



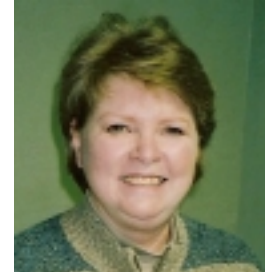
## LEGALITY MATTERS



Nelda Mickle

Nelda Mickle and Suzette Jensen are providing unprecedented public service to Des Moines in efforts invaluable to the preservation of standards of integrity and safety in our public schools.

Each has professional skills necessary for the legal actions by SOS, Nelda in law and Suzette in research and school board training (See vitas page X), and each, since July 2005, has worked in conjunction with Bruce Johnson, of the Cutler Law firm to research and prepare two separate legal actions filed on behalf SOS.



Suzette Jensen

Following is their summary of current legal actions. Both actions here described are alive and pending. -edSOS

## **TWO SOS LEGAL ACTIONS FILED AGAINST THE DM SCHOOL BOARD**

### FIRST: APPEAL TO THE IOWA DEPARTMENT OF EDUCATION:

In 2003, the Department of Education (DOE) State Board of Education adopted administrative agency rules (commonly referred to as The Barker Rules) which all local Iowa school districts are required to follow when considering whether to close an attendance center.

These rules require public notice, public consideration, and public involvement in the process by which a local Iowa school board determines whether to close an attendance center within its district. The rules require that a timeline be established in advance of a local Iowa school board undertaking research, study, and planning of whether to close an attendance center. The timeline establishes the process the school district will follow in order to carry out the procedures set out in the rules.

The Des Moines School Board did not establish such a timeline and did not involve the public in any research, study, and planning steps involved in making its decision to close the five attendance centers on July 12, 2005. The Proposed Decision by the Administrative Law Judge nevertheless recommends that the State Board ignore such failure and uphold the Des Moines School Board's process.

The Administrative Law Judge arrives at the Proposed Decision by disregarding the clear policy considerations, specifically stated in the rules, which are to be implemented by local Iowa school districts when considering closing atten-

*cont. on pg. 2* →

dance centers within their districts.

The rules require a local school board to create its formal process for determining whether to close attendance centers in such a way “... as will most reasonably accommodate the specific facts and circumstances surrounding the decision with which the local board is faced.”

The Des Moines School Board determined to close the five attendance centers as part of its Mid Program Review of its SCHOOLS FIRST program. The review was of the expenditures it had made of the special school infrastructure Local Option Sales and Services (LOSST) revenues during the first five years of this special tax levy. The ballot initiative submitted to the voters in 1999 stated the money received from the tax shall be spent ‘...as specified in a school infrastructure project plan on file with the Secretary of each school district located in Polk County on September 1, 1999’.

The Des Moines School District’s plan was called the Des Moines Public Schools Ten Year Community School Facility Action Plan (the Ten Year Plan). This SCHOOLS FIRST program was developed in order to secure voter approval of the special one cent LOSST. This Ten Year Plan is the Des Moines school infrastructure project plan on file with the Secretary of the District on September 1, 1999. This is the plan submitted to and approved by the voters of Des Moines in November of 1999.

The plan approved by the voters specifically addresses the needs of all school buildings in the district and includes detailed assessments of the needs of each facility. A review of the use of the LOSST revenues was literally the last place the public would expect to find consideration of school closings.

When school closings began to be considered as a way to solve decreases in expected LOSST revenues, the State Board’s rules required that the Des Moines School Board carve out school closures from such review and create a process for making such a decision which would substantially comply with the policy and procedure set out in the agency rules. The Administrative Law Judge’s Proposed Decision recommends that the State Board completely ignore the unique facts and circumstances of the Des Moines School Board’s action. Approval of the Proposed Decision would be a clear violation by the State Board of its own rules. It is reversible error for the State Board to fail to enforce its own rules.

In our SOS appeal to the State Board of Education, we urge the State Board to reject the Proposed Decision and to overturn the Des Moines School Board’s July 12th decision to close the five attendance centers, and to instruct the Des Moines School Board that any further consideration of closing attendance centers must proceed in a process that substantially complies with the policy and the procedures of the State Board’s rules:

- Original Appeal – filed (Supporting Brief, etc.) August 9, 2005.
- Hearing before Administrative Law Judge Carol Greta - October 5, 2005.
- Administrative Law Judge’s Proposed Decision - issued March 9, 2006.
- Notice of Appeal to the State Board of Education- filed March 29, 2006.
- Brief in Support of Appellants’ Notice of Appeal – filed April 13, 2006.
- Consideration by the State Board of the Proposed Decision & the Appellants’ Notice of Appeal - May 11 and 12, 2006.

cont. on pg. 3 →

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## **SECOND: CERTIORARI ACTION IN POLK COUNTY DISTRICT COURT:**

Our SOS Certiorari Action challenges the legality of the Des Moines School Board's changes in the use of the special school infrastructure LOSST revenues from uses specified in the Ten Year Plan submitted to and approved by voters in the special November 1999 referendum on the special levy of the one-cent sales tax.

