

STATE APPEAL BOARD

In Re:	Osceola County Budget Appeal FY 2014)))	Order April 30, 2013
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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 Section 331.436 and Chapter 24 of the Code of Iowa on April 16, 2013. The hearing was before a panel consisting of Mr. Luke Donahe, Investment Officer, Office of the State Treasurer and presiding Hearing Officer; Ms. Carrie Johnson, Property Valuation and County Budget Administrator, Department of Management; and Ms. Susan Battani, Director, Office of the State Auditor.

The primary spokesperson for the petitioners was Mr. Edwin Jones. The primary spokesperson for Osceola County was County Attorney Robert Hansen.

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 Osceola County fiscal year (FY) 2014 budget as described herein. However, correspondence will be sent to the members of the Osceola County Public Safety Commission regarding the issue presented by the appeal and a response is requested from the County Attorney.

PROCEDURAL HISTORY

The FY2014 Osceola County proposed budget summary was published in The Press News and the Gazette-Tribune. The budget was adopted at a public meeting held on March 5, 2013.

A petition protesting the certified FY2014 Osceola County budget was filed with the Osceola County Auditor on March 22, 2013 and was received by the State Appeal Board on March 25, 2013. The petitioners' objections and their reasons listed on the petition document are as follows:

- An objection stating the method used to determine the percentage of the public safety budget each town and the unincorporated area of Osceola County is required to pay is fatally flawed. Data has been presented which would indicate Iowa Code Chapter 28E.23 (2)(b) concerning the application of the use method has been used improperly. Third party audits indicate a "how much can each entity afford to contribute" approach has been used for numerous years rather than following the Iowa Code on this matter. Refusal to accurately determine the actual percentage of use has resulted in the public safety budget costs being skewed so as to not represent the actual percentage of use of

law enforcement services around the county. Consequently, some taxpayers are paying far more than their fair share of the public safety budget while others are paying far less.

- According to Iowa Code section 28E.24, a three year rolling average must be incorporated into the process to determine the amount of the public safety budget to come out of the General Funds of each town and the unincorporated area of the County. This requirement under the law has never been followed.

DISCUSSION

The petitioners and the representatives of Osceola County provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of this information and the public hearing is as follows:

PETITIONERS

Mr. Jones represented the petitioners and began his presentation by sharing exhibits in support of the objections to the budget.

Mr. Jones provided a variety of reference documents with his statement, including the 28E agreement and bylaws for the Osceola County Public Safety Commission (Commission), correspondence between legal counsel and the Commission and the Office of the Attorney General and the Commission, Iowa Code citations and other documentation.

- Mr. Jones indicated he is not trying to eliminate Unified Law Enforcement in Osceola County and is only concerned with their lack of compliance regarding the funding formula.
- Mr. Jones indicated the 1999 letter from the Brick Gentry law firm upon which the Commission has based many of their decisions includes errors. One such example is the miscalculation of the square miles within the County, which the square miles being off as much as by the size of two townships (392 versus the 519 stated in the letter). Another such example is the differential rounding used to determine each member's percentage of population.
- Mr. Jones stated the levels of service when comparing cities to each other and to the unincorporated portion of the County are not equal. The City of Sibley requires 24 hour/7 day a week coverage, which is not afforded the other members, whom only receive drive-thru coverage. An initial computation of deputy hours as a method for determining level of service may be an easier way to look at the funding formula.
- Mr. Jones indicated the City of Sibley sets forth its requirements for service from the Commission and then the contribution from everyone else is determined to meet the overall budget. Mr. Jones referenced a letter from the City of Sibley setting forth its requirements for service from the Commission. He indicated the levels of service and cost between members is unfair.
- Mr. Jones stated that no other county levies for Unified Law Enforcement and provided examples of how smaller communities in similar counties pay less with more typical contractual law enforcement agreements.

