IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA ASSOCIATION OF SCHOOL BOARDS, Petitioner, v. IOWA STATE DEPARTMENT OF EDUCATION and THE IOWA AUDITOR OF STATE, Respondents	**Case No. CV 5557** **RULING ON PETITION FOR JUDICIAL REVIEW**

The above captioned matter came before the Court on June 16, 2005, on the Petitioner's Petition for Judicial Review. The Petitioner, Iowa Association of School Boards (hereinafter "IASB"), was represented at the hearing by attorney, Dennis W. Johnson. The Respondents, Iowa State Department of Education (hereinafter "Department of Education") and Iowa Auditor of State (hereinafter "Auditor of State"), was represented by attorney, Christie Scase. After hearing the arguments of counsel and reviewing the court file, including the briefs filed by both parties and the Certified Administrative Record, this Court now enters the following ruling:

STATEMENT OF FACTS

In January 2005, the IASB filed a Petition for Declaratory Order with the Iowa Auditor of State. The IASB filed a substantially similar brief with the Iowa Department of Education. Both Petitions sought a declaratory ruling that Iowa school districts may use funds from the district management levy to pay the management fee to participate in the Iowa Joint Utilities Management Program, Inc. (hereinafter "IJUMP").

IJUMP established a Fuel Risk Management Program to protect Iowa school districts from the risks of rising fuel prices. Public school districts in Iowa own approximately 4,500 school busses which travel over 43 million miles a year and consume nearly 6 million gallons of fuel per year. School districts face major travel expenses with rising fuel costs. The impact of rising fuel costs on a school's budget can be dramatic. Under the Fuel Risk Management Program each participating school enters into a Participant Agreement. The Agreement last for a period of 12 months and can automatically be renewed for an additional 12 months unless it is terminated by either party. Under the terms of this Agreement, a school district agrees to pay IJUMP an annual fee which is determined on the basis of a set price per gallon and the number of gallons of fuel for which the school district wants protection from price increases. A school district cannot get price protection for more than 95% of the school district's historic usage.

Under the Agreement, IJUMP agrees to act as the school district's contracting agent for the purchase and delivery of fuel for the year enabling the school district to purchase fuel throughout the year at the guaranteed annual price established by IJUMP on January 31 of the following year. IJUMP also guarantees to roll over to the next year any surplus in the school district's account. In the alternative, the school district may receive a dividend payment based on the number of gallons of fuel purchased during the year minus program administration costs.

If fuel prices increase and the risk management fee is insufficient to cover the difference between the guaranteed fuel cost and the actual fuel costs, IJUMP will bill the

school district for the short fall or raise the risk management fee during the following year to cover increased fuel and program costs.

The Fuel Risk Management Program is designed to provide school districts with insurance against sudden, unforeseen increases in fuel prices which can be substantial and can have serious adverse consequences on the operation of a school district during the school year.

After reviewing the appropriate statute sections and the definition of an insurance agreement on March 4, 2005, the Iowa Auditor of State concluded that no risk is assumed by IJUMP and the only advantage to a participating district is similar to a budget billing plan resulting from the certainty of the price of fuel being set for a 12 month period. The Iowa Auditor of State determined that the increases are still eventually absorbed solely by the district. The Iowa Auditor of State declined to interpret the term "insurance agreements" in section 298.4 as including the Fuel Risk Management Program. In short, the Iowa Auditor of State concluded that the risk management fee associated with the IJUMP Fuel Risk Management Program does not represented the cost of an insurance agreement and thus a school district may not fund any part of its participation from the school district's management levy funds.

On March 4, 2005, the Department of Education issued a similar ruling in which it assessed the applicable statute sections, contemplated the definition of insurance and concluded that the Fuel Risk Management Program risk management fee does not represent the cost of an insurance agreement and a school district may not fund any part of its participation from the district's management levy funds.

