

**State of Delaware  
Office of Auditor of Accounts**

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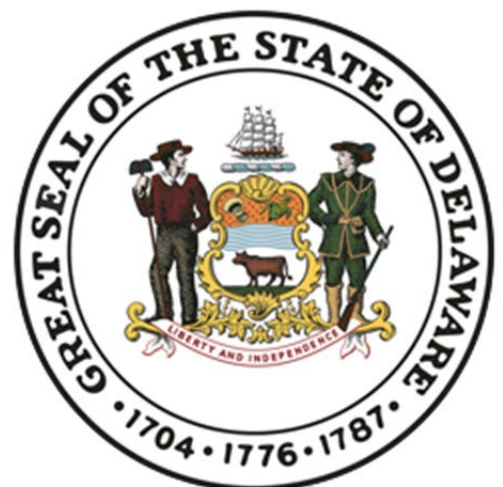
**School District Local Tax Collection and  
Debt Service Management  
Agreed-Upon Procedures Engagement**

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**Fiscal Year Ended June 30, 2014**

**Fieldwork End Date: August 3, 2015  
Issuance Date: August 14, 2015**

R. Thomas Wagner, Jr., CFE, CGFM, CICA  
Auditor of Accounts



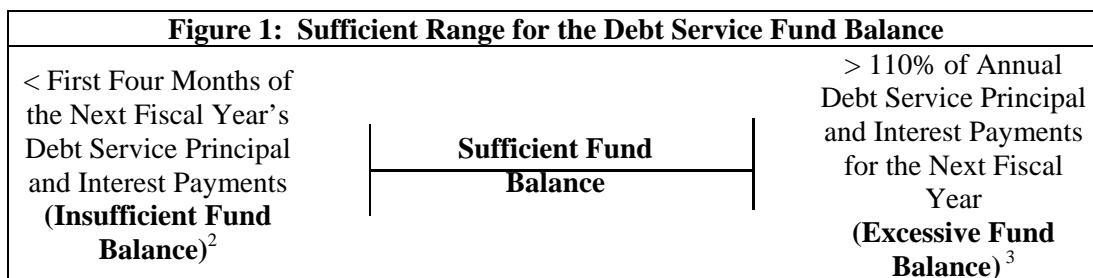
## ***Background***

This engagement focuses on whether Delaware school districts deposit their local tax revenues as authorized by their local school boards and applicable legislation. In addition, AOA compares the county tax billings, school district tax receipts, and delinquent taxes for the fiscal year to ensure there is no disparity. We also consider how school districts manage the debt used to pay for school construction, focusing on whether the debt is paid according to the bond amortization schedule and if the school district has a reasonable amount of funds set aside to meet their bond obligations. All of these activities, including the collection and use of local tax receipts, are State of Delaware (State) funds and activities, as reflected in the State’s Comprehensive Annual Financial Report as primary government.

### **Debt Service Management**<sup>1</sup>

Once approved by a taxpayer referendum, the General Assembly will approve a bond issuance to cover a school district’s construction cost. The school district is responsible for using county tax receipts to repay the local share of the bond, which is typically between 20% and 40%. The remainder of the bond is covered by other sources of funds. Most school districts have payment obligations for multiple debt service bonds that have accumulated over recent decades.

The debt service appropriation must be carefully monitored to ensure that the school has sufficient tax receipts to cover its debt service obligations without accruing an excessive fund balance. This analysis is a good indicator of whether the district’s tax rates need adjustment. The parameters surrounding the debt service fund balance are illustrated in Figure 1 below.



### **Local Tax Collections**

On a monthly basis, the school districts receive a lump sum amount of revenues collected from the three Delaware counties through real estate and capitation taxes.<sup>4</sup> Sussex County school districts also receive rollback tax revenue.<sup>5</sup> These revenues are commonly referred to as local funds.

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<sup>1</sup> Debt Service is the series of principal and interest payments required on debt over a given time period.

<sup>2</sup> See page 13 of Appendix A for Attorney General’s Opinion 89-I017.

<sup>3</sup> See page 17 of Appendix B for Attorney General’s Opinion 1W-024.

<sup>4</sup> Capitation taxes are collected based on the number of adult residents in a school district.

<sup>5</sup> Rollback taxes result when agricultural land is changed to another use, such as commercial or residential property. The basis for the tax is the difference between the land’s value when classified as agricultural and the land’s value under the new classification.

