



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF EDUCATION
AL RAMIREZ, Ed D, DIRECTOR

Declaratory Ruling #45
(Cite as 5 D.o.E. Decl. Rul. 47)

July 14, 1994

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Dear Mr. Gruhn:

On June 20, 1994, the Department of Education received your Petition for Declaratory Ruling filed on behalf of the Colo-Nesco Community School District Board of Directors. The petition presents a series of questions relating to the election of directors for this recently reorganized school district. An informal meeting between representatives of the District and Department staff was held on June 30, 1994, to discuss the issues, pursuant to Iowa Administrative Code 281--3.4.

I. Facts

The relevant facts upon which the Petition for Declaratory Ruling was requested and on which the Ruling itself is based are as follows:

- a. A petition for the reorganization and merger of the Colo Community School District and the Nesco Community School District was filed with the Heartland Area Education Agency in the spring of 1990, pursuant to Iowa Code section 275.12. The petition provided for selection of the initial Board of Directors of the reorganized (Colo-Nesco) school district from the ranks of the existing boards of the two districts, pursuant to Code section 275.41(2). The Petition also provided that regular elections of the new Board would be conducted pursuant to the apportionment method set forth in Code section 275.12(2)(c), with three directors being residents of each of two director districts, the seventh director being a resident

of either district, and all directors being elected at large.

- b. No objections to the reorganization were filed with the Area Education Agency and the proposal was approved by a majority of the electors of both districts at a special election conducted on May 15, 1990. Pursuant to Iowa Code section 275.24, the reorganization became effective July 1, 1991.
- c. On June 18, 1990, following the reorganization election, the boards of directors of the Colo and Nesco districts met separately to select representatives for the initial Colo-Nesco Board. The Colo board selected: one director to serve a term expiring in September of 1992, two directors to serve terms expiring in September 1993, and one ("at large") director to serve a term expiring in September 1994. The Nesco board selected: one director to serve through September 1992, and two directors to serve through September 1993.
- d. In September of 1992, at the second regular school election following the reorganization, two board members, each a resident of a different director district, were elected to serve three-year terms on the regular board of the Colo-Nesco Board.
- e. In September of 1993, at the third regular school election following the reorganization, four board members, two residents of each director district, were elected to serve on the regular board of the Colo-Nesco Board. No designation of the term of office to which these board members were elected was made on the nomination papers or ballot for this election. The certificates of election issued to each of the four directors indicated election to serve a regular three-year term.
- f. As a result of the failure to designate two of the director seats filled in the September 1993 election to serve one-year terms, the Colo-Nesco Board has a 1-2-4 board rotation. (The at-large directors' term will expire in 1994, the terms of the two directors elected in 1992 will expire in 1995, and the terms of the four directors elected in 1993 will expire in 1996.
- g. A number of the current members of the Colo-Nesco Board have expressed their belief that it was the intent of the boards at the time of the reorganization to establish a 1-2-4 rotation, so

that the "at-large" director seat would stand alone on the ballot every third year.

II. Controlling Statute

In recent months, a question has arisen regarding whether the September 1993 election was in compliance with the applicable requirements of Iowa Code section 275.41, as in place at the time of the reorganization.¹ Specifically, Code section 275.41(7) provided that:

At the third regular school election held after the effective date of merger, if a five-member board is specified in the reorganization petition, two directors shall be elected in the manner specified in the reorganization petition and if a seven-member board is specified in the reorganization petition, four directors shall be elected, two for one-year terms and two for three-year terms, in the manner specified in the reorganization petition.

(emphasis added).

III. Issues presented

The issues presented in your Petition are as follows:

1. Is it possible for the Board of Directors of the Colo-Nesco Community School District to take no action with regard to the possible error that was made in the September, 1993 regular school board election, thereby preserving a rotation of the school board directors that would be two to be elected one year (one from each Director District), four to be elected the next year (two from each Director District), and one to be elected at every third year (from either Director District)?
2. If it is inappropriate for the board to retain a 2-4-1 rotation of school board members, then is it appropriate for the Board of directors, prior to

¹ Code section 275.41 was amended in 1993, to allow the initial board of a reorganized school district to establish a plan for staggering the election of board members. Because this amendment took place after the effective date of the Colo-Nesco reorganization, we find it inapplicable to the case at hand.

