IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 132)

In re Lee Creveling, Quentin V. Anderson, Ivan Sterling, et al.	:	
	:	
Lee Creveling, Quentin V. Anderson, Ivan Sterling, et al. Appellants	:	DECISION
v.	:	
Mount Ayr Community School District Appellee	:	
	:	[Admin. Doc. 382]

The above entitled matter came for hearing before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate state superintendent; and Dr. Leonard Gustafson, supervisor, school plant facilities section, on February 7, 1977, at approximately 10:00 a.m. Lee Creveling, Quentin Anderson and Ivan Sterling were present. The Mount Ayr Community School District (hereinafter District) was represented by Attorney William Warin. Superintendent Philip Burmeister and Board Members Bill Smith and Jim Smith were present. The hearing was held pursuant to Chapter 290, The Code 1975, and Departmental Rules Chapter 670--50, Iowa Administrative Code.

On January 3, 1977, a document was filed with the Department of Public Instruction which was purported to be an affidavit of appeal from a December 13, 1976, decision of the District Board of Directors (hereinafter Board) to purchase a schoolhouse site.

I.
Findings of Fact

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

The Appellants allege that the proposed schoolhouse site is south and east of the geographical center of the District by about three miles, that the student population center is located north of the geographical center and north of the proposed site, that the location is inconvenient for the majority of students to be served at the proposed site and that the choice of location for the site was not the most desirable. They did not challenge the authority of the Board to select a schoolhouse site.

Quentin Anderson, one of the Appellants, testified that availability and costs of installing utilities had not been sufficiently investigated, that the location was hazardous from a traffic standpoint, that a hog confinement system and a country club holding a liquor license were located on property adjacent to the proposed site, that the property cost about three times what adjacent property sold for in May of 1975 and that the site was not as level as other sites which were available for location of the proposed school facilities.

The testimony of Superintendent Burmeister, Board Member Bill Smith, the certified record and various exhibits presented to the Hearing Panel tend to refute the majority of arguments put forth by the Appellants. It was testified to that the District Board had been considering the site location since at least June, 1976, when, after eliminating other sites from consideration, the Board members visited four potential sites in and around the city of Mount Ayr. The Board's architect accompanied them on the tour and discussed advantages and disadvantages of the various sites with them, including grading and dirt fill problems.

It was further testified to that subsequent meetings of the Board included discussions of various points including topography, availability of utilities, highway access, and geographic and population centers. In the fall of 1976, a school building survey and recommendation of the Superintendent were presented to the Board. At the December 13 meeting, the Board was presented with additional information including a large map showing the District's boundaries, geographical center, population center, and the location of each elementary child's residence. The geographical center was indicated to be within one and one-half miles of the population center and both were within a few miles of the proposed site. Information on these and other points had been presented to the Board members prior to the December 13 meeting. Among the items discussed by the Board at that meeting were the availability of utilities and traffic problems.

The Hearing Panel finds that the District Board gave sufficient and due consideration to the matter before it and did not act in an arbitrary or capricious manner in making the decision challenged here.

II.
Conclusions of Law

At the outset of the hearing, the District moved for a dismissal on the ground that the document which was filed as an appeal affidavit was not, in fact, an affidavit in that it did not conform to proper affidavit form and that it included an incorrect legal discription of the real estate at issue. Chapter 290 requires that the basis for an appeal of this nature be in the form of an "affidavit" but does not specify what characteristics must be included in an affidavit. An affidavit used in a court of law is defined in Section 622.85. Here follow the terms of that Section:

> 622.85 Affidavits--before whom made. An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state.

The document, purported to be an affidavit consisted of six pages including a statement of facts and errors with the heading "AFFIDAVIT," a second page with similar facts and errors referring to an affidavit which was to be attached and which was headed "Petition," and four pages containing the signatures of about 90 persons. The signatures of Lee Creveling, Ivan Sterling and Quentin V. Anderson were notarized.

While the documents filed may not contain all the exactness that might be required in a court of law, the Hearing Panel feels that the document of appeal filed in this matter was in substantial compliance with the requirements of an affidavit and overrule the school's motion to dismiss. To decide otherwise would unduly limit the availability of the administrative procedure for review of school board decisions contained in Chapter 290 to those persons who could afford legal assistance in the drafting of their

affidavits. This we do not think was the legislative intent in requiring an affidavit for an appeal.

By accepting the purported affidavit as substantially complying with the affidavit requirement, the Panel does not mean to imply that documents of any nature will be acceptable as sufficient affidavits in future appeals. When the sufficiency of an affidavit is challenged in the future, it will be held to a test of substantial compliance such as was done with the document currently before the Panel.

The parties are in agreement that the document of appeal contained the wrong legal discription of the property involved. We do not feel that all facts alleged in an affidavit of appeal need to be correct as long as the mistake does not appear to be intentional. Indeed, Section 290.1 does not even appear to require a statement of the facts, only the errors "complained of in a plain and concise manner."

The Appellants offered an amended affidavit at the hearing to rectify any technical problems in the previously filed document. In light of the foregoing discussion, it is unnecessary to rule upon the validity of the offering.

The primary thrust of the Appellants' objection to the Board's decision in this matter is the allegation that the Board did not comply with the statutory requirement of Section 297.1, The Code 1975, which established guidelines for the choice of schoolhouse sites. That Section reads as follows:

> 297.1 Location. The board of each school district may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities and villages, not less than thirty rods from the residence of any landowner who objects thereto.
>
> In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school district and the geographical location and convenience of any proposed site. [emphasis added]

The Appellants' affidavit of appeal complained that the District's Board did not comply with the guidelines contained in Section 297.1. They seem to read that Section with the understanding that the guidelines must be followed. We do not so read that Section. It is not mandated in that Section that schools be located at any particular place within a school district. Such a reading would be ludicrous when considering larger school districts with numerous buildings. What is mandated in the Statute is that the Board take several factors into consideration when locating school sites. The Statute merely outlines minimum factors to be considered in the deliberations of the board and does not state the sole determining factors of site location. See Van Es v. Newkirk Independent School District, 197 Ia. 348, 197 N.W. 55 (1924). We find that the Board did consider, among other factors, those statutorily required in Section 297.1, specifically the number of scholars residing in the various portions of the District and the geographical location and convenience of the proposed site. The proceedings before the Panel clearly rebutted all relevant allegations of the Appellants except that of payment of an exorbitant price for the land. We do not know all the factors involved in the valuation of this real estate. There is nothing in the record to show, nor was it alleged that any Board member personally gained from the transaction. The record does show that the transaction was negotiated over a period of time. We find that the

allegation of excessive payment was not sufficiently shown to cause this Panel to overrule the District Board's decision. Nor was there any other sufficient showing made which would cause this Panel to overrule the decision of the board with regard to the proposed location of the schoolhouse site.

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

III.
Decision

The decision of the Board of Directors of the Mount Ayr Community School District in this matter is hereby affirmed. Proper costs of this appeal, if any, under Chapter 290, The Code 1975, are hereby assigned to the Appellants.

April 15, 1977
DATE

T. J. HERONIMUS, PRESIDENT
STATE BOARD OF PUBLIC
INSTRUCTION

March 9, 1977
DATE

ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT AND
PRESIDING OFFICER