After receiving these declaratory orders, the IASB filed this Petition for Judicial Review on March 16, 2005. The IASB argues that because the Fuel Risk Management Program enables the school district to purchase fuel throughout the year at the guaranteed annual price established by IJUMP on January 31 for the following fiscal year, IJUMP assumes the risk and pays the cost of any increase in fuel prices above the guaranteed annual price during the fiscal year. The IASB also maintains that the risk management fee can be included in "costs of insurance agreements under section 296.7" in Iowa Code § 298.4 and therefore, school districts can levy on taxable property in a school district for a district management levy. Moreover, the IASB claims that the Declaratory Orders issued by the Department of Education and Auditor of State were based upon erroneous interpretation of law which neither the Department of Education nor the Auditor of State have authority to interpret.

In its Petition for Judicial Review, the IASB requested this Court reverse the decisions of the Department of Education and Auditor of State and enter a judgment declaring that participation by the school district members of the IASB in IJUMP Fuel Risk Management Program is authorized pursuant to Iowa Code §§ 298.4 and 296.7(1) and that payment of the risk management fee of the IJUMP Fuel Risk Management Program is an expense a school district can levy on taxable property in a district. The Department of Education and Auditor of State filed a response to the Petition for Judicial Review and both parties filed briefs.

STATEMENT OF LAW

On judicial review of an agency action, the District Court functions in an appellate capacity. *Greater Community Hospital v. Public Employment Relations Board*,

553 N.W.2d 869, 871 (Iowa 1996). Judicial review of a final agency action is governed by application of standards set out in Iowa Code § 17A.19. The District Court's review is limited to corrections of errors of law and is not de novo. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995).

"The Court may affirm the agency action or remand to the agency for further proceedings." Iowa Code § 17A.19(10). "The Court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced" for any of the fourteen grounds listed under Iowa Code 17A.19(10).

Specifically, the Court may reverse, modify or grant appropriate relief, when the agency determination of fact clearly vested in the discretion of the agency is not supported by substantial evidence in the record. Iowa Code § 17A.19(10)(f). The Court must view the record as a whole when determining whether the agency's finding is based on substantial evidence. Iowa Code § 17A.19(10)(f). In viewing the record as a whole, the Court must consider any determination of veracity made by the agency fact finder, who personally observed the demeanor of the witnesses, and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(f)(3). In deciding whether substantial evidence exits, the Court must consider the "quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). The substantial evidence standard only applies to factual findings. Iowa Code § 17A.19(10)(f).

Where the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence, the Court must give appropriate deference to the agency's findings. *Freeland v. Emp. Appeal Bd.*, 492 N.W.2d 193, 197 (Iowa 1992). "The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made." *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's decision is not supported by substantial evidence. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996).

Moreover, the Court shall reverse, modify or grant appropriate relief, if it determines based upon the record as a whole the agency applied or interpreted a provision of the law irrationally, illogically or wholly unjustifiably. Iowa Code § 17A.19(10)(l) & (m). The Court shall also reverse, modify or grant appropriate relief, if the agency action is "based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code 17A.19(10)(c). If there is nothing in the Iowa Code showing the legislature delegated any special powers to the agency regarding the statutory interpretation of the area of law in question, the court "need not give the agency any deference regarding" the interpretation of the statute in question. Iowa Code § 17A.19(10)(c); See, *Mycogen Seeds v. Sands*, 668 N.W.2d 457, 464 (Iowa 2004). However, in areas of the agency's expertise an agency's determination of a question of law is given careful consideration. *Id.* On the contrary, "the final interpretation and construction of pertinent statutes" is reserved for the reviewing court. *Brown v. Star*

Seeds, Inc., 614 N.W.2d 577, 579 (Iowa 2000)(quoting *Second Injury Fund v. Braden*, 459 N.W.2d 467, 468 (Iowa 1990)). "In deciding whether there has been a clear delegation of discretion" to the agency regarding interpretation of the area of law in question, the Court may consider "the following comments concerning the meaning of 'clearly' as used in section 17A.19(10):"

> [The world "clearly"] means that the reviewing court, using its own independent judgment and without any required deference to the agency's view, must have a firm conviction from reviewing the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration of the provision in question.

