IOWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 211)

In re Kruse, et al.	:	
Paul H. Kruse and others, Appellants,	:	
v.	:	DECISION
Irwin Community School District, Appellee.	:	[Admin. Doc. #910]

The above-captioned matter was heard on March 27, 1987, before a hearing panel consisting of Dr. James Mitchell, deputy director, Department of Education and presiding officer; Sharon Slezak, consultant, Bureau of Internal Operations; and Dwight Carlson, assistant chief, Bureau of School Administration and Accreditation. An evidentiary hearing was held pursuant to Iowa Code chapter 290 and departmental rules found at 670 Iowa Administrative Code 51. Appellants were present in person and through counsel, Judy Sheirbon of Buckley & Sojka Law Offices, Harlan, Iowa. Appellee Irwin Community School District (hereafter the District) was present in the person of Superintendent David Sextro, several board members, and through counsel Ronald Schechtman, Carroll, Iowa.

Appellants sought reversal of a decision of the District board of directors (hereafter the Board) made on December 15, 1986, in conjunction with the board of directors of Manilla Community School District, to pursue a form of whole grade sharing for the school years 1987-88 and 1988-89.

I.
Findings of Fact

The hearing officer finds that he and the State Board of Education have jurisdiction over the parties and the subject matter of this appeal.

The District has a current enrollment (K-12) of approximately 267 students. The District shares some academic and extracurricular programs with the neighboring Manilla district. In 1985-86, the Board prepared to make some longer term decisions about the educational opportunities to be provided to enrolled resident students. An Advisory Committee was formed by board action to study several options for the future including the status quo, expanded sharing with Manilla, sharing in some form with Manning or Harlan, "tuitioning" all students in grades seven through twelve to a contiguous district or districts, or reorganization. Concededly, Harlan, as a contiguous district, was the primary target for tuitioning.

At the time the Advisory Committee was formed, Richard Ott was superintendent of the District. Mr. Ott gave a set of "guidelines" to the members of the Committee. A report deadline was established in a directive to the Committee: "Return proposals and options to the Board by December 1986 for public discussion in December and/or January." Appellants' Exhibit 1, p. 2. The guidelines covered factors to be studied and concluded with the statement, "The committee will be expected to assist in presenting the material to the public." Id.

Mr. Ott retired and on July 1, 1986, David Sextro became district superintendent. He testified before the hearing panel that he was not aware of the board's established guidelines for the Advisory Committee. Mr. Sextro was aware of the existence of the Committee, however, and stepped in to replace Mr. Stickrod[1] as a representative of the administration, although no formal action was taken by the Board to appoint him to the Committee. At one time a Board member, Ruth Ann Barry, was part of the Committee but when she chose not to run for re-election, she ceased her Committee involvement. No other director sat on the Committee.

The Advisory Committee met numerous times between March and December, 1986. They toured facilities inside and outside the District, reviewed proposals from other school districts, evaluated the existing program, compared curricula, and discussed options. In early December, Mr. Sextro informed the Committee members that they should reach a decision, a vote on their preference, on December 8. He suggested a ranking of alternatives using two ballots. The options were voted upon as suggested by Superintendent Sextro, and the results were as follows:

Ballot A:		Ballot B:	
Share with H.S. in One Town and Jr. High in Another	28	"Schultz Plan"	28
Reorginzation [sic]	55	Reorginzation	50
Tuition to Harlan	33	Tuition to Harlan	34
Maintain Present System	34	Maintain Present System	38

Appellants' Exhibit 4.

The "Schultz Plan" referred to in Ballot B is really a modification of an approach involving an eight period day and block scheduling, sending teachers between districts. The proposed modification on which the Advisory Committee voted envisioned sending students rather than teachers

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[1] Mr. Ott had not sat on the Committee, but the previous high school principal, Mr. Stickrod, had so served. When he resigned, there was no representative from the administration on the committee.

back and forth between districts. In any event, the first option on each ballot, according to testimony, assumed Manilla as the sharing partner. Although Harlan was specifically mentioned in the third option, the Committee members apparently understood that voting for that option encompassed tuitioning to any school of the parents' choice.

Mr. Sextro requested that the voting be done by weighted ballot. Each member voted on each option, giving a "one" to the favored option, a "two" to the next favored, and so on. The result was that the option with the lowest point total was deemed to be the concensus recommendation. In this case, the favored option was to whole-grade share with Manilla, with all junior high students attending in one district and all high school students in the other district. Although there was some confusion over the voting system, apparently everyone understood the procedure before casting their votes. Mr. Sextro also voted.

Several members of the Advisory Committee met with the Board the next evening, on December 9. Rather than providing a written report on all the information gathered on each option, a verbal report was given discussing the Committee's voting process and recommendation. The Board took the recommendation under advisement and "made plans to meet with the Manilla board." Appellee's Exhibit F (Board minutes of 12/9/86 special meeting) at p. 81.

