

STATE APPEAL BOARD

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| In Re: | City of Eldora Budget Amendment Appeal FY 2011 |)) | Order June 30, 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 June 14, 2011. The hearing was before a panel consisting of Luke Donahe, Investment Officer, Office of the State Treasurer and presiding hearing officer; Stephen Ford, City Budget Director, Department of Management; and David Voy, Manager, Office of the State Auditor.

The spokesperson for the petitioners was Mr. Gary Van Den Boom. The spokespersons for the City of Eldora were John Danos and Amy Bjork, Attorneys, Dorsey & Whitney LLP, Patrick Ian Rigg, Eldora City Administrator, and Ben Cutler, City Attorney.

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 reduce the City of Eldora's fiscal year (FY) 2011 budget amendment as described herein.

PROCEDURAL HISTORY

The FY 2011 City of Eldora proposed budget amendment summary was published in the Eldora Herald-Ledger on May 6, 2011. The required public hearing was held and the budget amendment was adopted on May 19, 2011.

A petition protesting the certified FY 2011 City of Eldora budget amendment was filed with the Hardin County Auditor on May 25, 2011 and was received by the State Appeal Board on May 31, 2011.

Through the petition, the petitioners protested the FY 2011 budget amendment approved by the City of Eldora City Council with the following objection:

- City of Eldora 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 City of Eldora 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 Van Den Boom represented the petitioners. In his presentation, he provided comments with regard to the City of Eldora budget summarized, in part, as follows:

1. The appropriation by the Eldora City Council of \$38,000 to pay a portion of the FY 2011 Eldora Children's Center (ECC) deficit violates the Iowa Code and the City of Eldora's contract with the United States Department of Agriculture (USDA).
2. The City of Eldora should not pay for goods or services statutorily charged to the ECC.

CITY OF ELDORA RESPONSE

John Danos and Amy Bjork, Attorneys, Dorsey & Whitney LLP, Patrick Ian Rigg, Eldora City Administrator, and Ben Cutler, City Attorney, were the primary spokespersons for the City of Eldora. In Mr. Danos' presentation, he provided certain comments with regard to the City of Eldora's budget summarized, in part, as follows:

1. The objections filed by the petitioners should not be adjudicated by the State Appeal Board because the objections do not constitute budgetary objections.
2. The City established the Child Care Center as a City enterprise as defined in Iowa Code 384.24(2)(1).
3. The City entered into a 28E agreement with the Eldora-New Providence Community School District (School District) covering the ownership, operation and management of the Child Care Center.
4. The City leased the Child Care Center to the School District pursuant to a lease agreement.

5. The City issued \$350,000 of Taxable Child Care Revenue Notes dated June 29, 2007 to the USDA for the purpose of paying the costs of constructing and equipping the Child Care Center. The notes are payable solely and only from the net revenues of the Child Care Center and the Sinking Fund.
6. Since the City has leased the Child Care Center to the School District, the only user of the Child Care Center the City must charge user rates to is the School District. The School District makes monthly lease payments of \$1,984.58 to the City. The City does not use any other funds of the City to make payments on the notes or to make the required deposits into the Reserve Fund and the Depreciation Fund.
7. Pursuant to the Joint Agreement, the School District is responsible for paying the operation and maintenance costs of the Child Care Center. If the Child Care Center has an operating deficiency, the City has agreed, pursuant to the Joint Agreement, have the City Council consider appropriating legally available funds of the City to cover up to one-half of the amount of the reported operating deficiency of the Center. The School District certifies the operating deficiency of the Child Care Center for each fiscal year to the City after the School District receives its audit report for such fiscal year. Historically, the City Council has appropriated local option sales tax revenues to pay one-half of the operating deficiency of the Child Care Center.
8. The City has the legal authority to spend local option sales tax revenues to make payments to the School District.