- the September, 1994 election, to themselves determine the length of the term of office of each of the directors elected in September, 1993, by assigning the longest terms to the biggest vote-getters . . . ?
3. If it is not possible for the Colo-Nesco Community School District Board of Directors to decide the length of the school board member terms in question on the basis of votes cast in 1993, then is it appropriate for such Board to declare that the terms of office of all directors elected in September, 1993, were one year and place all four of those positions on the ballot in September, 1994, specifying that one from each of the Director Districts will be elected for a term of two years and one from each of the Director Districts will be elected for a term of three years?
 4. If the methods outlined in 1, 2, and 3 above are inappropriate, would it be appropriate for the Board of Directors of the Colo-Nesco Community School District to determine the length of the four terms of office for the directors elected in September, 1993, by the presentation of arguments to a neutral party (such as an arbitrator) the Board having previously agreed to be bound by such a neutral's decision?
 5. If none of the methods outlined above are appropriate courses for action for the Colo-Nesco Community School District Board of Directors to take, what is the method this Board should use to rectify the possible error that was made at the regular school board election September, 1993?

The questions have been presented in order of the Petitioners' preferred course of action and have been set forth so that an affirmative response to one of the first four questions eliminates the need to address the remaining questions.

IV. Conclusions of Law

As noted above, the Colo-Nesco reorganization became effective on July 1, 1991. Therefore, the regular school election held in September of 1993 was "the third regular school election held after the effective date of the merger." Pursuant to Iowa Code section 275.41(7)(1991), four directors should have been elected in the September 1993 election, "two for one-year

terms and two for three-year terms." While four seats were filled in the September 1993 election, no designation of the terms for which candidates were running was made. Apparently, all of the directors elected in 1993 assumed they were running for, and were issued election certificates indicating they had been elected to serve, three year terms. As a result, the board currently has a 1-2-4 rotation.

I find that the failure to designate two of the four seats filled in 1993 to be for one-year terms was in error.² In light of this, I turn to the Petitioners' first inquiry, may the current board retain the 1-2-4 rotation despite the fact that it was established in violation of section 275.41(7) and conclude that they may not. If section 275.41(7) had been followed at the time of the September 1993 election, the result would have been a 3-2-2 rotation of the election of the seven board members. (The terms of the initial at-large director and two of the directors elected in 1993 would have expired in September 1994, the terms of the two directors elected in 1992 would have expired in 1995, and the terms of the other two directors elected in 1993 would have expired in 1996).

Review of related provisions of chapter 275 convinces me that the legislature intended for the staggering of terms of office to be as balanced as possible. In fact, it appears that all similar provisions result, as nearly as possible, in a balanced rotation of director seats. See Iowa Code § 275.25(3) (alternative provision to § 275.41 which establishes a 3-2-2 rotation in the event that all directors are elected at a special election following a school district reorganization); Iowa Code § 275.37 (allowing for an increase in the number of directors of a school district from five to seven and requiring that a one or two year term of office be assigned to a newly elected director "if necessary in order that as nearly as possible one-third of the members of the board shall be elected each year"); Iowa Code § 275.41(3) (1993) (provision adopted in 1993 which allows the initial board of a reorganized district to approve a plan for the regular election of directors which requires "that as nearly as possible one-third of the members of the board shall be elected each year. . .").

² I do not believe, however, that the failure of election officials to designate terms of office for the director seats for the September 1993 election invalidates the election itself. See Good v. Crouch, 397 N.W.2d 757, 762-63 (Iowa 1986) (holding that pre-election error in designating term of office and error in identifying the term on the certificate of election were irregularities in the election process which did not invalidate the result of the election).