- Mr. Jones indicated concerns regarding the lack of use of the three year rolling average were discussed initially in 2005, with no changes. He stated a fix would require going back to the beginning of the Commission and determining the correct three year rolling average as required in statute for each member. Mr. Jones shared with the hearing panel his initial computation of what this might look like for the County. His figures stated \$551,440 should have come from the County General Basic levy and \$34,049 should have come from the Unified Law Enforcement levy in FY2013, instead of \$198,417 from the General Basic levy and \$387,072 from the Unified Law Enforcement levy as was adopted.
- Mr. Jones restated the third party audit findings, and referenced examples in his exhibits, where the audit noted the Commission was not following the statutorily required formula process for determining member contributions.
- Mr. Jones referenced the Iowa Code duties of the County Attorney, including the requirement to "enforce state laws and county ordinances." He indicated the County Attorney is neglecting his duties and perpetuating a violation of state law.
- Mr. Jones discussed the proposed legislation and indicated the Board of Supervisors at the time was not aware the legislation had been drafted and later asked for it to be withdrawn.

Mr. Jones indicated the remedies sought by the petitioners include a forensic audit to determine the correct member contributions, levies and distribution required by statute. This will require going back into history as a three year average is required to base the contribution from the member's General Fund. Mr. Jones also indicated the levy should be reduced and the taxpayers should be reimbursed for past taxation which was improper.

In his subsequent comments after the hearing, Mr. Jones stated, among other comments, the County has been funding public safety unlawfully for decades and continues to act unlawfully in the current budget. He stated he cannot give a dollar figure as to what he thinks should be the correct budget because, unless statutes are followed, no one knows at this time what would be allowed under the law.

OSCEOLA COUNTY RESPONSE

County Attorney Hansen was the primary spokesperson for Osceola County. In the response to the petition, he expanded upon the written remarks and the exhibits submitted.

- Mr. Hansen stated the budget appeal should be dismissed due to the fact the budget petitioners failed to challenge the budgets of the cities of Sibley, Ocheyedon, Harris, Melvin and Ashton, all members of the Commission, and funding for the Commission is a function of budgeting for the County and these cities. All of the city budgets have been certified and have not been challenged. If the Board of Supervisors were directed to reconsider their budgeting process for funding the Commission, it would be inherently unfair to force upon the cities a change in the Public Safety budget.
- Mr. Hansen indicated while Osceola County has not followed the letter of the law as set out in Iowa Code Sections 28E.23 and 28E.24, Osceola County and all members of the Commission have followed the spirit of the law. The Commission is made up entirely of

elected officials and every year the group of elected officials sit down and discuss the budget and funding for the Commission and every year they have reached a unanimous agreement regarding the budget and funding. In this process, all taxpayers and residents of Osceola County are represented by their elected officials serving on the Commission. The process used by Osceola County and members of the Commission to reach an agreement regarding the budget and funding fall in line with the intended purpose of Iowa Code Chapter 28E. The County and other members of the Commission are cooperating in ways of mutual advantage and the State Appeal Board should liberally construe this statute to facilitate these agencies working together by their unanimous agreement.

- The Board of Supervisors have addressed the budgeting and funding issues for the Commission at least four times in the last sixteen years. On three of those occasions, the entire county was involved in addressing these issues. The conclusion from a meeting in 1997 was rural Osceola County taxpayers paid less for law enforcement if the County remained in Unified Law. In 1999, Attorney James Brick examined the budget and opined the budget developed by the Commission which utilizes the percent of service formula in arriving at the member contributions was contemplated and permitted by Iowa Code Chapter 28E. In 2006, there was unanimous agreement of the Board of Supervisors and the City Council of each city in Osceola County to seek a third option for funding through legislation, which resulted in a bill during the 2007 legislative session, Senate File 23. Due to pressure from local residents, the County asked the local Senator to withdraw the bill. When those complaining about Senate File 23 were asked for a solution, they indicated they had no solutions to offer.
- It is the opinion of the Board of Supervisors, the County Attorney and many others this budget appeal is another attempt by a small group of people to disband Unified Law Enforcement. A petition for a referendum to end Unified Law Enforcement has never been pursued and the Board of Supervisors, the County Attorney and many others believe the referendum would be voted down and the County as a whole would greatly support the continuation of Unified Law Enforcement as it currently exists.
- If given an opportunity to continue this present year under unified law and with the budget as it presently exists, the Board of Supervisors and the Commission will pursue a remedy to fix the program. The County will again submit to local legislators a third option of "unanimous agreement" for funding public safety. They would also solicit any other proposals or options from anyone in the community and anyone with an interest for making the statute work so the people of Osceola County can continue to have full time law enforcement at a very reasonable rate to the taxpayers of Osceola County.
- The objectors have failed to meet their burden of proof and have tendered no proposal for reduction or exclusion of the specific items challenged. Due to this failure on the part of the objectors, the budget appeal should be dismissed. Neither of the challenges by the objectors is to any new item in the budget. These are old items.
- There has been a 3.23% increase in the budget for Public Safety, but a total increase of 5% was assessed to each member of the Commission. There are two reasons for the increases:
 1. The Sheriff has a 3.23% increase in costs over last year's budget.

