assessed value to the board of supervisors, who shall levy the amount so certified, and the tax so levied shall be placed in the schoolhouse fund to be used for the purchase and improvement of sites or for major building repairs. Any funds expended by a school district for new construction of school buildings or school administration buildings must first be approved by the voters of the district.

For the purpose of this section, "improvement of sites" includes: Grading, landscaping, seeding and planting of shrubs and trees; constructing new sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; original surfacing and soil treatment of athletic fields and tennis courts; furnishing and installing for the first time, flagpoles, gateways, fences and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for capital improvements such as streets, curbs, and drains.

Iowa Code §297.5 (1989).

We read this section to permit the District Board to expend site funds without a vote of the people if the funds are spent exclusively for "improvement of sites." The \$11,700 proposed to be spent from this fund for this project is limited to those purposes laid out in the definition of "improvement of sites." Only if the District Board uses the site fund for "new construction" is a vote required. 1984 Op. Att'y Gen. 17. Grading, sidewalks, retaining walls, sewers, and underground storage tanks (if installed for the first time) are permissible uses of the site fund without a vote of the people. Under the circumstances, the District Board would be wise to take great precautions in determining for what items site funds will be used.

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

III.
Decision

For the foregoing reasons, the decision made by the Carlisle Community School Board of Directors on August 15, 1989, to approve the construction

of a new administration building is affirmed as modified by this decision. Costs of this appeal under chapter 290, if any, are hereby assigned to Appellee.

December 15, 1989
DATE

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

Dec. 7, 1989
DATE

David H. Bechtel
DAVID H. BECHTEL, SPECIAL ASSISTANT
TO THE DIRECTOR
AND PRESIDING OFFICER