IOWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 249)

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| In re Philip J. Sullivan, et al. | : | |
| Philip J. Sullivan, Loyd A. Johnson, and Virginia Webb, Appellants, | : | |
| v. | : | DECISION |
| Central Decatur Community School District, Appellee. | : | [Admin. Doc. #920] |

The above-captioned matter was heard on June 2, 1987, before a hearing panel consisting of Dr. Robert D. Benton, director, Iowa Department of Education and presiding officer; Dr. Louis E. Smith, chief, Bureau of Food and Nutrition; and Dean Crocker, chief, Bureau of Internal Operations. Appellants were present in person and were represented by Mr. Charles L. Elson, Elson & Fulton, Leon. Appellee Central Decatur Community School District [hereinafter the District] was represented by Mr. John D. Lloyd of Reynoldson, Van Werden, Kines, Reynoldson, Lloyd & Wieck, Osceola. Two District board members, Frank Binning and Dennis Fierce, were in attendance but did not participate in the proceedings. A mixed evidentiary and on-the-record hearing was held pursuant to Iowa Code chapter 290 and departmental rules found at 670 Iowa Administrative Code 51.

Appellants seek reversal of a decision made by the District board of directors [hereinafter the Board] made on February 9, 1987, denying a request to call special election for the purpose of obtaining voter approval to construct an auditorium at the new junior-senior high school in the District. Appellants also included in their affidavit an appeal from a March 9 vote by the Board, declining to rescind its previous vote following a presentation of petitions seeking a special election.

## I.
## Findings of Fact

In October, 1982, the District voters approved a $2,900,000 bond issue to build a new school. In September, 1983, the Board approved plans, specifications, and form of contract for the construction of a junior-senior high school in the District, and construction began thereafter. The original contract included the basic structure and certain specific projects. An auditorium was planned, included in the architect's drawing, but not made a part of the basic bid, instead listed

in the bid specifications as "Alternate No. G-1." Appellants' Exhibit B. A stage adjacent to the auditorium site was built and the auditorium area left open for completion at a later date. Estimates in 1983 of the cost to construct and equip the auditorium ranged from approximately $185,300 to $262,500.

While construction of the basic building was taking place, Appellants and others in the community began to seek donations in the form of cash and pledges for the purpose of adding the auditorium. This effort was expended with the Board's knowledge, but independent of formal District or Board involvement.

In the spring of 1985, Superintendent Tom Spear appeared before the School Budget Review Committee (SBRC) seeking permission to apply $290,000 in the District's Secretary's Balance (unexpended cash balance) toward completion of the junior-senior high school. In an itemized memorandum accompanying the superintendent's request, the "remaining costs" column did not include nor refer to the auditorium.[1]

The SBRC granted the District's request for $290,000, or ten percent of the bond issue amount. The funds were authorized "for the purpose of furnishing, equipping, and contributing to the completion of" the junior-senior high school. Appellants contend that a portion of these funds was used for projects for which the site fund could have been applied, e.g. "site grading and cleanup" and bleachers and lighting for athletic field. See Application of Tom Spear on behalf of Central Decatur Community Schools; SBRC meeting, June 12, 1985; case #4, p. 2.[2]

By December, 1985, pledges and cash contributions raised by the auditorium committee had reached approximately $100,000. The Board expressed concern that the pledges could actually be converted to cash, so the committee members proceeded to obtain cash for most of the pledges and advised the Board of the total cash on hand.

At the December, 1985 regular meeting, the Board passed a resolution committing $100,000 of District funds toward the cost of construction of the auditorium shell.[3] This promise was contingent upon bids not

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[1] We take official notice, under Iowa Code section 17A.14(4) of Superintendent Spear's application to the School Budget Review Committee and the Committee's decision found at SBRC Doc. 85-12. The hearing officer hereby determines that fairness to the parties does not require an additional opportunity to contest the facts officially noticed. The issue of allegedly improper application of the approved funds was raised at the hearing, and both parties had a full and fair opportunity to develop or rebut facts related to this issue.

[2] See note 1 above.

[3] This resolution was rescinded by the Board on advice of counsel on April 13, 1987.

exceeding $100,000 plus the amount the committee had raised, and contingent upon the use of the name "Dr. Elmo V. Barnum," a substantial contributor, for the auditorium. Cost estimates for the completion of the auditorium at this time ranged upward from $200,000.

