

STATE APPEAL BOARD

In Re: Ringgold County E911) Order
Service Board Budget)
Appeal FY 2015) April 28, 2014

BEFORE THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, DAVID ROEDERER; STATE AUDITOR MARY MOSIMAN; 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 April 10, 2014. The hearing was before a panel consisting of Mr. Luke Donahe, Investment Officer, Office of the State Treasurer and presiding Hearing Officer; Ms. Lisa Oakley, School Finance Director, Department of Management; and Ms. Suzanne Dahlstrom, Manager, Office of the State Auditor.

The primary spokesperson for the petitioners was Mr. Kevin Kilgore. The primary spokesperson for Ringgold County E911 Service Board was Merle Walter, E911 Coordinator.

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 Ringgold County E911 Service Board's fiscal year (FY) 2015 budget as described herein.

PROCEDURAL HISTORY

The FY2015 Ringgold County E911 Service Board proposed budget summary was published in the Mount Ayr Record-News on February 20, 2014. The budget was adopted at a public meeting held on March 2, 2014.

A petition protesting the certified FY2015 Ringgold County E911 Service Board budget was filed with the Ringgold County Auditor on March 25, 2014 and was received by the State Appeal Board on March 26, 2014. The petitioners' objections and their reasons listed on the petition document are as follows:

- Objection number one stated the adopted budget represents a two year budgeted expenditure increase of 397%.
- Objection number two stated Forms E911-3.1 and E911-3.2 receipt for and expend the same money, making carryover balance impossible to know.
- Objection number three stated Iowa Department of Management (IDOM) Form E911-1 has no actual fund balance.
- Objection number four stated the surcharge revenue is improperly accounted for.

- Objection number five stated FY2013 budgeted expenditures were \$40,050. Actual expenditures were \$57,112.

The petitioners asked for the E911 surcharge to be zeroed by the program manager as a matter of excessive fund carryover balance.

The petitioners noted the surcharge was not reduced per the State Appeal Board Order issued pursuant to last year's budget protest.

DISCUSSION

The petitioners and representatives of the Ringgold County E911 Service Board 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. Kevin Kilgore represented the petitioners.

Mr. Kilgore began his presentation by sharing exhibits in support of the objections for the budget protest. His statement included the following points:

- Exhibit 3 contains the petitioners' opening remarks, the FY2015 certified budget, and the FY2014 certified budget and a portion of Iowa Code section 34A.7.
- Exhibit 3A was distributed at the hearing and lists the petitioners' rebuttal.
- Exhibit 3B was distributed at the hearing and contains Mr. Kilgore's bills from Windstream and US Cellular.
- The E911 budget should be defended by the Board, not the E911 Coordinator, who is a salaried employee and not part of the Board.
- Page 1 of Exhibit 3 shows the 397% increase in budgeted expenditures over two years as stated in objection number one. The re-estimated FY2014 expenditures in the FY2015 budget are \$186,895 larger than the expenditures approved in the FY2014 budget without a budget amendment.
- Forms E911-3.1 and E911-3.2 pages 4 and 5 of Exhibit 3 shows receipt for and expend the same money making carryover balance impossible to know (see line 65 on each form).
- Page 2 of Exhibit 3, Notice of Public Hearing, has no actual fund balance (repeat from FY2014 budget protest) as stated in objection number three.
- The surcharge revenue is improperly accounted for. As shown on pages 2 and 4 of Exhibit 3, Form E911-1, Column I only picks up line 5 telephone surcharge from Form E911-3 and does not pick up line 8 wireless E911 surcharge from Form E911-3.
- FY2013 re-estimated expenditures on the FY2014 budget were \$40,050 and the FY2015 budget shows FY2013 actual expenditures were \$57,112. This goes back to Forms E911-3.1 and E911-3.2 which show the same receipts and expenditures on both pages.
- Page 8 of Exhibit 3 is Iowa Code section 34A.7. The Iowa Legislature deleted the requirement for surcharge adjustment to limit fund carryover to 25%.
- The surcharge was not reduced pursuant to last year's State Appeal Board Order issued in response to the budget protest.

