

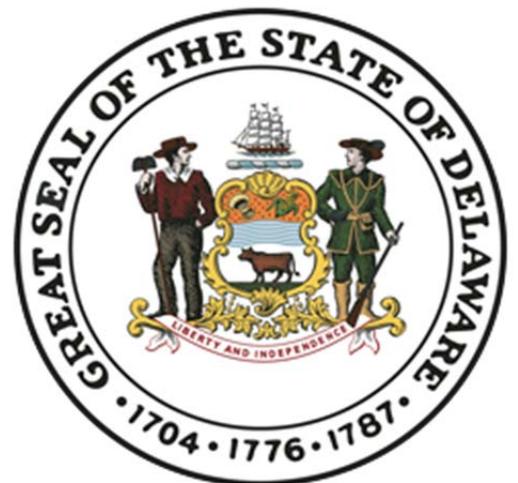
State of Delaware Office of Auditor of Accounts

School District Referendum Complaints

Inspection

Fieldwork End Date: June 26, 2014
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R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts





State of Delaware
Office of Auditor of Accounts
R. Thomas Wagner, Jr., CFE, CGFM, CICA
At a Glance

Working Hard to Protect YOUR Tax Dollars

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Citizens have the right to demand that their tax dollars are properly spent. Fight fraud, waste, and abuse in State government by contacting our confidential Fraud Hotline with supporting evidence.

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or
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Working together, we can save your tax dollars!

This inspection was performed in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation*.

For further information on this release, please contact:

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School District Referendum Complaints

AOA received several allegations that Laurel, Seaford, and Woodbridge School Districts were violating the constraints of their approved referendums.

Allegations against Laurel School District stated that Laurel planned to modify their taxpayer-approved referendum by demolishing the Laurel Middle School, change the new elementary school pupil capacity, and construct athletic facilities that were voted against by the taxpayers. While we found the allegations related to the demolition and pupil capacity change had merit, DOE interjected before any inappropriate measures were taken. We found that Laurel acted within its authority related to the athletic facilities.

We also found that both Seaford and Woodbridge School Districts acted within their authority related to allegations received for grade configurations and the spending of referendum money.

It is imperative for taxpayers to realize exactly what they are voting for or against during a referendum. In most cases, the referendum asks taxpayers to approve a construction project. The school districts must provide an estimated incremental tax rate per Delaware Code but, as evidenced by a Special Investigation performed by our office in 2011 over Woodbridge's construction referendum, taxpayers focus on the advertised rate and fail to recognize that other factors unrelated to the construction project may have an impact on the overall effective tax rate.

Further, we are encouraging school districts to be as transparent as possible to their public throughout their referendum and construction processes. We believe this will help alleviate the perception that school districts are misleading their taxpayers or violating applicable laws and regulations.

The local school boards are comprised of members in their individual communities looking out for the best interest of their students. Accordingly, we encourage them to work cooperatively with the Department of Education and their legal counsel to ensure their intended actions are in compliance with the law.

School districts are also reminded that it is their responsibility to maintain all appropriate documentation on all aspects of the construction process in order to pass their respective audits.

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Background

School District Construction Projects

In accordance with 29 Del. C. §7509, the Department of Education (DOE) shall determine the present necessity for any school construction program. Once a school district identifies the need for a construction project and receives approval from its Board of Education (Board), they submit a Major Capital Improvement Program request form to DOE by August 31 each year. DOE then meets with the school district to review appropriate documentation and discuss the necessity of the project. If it is deemed necessary, DOE will include the project in its budget request for the following fiscal year. All projects that are included in the budget request are then issued a Certificate of Necessity (CN) by the end of November that authorizes the construction project and details the scope and cost limits for the project.¹

DOE calculates the amount of State funding the school district will receive using a standard school construction formula. The formula is uniform throughout the State and is based on pupil capacity for the type of school requested (i.e. elementary, middle, or high school). The remainder of the cost is paid with local tax receipts, thus referred to as the local share.