To receive local funds, each school district's local school board approves and sends an annual tax warrant to their respective county, which authorizes the levy and collection of taxes. The tax warrant shows a separate tax rate for a combination of the following categories:

- **Current Expense:** costs associated with the general operation of the district as well as specific voter approved programs. This tax rate can only be increased with taxpayer approval through referenda.
- **Debt Service:** the principal and interest payments on capital improvement bonds used to fund new construction, additions, and major renovations. Voters must authorize the issue of bonds through a referendum. Thereafter, the school district's local school board annually sets the debt service tax rate to meet the authorized obligations.
- **Tuition:** the cost of providing in-district and out-of-district placements for students who must attend special schools within and outside of the State (e.g. Sterck School for the Hearing Impaired and Intensive Learning Centers). The local school board sets this tax rate annually based upon anticipated needs of the student body. A voter referendum is not required to adjust this rate and there is limited guidance regarding how to calculate the tax rate. As a result, the documentation to support the school districts' tuition tax rate calculation is inconsistent, making the tax rate difficult to validate.
- **Match:** provides local match to State appropriations where required or allowed by law. According to the Fiscal Year 2014<sup>6</sup> State Budget Bill, examples of matching programs include minor capital improvements (MCI), technology, reading resource teachers, math resource teachers, and extra time programs. Although the State only provides its portion of the MCI match funds, qualified school districts are still permitted to collect taxes for their local portion of other match programs. An explanation of each match program is provided below:
  - MCI – These funds are used to keep real property assets in their original condition and are reserved for projects that cost less than \$500,000.<sup>7</sup> School districts are required to pay 40% of this amount through local tax collections, according to 29 Del. C. §7528 (e), while the State provides the remaining 60%.
  - Technology – These funds are intended to support the replacement or purchase of equipment that supports classroom instruction, technology maintenance in schools either through the use of technology personnel or contractual services, or other technology needs which could improve or enhance the technology capabilities of the district. According to Section 336 of the Fiscal Year 2014 Budget Bill Epilogue, all districts are eligible for a technology match. According to DOE, school districts may either use the tax rate provided in a Fiscal Year 1999 memo or a 70% State/30% Local match on the new Technology fund provided in Fiscal Year 2014.

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<sup>6</sup> The State's fiscal year is from July 1<sup>st</sup> through June 30<sup>th</sup>.

<sup>7</sup> Section 7.1 of the State of Delaware *School Construction Technical Assistance Manual*.

- Reading and Math Resource Teachers\* - School districts are assigned a specified number of teachers to assist students who need additional support and instruction in the areas of reading and mathematics. As specified in the Budget Epilogue, all school districts shall be allowed to assess a local match for their Fiscal Year 2010 Reading and Math Resource Teachers.
- Extra time\* - This match provides additional instruction for low achieving students. As specified in the Budget Epilogue, all school districts shall be allowed to assess a local match for their Fiscal Year 2008 Extra Time funding.