2. There has been a pattern in past years of using the reserves in the budget to fund actual annual expenses and this practice has resulted in the reserves getting low. To avoid a huge increase in the future, the Commission made the total increase 5%.
- The objectors have not objected to any increase in the budget, but rather have complained “the percentage of use method has been used improperly” and “a three year rolling average... has never been followed”. If the objectors had objected to an increase in the County budget, the next step would be for the State Appeal Board to determine whether the increase “is necessary, reasonable and in the interest of the public welfare”.
 1. Is the item necessary? Under Iowa law, the County and each of the cities in Osceola County are required to provide law enforcement protection.
 2. Is it reasonable? When the cost of law enforcement in Osceola County is compared to any other county, it is clear the taxpayers and residents of Osceola County are receiving law enforcement services at a very low rate. The staff size and total expenditures provide essential, not extravagant, services and facilities.
 3. Is it in the public welfare? Law enforcement is an absolute necessity within any community. As indicated above, the cost of providing law enforcement services in Osceola County has increased by 3.23% and the Commission determined a 5% increase to each of the members was necessary in order to avoid depleting the reserves in the Public Safety budget. Increasing the cost by a total of 5% for all members of the Commission is in the best interest of the public welfare. Again, the objectors did not object to an increase in the County budget, only the process applied by the Commission and Board of Supervisors.
 - The formula as set out in the Iowa Code for a three year averaging of revenues raised for law enforcement purposes simply does not work. The three year averaging does not allow for increases necessary just to keep up with the cost of inflation as reflected in the annual increased costs of operation. All budgets for counties and cities derive their revenue from valuation. If the per capita assessment is used, it will not work because where people live within the county has very little to do with valuation. Also, in calculating a percentage of service, one factor in the calculation would undoubtedly be where people live and this has little to do with valuation. Osceola County is a rural county with approximately 81% of the total valuation as rural and approximately 29% of the valuation as urban.

The deadline given by the hearing panel for additional information was communicated as April 19 at noon. However, the County submitted its additional information after the deadline, and the petitioner objected to the submission of the information. The State Appeal Board noted the objection. However the nature of the hearing was informal and the stated deadline was not a mandatory deadline set in place by the rules. The Board considered the County's information, and to provide fairness, allowed the petitioner until April 22 at noon to respond to the remarks submitted by the County.

In the additional information submitted by the County, the County indicated the need to revisit the percentage of use aspect of the contribution, as many of the Board members are new. The County stated the Board members need to revisit the rationale behind the numbers so they and the public are better informed. The County also submitted information from its third party

audit firm which provided different ways to determine the three year rolling average distribution between the General Basic levy and Unified Law Enforcement levy.

THIRD PARTY INTERVENERS

The State Appeal Board Chair received a request from Jerry Johnson, Chairperson of the Commission, to serve as a third party intervener during the hearing. Correspondence was sent to Mr. Johnson, as well as to the parties to the appeal, granting his request to serve as a third party intervener. The State Appeal Board subsequently received notification of Mr. Johnson's withdrawal of his request to intervene. Therefore, no third party interveners spoke during the hearing.

MEMBERS OF THE PUBLIC

Various members of the public spoke during the public comment time. In addition, one member of the public, Mr. Dan DeKoter, submitted written documentation in addition to verbal comments. Mr. Donahue requested both parties to the appeal to review the written documents and state any objections prior to the inclusion of his written comments into the record. Neither party objected. Therefore, the written comments were included in the record. As a local taxpayer and an individual who formerly worked part-time in the Osceola County Attorney's Office, Mr. DeKoter provided comments and history regarding the Commission. He indicated the City of Sibley receives 24 hour coverage partially due to the need to staff the county jail and eliminate the requirement to employ additional jailers. Mr. DeKoter stated the "percentage of use" formula presents issues and the parties to the 28E agreement pay what they think the services they receive are worth. If the jurisdiction is not getting its money's worth, it can vote itself out of the 28E agreement, but no one has. He also stated if City Clerks and the County Auditor are not allocating the costs between the General Fund levy and Unified Law Enforcement levy, they need to correct their accounting going forward.