Before a school district can issue bonds to fund the local share of the construction costs, taxpayers must approve the bond sale through a referendum.² A referendum may occur any time after a CN is issued, and the school district has one year and two opportunities to pass a successful referendum before needing to request a new CN from DOE. The timing of each referendum is at the discretion of the local Board.

The school district must provide adequate public notice of the referendum that includes the purpose and amount of the proposed bond issuance, as well as the estimated annual amount of tax increase upon approval.³ The estimated increase, however, is based on certain assumptions that are subject to change, such as the anticipated interest rate on new bonds.⁴ Therefore, taxpayers are voting on the approval of the construction project and cannot rely on the advertised referendum rate as the effective tax rate.

The school district may ask their taxpayers to approve a local share in excess of the school construction formula to finance additional options. For example, if a construction project included expanding a particular school building and the school district wished to continue the same flooring throughout the entire building, taxpayers may be asked to fund the costs in excess of the State formula. This particular request must be clearly labeled on the referendum voting ballot using the language set forth in 14 Del C. §2004.

DOE presents their budget of all the State's school districts' construction projects to the Office of Management and Budget (OMB) for approval and inclusion in the Governor's Recommended Budget.⁵ The Governor's Recommended Budget is then subject to final approval by the Bond Bill Committee and the Legislature via the Bond and Capital Improvements Act (also referred to as the Bond Bill). If a school district fails to obtain a successful referendum before June 30, their project is removed from the Governor's Recommended Budget and not included in that year's Bond Bill.

¹ DOE's School Construction Manual, Section 2: Major Capital Improvement Program Regulations (<http://facilitynet.doe.k12.de.us/schooldata/>)

² 14 Del. C. §2122

³ 14 Del. C. §1074 (b)

⁴ Other rates that are not subject to voter approval (e.g. tuition, minor capital improvements) may be increased by the school district to meet annual demands thus resulting in the effective tax rate for the school district.

⁵ Same as footnote 1

The school district's Board then has the "power to employ engineers, architects and such other employees as it deems essential..." for their construction project per 29 Del. C. §7521. All final plans and specifications, including costs of construction under any school construction bond authorization act are approved by DOE.⁶

Depending on various factors (e.g. the total cost of the project, other projects within the State), the school district will receive funding for their construction project over the course of several fiscal years. For each State bond sale, the school district receives an aggregate allocation of funds and must pay back a portion of those funds with local tax receipts. The local share for each school district in the State can vary between 20% and 40%,⁷ depending on an assessment of the school district's ability to meet their obligations.⁸

The school district coordinates with the Office of the State Treasurer to pay the local share of their outstanding principal and interest payments in accordance with 14 Del. C. §2108. Annually, the Office of Auditor of Accounts (AOA) audits the school districts' local tax collections and debt service management in a separate engagement. Further, another annual audit examines all State and local construction project expenditures.

In the event the construction project comes in under budget, the school district may request permission from the State legislature to redirect the State-funded portion of the excess budget amount to fund another project. The subsequent epilogue language in the Bond Bill dictates if the school district must put forth local tax receipts and what sources of funding the school district may use, such as Minor Capital Improvement funds. Since this is a result of Delaware law, the change does not require a referendum.

There are no legal or statutory provisions that would prohibit a school district from utilizing excess funds for early repayment of its debt.

Maintenance of Records

Despite a lack of legal guidance, school districts should maintain all appropriate documentation related to their construction projects and related debt for audit purposes.

⁶ 29 Del. C. §7518

⁷ 29 Del. C. §7503 (b)

⁸ An Equalization Committee, as defined by 14 Del. C. §1707 (i), is comprised of 10 to 15 members appointed by the Secretary of DOE. The equalization formula (detailed in 14 Del. C. §1707) incorporates an annual survey conducted by the University of Delaware, and is annually reviewed and approved by the Equalization Committee.

