29 March 1992

Sen. Reichgott:

I talked to Don Moore in Chicago about the issue raised at Mounds View the other night.

The 1988 legislation for Chicago had removed tenure for principals; providing for the principal to be appointed for a fixed term by a new school-level board.

The principals took this to court. Their approach was to attack the constitutionality of the new school council.

The law had provided for 10 members: six parents, elected by parents; two community representatives, elected by voters in the attendance area; two teachers, elected by teachers.

The trial court upheld the law. The state supreme court stunned the reformers by overturning the decision on grounds this voting arrangement violated the equal-representation requirements of federal law in Baker v. Carr.

The Legislature did an emergency 'fix'; providing for the Chicago board of education to appoint all those local school council members presently serving.

Subsequently it substituted a jerry-built arrangement in which (as I understood Don's explanation) both parents and community people are given six votes which they can distribute as they wish among the parent and 'community' candidates. If you have kids in two different schools (say, elementary and high school) you vote in two elections.

The teachers did not want the general public voting on the teacher representatives, so the law provides for the city board of education to appoint two teachers from each school to serve. In fact there is a vote within the faculty to select the two teachers which the city board then 'appoints'.

So far this amazing arrangement has not been re-challenged. (Principals' tenure was not restored.)

Don thinks this is a potentially a serious problem for any site-management arrangement . . . most of which do call for some kind of 'school council', usually a Rube Goldberg arrangement involving parents, community, teachers and other staff.

I'd think the school-level board called-for in the MN Charter Schools legislation can escape the attack made on the

school councils in Chicago. But Don urges we get some legal advice about this right away.

I'd argue along these lines:

* The Chicago arrangement was really trying to create a piece of public governance. The underlying notion was that the council at the school level was like the board at the city level, and provided for an election in pretty much the normal format (tho at the school and on a 'special' day, and not administered by the city board of elections).

* The schools remain administrative units of the Chicago "school corporation". All the staff remain employees of this corporation. The school has no legal existence. The students do not have choice: They attend within attendance areas.

* In the MN law, by contrast, the school becomes a legal entity: a Ch 317 non-profit or Ch 308 cooperative; legally not part of a government. Its employees are employees of that organization. Students are not assigned: They enroll by choice. In effect it's a community; not a 'public'. The district board of education (there never were truly 'school' boards) remains, and remains elected, for its policy purposes, including taxation.

* A procedure for the governance of the organization is provided in the relevant statute (modified by certain requirements of the Charter Schools law about the proportion that must be teachers). Members of the organization select the members of the board; and the board has the power to appoint employees. It is not a public process. The organization is on contract to its sponsor; in the same way that (say) the Urban League might be on contract to a county for certain social services. Its board-selection process is no more subject to Baker v. Carr than is the selection process of the Urban League. (Or the MEA.)

Someone could probably argue, though, that the functions being performed are public functions, previously exercised by a (governmental) school board; so that the formal representation arrangements should apply.

Maybe someone will. Most innovative legislation has to fight through a certain amount of legal challenge, once the opposition has lost politically.

What do you think?

Is there someone else you'd like me to test this on?