BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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VAUGHN ELEMENTARY SCHOOL DISTRICT NO. 74 Appellant, vs. SUN RIVER HIGH SCHOOL DISTRICT NO. 55F Respondent.	)	OSPI 245-94 DECISION AND ORDER

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Vaughn Elementary School District (hereinafter Vaughn) is appealing a Cascade County Transportation Committee's (hereinafter "CCTC" or "the Committee") July 5, 1994, ruling that Vaughn did not have a right to a hearing before the Committee. Vaughn wanted to appear before the CCTC as a petitioner and name another Cascade County elementary district -- Sun River Valley (hereinafter SRV Elementary) -- as the respondent.

The SRV High School transportation service area (TSA) includes Vaughn. The SRV High School bus travelled through and stopped within Vaughn's boundaries on a route approved by the CCTC. Three elementary students who lived within the boundaries of the Vaughn District boarded the SRV High School bus and attending SRV Elementary. Vaughn wanted the transportation committee to stop the practice.

The CCTC asked the two districts to try to resolve the dispute between themselves. The districts were unable to do so.

At a regularly scheduled October 18, 1994, meeting committee representatives from Vaughn, SRV, other schools on the committee and concerned parents were heard on the question of SRV's bus route. SRV Elementary moved to extend its transportation service area two miles into Vaughn school district. The CCTC approved the motion 8 to 2.

On November 15, 1994, Vaughn filed a written request for a "fact finding hearing for the transportation decision of October, 18, 1994". The CCTC, acting on the advice of the Cascade County Attorney, refused to hear the matter because it was not a contested case and the CCTC did not have jurisdiction under §20-10-132 (1) (d). Vaughn appealed.

STANDARD OF REVIEW

The issue to be decided is whether the CCTC must hold a hearing to review a vote that is the result of a dispute between two member districts. An administrative forum has jurisdiction to determine initially whether it has jurisdiction. Wilson v. Dept of Public Service Reg. 260 Mont. 167, 171, 858 P.2d 368, 370 (1993). The CCTC's December 5, 1994, ruling is a conclusion of law that it should dismiss Vaughn's request for a hearing because the Committee lacked a jurisdictional grant to hear the matter.

Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990). On review, this Superintendent used the standard that dismissal of an action is viewed with disfavor and on appeal the matter

reviewed from the perspective most favorable to the party wanted to be heard. Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d 407 (1976).

DECISION AND ORDER

The Cascade County Transportation Committee correctly concluded that Vaughn was not raising a contested case controversy that the Committee had jurisdiction to hear. The Committee's conclusion of law not to hear the matter is AFFIRMED.

MEMORANDUM

Introduction. The issue in this appeal is procedural -- what questions of law may be ruled on by a county transportation committee through the administrative hearing process. The issue is not the legal merits of the CCTC's 1994 approval of SRV Elementary's TSA. As stated above, the CCTC correctly refused to hear the matter and there is no substantive ruling for this Superintendent to review. This is discussed in Part I.

Vaughn's dispute with SRV occurred before § 20-10-126, MCA, went into effect on July 1, 1995. Although the statute is not controlling in this appeal, Part II of this order discusses what effect § 20-10-126, MCA, (1995), has on a transportation committee's authority to approve a district bus route outside of a district's boundaries. This discussion is offered for future guidance only.

I. Having lost a vote before a committee that functions as an executive body to implement the school transportation laws, Vaughn wants to compel that committee to act as a quasi-judicial

body. It wants the CCTC to follow administrative procedure and weigh the merits of its prior decision with two members of the committee appearing as parties. No statute or case law supports the procedure Vaughn wants to follow.

A. Transportation committees exist by statute to carry out the duties listed in § 20-10-132. Transportation committees perform executive functions. These committees are suppose to be representative of the school districts in a county and apply statutory guidelines to approve bus routes for transportation reimbursement purposes.

Transportation committees have one, limited grant of quasi-judicial power to hold a hearing when a "patron of the district" appeals a "transportation controversy" arising from the "decision of the trustees." Sections 20-10-132(1)(d) and 20-10-132(2) (1993)[1]. Besides being a legislative grant, this quasi-judicial function makes sense -- the transportation committee is a neutral, knowledgeable third party that can fairly hear and decide a school transportation dispute between a patron of a district (usually a parent) and a school district.

The hearing Vaughn would like to hold -- the CCTC acting as an administrative forum to review its own decision with committee members appearing as litigants -- does not make sense. Vaughn's request for a hearing does not fit into the statutory

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[1]This dispute began prior to July 1, 1995, so § 20-10-132 (1993) applies. This statute was amended in the 1995 legislature but the outcome of this appeal is not effected by the change in statute. The portion of the statute stating what a transportation committee hears is not amended.

grant in §§ 20-10-132(1)(d) and 20-10-132(2). Vaughn is a school district, not a patron of the district. The matter it wants to be heard on is a decision of the transportation committee, not of a district.

This Superintendent has consistently held that there must be a statutory, constitutional or caselaw grant to a petitioner of a right to an administrative hearing before a County Superintendent has the jurisdiction to hear and resolve a dispute. Althea Smith v. Board of Trustees, Judith Basin County School District No. 12, OSPI 200-91, 11 Ed.Law 65 at 66 (1992), Cause No CDV-92-1331, First Judicial District, Lewis & Clark County, 12 Ed.Law 24 (1993) (affirmed on other grounds).

The same reasoning applies to county transportation committee decisions. Section 20-10-132, MCA, does not create jurisdiction in transportation committees to hear transportation disputes between school districts. The school districts have no right to a hearing and the transportation committee has no power to fashion a remedy.