At this point, the testimony reflected, communications fell apart. A memo dated December 10 from Superintendent Sextro to District staff indicated that the Board would attend a joint meeting with the Manilla board of directors on Monday, December 15 "to discuss the possibilities" of full-scale sharing. The Advisory Committee as a whole was not informed of this meeting, but the chairperson, Mr. Lee McLaughlin, was aware of the scheduled joint board meeting and was in attendance. An agenda was prepared and posted in the usual fashion, indicating that the meeting would begin at 7:30 at Irwin High School. Id. at p. 85. The agenda stated that the only item for consideration was "Discussion of possible 28E agreement between Manilla, Irwin-Kirkman [sic] School Districts." Id.

At the joint board meeting with nine of ten board members present, the District's official minutes reveal that the boards discussed "the Schultz Plan versus having the high school and middle school in respective towns on an alternating basis. After much discussion concerning what was best for our students in providing the best possible academic environment, a motion was made by Allen Oleson of Manilla. The motion was as follows: We, as joint boards, Manilla and Irwin-Kirkman, direct our administrators to plan on combining and alternating the high school and middle school the school years 1987-88 and 1988-89, to be bound by a two-year agreement." Id. at p. 86 (Board minutes of December 15, 1986).

The motion was seconded by an Irwin director, Steve Gawley. A roll call vote was taken, all present voting "aye." Id.

Appellants contend that this action was "official" and constituted a decision on the part of both boards. If this is so, then subsequent public hearings in each district on January 8 to present the "possibility" of whole-grade sharing after the vote was taken not only constituted a classic example of putting the horse after the cart, but also led to

the conclusion that the vote taken on December 15 was in violation of the Board policy reflected in Appellants' Exhibit 1 and quoted supra.

The District, on the other hand, argues that the joint meeting and subsequent motion, second, and roll call vote did not constitute official action by either board and represented only a "gentlemen's agreement" that both boards were willing to pursue sharing. The argument continues that it would have been both futile and silly for the District to discuss and possibly ultimately vote to enter into a Chapter 28E sharing agreement with Manilla unless and until it was known whether Manilla was a willing partner.

Compounding the confusion is the fact that at the December 15 joint meeting, both boards directed their superintendents to contact media representatives to inform them of the upcoming public meetings. The news releases resulted in stories which, taken at face value, appear to announce a fait accompli. Appellants' Exhibit 11. Superintendent Sextro and Manilla Superintendent Mike Davis were quoted extensively in news articles appearing in the Harlan News Advertiser (12/20/86), Harlan Tribune and Manilla Times; all statements strongly implied that the decision was a final one.

Nevertheless, after the joint meeting each district board chaired a public hearing on January 8. At the Irwin hearing, following Superintendent Sextro's presentation, Board President John Villegas sought public comment, adding that there would be an additional public hearing if people still had questions at the close of the evening. No minutes were recorded, but a video tape was made of the public hearing. (Appellants' Exhibit 10). The tape does not include the end of the meeting, but testimony evidenced the fact that despite many hands being raised seeking another opportunity to speak or ask questions, no further hearings were scheduled. At this point, Appellants filed their affidavit of appeal in this case.

The Board met again on January 19 in a special meeting. The agenda states that one item of business would be addressed: "Advisory Committee Report and Discussion of Irwin Public Meeting held on January 8, 1987." Appellee's Exhibit F at p. 98. The minutes of that meeting reflect an unsuccessful motion to hold a referendum on the issue of options for the District. Thereafter, director Barry moved to enter into a 28E agreement with Manilla. Id. at p. 99. No mention was made of the purpose or duration of the 28E agreement. The motion was seconded and passed 4-0, one director being absent.

II.
Conclusions of Law

The first issue before us is whether or not we have subject matter jurisdiction of this case. The District urges us to find the vote taken on December 15 was only a "gentlemen's agreement," not a binding, legal decision. If no "decision" was made, then Appellants do not have the statutory right to appeal under Iowa Code section 290.1.

Subject matter jurisdiction is a matter of statute. Cunningham v. Iowa Dept. of Job Service, 319 N.W. 2d 202, 204 (Iowa 1982). Issues of subject matter jurisdiction may be raised at any time, whether or not questioned by a party in a motion, and the reviewing tribunal may raise it on its own motion. Simpson v. Iowa Dept. of Job Service, 327 N.W. 2d 775, 777 (Iowa Ct. App. 1982).

The question before us is whether the absence of a motion by a member of the Board is a deficiency severe enough to render the subsequent vote void. In this case, the motion to "direct our administrators to plan on combining and alternating the high school and middle school for the school years 1987-88 and 1988-89, to be bound by a two year agreement" came from a Manilla director. The second to the motion was made by a director of the District. In essence, if there is no statutory authority for the board to act jointly, then there was no motion before the Irwin Board and no second to the Manilla board's motion.