- Iowa Code differentiates between telephone wirelines (formerly referred to as landlines) and cell phones. Both are identified as surcharges on Form E911-3.1 (lines 5 and 8) and prior to the change of the Code should have been used to generate the 25% carryover.
- Exhibit 3B contains Mr. Kilgore's personal phone bill from Windstream showing the E911 surcharge is still \$1.00 and from U.S. Cellular showing the Iowa wireless surcharge is \$1.00.
- Mr. Kilgore believes there should be a plan for replacing equipment. The E911 Service Board has been accumulating \$75,000 per year.

RINGGOLD COUNTY E911 SERVICE BOARD RESPONSE

Mr. Merle Walter, the E911 Coordinator, was the primary spokesperson for the Ringgold County E911 Service Board. Ms. Barbara Vos, Homeland Security and Emergency Management Department E911 Program Manager also spoke. In the response to the petition, Mr. Walter expanded upon the written remarks and the exhibits submitted.

- Exhibit 1 is the E911 Service Board's response to petitioners.
- In response to objection number one, the E911 surcharge funds are used to pay one time and recurring fees related to the provision of E911 services. The general life span of the core systems is 5-7 years. Replacement cost will range from \$100,000 to \$200,000. The increase in budgeted expenditures in FY2012-2014 represents capital expenditures to replace pieces of the core system which are 11 years old and no longer supported by vendors.
- In response to objection number two, the E911 Service Board must carryover funds from year to year in order to accumulate funds for the replacement of core systems. The Iowa Code does not limit the amount of carryover a County E911 Service Board may retain.
- In response to objection number three, the Board has no control over the content and structure of IDOM forms.
- In response to objection number four, surcharge revenue is accounted for based on the requirements set forth in Iowa Code Chapter 34A and by IDOM.
- In response to objection number five, budgeted expenditures for FY2013 were \$40,050 and actual expenditures were \$29,258, not \$57,112 as listed in the petition.
- The Iowa E911 director notified all telephone companies with service in Ringgold County to reduce the E911 surcharge. Exhibit 2 includes copies of the four June 11, 2013 letters from Barbara Vos, E911 Program Manager, ordering the surcharge reduction from \$1.00 to \$0.76 per access line for the period July 1, 2013 through June 30, 2014.
- Exhibit 2 includes a Grand River Mutual telephone statement dated March 1, 2014 showing the Ringgold County E911 surcharge as \$0.76.
- Mr. Kilgore's US Cellular bill shows a wireless surcharge amount, not a wireline surcharge.
- Mr. Walter answered various questions from the Hearing Panel.
 - Actual FY2013 expenditures were \$28,556 and FY2015 budgeted expenditures are \$125,950 as shown on Form E911-3.1, surcharge fund. The IDOM forms are confusing and Form E911-3.2 operating fund should have zero revenue and expenditures.
 - The previous Iowa Code requirement that required a reduction in the surcharge if the 25% carryover limit was exceeded related only to the telephone surcharge on

wirelines that is shown on line 5 of budget Form E911-3.1, not the line 8 wireless E911 surcharge.

- Ms. Vos answered various questions from the Hearing Panel.
 - Ms. Vos testified that while she notified telephone companies of the requirement to reduce the wireless surcharge amount, she is not able to ensure the reduction has occurred and there is no recourse if it is not.

MEMBERS OF THE PUBLIC

No members spoke during the public comment time.