In March, 1986, the Board began preparations to seek bids on the auditorium completion as well as two other projects: a bus barn and a multi-purpose room at one of the elementary schools. Initially April 22 was set as the date to receive bids; it was later changed to May 8. To Appellants' chagrin, the projects were not specified individually, but combined into one package. The lowest bid of those submitted on the three projects was $512,500. The Board rejected all bids on June 9, 1986.

Appellants apparently believed that construction on the auditorium project could have been undertaken immediately if the Board had bid the items separately. However, the Board became concerned that perhaps a vote of the people would be necessary prior to the expenditure of the promised $100,000. An attorney general's opinion was sought. On the facts presented to her, Assistant Attorney General Merle W. Fleming concluded that money in the schoolhouse fund, together with money obtained through sales tax refunds and proceeds of sold real estate,[4] could not be utilized for the auditorium addition absent voter approval. In her letter opinion of December 31, 1986, Ms. Fleming further concluded that even donations to the school for the building of the auditorium could not be utilized by the District in new construction without the necessary vote of the people of the District.[5]

Thereafter, Committee representatives approached the Board seeking authorization for a special election for the purpose of obtaining voter approval on the building of the auditorium shell. Speaking for the committee, Charles McKern informed the Board that donors, including Dr. Barnum, were expressing agitation and concern that money and pledges raised over the previous two and one-half years had not yet been used; the auditorium remained unbuilt.

At the February 9 regular meeting the Board voted down a motion to call a special election in March, instead unanimously passing a motion to place the funding issue on the ballot at the regular September election. This decision was made, in part, on the basis that a special election could not be called for this issue.

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[4] The process of sold real estate can be directed by the voters to a specific project or purpose at the time they approve the sale of real property. Iowa Code § 278.1(2)(1987). In such a case, no additional vote would be necessary.

[5] This opinion provided the rationale for the Board to rescind its resolution committing the $100,000 to the auditorium project, on the advice of counsel, at the April, 1987 Board meeting. See note 3.

At the next regular meeting on March 9, citizens and committee members presented a petition to the Board, again asking for a special election. A motion to rescind the previous vote (to set the issue on the ballot at the regular September meeting) failed. This appeal followed.

## II.
## Conclusions of Law

In their brief and argument Appellants allege that the Board, in turning down the petitions calling for a special election, abused its discretion. Appellants base this belief on several grounds:

1. The auditorium was included in the original plans as an alternate item as approved by the Board;

2. The failure to complete the auditorium renders a portion of the building unattractive, reduces the utility of the stage area, and leaves a drainage problem.

3. The committee raised funds in good faith, kept the Board informed, and felt that the Board intended to build the auditorium until recently, which raises a question of current bad faith.

4. The submission of bids for three combined projects (auditorium, bus barn, and multipurpose room) in 1987 was an attempt to defeat the auditorium issue because the Board knew that the three projects would exceed funds on hand.

5. The Board refused to go forward with a special election in spite of the knowledge that further delay could realistically result in the loss of support from contributors.

6. The Board should have called the special election when faced with a petition purportedly signed by 177 eligible electors out of 430 who voted at the last election.

7. Funds exist or will exist in the site fund levied by the Board sufficient to complete the auditorium project.

Although Appellants characterize the Board's "inaction" as an abuse of discretion, there are, nevertheless, issues of law intertwined in this appeal. The first is whether a vote of the electorate is necessary, as suggested by the attorney general's opinion, before a school district can spend money on a project already approved by the people where an addition was planned for but not included in the original bid package.

Iowa Code section 297.5 reads, in pertinent part, as follows:

> 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, 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.
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> 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; . . .
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> For purposes of this section, "major building repairs" includes reconstruction, repair, improvement or remodeling of an existing schoolhouse and additions to an existing schoolhouse and expenditures for energy conservation.

Iowa Code § 297.5 (1987)(emphasis added).

One issue addressed by the attorney general's office in the December 31, 1986, opinion, was whether "additions to an existing schoolhouse" constitute "new construction of school buildings" for purposes of obtaining voter approval. The assistant attorney general stated, "It is clear that an affirmative vote of sixty percent or more as required by law on a bond issue is not an open-ended grant of authority to a school board to expend funds in subsequent years from other sources to construct additions to a building which was constructed from bond issue proceeds." 1986 O.A.G. 12-31-86 (L)(Fleming to Fulton, Decatur County Attorney). The opinion also addressed whether voter approval is needed to authorize a board's expenditure of the proceeds of a previous sale of real property when the voters have authorized the sale of the real property but failed to designate the application of the proceeds. Compare Iowa Code § 279.41 and § 278.1(2)(1987).

