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November 6, 1975

Declaratory Ruling #5
(Cite as 1 D.P.I. Declaratory Ruling 12)

Ms. Jane Wallenstedt
League of Women Voters of
Indianola-Warren County
Box 105
Indianola, Iowa 50125

Dear Ms. Wallenstedt:

Your Petition for Declaratory Ruling was filed in my office on October 7, 1975. Your facts present a situation existing in the Indianola Community School District where the Secretary of the Board of Directors is also employed in other duties under the district supervision of the Superintendent. You stated that this policy of dual responsibility is found in Section 201.7, Indianola Community School Board Policy Handbook which you quote as follows:

At the first regular meeting in July, the Board of Education shall elect a secretary, who shall not be a teacher in the school system. For the unification of duties the Secretary shall also assume the duties of Administrative Assistant and shall work directly under the supervision of the superintendent.

The first specific question you present is whether the policy and practice of the Indianola Community School Board as stated above complies with Section 279.3, The Code 1975, as amended by House File 287 (1975). The relevant portion of that section, as amended, is as follows:

279.3 Appointment of Secretary and Treasurer. At a regular or special meeting of the board held in July prior to or on July fifteenth, the board shall appoint a secretary who shall not be a teacher or other employee of the board.

The answer to this first question appears to be in the negative. The likely purpose of the statute is to preclude the secretary of the board of directors who is an officer of the board, from also being an "other employee" under the supervision of the superintendent, who is the executive officer of the board. The Indianola policy in question appears to be contrary to the statute in that it expressly assigns to the board secretary duties of administrative assistant under the direct supervision of the superintendent.

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An Attorney General's opinion appearing at 1962 O.A.G. 339, addressed the question of whether the same person could serve as secretary to the board of directors and as secretary to the superintendent of schools. The result was as follows:

The secretary to the superintendent of schools is, in fact, an employee of said school district and would be an employee of the board of directors by operation of law. The person would be precluded from acting as secretary to the board of directors of said school district.

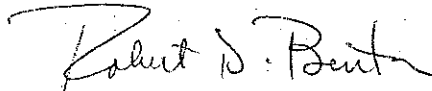
Therefore, it is our considered opinion that one person cannot act as secretary to the board of directors as well as secretary to the superintendent of schools.

As a second question in your Petition, you ask the following of the Department:

If the State Department of Public Instruction finds this policy and practice is not in compliance with the Code of Iowa, Section 279.3 (amended) we further petition for a declaratory ruling finding that the Indianola Community School Board of Directors must amend the policy cited in their handbook to comply with the Iowa Code and further finding that the Indianola Community Schools Board of Directors must desist from this practice with subsequent appointments to the position of Secretary to the Board of Directors.

Such a remedy is not available through the declaratory ruling provisions of Section 17A.9, The Code 1975, nor Departmental Rule 670--53.3.

Sincerely yours,



Robert D. Benton, Ed.D.
State Superintendent of Public Instruction

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