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 Iowa Code sections 24.28 and 24.29, a hearing was scheduled and conducted.
2. E911 Service Boards are not authorized to levy property tax. Their sources of revenue can include telephone wireline surcharge, wireless surcharge, County and/or City contributions and other miscellaneous income. The Ringgold County E911 Service Board receives revenue from the telephone wireline and wireless surcharges and wireless grant funds.
3. Iowa Code Chapter 34A specifies E911 Service Boards shall account for all surcharge revenue and expenditures in the surcharge fund and other revenue and expenditures, such as city or county contributions, in the operating fund.
4. The Ringgold County E911 Service Board budget was adopted as required by law, including the requirements for a public hearing. However, the same revenue and expenditures were mistakenly entered twice. Revenues and expenditures are shown correctly in the surcharge fund, Form E911-3.1, but then duplicated in the operating fund, Form E911-3.2.
5. After accounting for the duplicated entries, the Ringgold County E911 Service Board's FY2015 budget reflects \$125,950 (32.7%) less in expenditures than the FY2014 budget. FY2013 actual expenditures were less than the amount budgeted and FY2014 re-estimated expenditures are less than the amount budgeted.

FY 2013 budgeted expenditures	\$40,050
FY 2013 actual expenditures	\$28,556
FY 2014 budgeted expenditures	\$187,150
FY 2014 re-estimated expenditures	\$187,022
FY 2015 budgeted expenditures	\$125,950

6. After accounting for the duplicated entries, the Ringgold County E911 Service Board's FY2015 budgeted ending fund balance has declined since FY2013 and is 56% of budgeted expenditures.

FY 2013 actual ending fund balance	\$195,745
FY 2014 re-estimated ending fund balance	\$111,223
FY 2015 budgeted ending fund balance	\$70,773

7. HF 644 adopted by the 2013 Iowa Legislature removed the requirement in Iowa Code Chapter 34A directing the E911 program manager to reduce the surcharge if the unassigned ending fund balance is greater than 25% of the budgeted expenditures. The 25% limit is no longer in place, starting with the FY2015 budget.
8. The State Appeal Board's April 30, 2013 order regarding the Ringgold County E911 Service Board FY2014 Budget Appeal requested the E911 Program Manager reduce the Ringgold County E911 Service Board telephone wireline surcharge in accordance with Iowa Code Chapter 34A. On June 11, 2013, the E911 Program Manager sent letters to the following companies with the order to reduce the surcharge to \$0.76 per month per access line for FY2014.

Citizens Communications Co
Grand River Mutual
Mediacom
Windstream Corporation

9. Exhibits provided at the hearing showed Grand River Mutual reduced the surcharge to \$0.76 and Windstream Corporation did not reduce the surcharge. It is unknown whether Citizens Communications Co and Mediacom made the reduction.
10. Mr. Kilgore stated petitioners - on behalf of what he believes are the majority of the citizens in Ringgold County - believe the interests of the taxpayers in Ringgold County will be best served by minimizing the costs of government - limiting budget growth - in order to minimize property tax increases. However, Mr. Kilgore serves as a spokesperson only for himself and those individuals who signed the various budget protest petitions.
11. According to Iowa Code section 24.9, "The department of management shall prescribe the form for public hearing notices for use by municipalities."

CONCLUSIONS OF LAW

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

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 Ringgold County E911 Service Board budget was mistakenly entered twice, into both Form E911-3.1 surcharge fund and E911-3.2 operating fund. This resulted in the budgeted revenues, expenditures and ending fund balance amounts being doubled in the budget forms.


The burden of proof lies with the E911 Service Board to demonstrate the increases in expenditures are “necessary, reasonable, and in the interest of public welfare”. Based on the duplicated entries, the E911 Service Board did not meet the burden of proof regarding the increase in expenditures.

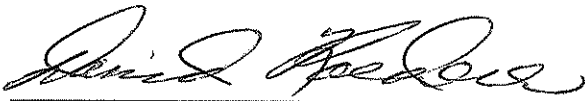
ORDER

Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board orders a decrease in the FY2015 E911 budgeted revenue, expenditures and ending fund balance by eliminating the mistakenly duplicated entries in Form E911-3.2 operating fund. The State Appeal Board also requests the E911 Program Manager under the Homeland Security and Emergency Management Department obtain documentation to ensure the telephone surcharge reduction is made.

STATE APPEAL BOARD


Mary Mosiman
Chairperson


Michael L. Fitzgerald
Vice Chairperson


David Roederer
Member

4/28/14
Date