FILED
APR 30 1985
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT J. HOEFER and WILLIAM H. HOEFER, d/b/a THE ADMINISTRATORS,

Plaintiffs-Appellants,

vs.

SIOUX CITY COMMUNITY SCHOOL DISTRICT, WOODBURY COUNTY, STATE OF IOWA, and DR. THOMAS PADGETT, MARY BETH SATTERFIELD, DONALD MEISNER, DR. JAMES HARTJE, PATRICIA VAN BRAMER, HAROLD METTENBRINK, and DALE PARKER, as members of the Board of Education of said School District,

Defendants-Appellees.

Filed April 30, 1985

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Appeal from the Iowa District Court for Woodbury County - Phillips S. Dandos, Judge.

Plaintiffs appeal from the district court ruling quashing their petition for writ of certiorari in this suit to test the legality of a school board's award of a group health insurance contract. REVERSED AND REMANDED.

Paul W. Deck of Deck & Deck, Sioux City, Iowa, for plaintiffs-appellants.

James R. Villone and Daniel T. Cutler of Klass, Whicher & Mishne, Sioux City, Iowa, for defendants-appellees.

Heard by Oxberger, C.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

Plaintiffs appeal from the district court ruling quashing their petition for writ of certiorari in this suit to test the legality of a school board's award of a group health insurance contract.

In September of 1983 the defendant Sioux City Community School District advertised inviting bids for group health insurance and group life insurance contracts to cover its employees. Specifications for bidding on the contracts were available and reserved to the district the right to reject any and all bids.

Plaintiffs are the agents for Washington National Insurance Company and participated in the bidding on its behalf. On November 8, 1983, the school district accepted the bid of the Wisconsin Education Association Trust (W.E.A.) for the group health insurance contract and the bid of Travelers Insurance Company for the group life insurance contract.

Plaintiffs filed their petition challenging the award of the health insurance contract to W.E.A. Defendants filed a motion to dismiss which the district court sustained. The district court held that: (1) certiorari was not available because the school district did not exercise a judicial or quasi-judicial function; and (2) plaintiffs had not set forth sufficient facts that the school district had exceeded its jurisdiction or otherwise acted illegally.

Certiorari is an action at law and our review of the district court decision is governed by rules applicable to appeals in ordinary actions. Dunphy v. City Council of Creston, 256 N.W.2d 913, 916 (Iowa 1977).

I. Judicial Function. Iowa Rule of Civil Procedure 306 provides:

> A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his proper jurisdiction or otherwise acted illegally.

Although the rule speaks only of "judicial functions" the supreme court has interpreted the phrase to include quasi-judicial functions as well. Buechele v.

Ray, 219 N.W.2d 679, 681 (Iowa 1974). In deciding whether a function is judicial or quasi-judicial, it is not the identity of the board or tribunal but the nature of the act which is determinative. Id.

In Massey v. City Council of Des Moines, 239 Iowa 527, 530-31, 31 N.W.2d 875, 878 (1948), the supreme court rejected the idea that an inferior tribunal which is not a court exercises a judicial function only when the parties have a legal right to demand a hearing in accordance with judicial procedure. However, in Buechele the supreme court, recognizing the difficulty in determining what acts are quasi-judicial, set forth the following test:

> In keeping therewith it has been authoritatively held, an inferior tribunal which is not a court exercises a judicial function when (1) the questioned act involves a proceeding in which notice and opportunity to be heard are required; or (2) a determination of rights of parties is made which requires the exercise of discretion in finding facts and applying the law thereto.

Buechele v. Ray, 219 N.W.2d at 681. The court further indicated that the test, while deserving of consideration, is not conclusive:

> Although we long ago indicated our view is not so restricted, it still remains the foregoing judicial attributes are worthy of some weight in resolving the question at hand.

Id. The court held that the action of the State Executive Council in hiring an attorney to represent a legislator accused of slander was not a judicial function. The court noted that the statutes authorizing the action "do not require (1) notice; (2) hearing; (3) taking of evidence; (4) fact findings; or (5) legal conclusions. Nor are adverse parties with antagonistic interests therein contemplated." Id. at 682.

Other cases have found that certain acts did constitute judicial or quasi-judicial functions. In Porter v. Iowa State Board of Public Instruction, 259 Iowa 571, 573, 144 N.W.2d 920, 921 (1966), the defendant board approved an agreement between a school district and a corporation for the construction and leasing of a building on school land adjacent to the existing school building. The court stated:

" 'Acts of approving plans, establishing boundaries, etc. by boards of education are of a quasi-judicial character and, as such, may be the subject of certiorari review in the courts.' " Id. at 576, 144 N.W.2d at 923 (quoting Hohl v. Board of Education of Poweshiek County, 250 Iowa 502, 505, 94 N.W.2d 787, 789 (1959)). The court noted that in making its decision the board did not just review administrative matters, but also passed on the legality of the lease. Id.

In Lehan v. Greigg, 257 Iowa 823, 825, 135 N.W.2d 80, 82 (1965), suit was brought to challenge the legality of a city council's action in granting a beer permit to a person who had been convicted of indictable misdemeanors and violating liquor laws. After citing the statutory qualifications required of an applicant for a beer permit the court stated: "The city council exercises its discretion and judgment in determining if the applicant meets these qualifications and therefore performs a quasi-judicial function with respect to beer permits." Id. at 827, 135 N.W.2d at 83.

In Gates v. City Council of Bloomfield, 243 Iowa 1, 3, 50 N.W.2d 578, 580 (1951), the defendant adopted an ordinance creating a bus zone in the street fronting plaintiff's property. Defendant argued that it was acting in a legislative capacity in passing the ordinance and, therefore, review by certiorari was unavailable. The court rejected the argument saying that the council "undertook to determine law when it decided it had the power to grant to the bus companies the privilege of using city streets to carry on their private businesses." Id. at 10, 50 N.W.2d at 583.

Defendants argue that the awarding of group insurance contracts is strictly discretionary under Iowa Code section 279.12 and that it is not a judicial or quasi-judicial fuention. Although the statute does not require notice and a hearing, defendants in this instance chose to advertise the invitation for bids and held a public hearing on November 8, 1983. Defendants created an adversary situation and set itself up as the arbitrator in deciding which party should have the benefit

of the contract. Furthermore, defendants engaged in factfinding to determine whether the bidders met the requirements set forth in the bid specifications. Finally, defendants interpreted the law in deciding that they had the authority to contract with W.E.A., an organization allegedly unauthorized to issue group insurance under Iowa Code section 509.5.

We hold that the action of defendants was quasi-judicial in nature and that certiorari is a proper method to review such action.

II. Pleadings. The district court as an additional ground in denying the writ held that the plaintiffs' pleadings and arguments did not set forth facts suggesting that defendants exceeded the proper jurisdiction or otherwise acted illegally. After reviewing the pleadings we find that, although more facts and fewer conclusions could have been included, plaintiffs have stated sufficient facts to satisfy Iowa Rule of Civil Procedure 309. Therefore, we reverse this case and remand it to the district court for further proceedings.

REVERSED AND REMANDED.