IN THE COURT OF APPEALS OF IOWA

No. 9-841 / 08-2056
Filed April 21, 2010

HAWKEYE FOODSERVICE DISTRIBUTION, INC.,
Plaintiff-Appellant,

vs.

IOWA EDUCATORS CORPORATION, d/b/a IOWA EDUCATORS CONSORTIUM; KEYSTONE AREA EDUCATION AGENCY, AREA EDUCATION AGENCY 267, PRAIRIE LAKES AREA EDUCATION AGENCY, MISSISSIPPI BEND AREA EDUCATION AGENCY, GRANT WOOD AREA EDUCATION AGENCY, HEARTLAND AREA EDUCATION AGENCY, NORTHWEST AREA EDUCATION AGENCY, LOESS HILLS AREA EDUCATION AGENCY, GREEN VALLEY AREA EDUCATION AGENCY, and GREAT PRAIRIE AREA EDUCATION AGENCY,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Hawkeye Foodservice Distribution, Inc. (Hawkeye Foodservice) appeals from the district court ruling dismissing its petition for declaratory judgment. **REVERSED AND REMANDED.**

Stephen R. Eckley and David W. Nelmark of Belin McCormick, P.C., Des Moines, for appellant.

Jim D. DeKoster and Beth E. Hanson of Swisher & Cohrt, P.L.C., Waterloo, for appellees.

Heard by Vogel, P.J., and Eisenhauer and Potterfield, J.J.

EISENHAUER, J.

Hawkeye Foodservice Distribution, Inc. (Hawkeye Foodservice) appeals from the district court ruling granting a motion to dismiss its petition for declaratory judgment. It contends the court erred in concluding it lacks standing to challenge the alleged illegal actions of the defendants. Hawkeye Foodservice also contends the court erred in concluding it failed to show the defendants violated Iowa Code chapter 23A (2007). Because the defendants' motion to dismiss was improvidently granted, we reverse and remand.

I. Background Facts and Proceedings. Hawkeye Foodservice is a wholesale foodservice distributor and consultant. It does business with institutions and has historically provided services to Iowa schools.

In 2000, the fifteen Iowa Area Education Agencies (AEAs) incorporated as a nonprofit corporation known as Iowa Educators Corporation (IEC). The purpose of IEC is to provide a voluntary purchasing program for Iowa schools, which allows the schools to take advantage of aggressive pricing based on a greater purchasing volume. This pricing is offered through prime vendors, selected by IEC. The AEAs are required to purchase at least sixty percent of their foodservice needs from the prime vendor.

IEC selected Martin Brothers Distributing Co. (Martin Brothers) as its prime vendor for foodservice. Martin Brothers is in competition with Hawkeye Foodservice. As a result, Hawkeye Foodservice has lost revenue from customers who purchase foodservice and products through IEC.

On June 17, 2008, Hawkeye Foodservice filed a petition against IEC and the ten AEAs now comprising IEC. Count I alleged the AEAs did not have authority under Iowa Code chapter 273 to form or operate IEC. Count II alleged IEC was created and operates in violation of chapter 28E. Count III alleged the AEAs and IEC violated chapter 23A, which prohibits a school corporation from engaging in "manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise . . . ." Finally, in Counts IV and V Hawkeye Foodservice alleged IEC violated Iowa's open meeting (chapter 21) and open record (chapter 22) laws. Hawkeye Foodservice sought "[a] declaration that the establishment, exercise, and operation of the IEC are unauthorized under Iowa law," "[e]quitable relief enjoining the AEAs and the IEC from continued operations in violation of Iowa law," and attorney fees and costs.

On August 14, 2008, the defendants filed a motion to dismiss the petition, alleging—among other things—that Hawkeye Foodservice lacks standing to seek dissolution of IEC or to challenge the validity of its actions, the petition failed to demonstrate the defendants operated in violation of chapter 23A, and IEC is not a governmental body subject to Iowa's open meeting and open record laws. Following a hearing, the district court granted the defendants' motion to dismiss in its entirety. It found:

> The actions of the AEAs and IEC have resulted in damages to Hawkeye. It has lost and continues to lose substantial revenue from customers who purchase food products and services from IEC's prime vendor. Further, Hawkeye continues to lose out on word-of-mouth advertising and referrals.