Other members of the public also spoke, including Kevin Wolfswinkel President of the Osceola County Taxpayer Association. His comments included the lack of compliance has continued for over a decade and the County Sheriff and County Attorney have resisted efforts to correct the issue. Additional comments were provided by others, including a former Board of Supervisor member, Rochelle Buchman, who held office during the time legislation was sought. She indicated she regretted her participation in the process. She also stated the three-year average requirement has continually been disregarded.

The current Chair of the Board of Supervisors, Phil Bootsma, also requested to speak during the public comment time. He indicated the service is necessary and there are no complaints about the service. He stated resources have to meet the demands of the law, while there may be bookkeeping issues to resolve.

FINDINGS OF FACT

1. Iowa Code section 24.27 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, 24.29 and 331.436, a hearing was scheduled and conducted.

2. Unified Law Enforcement is covered under Iowa Code sections 28E.21 through 28E.30. The Unified Law Enforcement District in Osceola County was established in 1977 and the Osceola Public Safety Commission and ability to levy locally was put into place in 1980. Osceola County is the only county levying for Unified Law Enforcement.

The method of funding for Unified Law Enforcement is provided in Iowa Code sections 28E.22 through 28E.24.

According to the Iowa Code section 28E.22, the Unified Law Enforcement levy has a rate limit of \$1.50/\$1,000 of valuation. The section also states, in part, "Such moneys collected pursuant to the tax levy shall be expended only for providing additional moneys needed for unified law enforcement services in the district and shall be in addition to the revenues raised in the county and cities in the district from their general funds which are based upon an average of revenues raised for law enforcement purposes by the county or city for the three previous years. The amount of revenues raised for law enforcement purposes by the county for the three previous years shall be computed separately for the unincorporated portion of the district and for each city in the district."

Iowa Code section 28E.23 provides the Commission shall make an estimate of the total amount of revenue needed to operate the district and determine in conjunction with the members the amounts contributed. Iowa Code section 28E.23 stipulates one of two methods be used to compute the amount of revenue needed:

- 1) A per capita cost for each city and the unincorporated area or
- 2) A percentage of service received by the unincorporated area and the cities.

Iowa Code section 28E.24 sets forth procedures to be used by the Commission and its members regarding the process to determine the revenue contributed by the members and the steps to be taken if the revenue exceeds the tax limitations. This section states, in part:

"If the tax rate in any of the cities or the unincorporated area exceeds the limitations prescribed in section 28E.22, the public safety commission shall revise the budget to conform with the tax limitations.

The county board of supervisors and the city council of each city in the district shall deposit in the public safety fund the amounts of revenue certified to the public safety commission in this section based upon an average of revenues raised for law enforcement purposes for the three previous years.

If the average of revenues raised for law enforcement purposes in the unincorporated area or a city for the previous three years exceeds the amount of revenue needed for unified law enforcement purposes, the unincorporated area or city is only required to contribute the amount of revenue needed."

3. The County uses a portion of its General Basic levy and its Unified Law Enforcement levy to provide County support of the Commission. In FY2013, the amount levied and budgeted as expenditures from the General Basic Fund was \$198,417. The amount levied and budgeted as expenditures from the Unified Law Enforcement levy was \$387,073. The FY2013 total was \$585,490.

In FY2014, the amount levied and budgeted as expenditures from the General Basic Fund is \$208,338. The amount levied and budgeted as expenditures from the Unified Law Enforcement levy is \$406,587. The FY2014 total is \$614,925. The increase from FY2013 to FY2014 is \$29,435 or 5%.