We have no reason to reject the opinion of the attorney general's office on this issue. Moreover, the legal expertise of that office warrants our respect, and opinions of the attorney general are entitled to "careful consideration" by those asked to apply them. Therefore, we concur with Ms. Fleming's opinion that an addition to an existing schoolhouse would constitute "new construction," thus requiring a vote of the electorate prior to the expending of district funds.

A second and more important legal issue lying at the heart of this appeal is whether the Board, when presented with a petition containing over 25 signatures of eligible electors, was required to call a special election to allow the voters to speak on the auditorium issue. Several Iowa statues come into play here.

Iowa Code section 278.1(7) provides that the electors of a district at a regular election have the power to authorize various actions, including the sale of school sites and application of the proceeds and the power to levy a 67 1/2 ¢ tax for schoolhouse sites. Iowa Code section 278.2 provides that the board may, "and upon the written request of twenty-five eligible electors of any district having a population of five thousand or less . . ., shall" place on the ballot at the regular election any "proposition authorized by law . . . ." (Emphasis added.) It seems to be clear from these statutes that the directors were authorized to place the auditorium funding issue on the ballot at the general election. It also seems clear that the electors could have required that the proposition be placed on the ballot at the regular election even if the directors had not wanted to do so. To that extent, then, the action of the directors appears to be proper and within their authority under the law. The question really is, however, could the directors be required to submit the proposition at a special election.

Iowa Code section 277.2 provides that the board of directors of a school district "may call a special election at which election the voters shall have the powers exercised at the regular election with reference to the sale of school property and the application to be made of the proceeds, the authorization of seven members on the board of directors, the authorization to establish or change the boundaries of director districts, and the authorization of a schoolhouse tax or indebtedness, as provided by law." (Emphasis added.) There is no provision comparable to section 278.2 which requires submission of propositions at special elections when a certain number of patrons petition for it. The section is phrased to confer a power upon the directors, not impose a duty upon them. See Iowa Code § 4.1(36). In addition, the power granted to call a special election is limited to the subjects listed in section 277.2, which does not include all of the subjects listed in section 278.1.

From these statues we conclude that the Board was not required to call a special election under the circumstances, and in fact could not have called a special election for the purpose sought here. The general assembly has judiciously limited the subjects for which a special election can be called. But see Iowa Code § 39.2(2)(1987). (A special election may be held on the same day as a regular election under certain circumstances.) At best, the Board was correct in its denial; at the worst, the Board was conservative and cautious in its denial.

Only if the Board had the discretion to call a special election under the circumstances of this case could it have abused its discretion in failing to do so. Because we have concluded that the Board lacked any discretion, we do not reach the abuse question. The Board acted properly in placing the issue on the ballot of the upcoming regular September election.

Resolution of these issues disposes of most of Appellants' allegations. What remains is a sincere concern that nearly three years of dedicated fundraising under adverse financial conditions may be erased — either because contributors will withdraw donations and pledges because nothing has been done, or because the voters have the opportunity to defeat the auditorium issue in September by voting against the expenditure of district funds to be pooled with the donations and used to build the

auditorium. That would be a shame, in either case. To raise well over $100,000 in a community of the size of Leon, considering the depressed economic conditions, was itself a magnificent feat and a tribute to the commitment of District residents to quality education. Nevertheless, we can find no support in the statutes of Iowa for Appellants' position. We can only add our concern and our hopes that the voters will approve the expenditure, since it does not require that additional taxes be levied.

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

III.
Decision

For the foregoing reasons, the decision of the board of directors of Central Decatur Community School District is hereby affirmed and the appeal dismissed. Costs of this action, if any, under Iowa Code chapter 290, are hereby assigned to Appellants.

July 9, 1987
DATE

Lucas J. DeKoster
LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

June 11, 1987
DATE

Robert D. Benton
ROBERT D. BENTON, Ed.D., DIRECTOR
DEPARTMENT OF EDUCATION
AND PRESIDING OFFICER