FINDINGS OF FACT

1. The City of Eldora, subject to various state laws and administrative rules, shall prepare and adopt a budget amendment and authorize expenditures. The City of Eldora met those requirements.
2. Section 24.27 of the Code of Iowa provides persons who are affected by any proposed budget or amendment, 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 City of Eldora certified a budget amendment which results in a \$3,247,400 increase in expenditures and a \$2,433,500 increase in revenues and other sources. The budget amendment includes a capital projects expenditure of \$1,648,000, which includes \$38,000 for the City's share of the ECC operating deficit for the fiscal years ended June 30, 2009 and June 30, 2010.
5. The City issued USDA revenue notes to build the ECC and is repaying those notes.
6. The City and the School District 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 operating deficit on an annual basis. The Childcare Board has provided operating deficiency reports to the City and the School District.
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 Reserve Fund and \$257.00 for the Depreciation Fund, as required by the USDA Revenue Notes agreement.
8. Operating expenses of the ECC include liability insurance, property 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 in accordance with the lease agreement between the City and the School District for the ECC.
9. 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 City and the School District during FY 2012 in accordance with the 28E agreement.

10. The City has not complied with the Child Care Facility Revenue Notes Resolution No. 2015 which requires the City to do the following:

- Page 3 states "The City Council hereby acknowledges and reaffirms that the Facility has been established as a city enterprise as defined in section 384.24(2)(l) of the Code of Iowa. The Notes and the interest thereon, together with any additional obligations as may be hereafter issued and outstanding from time to time ranking on a parity therewith under the conditions set forth herein are payable solely and only from the Net Revenues to be derived from the Enterprise and the Sinking Fund, as hereinafter set forth, and shall be a valid claim of the owner thereof only against the Net Revenues and said Sinking Fund, and the Notes shall not be general obligations of the City, nor payable in any manner by taxation, and under no circumstance shall the City be liable by reason of the failure of the Net Revenues of the Enterprise to be sufficient for the payment in whole or in part of the Notes and interest thereon, but the Notes, and any Parity Obligations as may be hereafter issued."
- Page 13, section 6, states "So long as the Notes are outstanding, the Enterprise shall be operated as revenue producing undertaking. The City shall establish, impose, adjust and provide for the collection of rates to be charged in connection with the Enterprise, to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the Enterprise..."

- Page 13, section 7(a), states "Sinking Fund: There shall be and there is hereby created, and there shall be maintained, an account to be known as the "Sinking Fund"...".
- Page 14, section 7(b), states "Reserve Fund: There shall be and there is hereby created, and there shall be maintained, an account to be known as the "Reserve Fund"...".
- Page 14, section 7(c), states "Depreciation Fund: There shall be and there is hereby created, and there shall be maintained, an account to be known as the "Depreciation Fund"...".

11. The City has established a bank account for the Early Childhood Ed Facility which includes the Sinking, Reserve and Depreciation Funds in a single account. This bank account is reported by the City as an Enterprise Fund.

12. The Child Care Facility Revenue Notes Resolution No. 2015 requires the City to establish rates for the Enterprise. However the ECC is establishing the rates for the Enterprise.

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 orders the following action:

The City has not complied with the Child Care Facility Revenue Notes Resolution No. 2015 and needs to contact the note holder (USDA) to resolve all non-compliance issues, including the following:

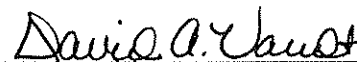
- The notes are payable solely and only from the "Net Revenues" of the Enterprise and the notes shall not be general obligations of the City, nor payable in any manner by taxation.
- The City shall establish, impose, adjust and provide for the collection of rates to be charged in connection with the Enterprise, to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the Enterprise.
- Create Sinking, Reserve and Depreciation Funds.

The City is denied \$38,000 of the \$1,648,000 capital projects expenditure included in the budget amendment dated May 19, 2011. The remaining amendments to the fiscal year 2011 budget are sustained.

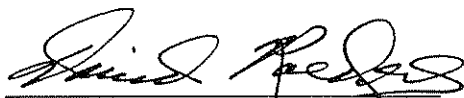
STATE APPEAL BOARD



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Chairperson



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David Roederer
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Date