We assert that the only authorized expenditures of the special tax levy revenues are for the uses specified in the Ten Year Plan. We argue that since the revenues are special levy revenues, any change in the use of the revenues from those specified in the plan by the Des Moines School Board must be taken back to the voters prior to implementation of such change. (The Iowa Legislature specifically provided for such a change-in-the-use referendum in amendments to the special school infrastructure LOSST statute in 2003):

- SOS Writ of Certiorari filed in Polk County District Court - August 8, 2005.
- School District' Motion for Summary Judgment - December 16, 2005.
- Response by SOS to School District's Request for Summary Judgment - Brief - March 10, 2006.
- Hearing on Summary Judgment – March 31, 2006.

Polk County District Court Judge Robert Hanson's decision on the summary judgment issues should be rendered within thirty to sixty days after the March 31st hearing.

## **OTHER POTENTIAL LEGAL ACTION:**

- Violations of Open Meetings and Open Records – Chapter 21 & 22 of the Iowa Code

During our research, we uncovered numerous disturbing violations of Iowa's Sunshine Laws. As our resources of time, energy, and money are limited, we have been unable to pursue these issues. However, the Des Moines School Board's departure from appropriate legal process with respect to open meetings and open records cries out for further investigation and public disclosure.

- Public petition to place a question on the SB ballot in September 2006 to ask the voters to vote to sell the Federal Home Loan Bank Building.
- Petition to place a question on the SB ballot in September 2006 to ask the voters whether the SB Members should be elected from Director Districts as provided for in the Code of Iowa. This would be analogous to the ward representation we presently have in elections for four of our seven City Council members.

\* Should readers wish more detailed legal information, please contact one of the following members of SOS:

- |                |                       |                  |                         |
|----------------|-----------------------|------------------|-------------------------|
| • NELDA MICKLE | nelda@shermanhill.org | • SUZETTE JENSEN | sjensen@acsLtd.com      |
| • MARK WALLACE | marcrwallace@msn.com  | • BRUCE JOHNSON  | bjohnson@cutlerfirm.com |

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## Nelda Mickle

Nelda Barrow Mickle was born in Jonesboro, Arkansas. She is a graduate of Arkansas University with a B.A. in English and a minor in History. As a recipient of a national Woodrow Wilson Fellowship for Graduate Study, Nelda attended Northwestern University where she earned a M.A. in both English and American Literature.

Nelda moved to Des Moines in 1968 and taught freshman English and Business English at Drake University from 1969 to 1971. In 1974 she entered Drake Law School as a young mother of two children. After earning her Law Degree in Spring, 1977, she served as Law Clerk to Judge Leo Oxberger, Iowa Court of Appeals, for two years.

Nelda served as Attorney with the City of Des Moines Legal Department for many years, first as a Traffic Court Prosecutor; then Attorney III working with Neighborhood and Urban Development Departments; then City Solicitor working with Civil Service, Police and Fire Retirement Systems and Employee Relations matters. She was appointed as Acting Corporation Counsel for six months after the retirement of Corporation Counsel Philip Riley in 1986.

Nelda is married to former City of Des Moines Planning Director, Robert Mickle and has two sons. Her entire family lives in the Edmunds neighborhood and her grandchildren attend Edmunds Academy. Nelda joined SOS in the Spring of 2005 and is a key member of the SOS legal team.

## Suzette Jensen

BA & MA Journalism- Mass Communications  
Drake University

### Past Service:

Luther Memorial Church: Youth Choir Director  
Church Council Member

PTA President: Garton Elementary,  
Goodrell Middle, East High School

Des Moines PTA Council President

Iowa PTA Board of Directors

Intern - Iowa Association of School Boards

AEA 11 (Heartland) Board of Directors

Des Moines School Board - 6 years

IASB Leadership Team & Advisory Committees

IA Communications Network Advisory Committee

Mid-Iowa Computer Center Board of Directors

### Current Service:

Grand View College National Alumni Board

Des Moines Park & Recreation Board - Chair

Northeast Neighbors - Founding Member

Save Our Schools - Legal Team

### Honors

Volunteer of the Year - DSM Education Assoc.

Alumni of the Year Award - Grand View College



In every child who is born under no matter what circumstances and of not matter what parents, the potentiality of the human race is born again, and in him, too, once more, and each of us, our terrific responsibility toward human life.

-- James Agee