



**The University of the State of New York**  
**The State Education Department**  
**Before the Commissioner**

Appeal of FREDERICK J. GORMAN from actions of the Board of Education of the Sachem Central School District regarding financial practices.

Ingerman Smith, L.L.P., attorneys for respondent, Mary Anne Sadowski, Esq., of counsel

Petitioner challenges certain financial practices of the Board of Education of the Sachem Central School district ("respondent"). The appeal must be dismissed.

Petitioner contends that respondent violated Real Property Tax Law ("RPTL") §1318 and Open Meetings Law ("OML") §103 by improperly inflating the budgets for the 2007-2008 through 2011-2012 school years. He alleges that respondent intentionally deceived voters by claiming that the budgeted funds were needed for educational purposes, when in fact, the board's intention was to overstate expenses, resulting in excess unspent funds. Petitioner asserts that, rather than returning the surplus funds to the taxpayers by reducing the tax levy during those budget years, respondent created an unauthorized "tax stabilization fund" with the surplus funds in order to level future tax increases. He asserts further that this fund balance has steadily increased over the budget years in question.<sup>1</sup>

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<sup>1</sup> I note that this is the seventh appeal petitioner has brought regarding respondent's financial practices: see Appeals of Gorman, 39 Ed Dept Rep 277, Decision No. 14,265; Appeals of Gorman, 43 id. 32, Decision No. 14,906; Appeal of Gorman, 44 id. 407, Decision No. 15,213; Appeal of Gorman, 44 id. 432, Decision No. 15,222.

Petitioner also contends that respondent deliberately underestimated the June 30, 2011 fund balance in order to increase the 2011-2012 budget; twice improperly modified the 2010-2011 budget after the voters had approved it; violated the OML by holding secret meetings to plan and develop the tax stabilization fund; and improperly transferred funds from the workers' compensation reserve fund into revenue. Petitioner requests that I order respondent to: provide information about its 2010-2011 budget by July 15, 2011; reduce its 2011-2012 fund balance, budget and contingent budget by \$20 million each or by an amount that I deem reasonable; be reasonable when estimating future budgets; audit its budgeting practices to discover how it created a long term tax stabilization fund and the amount of taxes levied for such fund; and refrain from improper use of the workers' compensation reserve fund. He also requests that I reprimand respondent for its improper financial practices.

Respondent denies any improper budget practices. It denies that it created a tax stabilization reserve fund or utilized the workers' compensation reserve fund improperly. Respondent contends that the appeal is untimely with respect to all claims other than those for the 2010-2011 school year, that the petition fails to state a claim upon which relief may be granted and that the Commissioner lacks the authority to audit or reduce an approved budget or fund balance.

I will first address the procedural issues. An appeal to the Commissioner must be commenced within 30 days from the making of the decision or the performance of the act complained of, unless any delay is excused by the Commissioner for good cause shown (8 NYCRR §275.16; Appeal of Lippolt, 48 Ed Dept Rep 457, Decision No. 15,914; Appeal of Williams, 48 *id.* 343, Decision No. 15,879). Under RPTL §1318(1), an appeal is timely if it is brought within the fiscal year during which unexpended surplus funds are improperly retained (Appeal of Schadtle, 40 Ed Dept Rep 60, Decision No. 14,421; Appeal of Siver, 37 *id.* 498, Decision No. 13,912). This appeal was commenced on June 6, 2011, during the 2010-2011 school year. Therefore, to the extent that petitioner challenges the budget for 2010-2011 school year and the development of the budget for the 2011-2012 school year, the appeal is timely. However, the appeal

must be dismissed as untimely with regard to the budgets for the 2007-2008, 2008-2009, and 2009-2010 school years. In addition, exhibits relating to those years are also untimely.

The Commissioner will only decide matters in actual controversy and will not render a decision on a state of facts which no longer exist or which subsequent events have laid to rest (Appeal of a Student with a Disability, 48 Ed Dept Rep 532, Decision No. 15,940; Appeal of M.M., 48 id. 527, Decision No. 15,937; Appeal of Embro, 48 id. 204, Decision No. 15,836). To the extent that petitioner requests that respondent provide information about its 2010-2011 budget by July 15, 2011, to take action regarding its 2010-2011 budget and to reduce its 2011-2012 fund balance, those issues must be dismissed as moot because that budget year has concluded. Furthermore, an appeal to the Commissioner is appellate in nature and does not provide for investigations (Appeal of Huffine, 48 Ed Dept Rep 386, Decision No. 15,893; Appeal of D.K., 48 id. 276, Decision No. 15,857).