However, the court viewed the petition as a request to dissolve the IEC and concluded Hawkeye Foodservice did not have standing to file its claims because it does not fall within the class of persons Iowa law allows to seek the dissolution of a corporation. It further concluded Hawkeye Foodservice failed to show a violation of chapter 23A because it failed to allege the goods offered by IEC's prime vendors are sold to the public, rather than to IEC's members—the AEAs and schools.

Hawkeye Foodservice filed a motion to reconsider the ruling. Following the court's denial of the motion, it filed a timely notice of appeal. On appeal, Hawkeye Foodservice challenges only the dismissal of Counts I, II, and III.

II. Scope and Standard of Review. A ruling on a motion to dismiss is reviewed for the correction of errors at law. *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). We will affirm a dismissal only if the petition shows no right of recovery under any state of facts. *Reiff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). The district court's decision to grant a motion to dismiss is proper only when the petition, "on its face shows no right of recovery under any state of facts." *Id.*

We review the petition in the light most favorable to the petitioner. *Id.* We must accept as true the allegations in the petition. *Id.* Facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it. *Id.* We will uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged to that court.

Martinek v. Belmond-Klemme Cmty. Sch. Dist., 772 N.W.2d 758, 762 (Iowa 2009).

III. Standing. We first address Hawkeye Foodservice's claim the district court erred in dismissing Counts I and II of its petition on the grounds it lacks standing to obtain the relief sought.

In order to have standing to bring suit, a plaintiff must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected. *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008). Having a legal interest in the litigation and being injuriously affected are separate requirements for standing, both of which must be satisfied. *Id.* The first element is aligned with the general concept of standing that a party who advances a legal claim must have a special interest in the challenged action, "as distinguished from a general interest." *Id.* at 419. The second requirement means the plaintiff must be "injured in fact." *Id.* This requirement recognizes the need for the litigant to show some "specific and perceptible harm" from the challenged action, distinguished from those citizens who are outside the subject of the action but claim to be affected. *Id.*

The district court concluded Hawkeye Foodservice could not meet the first requirement of showing it had a personal or legal interest in the litigation because it is not within the class of persons the legislature has authorized to seek dissolution of a corporation or to challenge the validity of corporate action. The court noted Iowa Code section 504.1431 provides it may only dissolve a corporation in proceedings brought by the attorney general, members of the corporation, a creditor, or the corporation itself. A party may also bring an action

quo warranto against a corporation exercising powers not conferred by law, *see* Iowa R. Civ. P. 1.301(4), but such actions may only be brought by a county attorney or attorney general. Iowa R. Civ. P. 1.302. Finally, the court noted under the doctrine of ultra vires, a challenge to the validity of a corporation's action may only be brought by the attorney general, a director, or a member. Iowa Code § 504.304.

Hawkeye Foodservice argues it is not seeking judicial dissolution of IEC, but rather it has standing to challenge IEC's illegal actions and to seek an injunction preventing IEC from engaging in continued illegal activity. At this stage of the proceedings, we accept this contention.

We conclude the doctrine of ultra vires does not prohibit a challenge to IEC's actions in violation of chapters 273 and 28E as alleged in Counts I and II of the petition. The doctrine of ultra vires is codified in section 504.304. This court has held this statutory formulation seems unambiguous, and has the clear purpose of protecting shareholders and the corporation from ultra vires acts of corporate officers and directors by creating statutory indemnity for the corporation. *LoRang v. Rasmusson Constr. Co.*, 464 N.W.2d 482, 486 (Iowa Ct. App. 1990).[1] In other words, the purpose of section 504.304 is to allow a municipal corporation indemnity where its officers and directors act beyond the scope of their power or authority. It limits the parties who may allege the commission of an act beyond the scope of corporate power to the attorney

[1] In *LoRang*, the court addresses the doctrine of ultra vires as set forth in section 490.304 and its predecessor. The language of section 490.304 applies to business corporations, but is identical to the language of section 504.304, which applies to municipal corporations.

general, a director, or a member of the corporation. Iowa Code § 504.304. It does not prevent a private entity from seeking to enjoin a municipal corporation from engaging in acts that exceed the law.

