

STATE APPEAL BOARD

In Re:	Eldora-New Providence Community) School District Budget Appeal) FY 2012)	Order May 26, 2011
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BEFORE THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, DAVID ROEDERER; STATE AUDITOR, DAVID A. VAUDT; AND STATE TREASURER, MICHAEL L. FITZGERALD:

A hearing on the above captioned matter was held pursuant to the provisions of Chapter 24 of the Code of Iowa on May 16, 2011. The hearing was before a panel consisting of Luke Donahue, Investment Officer, Office of the State Treasurer and presiding hearing officer; Lisa Oakley, School Finance Director, Department of Management; and David Voy, Manager, Office of the State Auditor.

The spokesperson for the petitioners was Mr. Gary Ven Den Boom. The spokespersons for Eldora-New Providence Community School District were Andrew Bracken, Attorney, Ahlers & Cooney, P.C., and Superintendent Randall Nichols.

Upon consideration of the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted to the hearing panel both before and after the hearing and after a public meeting to consider the matter, the State Appeal Board has voted to sustain the Eldora-New Providence Community School District fiscal year (FY) 2012 budget as described herein.

PROCEDURAL HISTORY

The FY 2012 Eldora-New Providence Community School District proposed budget summary was published in the Eldora Herald-Ledger on March 29, 2011. The required public hearing was held and the budget was adopted on April 11, 2012.

A petition protesting the certified FY 2012 Eldora-New Providence Community School District budget was filed with the Hardin County Auditor on April 25, 2011, and was received by the State Appeal Board on April 26, 2011.

Through the petition, the petitioners protested the FY 2012 budget approved by the Eldora-New Providence Board of Directors with the following objection:

- Eldora-New Providence is using taxes to repay revenue notes, both directly and indirectly, in violation of chapter 384 of the Iowa Code and Iowa Case Law.

The petition stated the following grounds for the objection:

1. The Eldora Children's Center (ECC) is a City enterprise of the City of Eldora.
2. Construction of the ECC was partially funded by revenue notes.
3. Revenue notes must be repaid solely and only from net revenues of the enterprise.
4. Iowa Case Law prohibits using taxes to repay revenue notes, directly or indirectly.

DISCUSSION

The petitioner and representatives of the Eldora-New Providence Community School District provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of the public hearing and information provided on this matter is as follows:

PETITIONERS

Mr. Gary Ven Den Boom represented the petitioners. In his presentation, he provided comments with regard to the Eldora-New Providence Community School District budget summarized, in part, as follows:

1. The School District pays the City \$410.00 per month more in rent than the City is obligated to pay for the United States Department of Agriculture (USDA) Revenue Notes. The lease agreement between the School District and City for the ECC facility specifies the Tenant (School District) will pay the Landlord (City) \$1,984.58 per month or whatever amount is required to meet the Landlord's monthly payment obligations related to the childcare facility. The monthly payment from the City to the USDA is \$1,523.00.
2. Given the current ECC financial situation, the School District should not be paying any rent to the City. The ECC has always had a deficit. Principal and interest on the revenue notes are payable solely and only from the net revenues of the ECC and are not payable by taxation.
3. The School District should not pay for goods or services statutorily charged to the ECC. Liability insurance, electricity, natural gas, custodian, cleaning supplies, garbage, trash and administration are provided to ECC at no charge by the School District.
4. The School District should not use taxes to pay any part of the deficit of ECC.
5. The City Council, as the governing body of the ECC, is responsible for establishing rates to be charged by the ECC so there is sufficient revenue to pay all costs of operating and maintaining the ECC and make the payments on the Revenue Notes.

ELDORA-NEW PROVIDENCE COMMUNITY SCHOOL DISTRICT RESPONSE

Mr. Andrew Bracken, Attorney, Ahlers & Cooney, P.C., and Superintendent Randall Nichols were the primary spokespersons for Eldora-New Providence Community School District. In Mr. Bracken's presentation, he provided certain comments with regard to the Eldora-New Providence Community School District budget summarized, in part, as follows:

1. The School District denies there are adequate grounds for the protest. The School District does not have any revenue notes relating to the ECC and, therefore, is not repaying revenue notes relating to the ECC. Furthermore, the School District is not subject to Chapter 384 of the Code which relates to City Finance.
2. The School District admits the ECC is a City enterprise.
3. The School District denies it has issued revenue notes relating to the ECC and denies, for lack of information, whether the ECC was partially funded by revenue notes by the City.
4. The School District denies any involvement in the City's decisions as to how to repay any revenue notes the City has issued.
5. The subject matter of the appeal must necessarily be limited to the written protest and the stated grounds. Therefore, the protest must be dismissed.
6. The School District is paying rent to the City for the ECC. If the City then uses the rent to pay for the revenue notes, this is not the City's revenue from taxes.

FINDINGS OF FACT

1. The School District, subject to various state laws and administrative rules, shall prepare and adopt a budget, certify taxes and authorize expenditures. The School District met those requirements.
2. Section 24.27 of the Code of Iowa provides persons who are affected by any proposed budget, expenditure or levy, or by an item thereof, may appeal. The petitioners met the requirements and, pursuant to Sections 24.28 and 24.29 of the Code of Iowa, a hearing was scheduled and conducted.