Turning to the merits, under RPTL §1318(1), at the conclusion of each fiscal year, a board of education must apply any unexpended surplus funds to reduce its tax levy for the upcoming school year. Surplus funds are defined as "any operating funds in excess of four percent<sup>2</sup> of the current school year budget, and shall not include funds properly retained under other sections of law" (RPTL §1318[1]). Accordingly, the Commissioner has repeatedly held that, at the end of each school year, all unexpended operating funds in excess of the designated percentage (depending on the school year) of the amount of the budget for the upcoming school year must be applied to reduce the tax levy (Appeal of Wolfley and McCauley, 50 Ed Dept Rep, Decision No. 16,225; Appeal of Uy and Norden, 44 id. 368, Decision No. 15,201; Appeal of Gorman, 43 id. 32, Decision No. 14,906; Appeal of Schadle, Jr., 40 id. 60, Decision No. 14,421).

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<sup>2</sup> Prior to 2007, surplus funds meant those in excess of two percent. In 2007, the statutory definition of surplus funds was amended to mean "in excess of three percent" for the 2007-2008 school year and "in excess of four percent for the 2008-2009 school year and thereafter" (L. 2007. ch. 238).

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief (8 NYCRR §275.10; Appeal of Aversa, 48 Ed Dept Rep 523, Decision No. 15,936; Appeal of Hansen, 48 id. 354, Decision No. 15,884; Appeal of P.M., 48 id. 348, Decision No. 15,882).

Respondent denies creating a tax stabilization fund, denies that it retained excess surplus funds, and denies that it overestimated its expenditures in formulating its budgets for budget years 2007-2008 through 2011-2012. Respondent's assistant superintendent for business ("assistant superintendent") avers that in formulating each budget, the district employs sound financial practices and estimates "expenditures utilizing the data available to it and its experience the previous year." For example, the assistant superintendent asserts that respondent must estimate premiums for health and liability insurance and required premium contributions for the New York State Teachers Retirement System ("TRS") and Employees Retirement System ("ERS") because the amounts are not available until after the formulation of the budget and/or after the budget vote. In addition, it must estimate costs for salaries because staff numbers fluctuate, estimate costs of interest on its tax anticipation notes because of fluctuating interest rates, and estimate the amount of state aid. Based on these and other estimates (depending on the year), respondent asserts that it has not improperly utilized the budgeting process or established a tax stabilization fund, but rather, that it proposed budgets that were in accordance with the Education Law and received voter approval. Respondent asserts further that it did not retain surplus funds in excess of the percentage permitted under RPTL §1318.

Respondent acknowledges that for budget years 2007 through 2010, its actual expenditures were less than the voter-approved budgets. (At the time the appeal was commenced, the actual expenditures for the 2010-2011 year were not yet available, and neither party has submitted them for the record.) However, on the record before me, it appears that the estimating process that respondent used to derive its proposed budgets to submit to the voters was rational, reasonable and consistent with law, and

petitioner has failed to prove otherwise. The fact that expenditures were less than proposed budgets does not compel the conclusion that budgets were improperly exaggerated or inflated.

Respondent also acknowledges that it maintains reserve funds for workers' compensation, unemployment insurance, long-term disability, and employee benefit accrued liability (compensated absences), and also maintains a fund balance. There is no evidence of a separate "tax stabilization" fund. Respondent acknowledges further that the amount of funds in each reserve and the total fund balance contributed to its receipt of a high bond rating and to its ability to maintain low tax increases for several years. It denies, however, that its cash management system was meant to overfund reserves or fund balances or to achieve a high rating. Petitioner appears to allege that the fund levels of the reserve funds collectively comprise a "tax stabilization" fund, because respondent increased its budget and raised taxes instead of depleting the reserves.

Under the Education Law and General Municipal Law, respondent is authorized to establish and maintain reserve funds. Under RPTL, respondent is authorized to maintain a fund balance subject to RPTL §1318 (up to the designated percentage).<sup>3</sup> As long as the reserve funds were properly established and properly funded, and as long as the fund balance subject to RPTL §1318 did not exceed the designated percentage, respondent is in compliance. I note that neither party has submitted the tax warrants approved by respondent demonstrating the actual amount of other unexpended surplus funds, if any, retained by respondent,

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<sup>3</sup> Prior to school year 2010-2011, unreserved, undesignated fund balance was the portion of fund balance subject to RPTL §1318. The Governmental Accounting Standards Board ("GASB") issued GASB Statement Number 54 ("Statement 54"), "Fund Balance Reporting and Governmental Fund Type Definitions" in February 2009, which changed the composition of fund balance starting with the 2010-2011 school year. Starting with the 2010-2011 school year, the Office of the State Comptroller has determined the portion of fund balance subject to the RPTL to be: unrestricted fund balance (i.e., the total of the committed, assigned, and unassigned classifications), minus appropriated fund balance, amounts reserved for insurance recovery, amounts reserved for tax reduction, and encumbrances included in committed and assigned fund balance.

