

Bratenahl Lamplighter

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A FIGHT FOR JUSTICE:
THE STORY OF BRATENAHL'S SCHOOLS
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Bratenahl School Board attorney William S. Burton on Friday, June 30, was given an additional month by the Ohio Supreme Court to file an appeal with the United States Supreme Court on behalf of Bratenahl's school system. In March of this year, the Ohio Court had ruled in favor of the Ohio School Board against Bratenahl and extended the stay of execution to July 8, 1978 for the Ohio board to consider possible dissolution of the Bratenahl School system and merger of its territory with the Cleveland school system.

The July 8 stay was then extended to August 13, ten days past the deadline for Burton's appeal to the U. S. Supreme Court. Since the federal court is scheduled to be in adjournment until October, Burton may seek a further postponement from the state court until the federal court can consider Burton's appeal. Then, if the U. S. Supreme Court agrees to consider Burton's "Writ of Certiorari" (which is explained below), the dissolution/merger date would be postponed even further, possibly a number of months.

But wait! That's not all Bratenahl has going for it in the courts--and not just to postpone dates, but to secure justice. Those of you who believe that the law is on Bratenahl's side in this complicated, multi-faceted case are right! Getting the judicial system to acknowledge this fact is another matter. But attorney Burton is determined to pursue every suit necessary until one or more courts rule on what seems so simple and clear to the reasonable and fair-minded.

Mr. Burton's several legal actions in the past week can be explained more easily within the context of what has led up to this INDEPENDENCE DAY 1978 in embattled Bratenahl's fight to preserve its public schools. Thus, I attempt below to clarify the chronology of Bratenahl's legal disputes with the Ohio State School Board. Bratenahl resident and attorney Daniel Wilt provided immeasurable patient interpretation of the legalities in order for me to fit the pieces together and write the following.

In 1967 the Ohio legislature amended state law 3311.29 to require every school system in the state to provide all 12 grades of education by July 1, 1968. At that time, and for the preceding 70 years, Bratenahl operated only a grade school, providing grades Kindergarten through 8. Since a state regulation required a minimum of 240 students in grades 9 through 12 in order for a high school to exist, and since nowhere near 240 students of high school age lived in Bratenahl, the Village was caught in a bind. One rule said we had to create a high school or else give up our grade school, and another rule said we could not create a high school unless we had at least 240 high school students.

Certain exceptions could be granted at the discretion of the State School Board, but Bratenahl was ordered to dissolve its grade school and merge its school district territory with the Cleveland school district. Bratenahl asked for and was granted two years in which to conclude its educational affairs and carry out the transition. July 1, 1970 was agreed to by the State and Local Boards as the dissolution/merger date.

As part of the transition program, Bratenahl voluntarily arranged to educate minority students from the adjacent Cleveland district at a ratio of approximately 25% of its enrollment. As a result, Bratenahl's school system has satisfied federal desegregation requirements for the past ten years.

In the meantime, after Bratenahl had agreed to give up its grade school under the amended law, the Bratenahl School Board discovered that the requirement for a minimum high school enrollment of 240 had been removed from the regulations. In its place the requirement of 55 units of credits had been inserted as the criterion for a new high school. (All previously existing high schools still needed to offer only 45 units.) Now Bratenahl could create a public high school of its own which would comply with all the laws and regulations!

So, the Bratenahl School Board asked the State School Board for an extension of time past the July 1, 1970 dissolution/merger date to give the Village time to start a high school. The State Board refused. Not on the basis of any law, but on the basis that no law required them to say "yes" to Bratenahl. This is when the Bratenahl School Board instructed attorney William Burton to go to court to secure Bratenahl's rights under the law.

Burton asked the Franklin County Common Pleas Court to order the State School Board to grant Bratenahl a hearing to consider our Board's justification for an extension of time in order to create a high school which would satisfy the state laws. All our School Board wanted was its legal right to comply with a new law. However, in 1971, the Common Pleas Court denied Burton's appeal. So Burton took our case to a higher court, the Franklin County Court of Appeals. Since the case was in litigation, the July 1, 1970 dissolution/merger date had been postponed.

This time, the Court of Appeals agreed that Bratenahl had a legal right to a hearing with the State School Board and so ordered it, reversing the lower court.

Instead of just getting the hearing over with, the State School Board appealed to the next higher court, the Ohio Supreme Court. (The battle on this relatively simple issue was now joined.)

By this time, Bratenahl had started operating its high school, beginning with the September, 1971 term. And, Bratenahl had begun measures for a bond issue and the eventual construction of a new high school/community center building.

The State Supreme Court refused to hear the appeal of the State School Board, thus supporting Bratenahl's position. That was two consecutive court victories for Burton and Bratenahl.

So, the State School Board arranged a hearing for Bratenahl's request for time to create a high school which complied with the law.

Non-judicial minds may have wondered about this strange sequence of events, for the hearing for more time for Bratenahl was scheduled in 1973 and Bratenahl had been operating a high school within the requirements of the law since 1971! All the State board had to do was come up and take a look and then evaluate it. But these legal/court proceedings, once started, do proceed (unless one party withdraws).

Accordingly, in 1973, as construction of the Bratenahl high school building proceeded, and as Bratenahl classes K through 12 continued, a State Board-appointed referee listened to Bratenahl's case for time in which to start a high school. In 1974 the referee ruled that Bratenahl was not justified under law to have the time to start a high school--the one that had been operating for three years!