Hawkeye Foodservice also argues it has standing to challenge the actions of the individual AEA defendants in violating chapter 273 as alleged in Count I of its petition. The district court did not address this claim in its ruling on the motion to dismiss. Hawkeye Foodservice raised the issue again in its motion to reconsider, which the court denied, but did not address the allegation.

The crux of Hawkeye Foodservice's claim is the AEAs, by forming and operating IEC, violated Dillon's Rule. Dillon's Rule provides municipal corporations possess only the powers the legislature has expressly granted to them, the powers incidental to their existence, and those powers implied from other powers granted. *See* 2A Eugene McQuillen, *The Law of Municipal Corporations* § 10.10, at 409 (3d ed. 2006). Because chapter 273—which controls the operation of AEAs—does not allow AEAs to form or operate corporations or to serve entities other than Iowa schools or school districts, it claims the defendants are in violation of the law.

The defendants argue as an alternative ground for dismissing Count I of the petition that they have not violated chapter 273 because Dillon's Rule should not be applied to school corporations like the AEAs. They note the application of Dillon's Rule to cities and counties was abolished by adoption of the Municipal Home Rule and Counties Home Rule amendments to the Iowa Constitution in 1968. Iowa Const. art. III, §§ 38A, 39A. They argue Dillon's Rule "is an archaic

rule of law that is not mandated by statute and would no longer be followed by the Iowa Supreme Court if presented with the question."

The Iowa Department of Education has been tasked with the responsibility to act in a policymaking and advisory capacity and exercise general supervision over AEAs. Iowa Code § 256.1. Additionally, it is to interpret the school law and rules relating to the school laws. *Id.* § 259.9(16). Accordingly, the director of the department is vested with discretion to interpret law relating to AEAs. *Cf. Iowa Ass'n of School Bds v. Iowa Dep't of Educ.*, 739 N.W.2d 303, 307-08 (Iowa 2007) (finding the legislature intended to vest the department's director with discretion to interpret statutes relating to school districts' authority to levy taxes and enter into specified insurance agreements as part of the director's duty to interpret school laws). With regard to AEAs, the department has stated:

> Iowa school districts and AEAs operate under Dillon's Rule, by state constitution, which states that school districts and AEAs possess and can exercise the following powers and no others: Those granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the school corporation—not simply convenient or desired, but indispensible.

Div. of Fin. and Info. Servs., Iowa Dep't of Educ., *Uniform Administrative Procedures for Iowa AEA Officials*, ch. 11 (2001). We conclude the Dillon's Rule applies to AEAs.

The defendants argue even if Dillon's Rule applies, they have not violated chapter 273. They claim the court could find as a matter of law they are authorized to provide foodservices to Iowa school districts. Count I of the petition alleges the AEAs "have no authority under Chapter 273 to form and operate the

IEC" or "to serve entities that are not Iowa schools or school districts." The formation of IEC was not indispensible to providing foodservice to Iowa school districts. We conclude Hawkeye Foodservice has alleged a violation of chapter 273 for which there may be a right of recovery.

The defendants also make an alternative argument for dismissing Count II of the petition. They allege they did not violate chapter 28E because it was allowed to form IEC under chapter 504, the Revised Iowa Nonprofit Corporation Act. The defendants' argument depends on a finding that school corporations are allowed to incorporate nonprofit corporations. In order to make this finding, the defendants urge us to read section 504.201 ("one or more persons may act as the incorporator or incorporators of such a corporation") to include school corporations as persons by reading the following chain: the definition of "person" found in section 504.141(26) ("any individual or entity"); the definition of "entity" found in section 504.141(15) ("includes . . . state"); the definition of "state" found in section 504.141(34) ("includes a state and commonwealth and their agencies and governmental subdivisions"); section 273.2 ("[a]n area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter"); and Iowa case law likening school districts and school boards to governmental subdivisions, *see City of Cedar Falls v. Cedar Falls Cmty. Sch. Dist.*, 617 N.W.2d 11, 18 (Iowa 2000) (noting Iowa Code chapter 670 governs tort liability of governmental subdivisions, *including school districts*); *Bunger v. Iowa High School Athletic Ass'n*, 197 N.W.2d 555, 564 (Iowa 1972) ("The general requirement that a rule

promulgated by a governmental subdivision or unit be reasonable applies to school board rules."). Based on the foregoing, the defendants allege section 504.201 may be paraphrased to read "one or more AEAs may act as the incorporator or incorporators."