Roberts' Rules of Order does not address this situation, and our research has disclosed no statute requiring a motion or second prior to board action. For that matter, we could find no statute that requires a majority vote to make binding decisions on routine matters, but we think it is understood. See generally, Iowa Code chapter 21, §§ 21.3, 21.5. Clearly, it is not the motion but the vote taken that creates an obligation.

Armed with that logic, the question then becomes whether a board vote constitutes an appealable decision regardless of the technicalities of form. We believe the answer to that question is yes. See, e.g., Marion Water Co. v. Marion, 121 Iowa 306, 96 N.W. 883 (1903)(city council was legally estopped from repudiating contract on which all council members voted aye, regardless of any deficiency in the language of the proposal and motion); Hansen v. Town of Anthon, 187 Iowa 51, 173 N.W. 939 (1919)(town council can subsequently ratify contract deemed invalid due to procedural flaw in voting). The conclusion required by these cases is that procedural flaws do not automatically negate action by a governmental body and that subsequent action taken can ratify (approve after the fact) action taken earlier in violation of some statute or rule.

The Board's argument that the December 15 gathering was not really a meeting is belied by the facts. The Board substantially complied[2] with the requirements of Iowa Code chapter 21, the Open Meetings Law, by posting notice of the meeting, including time, date, and place, more than twenty-four hours in advance at the principal office of the body holding the meeting. Iowa Code § 21.4(1)(1987). In addition, formal minutes were recorded as required by law. Under the definition of chapter 21, a

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[2] Notice of a board's tentative agenda is to be "reasonably calculated to apprise the public of that information." Iowa Code § 21.4(1)(1987). We have serious doubts about the nature of the agendas for both the December 15 and January 19 Board meetings. Neither agenda announced contemplated action by the Board. Both announced "discussion" only. Appellee's Exhibit F at pp. 85, 98.

meeting is "a gathering in person . . . of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties." Id. at 21.2(2). Since sharing of academic programs between school districts is a legitimate subject of school board deliberation and action, see Iowa Code §§ 256.13, 280.15, 282.7 (1987), the action taken on December 15 constituted a valid decision made at a public meeting under Iowa law. Although the individual board members testified that the board did not intend to make a decision, the vote was taken and the citizens, by reading the written records and by listening to the reports of the action, had every right to assume the action was final.

This conclusion leads us to consider whether the Board in deciding the future of the District, then receiving public input, then deciding again violated their own guidelines established in March, 1986. If so, is such a violation sufficient cause to overturn the Board's decision.

We conclude that by all appearances a violation of the Board's policy statement occurred. It was clear from the written charge to the Advisory Committee that the contemplated process was to begin with the Committee's report, which may or may not have included a recommendation to the Board. Although there was some dispute as to the amount of information the directors had regarding all possible options, there was insufficient evidence to conclude with certainty that they knew more about the various proposals than the Advisory Committee members. We think it is incumbent upon the elected officials to ascertain for themselves the ramifications of such a major decision, not to delegate that responsibility to a group of citizens.

Thereafter the Board moved swiftly. Within one week of receiving a verbal recommendation from the Committee, a joint meeting was set with the Manilla board. While we do not question the wisdom of determining a partner's willingness to proceed in a joint venture, we think an informal inquiry would have sufficed. The vote taken on December 15 had all the earmarkings of a binding decision. In fact, the resolution that passed on December 15 was far more detailed than the one the Board made on January 19.[3]

Despite the fact that the decision to enter a sharing agreement or to combine grades with another school district rests squarely with a local board and the local citizens have no statutory voice in such a decision, we think the remedy for the Board's procedural violation in this case is a reversal of that decision. From the failure to receive a full, studied report of all the options available and what benefits and problems might accrue to District students from each option, to the appearance, at least, that a decision was made based primarily on the verbal recommendation of a citizen's committee, to the questionable purpose and sufficiency of a public hearing, we find that the errors are significant enough to warrant

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[3] The minutes of January 19 state only that "Barry made the motion to enter into 28E Agreement between the Manilla and Irwin Kirkman [sic] School Districts." Appellee's Exhibit F at p. 99.

reversal of the Board's actions. Fortunately, testimony evidenced the fact that no written agreement between the two districts has been created as yet.

While we make no comment about the merits of the decision to share with Manilla, we think the Board owes to its students and citizens the duty of a well-researched study and the courtesy of receiving public comment prior to reaching a decision.

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

III.
Decision

For the reasons stated above, the decision of the Irwin Community School District board of directors reached on December 15, 1986, is hereby reversed and remanded to the Board for action consistent with this opinion. Costs of this appeal under chapter 290, as presented by Appellants in this case, are assigned to the District.

May 7, 1987
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

April 15, 1987
DATE

JAMES E. MITCHELL, DEPUTY DIRECTOR
DEPARTMENT OF EDUCATION
AND PRESIDING OFFICER