or the actual amount of surplus funds applied to reduce the tax levy for any of the budget years questioned by petitioner.<sup>4</sup> The evidence in the record indicates that for 2010-2011, the remaining year at issue in this appeal, respondent maintained a fund balance subject to RPTL §1318 of \$11.2 million, which was four percent of the budget and thus complies with the RPTL.<sup>5</sup> There is no evidence in the record that the reserve funds were not properly established or funded, or that respondent imposed a minimum or maximum funding level for the reserves. Petitioner has not established that respondent unreasonably funded its reserves, and has presented no evidence of intentional overestimation of expenses or manipulation of funds in violation of the Education Law. I also note that the voters approved the budgets, and that the record also indicates that respondent appropriated \$17,013,313 to apply to reduce the tax levy for that budget year and intended to appropriate \$23.5 million to apply to reduce the tax levy for 2011-2012.

Petitioner alleges that respondent twice improperly modified the 2010-2011 budget. He alleges that respondent increased the budget by \$2.1 million "to replenish the unappropriated fund balance," and intended to modify the budget on June 30, 2011 by adding an additional \$2 million of workers' compensation reserves to revenue.

Prior Commissioner's decisions have held that, recognizing that budgets are prepared almost a year in advance, a transfer of funds is permissible if authorized by the Regulations of the Commissioner (8 NYCRR §170.2; Rodman v. Lofaso, 23 Misc 2d 337 [Sup Ct Nassau Co 1960], app dism 13 AD2d 974 [2d Dept 1961]; Appeal of Leman, 39 Ed Dept Rep 35, Decision No. 14,166; Appeal of Wozniak, 21 id. 297, Decision No. 10,690). However, petitioner has failed

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<sup>4</sup> Despite the absence of the actual tax warrants in the record, it appears that respondent designated slightly over \$17 million to apply to the tax levy for 2010-2011, and intended to designate \$23.5 million for the tax levy for 2011-2012.

<sup>5</sup> Respondent asserts that for the 2007-2008 school year, its unreserved, undesignated fund balance was \$8.2 million, which was 2.99% of the budget for the upcoming school year, and for the 2008-2009, 2009-2010 and 2010-2011 school years, the fund balance subject to RPTL §1318 was 4% of the upcoming budget: \$11.2 million, \$10.9 million, and \$11.2 million, respectively.

to meet his burden of proving that any funds were improperly transferred.

Petitioner has failed to establish that respondent acted illegally in applying \$2.1 million to the fund balance. Under RPTL §1318, respondent is authorized to maintain a fund balance subject to RPTL §1318 within the 4% limit, and maintaining an adequate fund balance is important for sound fiscal management. Without an adequate fund balance, a district would have difficulty in managing unanticipated fluctuation in available revenue and/or expenditures.

With regard to the \$2 million in workers' compensation funds, respondent contends that it properly utilized the reserve and did not "increase" the budget. Respondent states that it determined that its workers' compensation reserve was underfunded for short-term and long-term liabilities. Consequently, to avoid depleting the reserve, it included a line item in the budget of \$1.8 million for workers' compensation claims in 2010-2011. Respondent asserts, however, that it expected to expend \$2.2 million for workers' compensation claims in 2010-2011. Therefore, it properly transferred some funds from the workers' compensation reserve to meet the total expenditures for workers' compensation. Petitioner presents no evidence to contradict respondent's explanation of that transfer and has failed to demonstrate that such transfer or use of the reserve was improper. However, respondent is cautioned that any such transfer from the reserve may not be in excess of the projected shortfall required to cover its liabilities.

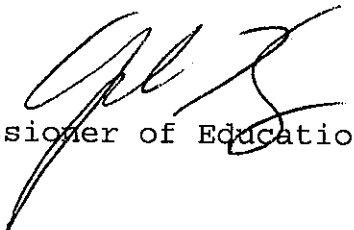
Finally, I note that, with regard to the OML, Public Officers Law §107 vests exclusive jurisdiction over complaints alleging violations of the OML in the Supreme Court of the State of New York, and alleged violations thereof may not be adjudicated in an appeal to the Commissioner (Appeal of McColgan and El-Rez, 48 Ed Dept Rep 493, Decision No. 15,928; Applications and Appeals of Del Río, et al., 48 *id.* 360, Decision No. 15,886). Therefore, I have no jurisdiction to address the Open Meetings Law allegations raised in this appeal.

In light of this disposition, I need not reach the parties' other contentions. However, in these difficult fiscal times, respondent should be mindful in developing its subsequent budgets to avoid levying taxes in excess of need.

THE APPEAL IS DISMISSED.



IN WITNESS WHEREOF, I, John B. King, Jr., Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 18<sup>th</sup> day of *September* 2012.

  
Commissioner of Education