4. County audits, conducted at least as far back as FY1998 and including the most recent FY2011 audit, have stated the Commission is not using a statutory method to determine the member contributions to the Commission. An outside attorney was contacted in 1999 and an attempt to change legislation was made in 2007. Although the County indicated discussion regarding the matter has taken place at various times, the Commission has continually disregarded the required statutory funding formula.
5. The Intergovernmental Agreement as adopted by the members of the Commission states, in part, "The dollar amounts contributed annually by each member/entity shall be determined by application of Sections 28E.22, 28E.23, and 28E.24 of the 2005 Code of Iowa and any amendments thereto." However, the dollar amounts are not being contributed per the statutory requirements cited in the Commission's intergovernmental agreement.
6. Determination of the required statutory contributions by members will require the Commission to investigate and likely seek legal assistance. In addition, if members have not been calculating the allocation between the General Fund levy and Unified Law Enforcement levy according to statute, they will need to take steps to investigate how this should be done.
7. Section 24.30 of the Code of Iowa limits the authority of the State Appeal Board to items specifically related to the local government budget process under protest. Therefore, the State Appeal Board does not have authority to issue any rulings on issues outside of the authority given under Chapter 24.30.
8. There is currently a case in United States District Court for the Northern District of Iowa in Case No. 11-cv-4045, under the short title of Van Stelton, et al v. Van Stelton et al.

CONCLUSIONS OF LAW

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Iowa Code sections 24.28 and 331.436.

BASIS OF DECISION

Iowa Code section 24.28 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."

The primary objection of the petitioners is the Commission, of which Osceola County is a member, does not follow the statutory requirements in regard to how the contribution of each member, including the County, is determined. It has been demonstrated through years of audit reports and the admission of the County Attorney this is fact. However, the Commission has failed to comply.

Unless and until the statutory requirements of Iowa Code Section 28E.23 are modified, the County, Commission and other members should comply with the statute. However, the State Appeal Board, does not have the statutory authority to adjust the other member budgets absent an official budget appeal from each community pursuant to Iowa Code Section 24.27. In this regard, the State Appeal Board only has jurisdiction over the outcome of the appeal for the FY2014 Osceola County budget.

The County expenditure increase related to law enforcement seem reasonable as the costs to provide public safety in the County has increased 3.2% from FY2013. Due to years of noncompliance by the Commission and lack of specific available information, it is difficult to determine definitive formula amounts at this point. Although the information provided by the County's audit firm is taking steps towards determining the allocation between the General Basic levy and the Unified Law Enforcement levy for the County, the formula used by the Commission to determine the revenue needed and the request for revenue sought from each Commission member needs to be determined definitively. Consequently, the State Appeal Board cannot determine the precise formula or amount the Commission should have requested from the County and the division of support by the County between its General Fund levy and Unified Law Enforcement levy. The County, as a member of the Commission, will need to continue to investigate the statutory formula and determine how to comply moving forward.

Although the petitioners are not party to the litigation Van Stelton, et al v. Van Stelton et al, the litigation may assist in providing some relief the petitioners seek.

ORDER

Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board sustains the FY 2014 Osceola County Budget as adopted.

However, the State Appeal Board believes the demonstrated lack of compliance with statute by the Osceola County Public Safety Commission is egregious and habitual. The statute is neither vague nor ambiguous in the budget and funding methods prescribed in Iowa Code section 28E.23. A letter will be sent from the State Appeal Board to the Commission and its members regarding the members' requirement to comply with the statutory funding formula when they submit their budgets to the County Auditor. The State Appeal Board understands the Commission may need time to research and precisely determine the formula required to meet statute, calculate the statutory amount of contributions and provide the required contribution amount to members. Members of the Commission will also need time to determine the appropriate division of support between their General Fund and the Unified Law Enforcement levy. If the Commission deems a statutory change to the funding formula is required, it should seek the legislative change prior to adoption of the Commission members' FY2015 budgets. The State Appeal Board requests written communication from the Osceola County Attorney on or before January 31, 2014 on behalf of the County, the Commission and its members confirming the specific action(s) and remedy to this matter.

The correspondence to Commission members from the State Appeal Board will state the Commission members must be able to demonstrate compliance with the statutory formula when certifying their FY2015 budgets to the County Auditor.

Iowa Code section 444.7 states, in part, "It is a simple misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for a

public purpose in excess of the amount certified or authorized as provided by law... The county auditor shall reduce an excessive levy to the maximum amount authorized by law, and not in excess of the amount certified; and the county auditor shall not enter or carry a tax on the tax lists for an illegal levy .”

If needed, the County Auditor will have to exercise her statutory responsibility to reduce the levies of any members of the Commission not in compliance with the required statutory amount to prevent the authorization by the County of an illegal excess levy.

STATE APPEAL BOARD




David Roederer
Chairperson



Michael L. Fitzgerald
Vice Chairperson



David A. Vaudt
Member



Date