

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 215)

In re Mr. & Mrs. Layton Vick

Mr. & Mrs. Layton Vick, Appellants

v.

Spirit Lake Community School District,
Appellee

DECISION

[Admin. Doc. 568]

The above entitled matter was heard on November 6, 1980, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Ms. Carol Bradley, chief, special education instructional services section, and Mr. Gayle Obrecht, director, administration and finance division. Mr. Vick was present and presented argument and evidence on behalf of himself and his wife. The Spirit Lake Community School District (hereinafter District), was represented by Attorney James C. Ladegaard. The hearing was held pursuant to Section 285.12, The Code 1979 and Chapter 670--51, Iowa Administrative Code.

The Appellants are appealing a decision of the Area Education Agency 3 (hereinafter AEA) Board of Directors affirming a decision of the District Board of Directors regarding transportation.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

The Vick family resides at the northeast corner of the intersection of state highways 9, 32 and 86. State highway 9 runs east and west as it passes immediately south of their residence. Highway 86 runs from the north to the south and passes the Vick residence on the east. Its southern terminus is several hundred feet immediately to the southeast of the Vick home at its intersection with highways 9 and 32. Highway 32 runs north and south with its northern terminus at the intersection with highways 9 and 86. Traffic is controlled at the intersection by stop signs on highways 32 and 86, but traffic on highway 9 does not stop.

Immediately adjacent to the Vick residence on the east is a family business operated by Mr. & Mrs. Vick. The business consists of a small general store, gasoline station and vehicle and trailer rentals. The business is accessed by a large east-west driveway which roughly parallels highway 9 for about 1,000 feet. The east entrance is on highway 86, about 200 feet north of the intersection. The west entrance is on

highway 9, about 1,000 feet west of the intersection. There is a parking area immediately adjacent to the general store. Portions of the parking area are used to store rental vehicles. Between the driveway and the highways on the east and south are wide ditches which often contain standing water and in winter are used for snow disposal.

During the last school year the District's bus route passed the Vick residence, approached the residence from the north on highway 86, picked up the only Vick child then attending school at the east entrance of the driveway, then turned west at the intersection and continued on the route. Apparently unknown to school officials, the bus driver would sometimes pull into the general store parking area to pick up the Vick child and then turn around and exit back out the east entrance or continue through the driveway past the store, gas pumps, the residence and exit at the west entrance.

Due to declining rural enrollment, and the purchase of larger buses, the District changed its bus routes in the western part of the District where the Vicks reside. For the 1980-81 school year the District's bus route for the Vick residence was expected to approach the Vick residence from the east on highway 9, pick up the two Vick children along the highway south of the house somewhere in the 1,000 feet between the intersection and the west driveway entrance.

Mr. & Mrs. Vick were notified of the change two weeks before the start of school in the fall. They objected the proposed route to school officials on the basis that stopping a school bus on highway 9 to pick up and deliver their child was an unnecessary hazard to their children and the other students on the bus. They asked that their children be picked up in the driveway near their home or the general store and not on highway 9.

On September 3, 4 and 5, Superintendent Overmann, the bus driver and the District's transportation director reviewed the request. They visited the site, made measurements and considered the safety alternatives. They discussed the matter with employees of the State Departments of Public Safety and Transportation.

On September 5, Superintendent Overmann informed Mrs. Vick by telephone that he was denying the Vick request to have the school bus pick up the Vick children in the driveway rather than on highway 9. The Vicks were given the opportunity to appear before the District Board of Directors on September 15 to request a review of the Superintendent's decision. After both sides presented their positions, the Board tabled the matter to enable them to investigate the situation. At the conclusion of the meeting, all the Board members went to the Vick property and viewed the area of concern.

On September 22, the District Board met in special session. Trooper James Bonnstetter of the Department of Public Safety was present. Trooper Bonnstetter has been with Public Safety for 28 years. For the last 14 years he has been responsible for the Public Safety highway safety education program in a 10-county area in north-west Iowa. He has worked closely with officials of the Department of Transportation regarding highway safety and with the Department of Public Instruction regarding school bus transportation safety. Trooper Bonnstetter advised the District Board that the hazards of vehicle and pedestrian traffic, gasoline pumps and storage and other potential hazards involved in the type of business done at the Vicks' place of business were greater than the school bus stopping on the highway. He stated that he felt a school bus stop near the Vick residence on the right-hand side of the double lane existing at that point did not present undue hazard. In contrast, he pointed out that vehicles in the Vick driveway would not have to obey bus stop and warning lights on a school bus stopped to pick up or discharge children because

traffic safety laws are not enforceable in a private drive. The record indicates that a bus stopping on highway 9 immediately adjacent to the Vick residence would be situated in the right lane of a divided highway about 23 feet wide, and over 300 feet from the center of the three highway intersection to the rear. It also indicates that clear, unobstructed vision behind a bus so stopped would be over 1,000 feet and that a bus with flashing lights could be seen to the rear for about a mile.