Procedures and Results

Laurel School District

The Laurel School District (Laurel) went to referendum on October 4, 2010. Taxpayers were asked to approve the issuance of bonds to fund (1) a new 1,400 pupil combined high school and middle school facility, (2) a new 1,200 pupil elementary school, (3) the demolition of North Laurel Elementary School, and (4) the selective demolition and restoration of the existing middle school. An additional request asked voters to approve the construction of new athletic facilities, contingent upon the approval of building the new high school.

Laurel's taxpayers approved the construction of the new high, middle and elementary schools, including demolition of their existing schools, as described. The taxpayers did not approve the additional request for the construction of new athletic facilities. The total cost of the approved construction projects is \$117,349,500, with a local portion of \$28,163,900.



Photo of Laurel Middle School obtained from Laurel's website on May 16, 2014, in the "Capital Projects Community Forum; "Laurel Intermediate/Middle School Conditional Assessment" presentation at http://www.laurel.k12.de.us/apps/pages/index.jsp?uREC_ID=186168&type=d&termREC_ID=&pREC_ID=454207

AOA received an allegation that Laurel intended to modify their taxpayer-approved referendum by completely demolishing the existing Laurel Middle School and changing the elementary school pupil capacity from 1,200 to 1,400 pupils. However, per the referendum language, taxpayers approved the "selective demolition of the existing middle school ... and selective renovation of the remaining school facilities" as well as a "1,200 pupil elementary school to replace to the existing North Laurel Elementary [School]".

Per 29 Del. C. §7511, "No certificate of necessity shall be amended after the date of successful local school district referendum."

The DOE Associate Secretary of Financial Reform and Resource Management met with the Laurel Superintendent to inform him that their proposed plan would constitute an amendment to the CN and is

not permitted. To proceed, Laurel must receive approval from their taxpayers via referendum or obtain approval from the State Legislature. In May 2014, the Laurel Superintendent confirmed with us that Laurel will comply with DOE's instructions.

AOA also received several complaints that Laurel was violating their approved referendum by constructing athletic facilities despite being voted against by the taxpayers. However, we found that Laurel acted within its authority since the athletic facilities were approved by the State Legislature.

The Fiscal Year 2014 Bond Bill authorized the transfer of excess major capital improvement money to fund the construction of new athletic facilities for Laurel. The Bond Bill only specified the transfer of State funds and did not require a local portion; therefore, the cost of the project does not directly affect the citizens of the district. Since this was a matter of law, it was not subject to taxpayer approval. Laurel transferred \$182,075.45 of State funds from their land acquisition appropriation to their construction appropriation for the athletic facilities, which was approved by the Secretary of Education, Director of Office of Management and Budget, and Controller General in November 2013.

Seaford School District

The Seaford School District (Seaford) went to referendum on May 18, 2011. Taxpayers were asked to approve the issuance of bonds to fund "... renovations and additions to the Seaford High School, including funding for the planning, construction, and equipping of renovations and additions to the Seaford High School to include renovations and additions necessary to implement the New Tech High School educational concept; accomplish grade level reconfigurations; life, health, safety systems and mechanical, HVAC and electrical control systems renovations and upgrades; as well as athletic facility renovations, additions and improvements."

Seaford's taxpayers approved the construction renovations and additions to the Seaford High School, as described above. The total cost of the approved construction is \$36,445,600, with a local share of \$9,113,900.



Photo of Seaford Senior High School obtained from Seaford Senior High School's website on May 16, 2014, at <http://agi.seaford.k12.de.us/schools/shs/Pages/default.aspx>.

Seaford initially planned to move the eighth grade from the middle school to the high school but later reversed that decision. AOA received an allegation that this violates the intent of the referendum.

Local school boards are granted the authority to “grade and standardize all the public schools under its jurisdiction” under 14 Del. C. §1049(a)(4). DOE stated that although grade configurations may be discussed as part of determining capacity needs for funding purposes, school districts are able to reconfigure their grade levels per school buildings as they deem appropriate. Therefore, Seaford acted within its authority to place the eighth grade in the building they considered the best fit for the students.