Because the legislature has clearly required a 3-2-2 rotation of the election of directors on a seven member school board, I conclude that continuation of the 1-2-4 rotation now in place in the Colo-Nesco district is not an acceptable alternative. Having done so, examination of your suggested methods for regaining a balance in the rotation of the board is necessary. Before doing so, I note that neither Code chapter 275, nor any other provision of the Code which we have located, directly provides a procedure applicable to this situation. I will, therefore, consider the alternative set forth in your Petition sequentially, turning to analogous statutory provisions for guidance when possible.

You initially ask whether the current board may, prior to the September 1994 election, determine the length of the term of office of each of the directors elected in September of 1993 by assigning the longest terms to the bigger vote-getters. It appears that this method is as reasonable as any of the apparent alternatives for restoring the election of directors to a balanced rotation.

As a general rule, the affairs of each school corporation shall be conducted by the board of directors. See Iowa Code § 274.7. Pursuant to Code section 279.8, the "board shall make rules for its own government, and that of the directors, officers, employees, teachers and pupils . . ." Because the board of directors is the governing body of the school district, they are the logical choice to take the lead in correcting the director seat rotation error.

Guidance for the board's action may be found in Code section 275.25, which sets for an alternative method for the election of directors following a school district reorganization, provides for a special election where all directors of the newly formed district are chosen shortly after a successful reorganization vote. This section includes the following provisions for determination of the term of office of the all of the new directors. Iowa Code § 275.25(3). The three directors receiving the most votes shall serve until the fourth regular school election after the effective date of the reorganization, the two receiving the next largest number of votes serve until the third regular election after the reorganization, and the two receiving the next largest number of votes serve until the second regular election after the reorganization. Id. Similarly, Iowa Code section 275.37, which allows for implementation of an increase in the number of school district directors from five to seven, provides that following the election to fill the expanded board, "the newly elected director who received the fewest number of votes in the election shall be assigned a term of either one year or two years if necessary in order that as nearly as possible one-third of the members of the board shall be elected each year."

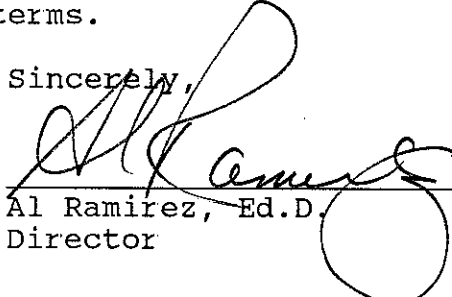
Each of these statutes provides precedent for the board looking to the number of votes received by the directors elected in September of 1993 as the determining factor for the length of term the directors will serve. Utilizing this selection method will allow those directors who received the strongest support from the electors of the district to serve full terms.

Your petition indicates a preference on the part of the board to balance the election of directors from the two districts, so that no one of the current director districts has more positions to be turned over in any one election than the other district. The board can accomplish this end while returning the board to a 3-2-2 rotation if they group the directors elected from each district in the 1993 election together, designate the director who received the most votes in each district to serve a three-year term, and designate the remaining directors to serve one-year terms. Through this process the board would attain a rotation in which one director seat in each district would stand for election each year and the seventh, "at large," seat would be elected every third year.

V. Summary

I find that the failure to designate two of the director seats on the Colo-Nesco board filled at the September 1993 election to be for one-year terms was contrary to the requirements of Iowa Code section 275.41(7) (1991). The resulting 1-2-4 rotation of the director district seats is inconsistent with statutory requirements and should not be maintained. The current Colo-Nesco Board of Directors may take action to correct the rotation by designating two of the four directors elected in 1993 to serve one-year terms and filling the seats these directors have held in the September 1994 election. The number of votes received by directors in the September 1993 election is a reasonable factor for the board to use to determine which of the directors elected in that election will be designated to serve one-year terms.

Sincerely,



Al Ramirez, Ed.D.
Director

cc: Colo-Nesco Community School District
Board of Directors
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