That same day the District Board voted to deny the Vicks' request for a driveway pickup point for the children, and Mr. Vick later informed Superintendent Overmann that his children would not ride the bus and that he was taking his children out of school until the matter could be considered further by him and his wife. Between September 23 and September 29, school bus service was available to the Vick children but was not utilized by them. The children returned to school on September 29 but have not since utilized the available bus service.

On September 25, the Vicks filed an appeal of the District Board decision with AEA Administrator Nels Christensen. Also on September 25, Mr. and Mrs. Vick called a meeting which included a person from the Iowa Department of Transportation, the County Coordinator of Civil Defense, the County Sheriff and Superintendent Overmann. The people at the meeting discussed alternatives to the District position of picking up the Vick children on highway 9. Superintendent Overmann opposed the alternatives discussed.

On October 9, 1980, the Board of Directors of the AEA held a transportation hearing regarding the Vick appeal. In addition to Mr. & Mrs. Vick, six witnesses testified on behalf of the Vicks. The District Superintendent, Trooper Bonnstetter and the school bus driver appeared as witnesses for the District. Various exhibits, including a number of photographs, were entered into the record. In reviewing the record, including a verbatim tape recording of the hearing before the AEA Board, the Hearing Panel concludes that with the exception of the County Sheriff, the witnesses for the Appellants before the AEA were not sufficiently qualified by background, training or experience to render opinions in matters of school bus and traffic safety to be of much meaningful value in this proceeding.

At the conclusion of the hearing and discussion of the evidence, the six AEA Board members present voted unanimously to sustain the action of the District Board of Directors. The Vicks appealed to the Superintendent of Public Instruction.

The record does indicate that the intersection of the three highways about 300 feet east of the likely school bus stopping place immediately south of the Vick residence has had a number of serious accidents and near collisions. Most of these have apparently resulted from persons stopped on highways 86 and 32 pulling into the traffic on highway 9. Trooper Bonnstetter testified that the intersection was about average in hazard to comparable intersections.

The record shows that the Vick driveway is considered a commercial driveway and as such, is well maintained. There are two fueling islands in the driveway and if two vehicles were at the pumps at the same time, passage would be difficult. Three or more vehicles would make passage virtually impossible. When passage is clear it would, in all instances, be within a few feet of fuel pumps and fuel storage tanks. Due to customer congestion and parked rental vehicles in the driveway, the school bus would not always be able to take the same route when passing through the driveway.

Eugene Pappenfus, District school bus driver with nine years experience, and the driver on the Vicks' route, testified that he feels that the school bus is safest when lights are flashing. For that reason, it was his recommendation that the bus remain on the highway when picking up and discharging the Vick children.

All alternative options proposed by the Vicks were given due consideration and study before being rejected by the District.

II. Conclusions of Law

The Appellants here would have this Hearing Panel overturn the AEA Board decision sustaining the District Board's refusal to pick up and discharge the Appellant's children in their commercial driveway. We are not inclined to do so.

State law creates a presumption of safety in the picking up and discharging of pupils on the public highway. Section 285.11 provides in relevant part as follows:

285.11 Bus routes--basis of operation. The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations:

7. No bus shall leave the public highway to receive or discharge pupils unless their safety is enhanced thereby, or the private road is maintained in the same manner as a public roadway. [Emphasis added.]

This presumption of safety is created and preserved by a series of laws governing school bus safety equipment, detailed stopping procedures and the illegality of passing a stopped school bus from either direction. See §§321.372 and 321.373. State laws do not extend the presumption to private property where traffic laws are not enforced. See §321.228.

The Hearing Panel has not been shown in the record that the safety of the Vick children, the passengers on the bus or anyone else will be "enhanced" by requiring the District to provide school bus transportation services through the Vick driveway rather than stopping on highway 9. In the absence of the commercial nature of the primary use of the driveway, congestion caused by customers and rental vehicles and the fuel storage and pumps, our result may have been different. So, too, may have the decisions of the District and AEA Boards.

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

III. Decision

The decision of the Area Education Agency 3 Board of Directors affirming the decision of the Spirit Lake Community School District Board of Directors in this matter is hereby affirmed.

December 11, 1980
DATE

November 26, 1980
DATE

Susan M. Wilson

SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

Robert D. Benton

ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND PRESIDING OFFICER