3. Section 24.30 of the Code of Iowa states, in part, "It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted...".
4. The Eldora-New Providence Community School District certified a budget which results in a \$152,904 decrease in expenditures, a \$12,701 decrease in tax dollars levied and a \$0.52068 per \$1,000 of taxable valuation decrease in the property tax levy rate.
5. The City, not the School District, issued USDA revenue notes to build the ECC and is repaying those notes.
6. The School District may operate or contract for the operation of a program to provide child care under Section 279.49 Code of Iowa. The School District maintains an Enterprise Fund for operation of the ECC as required by Section 298A.12 of the Code of Iowa.
7. The School District's lease agreement with the City requires rental payments of \$1,984.58 per month or whatever amount is required to meet the City's monthly payment obligation related to the childcare facility. The City's monthly obligation related to the childcare facility is \$1,933.00, which includes \$1,523.00 for principal and interest, \$153.00 for the City's reserve fund and \$257.00 for the City's depreciation fund, as required by the USDA Revenue Notes.
8. Operating expenses of the ECC include liability insurance, electricity, natural gas, custodian, cleaning supplies, garbage and administration costs. These operating expenses are appropriately paid by the ECC, the City or the School District.
9. The School District and the City entered into a 28E agreement for the operation of the ECC in May, 2005 and created a Childcare Board to oversee the operation of the ECC, including establishing rates to be charged by the ECC. The 28E agreement requires the Childcare Board to report any operating deficiency to the City and the School District at least quarterly. Upon receipt of such report, both the City and the School District agreed to put before their respective governing bodies the question of appropriating legally available funds for the payment of up to one half of the reported operational deficit on an annual basis. The Childcare Board has provided operating deficiency reports to the School District and the City.
10. The Eldora-New Providence Community School District certified FY 2012 budget includes a transfer from the General Fund to the Proprietary, Other Enterprise Fund of \$22,000 for the ECC.

11. The ECC's annual deficits since opening have been funded as follows:

Date	Description	Total	Anonymous Donor	City of Eldora	Transfer from School District General Fund
<u>For 2006-07 Deficit</u>					
1-11-08	Anonymous donor	\$5,000.00	\$5,000.00		
2-07-08	City of Eldora	\$6,898.00		\$6,898.00	
6-27-08	Anonymous donor	\$5,000.00	\$5,000.00		
6-30-08	Transfer from School District's General Fund	\$6,898.00			\$6,898.00
<u>For 2007-08 Deficit</u>					
4-23-09	Transfer from School District's General Fund	\$4,523.85			\$4,523.85
4-29-09	City of Eldora	\$4,523.84		\$4,523.84	
6-29-09	Anonymous donor	\$10,000.00	\$10,000.00		
<u>For 2008-09 Deficit</u>					
4-30-10	Transfer from School District's General Fund	\$18,470.41			\$18,470.41
6-29-10	Anonymous donor	\$10,000.00	\$10,000.00		
7-02-10	City of Eldora	\$18,500.00		\$18,500.00	
<u>For 2009-10 Deficit</u>					
3-08-11	Transfer from School District's General Fund	\$17,106.74			\$17,106.74
4-11-11	City of Eldora	\$17,106.73		\$17,106.73	
Total		\$124,027.57	\$30,000.00	\$47,028.57	\$46,999.00

For 2010-11, the ECC deficit as of March 31, 2011 is \$48,084.57. Any deficit at the end of 2010-11 will be shared between the School District and the City during FY 2012 in accordance with the 28E agreement.

12. The School District Enterprise, ECC Fund has not repaid the School District's General Fund for prior year transfers of \$46,999.

13. The Iowa Department of Education issued a Declaratory Order as to Intra-district Fund Loans on October 22, 2009. The Declaratory Order states, in part:

- All loans between funds within a fiscal year must be accomplished through official board action and may not be accomplished until the board by resolution authorizes the loan. An inter-fund loan must not constitute an amendment to the budgeted revenues or expenditures for the fiscal year.
- The resolution must specify the funds from which and to which the transfer will be made. A note is not necessary if the resolution specifies the terms of the repayment including the payment of interest.
- Interest must be paid from the borrowing fund on the unpaid balance at the rate in effect at the time of the loan as established by rule pursuant to Iowa Code section 74A.6, subsection 2.
- The loan must be repaid before October 1 of the fiscal year following the fiscal year within which the loan occurred. In the event repayment cannot be made by that time, the school corporation must proceed under the provisions of Iowa Code chapter 74 to issue anticipatory warrants or seek approval of the voters pursuant to Iowa Code section 278.1 for transfer of surplus funds from the debt service, physical plant and equipment levy, capital projects, or public education and recreation levy funds to the general fund, or, for other transfers, seek approval from the State Appeal Board pursuant to Iowa Code section 24.22. Inter-fund loans within a fiscal year do not require State Appeal Board approval so long as they are repaid by October 1 of the following fiscal year.

CONCLUSIONS OF LAW

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Section 24.28 of the Code of Iowa.

BASIS FOR DECISION

Section 24.28 of the Code of Iowa states, in part, "At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the previous year and which the objectors propose should be reduced or excluded...". The Code continues: "...the burden shall be upon the certifying board or the levying board, as the case may be, to show any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare."

ORDER


Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board sustains the FY 2012 Eldora-New Providence Community School District budget as adopted.

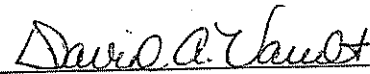
The Eldora-New Providence Community School District is required to follow the Iowa Department of Education Declaratory Order dated October 22, 2009 as to Intra-district Fund Loans, including:

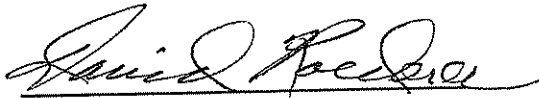
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Transfers between funds included in the FY 2012 Eldora-New Providence Community School District budget should be made in compliance with the Declaratory Order.

STATE APPEAL BOARD


Michael L. Fitzgerald
Chairperson


David A. Vaudt
Vice Chairperson


David Roederer
Member

5/26/11
Date