Mosher v. Dept. of Inspections and Appeals, 671 N.W.2d 501, 509 (Iowa 2003) (quoting Arthur E. Bonfield, Amendments to Iowa Administrative Procedure Act, *Report on Selected Provisions of Iowa State Bar Association and Iowa State Government* 63 (1998)).

Finally, the Court shall reverse, modify or grant appropriate relief to a petitioner, if the agency's decision was unreasonable, arbitrary, capricious or an abuse of discretion. Iowa Code § 17A.19(10)(n). An agency's action is "arbitrary" or "capricious" when the agency acts "without regard to the law or facts of the case." *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998)(citation omitted). "An agency action is 'unreasonable' when it is 'clearly against reason and evidence.'" *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688-89 (Iowa 1994)(quoting *Frank v. Iowa Dep't of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or

unreasonable.'" *Dico, Inc.*, 576 N.W.2d at 355 (quoting *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997)).

ANALYSIS

In this case, the Department of Education and the Auditor of State interpreted law and made a determination concerning the meaning of particular statutes. The facts of this case are such that neither the Department of Education nor the Auditor of State needed to make a factual finding. Therefore, the Court does not need to consider whether the Department of Education's ruling or the Auditor of State's ruling was supported by substantial evidence.

Here the Court reviews these ruling to determine whether the Department of Education and the Auditor of State had the authority to interpret the provisions of law they used in their respective ruling and whether they applied or interpreted the applicable provisions of law irrationally, illogically or wholly unjustifiably.

The agencies, the Department of Education and the Auditor of State, argue that they have authority to interpret the applicable statute sections because the Petitioner recognized the authority of the agencies by petitioning the agencies for Declaratory Orders regarding interpretation and application of Iowa Code §§ 296.7 and 298.4. The agencies also point out that these agencies are statutorily charged with oversight of school spending and the school budget process.

Under Iowa Code § 11.6(1)(a) the Auditor of State "...shall include an audit of all school funds..." and pursuant to Iowa Code § 11.6(7), the "auditor of state shall make guidelines available to the public setting forth accounting and auditing standards and procedures and audit and legal compliance programs to be applied in the examination of

the governmental subdivisions of the state..." Additionally, the Department of Education has explicit authority to interpret school laws. Iowa Code § 256.1(1) states that "the department of education is established to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education..." Moreover, Iowa Code § 256.1(5) requires that the Department "act as an administrative, supervisory, and consultative state agency." Under Iowa Code § 256.9(16), the director of the Department of Education shall "interpret the school laws and rules relating to school laws" and under Iowa Code § 256.9(17) the director of the Department shall "hear and decide appeals arising from the school laws not otherwise specifically granted to the state board." Accordingly, the statutes whose interpretation are at issue in this case are in Iowa Code chapter 296 and Iowa Code chapter 298.

Iowa Code chapter 296 is "Indebtedness of School Corporations" and Iowa Code chapter 298 "School Taxes and Bonds." The titles of these chapters indicate that the code sections in these chapters are laws relating to the finances of schools. As such, under Iowa Code § 256.9(16) the Department of Education has authority to interpret these statutes and this Court gives appropriate deference to the Department of Education's interpretation by determining whether the Department's interpretation was based upon an "irrational, illogical, or wholly unjustifiable interpretation" of the pertinent code sections.

The pertinent statute sections under Iowa Code chapters 298 and 296 are Iowa Code §§ 298.4 and 296.7(1). Iowa Code § 298.4 is entitled "District management levy" and it states, in pertinent part, as follows:

> The board of directors of a school district may certify for levy by April 15 of a school year, a tax on all taxable property in the school district for a district management levy. The revenue from the tax levied in this section shall be placed

> in the district management levy fund of the school district. The district management levy shall be expended only for the following purposes:
>
> ...3. To pay the costs of insurance agreements under section 296.7.

Iowa Code § 298.4. In other words, the district may use funds from the district management levy to pay for those items listed under Iowa Code § 296.7. Iowa Code 296.7(1) specifically states as follows:

> A school district ... may contract indebtedness and issue general obligation bonds or enter into insurance agreements obligating the school district or corporation to make payments beyond its current budget year for one or more of the following mechanisms to protect the school district or corporation from tort liability, loss of property, environmental hazards, or any other risk associated with the operation of the school district...:
>
> a. To procure or provide for a policy of insurance.
> b. To provide a self-insurance program.
> c. To establish and maintain a local government risk pool...