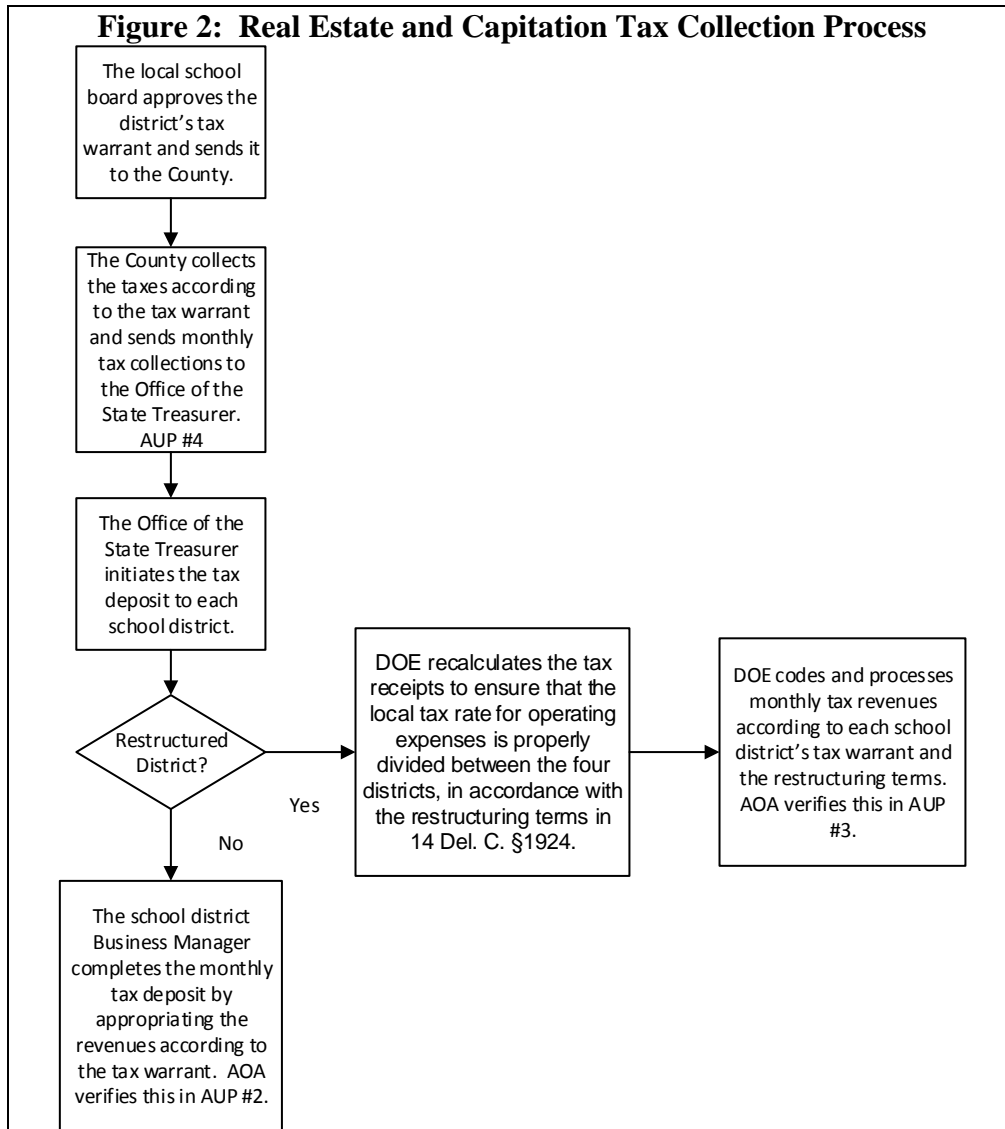
\* Overall, there are unclear guidelines surrounding the collections of taxes for the expired match taxes. The school districts interpreted the Budget Epilogue's direction in a variety of ways: (1) at the exact tax rate collected; (2) at the exact percentage of program costs; and (3) at the exact dollar amount collected (e.g. \$450,000). There is no Attorney General's opinion regarding the expired match programs, and absent any guidance from DOE, we believe the school districts are satisfying the intent of the epilogue language.

DOE is responsible for allocating local tax revenues to the four restructured districts: Brandywine, Christina, Colonial, and Red Clay.<sup>8</sup> Although these four districts operate separately, they all share a current expense tax rate as part of the restructuring plan. Each districts' student enrollment unit count is used as the basis for dividing the tax revenue attributed to current expense, as defined at the bottom of page i.

The tax collection process is summarized in Figure 2 below.

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<sup>8</sup> These four districts were formerly the New Castle County School District but were divided in 1981 in accordance with 14 Del C. §1924. Each of the four districts shares a local tax rate for the current expense appropriation, which is distributed by DOE to ensure the funds are disbursed objectively.



The school districts may also receive payments in lieu of taxes (also known as PILOT) from sources such as the Delaware State Housing Authority, Prime Hook National Wildlife Refuge, and Bombay Hook National Wildlife Refuge. It is the school district's responsibility to deposit and code the revenue to the correct appropriation. These funds are in addition to the tax receipts collected by each county, so AOA takes these items into consideration when performing Procedure 2 (described on pages three through five of this report).

The following statements were constructed as a result of the procedures performed:

**Statement of Local Tax Collections  
for the Fiscal Year Ended June 30, 2014**

<b>School District</b>		<b>Tax Receipts<sup>a</sup></b>
Appoquinimink	\$	33,278,001
Brandywine		74,694,109
Caesar Rodney		9,874,365
Cape Henlopen		32,563,179
Capital		22,022,021
Christina		108,353,563
Colonial		47,856,920
Delmar		1,934,148
Indian River		38,658,360
Lake Forest		6,261,217
Laurel		4,419,031
Milford		8,368,046
NCC Vo-Tech <sup>9</sup>		28,190,765
Polytech		4,809,365
Red Clay		85,349,537
Seaford		7,026,695
Smyrna		9,392,958
Sussex Technical		8,148,684
Woodbridge		4,847,380
<b>Total</b>	\$	<b>536,048,344</b>

<sup>a</sup>The figures represented in the Tax Receipts column are the local tax revenues for current expense, debt service, tuition, and match purposes that each district received from the counties for the fiscal year.