B. This appeal is an example of one district trying to bring an administrative action against another school district over bus routes. It is unclear what Vaughn wants heard or what remedy it wants. Litigation is an expensive way to resolve a dispute and districts have better uses for their time and money then suing each other. Before a district brings an action against another district it should seriously review what remedy it is seeking and consider whether it has standing to bring an action

against another unit of government. Concerning this question, the Montana Supreme Court has written:

> School districts, municipalities, and counties are political subdivisions of the state. As creations of the state, "[e]xcept as provided by the state, they have no existence, no functions, no rights and no powers." [cites omitted] When a school district or other subdivision of state government attempts to bring an action against another governmental subdivision, the state, in effect, is suing itself. Carbon County, 680 P.2d at 774. The logic of this view cannot be denied. While the taxpayers, as represented by the School Districts, may benefit, the taxpayers, as represented by the County, must pay, through taxes or insurance, the deficient funds to the School Districts.
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> Generally, courts will not allow suits between governmental entities unless express or implied statutory authority exists. (emphasis added)

District No. 55 v. Musselshell County, 802 P.2d 1252, 245 Mont. 525, 527, 47 St.Rep. 2249, 2250 (1990).

II. Application of § 20-10-126, MCA. This controversy took place during school year 1994-95. Vaughn was not entitled to a hearing before the CCTC under 1994 law or under current law. Section 20-10-126, which went into effect in July, 1995, will control how these districts resolve this dispute in the future, however. The following discussion is offered to help transportation committees apply the statute. This discussion applies prospectively only. It does not effect the 1994-95 or 1995-96 school years.

Section 20-10-126 (2) states:

> "A district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils."

This statute precludes a transportation committee from approving a bus route for District A that extends into District B's TSA unless District B has a written agreement with District A.

By definition, a district's TSA is "the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program." Section 20-10-101 (6), MCA. By operation of statute a district's geographic area of responsibility cannot be smaller than its district boundaries because if the district provides transportation it must do so for all eligible trustees in the district. Section 20-10-121 (1)). By agreement of the districts a transportation committee can expand one district's TSA to include another district's territory. In that case a bus route may be outside of a district's territory but within its TSA and it can be an approved route.

The question then becomes does § 20-10-126 (1) mean a transportation committee can extend District A's TSA beyond its district boundaries into District B without District B's approval? Statutes are applied to give effect to legislative intent. The primary source for determining legislative intent is the plain language of the statute. Section 20-10-126 has to be applied to harmonize with §§ 20-10-101 and 121. One rule of statutory construction is that the Legislature intends to give meaning to all statutes if possible. Vita-Rich Dairy, Inc. v. Dept of Bus. Reg., 170 Mont. 341, 348, 553 P.2d 980 (1976).

To give effect to all statutes, § 20-10-126 (1) has to be applied to mean that a transportation committee may extend District A's TSA beyond its district boundaries only if the other effected district or districts agree. For example, a transportation committee can extend District A's TSA into District B's boundaries if it concludes that the extenuating circumstances of § 20-10-126(1), MCA, apply and District A and District B both agree to the inclusion of District B territory in District A's TSA.

In enacting § 20-10-126 the Legislature anticipated that districts would act reasonably and cooperate with each other. District B should not unreasonably refuse to allow District A's TSA to be extended into District B. If District B wants to stop District A's TSA at District B' boundaries, however, it can do so. If District B does not want the transportation committee to approve a route operated by District A within District B, District B can prevent the approval.

A transportation committee has the jurisdiction to approve or disapprove district bus routes but the approval is subject to some statutory limits. Section 20-10-132 (1)(b) and ARM 10.7.112 One statutory limit is § 20-10-126 (2). By operation of statute, the transportation committee cannot approve District A's bus route within District B if District B opposes it.

If a transportation committee establishes a TSA for District A that includes District B's territory contrary to District B's wishes or if a transportation committee approves a route for

District A that travels in District B's territory contrary to District B's wishes, District B does not need a fact finding hearing to stop the transportation committee's approval. Both the district boundary and the TSA boundary are a matter of public record. All District B has to do is notify the county superintendent that the route cannot be approved by operation of law. The route cannot be authorized for reimbursement. There is no need for an administrative hearing.

The effect of approval of a bus route is that the route may be eligible for state and county transportation reimbursement. Sections 20-10-104, 20-10-141, 20-10-145 and 20-1-146. (The route also has to be operated in a manner that complies with transportation laws. Section 20-10-104.) The effect of no approval is that the route cannot be claimed for transportation reimbursement -- no approval, no money.

Claims for reimbursement are submitted to the State Superintendent by County Superintendents. § 20-10-145 (2) and ARM 10.7.104. If a district operates a bus route that is not approved by a transportation committee it cannot claim reimbursement. If the County Superintendent receives such a claim he/she cannot submit it to the State Superintendent. A school district that knowingly operates school buses without approval of the route by a county transportation committee will not receive any state or county reimbursement for that route until the violation is corrected. 39 Ag. Op. No. 57 (1982).

County Superintendents and transportation committees should note that if District A's route in District B is approved (because District B has no objection to the TSA) it does not follow that residents of district B automatically become eligible transportees of District A. If District A is operating an approved bus route that picks up non-resident students it has to have an attendance agreement with the district of residence (§§ 20-5-320 and 322) to include the nonresident students as eligible transportees for reimbursement purposes.

DATED this 20 day of June, 1996.

Nancy Keenan

NANCY KEENAN

2VAUGHN.245

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 20th day of June, 1996, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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