In short, according to the language in this statute section and Iowa Code § 298.4, a school district may use money from the district management levy fund to "enter into insurance agreements" for protection from "any other risk associated with the operation of the school district." Iowa Code § 296.7(1).

The Court must consider what constitutes "insurance," "self-insurance," "local government risk pool," whether the Fuel Risk Management Program protects against any "risk associated with the operation of the school district," and assess the Department of Education's interpretation of this term and phrase as to whether the interpretation is irrational, illogical, or wholly unjustifiable.

In considering the meaning of these terms, the Court must keep in mind that rules of statutory interpretation which is summarized in the following:

> Our first step in ascertaining the true intention of the legislature is to look to the statute's language. We do not search beyond the express terms of a statute when that statute is plain and its meaning is clear. Moreover, we must read a statute as a whole and give it "its plain and obvious meaning, a sensible and logical

> construction." Additionally, we do not construe a statute in such a way that would produce impractical or absurd results. When the legislature has not defined words of a statute, we look to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage.

Gardin v. Long Beach Mortg. Co., 661 N.W.2d 193, 197 (Iowa 2003)(citations omitted).

Another rule of statutory interpretation that the Court must consider is specific to the interpretation of statutes that impose taxes.

> Such statutes are liberally construed in favor of the taxpayer and strictly against the taxing body. It must appear from the language of the statute that the tax assessed against the taxpayer was clearly intended. Thus, any doubt in interpretation or construction should be resolved in the taxpayer's favor.

Carlon Co. v. Board of Review of City of Clinton, 572 N.W.2d 146, 154 (Iowa 1997)(citations omitted).

Now turning to the meaning of the terms at issue, insurance has generally been given the following four-element definition:

> A contract is one of insurance if it meets the following test: one party, for compensation assumes the risk of another; the party who assumes the risk agrees to pay a certain sum of money on a specified contingency; and the payments is made to the other party or the party's nominee.

Barberton Rescue Mission, Inc. v. Ins. Div. of Iowa Dept. of Commerce, 586 N.W.2d 352, 354 (Iowa 1998)(citing *State v. Schares*, 548 N.W.2d 894, 896 (Iowa 1996)(quoting *Iowa Contractors Workers' Comp. Group v. Iowa Ins. Guar. Ass'n*, 437 N.W.2d 909, 916 (Iowa 1989)). The Iowa Supreme Court borrowed the following language from 43 Am.Jur.2d *Insurance* § 4, at 79-80 (1982) to further define insurance:

> It is immaterial, or at least not controlling, that the term "insurance" nowhere appears in the contract the nature of which is to be determined; indeed, the fact that it states that it is not an insurance policy is not conclusive, and a company may be found to be engaged in an insurance business even though it expressly disclaims any intention to sell insurance. Neither are the terms or mode of payment of the consideration determinative of the question whether the contract is one of insurance. The nature of a contract as one of insurance depends upon its

> contents and the true character of the contract actually entered into or issued—that is, whether a contract is one of insurance is to be determined by a consideration of the real character of the promise or of the act to be performed, and by a consideration of the exact nature of the agreement in the light of the occurrence, contingency, or circumstances under which the performance becomes requisite, and not by what it is called.

Barberton Rescue Mission, Inc., 586 N.W.2d at 354. In short, the Court needs to consider the real promise, the act to be performed and the nature of the agreement if the underlying contingency occurs to determine whether this Fuel Risk Management Program constitutes insurance.

"Self-insurance" and "local government risk pools" are different than "insurance." A self-insurance program has been referred to as "no insurance." *State v. Schares*, 548 N.W.2d 894, 896 (Iowa 1996). Self-insurance has been defined by Black's Law Dictionary as a plan whereby a business sets aside money to cover any loss. Black's Law Dictionary, 807 (7th ed. 1999). "A risk pool is another form of self-insurance but on a group basis. The members of the group share the risks." *City of West Branch v. Miller*, 546 N.W.2d 598, 603 (Iowa 1996).