<sup>9</sup> New Castle County Vocational Technical School District

*School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report*

*State of Delaware*

**Statement of School District Debt Service Funds  
for the Fiscal Year Ended June 30, 2014**

School District	June 30, 2013 Debt Service Reserve Fund Balance	Debt Service Revenues <sup>a</sup>	Debt Service Expenditures <sup>b</sup>	Other Adjustments <sup>c</sup>	June 30, 2014 Debt Service Reserve Fund Balance <sup>d</sup>
Appoquinimink	\$ 2,798,361	\$ 6,298,735	\$ (6,494,102)	\$ 11,494	\$ 2,614,488
Brandywine	2,583,638	8,528,771	(8,309,880)	16,079	2,818,608
Caesar Rodney	1,046,804	1,626,737	(1,981,055)	390,729	1,083,215
Cape Henlopen	2,949,587	3,822,653	(3,439,320)	9,976	3,342,896
Capital	4,698,979	6,367,739	(7,452,824)	365,235	3,979,129
Christina	3,743,968	7,391,845	(7,509,476)	17,106	3,643,443
Colonial	3,145,501	5,299,568	(5,566,749)	167,660	3,045,980
Delmar	82,385	316,689	(321,459)	508	78,123
Indian River	2,426,159	4,611,046	(4,327,037)	110,704	2,820,872
Lake Forest	255,356	727,403	(628,643)	1,608	355,724
Laurel	1,395,491	1,257,513	(1,111,988)	49,077	1,590,093
Milford	894,045	1,522,311	(1,695,040)	2,801	724,117
NCC Vo-Tech	2,477,835	1,917,508	(2,644,378)	11,162	1,762,127
Polytech	597,229	665,998	(675,604)	23,174	610,797
Red Clay	3,945,937	6,760,883	(7,454,085)	590,126	3,842,861
Seaford	1,133,185	1,379,819	(1,300,318)	14,172	1,226,858
Smyrna	1,559,360	1,884,035	(2,593,818)	754,911	1,604,488
Sussex Technical	1,004,148	605,676	(1,013,376)	15,851	612,299
Woodbridge	1,152,063	1,271,404	(1,286,458)	20,045	1,157,054
<b>Totals</b>	<b>\$ 37,890,031</b>	<b>\$ 62,256,333</b>	<b>\$ (65,805,610)</b>	<b>\$ 2,572,418</b>	<b>\$ 36,913,172</b>

<sup>a</sup> The figures represented in the Debt Service Revenues column are the local tax revenues that each district received from the counties for the fiscal year and allocated to the debt service appropriation.

<sup>b</sup> The debt service expenditures represent the principal and interest payments made on each school district's long-term debt obligations.

<sup>c</sup> Amounts recorded in the "Other Adjustments" column may be attributed to interest income, transfers in or out of the appropriation, or PILOT receipts that were not recorded to the "Real Estate Tax" account code in FSF and therefore may not be included as part of our procedures.<sup>10</sup>

<sup>d</sup> The debt service reserve balance represents the prior year debt service balance plus the debt service tax receipts and other adjustments, and is reduced by the debt service expenditures for the fiscal year.

<sup>10</sup> Any transfers in or out of the debt service appropriations were reviewed in Procedure 11.

## ***Table of Contents***

Independent Accountant’s Report	1
Appendix A – Attorney General Opinion 89-I017	16
Appendix B – Attorney General Opinion 1W-024	20
Appendix C - Matrix of Exceptions by School District	28





STATE OF DELAWARE  
OFFICE OF AUDITOR OF ACCOUNTS

R. THOMAS WAGNER, JR., CFE, CGFM, CICA  
AUDITOR OF ACCOUNTS

Independent Accountant's Report  
on Applying Agreed-Upon Procedures

To the Specified User(s) of the Report:

The Honorable Mark Murphy  
Secretary  
Department of Education  
401 Federal Street, Suite 2  
Dover, Delaware 19901

Superintendents, All School Districts  
Business Managers, All School Districts

We have performed the procedures enumerated below, which were agreed to by the Office of Auditor of Accounts (AOA) and the specified user(s) of the report, as identified above, and as defined within the applicable laws of the State of Delaware. The procedures were performed solely to assist the specified parties in evaluating the school district's compliance with the criteria listed in each procedure below. Management of each school district is responsible for their school district's compliance with those requirements for the period July 1, 2013 through June 30, 2014 (Fiscal Year 2014).