We reject the defendants' invitation to interpret chapter 504 as including AEAs in the class of persons who can incorporate nonprofit corporations.

> When we interpret a statute, we attempt to give effect to the general assembly's intent in enacting the law. Generally, this intent is gleaned from the language of the statute. To ascertain the meaning of the statutory language, we consider the context of the provision at issue and strive to interpret it in a manner consistent with the statute as an integrated whole. Similarly, we interpret a statute consistently with other statutes concerning the same or a related subject. Finally, statutes are interpreted in a manner to avoid absurd results, and to avoid rendering any part of the enactment superfluous . . . .

State v. Pickett, 671 N.W.2d 866, 870 (Iowa 2003) (citations omitted). "Issues of statutory construction cannot be resolved from isolated words taken out of context." *Hanover Ins. Co. v. Alamo Motel*, 264 N.W.2d 774, 778 (Iowa 1978). In contrast to the strained reading of chapter 504 urged by the defendants, chapter 28E states its purpose "is to permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies to co-operate in other ways of mutual advantage." Iowa Code § 28E.1. The defendants' interpretation of chapter 504 as an alternative way for AEAs to incorporate would render chapter 28E superfluous, an interpretation our rules of statutory construction caution against. *Cf. First State Bank v. Clark*, 635 N.W.2d 29, 32 (Iowa 2001) ("We do not interpret statutes to render any part superfluous.").

We conclude the district court erred in dismissing Count I and Count II of Hawkeye Foodservice's petition.

IV. Chapter 23A. We next address Hawkeye Foodservice's claim the district court erred in dismissing Count III of its petition for failing to show a violation of chapter 23A on its face.

Iowa Code section 23A.2(1) prohibits a state agency or political subdivision from engaging in the following activities unless specifically authorized by statute, rule, ordinance, or regulation:

> a. Engag[ing] in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the state agency or political subdivision.
> b. Offer[ing] or provid[ing] goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter.

A state agency is defined as "state department, board, commission, or other unit of state government regardless of whether moneys are appropriated to the agency." Iowa Code § 23A.1(3). A political subdivision is defined as "a city, county, or school corporation." Iowa Code § 23A.1(1).

In its petition, Hawkeye Foodservice states, "IEC never takes title to the goods nor does it participate materially in the actual distribution of the goods to its members." Taking the allegations of the petition as true, the defendants argue this statement nullifies Hawkeye Foodservice's claim they have acted and continue to act in violation of chapter 23A. However, in Count III, Hawkeye Foodservice alleges the AEAs and IEC violated chapter 23A by "engaging in and

assisting Martin Brothers in the sale, offering for sale, delivery, distribution, or advertising of goods or services offered by private enterprise."

At issue is Hawkeye Foodservice's right of access to the courts, not the merits of its claim. *Neill v. Western Inns, Inc.*, 595 N.W.2d 121, 125 (Iowa 1999). The question is whether the petition on its face shows no right to recovery under any state of facts. *Rieff*, 630 N.W.2d at 284. Given our state's liberal notice pleading rules, Hawkeye Foodservice does not need to allege ultimate facts to support each element of a cause of action. *Id.* at 292. A suit will survive a motion to dismiss whenever a valid recovery can be gleaned from the pleadings. *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991). Taking out claims regarding the defendants taking title of or distributing the goods, the petition alleges the defendants have engaged in the offering for sale or advertising of goods and services offered by private enterprise, in violation of chapter 23A. Whether there is merit to these claims should be determined following proper discovery.

We conclude the court erred in dismissing Count III of the petition.

V. Conclusion. We reverse the district court order dismissing Counts I, II, and III of Hawkeye Foodservice's petition for declaratory judgment against the defendants. We remand for further proceedings. Costs are taxed to the defendants.

REVERSED AND REMANDED.