Keeping in mind these cannons of statutory construction, the IASB argues that the Iowa Legislature's explicit and unambiguous inclusion of non-insurance mechanisms for school districts to protect themselves, like self-insurance and local government risk pools, clearly means that section 296.7 cannot be limited to only traditional insurance agreements or insurance policies. Additionally, the IASB argues that the application of the ordinary and common definitions of these terms in the context of the entire statutory framework clearly demonstrates that the risk management fee is a proper expenditure from the district management levy. The IASB specifically addresses the purpose and structure of the Fuel Risk Management Program by stating that it is designed to protect

school districts from the disruption caused by unexpected fuel price increases during the school year and that this mechanism for protecting a school district from fuel price fluctuations effectively assists in the budgeting process. This Program protects the school district's budget by allowing the school districts to get a set price in January prior to the certification of the budget in April 15 for the upcoming fiscal year protecting the budget from unforeseen increases in fuel expense. The IASB claims that this Program is a form of self-insurance because it is shifting the risk of increasing fuel prices from school districts and affording school districts time to set aside funds to pay for the increase in fuel prices. As its final argument, the IASB argues that the Fuel Risk Management Program constitutes insurance under the traditional definition used by the Department of Education in its ruling, because even though a school district pays any price increases at the end of its participation in the Fuel Risk Management Program, the risk management fee does not invalidate the mechanism used to protect school districts from the risk of price fluctuations during the fiscal year.

In opposition to the IASB's arguments, the Department of Education and Auditor of State argue that a broad interpretation of the statutes governing expenditure of the management levy fund, to allow the shifting of operational expenses from the general fund to the management fund, will throw this equalization out of balance and increase the overall property tax burden placed on school district patrons. The Department of Education and Auditor of State argue that because section 298.4 authorizes an unlimited property tax levy, the scope of "insurance agreements authorized under section 296.7" must be strictly construed. Moreover, the Department of Education and Auditor of State maintain that interpreting "risks associated with the operation of school district" of Iowa

Code § 298.4 as including rising fuel costs and the impact this expense may have on school programs would virtually allow any type of risk management tool to be characterized as insurance for which a school district could pay with a tax levy. Additionally, the Department of Education and Auditor of State based their decisions on the claim that the Fuel Risk Management Program does not constitute "insurance," "self-insurance" or "a local government risk pool," because the Program does not involve a transfer of risk in that if fuel prices rise so that the fee does not cover the margin between the actual cost and the guaranteed price, the district must pay the difference either in a lump sum or through an increase in the management fee for the following period.

In their rulings on the IASB's request for a Declaratory Order, the agencies use interpretations of the terms "insurance," "self-insurance," and "local government risk pool" identical to those used by the Court as previously stated in this ruling. The Court agrees with the agencies interpretation and finds that the agencies logically, rationally and justifiably applied these statutes sections, specifically Iowa Code § 296.7(1), to the facts of this case. Although the purpose of the Fuel Risk Management Program is to give stability to school district in the time of rising fuel prices, the school district is still responsible for paying the increase in fuel prices above the set price per gallon and the risk management fee. Therefore, the Fuel Risk Management Program only works to postpone the risk or, in other words, relieve the school district of the risk of the rising fuel prices for the period of one fiscal year or the term of the Participant Agreement. The Fuel Risk Management Program does not assume the school district's risk as required by the four-element definition of insurance. Furthermore, the Fuel Risk Management Program does not constitute "self-insurance" because it does not involve the

establishment of a reserve of money to cover loss and it does not constitute a "local government risk pool" because, as previously determined, the school district's risk of rising fuel prices is not assumed by members of a group.

RULING

IT IS THERFORE ORDERED, ADJUDGED AND DECREED that the Petitioner's Petition for Judicial Review is **DENIED**.

IT IS SO ORDERED this 24 day of ~~July~~ June, 2005.

SCOTT D. ROSENBERG, JUDGE
Fifth Judicial District

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