In October of 1974 the State School Board concurred with the ruling of its appointed referee, to no one's surprise. The State School Board reset Bratenahl's dissolution/merger deadline for November of 1974. (Note: They gave us one month to dissolve and merge when our "legal" but not-recognized high school was in operation--after having given us two years to dissolve and merge at a time when there was no way Bratenahl could comply with the law as then written. Is this fairness? Reasonableness?)

Attorney Burton returned to the courts with appeals challenging the proceedings and the legal bases for the State School Board's rulings against Bratenahl. Each case postponed that dissolution/merger deadline.

And in the fall of 1975 our new high school building opened. (Some--probably many--Bratenahl residents asked why the State School Board did not come to our Village, look at our new building, examine our school system, and verify that we satisfied or exceeded all state requirements for a school system, and then stop all the legal maneuvering and let Bratenahl do its educational thing unharrassed by legal actions and deadlines. No one in the state, at least publicly, offered an explanation.)

The appeals from persevering attorney Burton continued through 1976 and into 1977. (To paraphrase a number of people I have talked to about this chronology: "The State School Board could have stopped all the nonsense at any time by performing its duty of inspecting our system, admitting its legality and quality, and withdrawing its order for dissolution/merger.")

Burton's legal activities from late 1974 through late 1977 culminated in his appearance before the Ohio Supreme Court in November of 1977. Now here again is where non-judicial minds are challenged to find comprehension. Instead of the state's highest court responding to any of several appeals in Burton's suit, the Ohio Supreme Court in the tightest possible split vote, ruled 4 to 3 that way back there in 1970--seven years earlier--when the State School Board had first refused to give Bratenahl an extension of time to create a high school (remember that presumably dead issue?) well, four Justices of the State Supreme Court ruled that the State School Board had not needed to give Bratenahl a hearing before a referee after all!

This "split-decision" by the Ohio Supreme Court in March of 1978, in the words of attorney Dan Wilt, "made all the legal actions between Bratenahl and the State School Board from 1970 through 1977 irrelevant--no longer in consideration, no longer appealable." That is to say, if any of attorney Burton's legal actions during that seven-year period do in fact have legal basis, if they can in fact prove Bratenahl's legal rights, they must be re-initiated, begun anew. If you are tired and weary of all this, consider attorney Bill Burton's patience.

As you may more readily recall, Burton filed a motion for reconsideration later in March, only to get the same 4 to 3 split vote; and Burton appealed the state ruling on that suit to a U. S. Supreme Court Justice, who included Burton's suit among the bulk of those to be refused a hearing.

Time, time! The issue has been how much time we have, for 10 years now! How much time to satisfy the law? Bratenahl took less than two years to create and operate a high school within the written law (since 1971) and the Village has given the State School Board seven years to verify the fact--a procedure the State Board is required to do routinely every four years with every school system in the state. But the State Board denies that our school system legally exists and that they don't have to evaluate "nothing" and confirm anything. (Do you remember Captain Yosarian and "Catch-22?")

But, to return to the present situation: On June 28, 1978 attorney Burton "began anew" with two suits in the Franklin County Court of Appeals. He filed a Writ of Mandamus--which would require the State School Board to evaluate Bratenahl's school system for compliance with the law, which the Board had been ordered to do in 1975, but which order was wiped out, rendered irrelevant, in that 4 to 3 Ohio Supreme Court vote.

And Burton filed on June 28 a Writ of Prohibition--which would order the State School Board not to order Bratenahl's schools' dissolution/merger on the basis that the State School Board no longer has the authority to do so under various state laws. Among other technicalities, Ohio law requires that before the State School Board can order the dissolution of a school

system and "its territory joined (merged) with another school district," the two school districts in question must get together, discuss the property involved, and agree on the handling or the disposal or the sale or the whatever of the dissolving school's assets and liabilities. Cleveland and Bratenahl have never discussed this potential transaction, let alone agreed on a resolution of the properties involved. Thus, Burton has charged that the State School Board does not have the authority to order a dissolution/merger of the Bratenahl schools.

The Court of Appeals took one day to dismiss the two-part suit and allow Burton to appeal to the Ohio Supreme Court, which is what attorney Burton did on the next day, June 30, 1978. The Ohio Supreme Court cannot dismiss the suit; its consideration of the charges is mandatory.

Burton has until July 30, 1978 to file his brief, unless he asks for more time. If he files by July 30, then the State School Board has until August 30 to file its brief, unless they ask for more time.

If no one asks for additional time, attorney Dan Wilt surmises, "it could take until November or even January of 1979 until oral arguments are scheduled, and then until March or later in 1979 until the State Court rules." And then there could be appeals by the loser. During all this time the Bratenahl schools will continue to operate under continuing postponements of any deadlines.

Now, to return to Burton's simultaneous appeal to the U. S. Supreme Court with that Writ of Certiorari which he has until August 3, 1978, by order of the same Ohio Supreme Court, to file in the federal court. The Writ of Certiorari in effect asks the nation's highest court to consider the possibility that the state's highest court erred in its 4 to 3 split ruling of the case presented to it--that Bratenahl did not receive justice in March of 1978.

In a layman's view, it feels good to know that a state court has granted time to the attorney of a village to ask the federal court to consider that the state court made a mistake.

Regarding all these current federal and state court proceedings, what can be anticipated? Delays upon further delays of the State School Board to treat Bratenahl negatively, and that same amount of time for the State Board to decide to treat Bratenahl positively. And there are even more suits under consideration on behalf of the rights of Bratenahl's school system, should more be necessary to obtain justice under law for Bratenahl in court.

And all these legal proceedings could be dropped if only the State School Board would.....But you already know how easy and simple and economical that would be.