Woodbridge School District

The Woodbridge School District (Woodbridge) went to referendum on March 29, 2011. Taxpayers were asked to approve the issuance of bonds to “Construct a new Woodbridge High School, including funding for the planning, construction and equipping of a new 700 pupil High School (with 1,000 pupil core facilities) on lands owned by the District.”

Woodbridge’s taxpayers approved the referendum as described above. The total cost of the approved construction is \$52,539,700, with a local share of \$14,711,100.



Photo of Woodbridge High School construction obtained from Woodbridge’s website on May 16, 2014 at <http://www.wsd.k12.de.us/construction.htm>.

Statements against Woodbridge allege the district is spending referendum money for items not included in the referendum. These projects include constructing an athletic support facility, which is a pole building adjacent to the athletic fields, and moving and modernizing three modular buildings obtained free of charge and to be used for the Junior Reserve Officers’ Training Corps (JROTC). Further statements allege that Woodbridge violated State procurement by using a change order to perform paving work on existing roads at the high school facility rather than going out for competitive bid.

AOA found that school districts are permitted to use major capital improvement money to construct athletic support facilities. According to Title 14 of the Delaware Administrative Code, Section 401, Major Capital Improvement Programs, facilities are, “long lived capital assets to include...athletic buildings.” DOE also confirmed that Woodbridge is permitted to use their high school construction funds to construct an athletic support facility for their athletic fields.

School districts are also permitted to use major capital improvement money to acquire temporary buildings or facilities for school purposes to be used until the permanent buildings are available, per 29 Del. C. §7501(5). Woodbridge received modular buildings from another school district, but according to DOE, these structures were never intended to be temporary since they were placed on a permanent

foundation and therefore are considered part of the new high school. Thus, Woodbridge is permitted to use their referendum money to move and modify the modular buildings since they are part of the new high school construction project.

Lastly, Title 14 of the Delaware Administrative Code, Section 401, Major Capital Improvement Programs, defines “change orders” as, “Documents which change the construction contract and are negotiated between the owner and contractor in order to ... improve upon designs based on project progress.” During their August 14, 2012, meeting, Woodbridge’s Board of Education (Board) approved a change order process for the high school construction project that included full Board approval for services in excess of \$100,000.

AOA verified that the Board obtained the current site work contractor for the new high school through a competitive bid process in August 2012. During their meeting on May 21, 2014, the Board approved a change order totaling \$267,765 for the current site contractor to repave and address drainage issues on the existing roads around the high school complex. Since site work includes the construction and paving of driveways and parking lots, as well as utilities, AOA and DOE confirmed that Woodbridge acted appropriately by using a change order for these services.

Transparency by Local School Boards

The Delaware Code gives the local school boards the authority to oversee all school construction projects within their district:

- 29 Del. C. §7520 states, “The board of education in each school district shall supervise, or cause to be supervised, the school construction program in such school district.”
- 29 Del. C. §7519 states, “The board of education for any district shall cause the school construction program authorized under any school construction bond authorization act and this chapter for such school district to be carried out.”
- 29 Del. C. §7522 states, “All bills for the expenses of the board of education of any school district for carrying out the school construction program of such school district under this chapter must be marked "approved," and such approval must be signed by the president or vice-president of such board of education and attested by the secretary or acting secretary of such board of education...”

Since the local school boards have so much authority over the construction projects, complete transparency to the public is imperative. One simple way to accomplish this may be to dedicate a portion of the school district’s website to the construction projects and include timely and comprehensive updates. The school district should also post relevant documentation for the construction process, such as the approved CN and referendum voting results, as well as excerpts from the Bond Bill that may authorize construction projects different than, or in addition to, what the taxpayers approved.

In addition, school districts are encouraged to issue press releases to local media with pertinent information regarding their construction projects since taxpayers may not be able to attend all relevant board meetings.

By practicing full disclosure to the public, school districts can help alleviate the perception amongst taxpayers that school districts are violating their approved referendum constraints.