This agreed-upon procedures engagement was performed in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States and the attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified user(s) of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and results were as follows:

**Procedure 1:** Using each school district's official Fiscal Year 2014 tax warrant and supporting rate calculations, compared the amount of taxes levied in Fiscal Year 2014 to the amount of taxes authorized by referendum and enabling legislation. [14 Del. C. §1902(b), 14 Del. C. §1903, 14 Del. C. §1916(d)]

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**Results:**

1. The Woodbridge School District's technology match tax rate for Sussex County was \$.0023 higher than the rate approved by DOE. The estimated unauthorized revenue collected by the school district is reported in Table 2 under Procedure 2. Due to the District's poor methodology for calculating their match taxes, AOA was unable to determine if the MCI tax rate was appropriate for the MCI match per the Bond Bill. The District's remaining tax rates were properly authorized.
2. The Colonial School District was approved by the General Assembly during the period July 1, 2006 through June 30, 2007 (Fiscal Year 2007), to issue local debt that exceeded the authorized debt service referendum amount by \$394,000; however, the taxpayers were not provided the opportunity to approve the debt. The estimated annual cost of the extra debt incurred by the school district is reported in Table 4 under Procedure 3

For the remaining school districts, we found no exceptions as a result of applying this procedure.

**Procedure 2:** Recalculated the allocation of County taxes received during Fiscal Year 2014 to verify that tax revenues were properly recorded in First State Financials (FSF) using the following information:

- a. The monthly report of school tax collections levied by each County and obtained from the Office of the State Treasurer (OST). [14 Del. C. §1917 (a) and (b), §1919 (a) and (b)]
- b. The tax warrant and corresponding source documents for each school district.
- c. The amount of Elderly Property Tax Relief paid to each school district in Fiscal Year 2014, obtained from OMB. [14 Del. C. §1917 (c)]
- d. The amount of any additional revenues in lieu of taxes including payments from the Delaware State Housing Authority, Prime Hook and Bombay Hook National Wildlife Refuges, Sussex County Rollback taxes, and Kent County Impact Fees, obtained from each school district.
- e. The FSF Revenue by Account and Appropriation report (Report ID DGL114) for each school district. [14 Del. C. §1918 (a)]

(Note: Nominal rounding variances are expected when applying this procedure.)

Any variances less than 5% and \$1,000 for each appropriation are considered immaterial and will not be reported.

**Results:** All school districts allocated their tax revenues in accordance with the tax warrant with the exception of the school districts in Table 1.

**School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report**

*State of Delaware*

<b>Table 1: Tax Receipts not Allocated per the School Districts' Tax Warrant</b>				
<b>Match Tax Appropriation</b>	<b>Allocation Method</b>	<b>Appoquinimink</b>	<b>Cape Henlopen</b>	<b>Smyrna</b>
<i>Extra Time</i>	Actual Deposit	\$ 249,600.65	\$ 160,210.87	\$ -
	Correct Deposit Per Tax Warrant	247,765.35	170,982.13	144,215.35
	Variance	1,835.30	(10,771.26)	(144,215.35)
<i>MCI</i>	Actual Deposit	939,801.58	261,824.48	-
	Correct Deposit Per Tax Warrant	563,300.22	218,806.39	243,295.87
	Variance	376,501.36	43,018.09	(243,295.87)
<i>Reading and Math Resource Teachers</i>	Actual Deposit	-	187,756.05	-
	Correct Deposit Per Tax Warrant	383,587.58	216,785.14	180,727.11
	Variance	(383,587.58)	(29,029.09)	(180,727.11)
<i>Match</i>	Actual Deposit	5,250.92	20,773.58	570,633.22
	Correct Deposit Per Tax Warrant	-	-	-
	Variance	5,250.92	20,773.58	570,633.22
<i>Technology</i>	Actual Deposit	273,459.54	300,409.91	101,809.61
	Correct Deposit Per Tax Warrant	273,459.54	320,790.49	104,204.20
	Variance	-	(20,380.58)	(2,394.59)
<b>Net Variance by District<sup>11</sup></b>		<b>\$ -</b>	<b>\$ (3,610.74)</b>	<b>\$ .30</b>

1. The Appoquinimink School District split their Reading and Math Resource Teachers match of \$383,587.58 between the Minor Capital Improvements and Match appropriations.
2. The Cape Henlopen School District split their Extra Time, Reading and Math Resource Teachers, and Technology match total of \$60,180.93 between the Minor Capital Improvements and Match appropriations.
3. The Smyrna School District utilized an appropriation labeled "Match Tax" for all match tax revenues except technology; therefore, AOA could not determine whether match tax revenues were properly allocated as authorized.

In Procedure 1, we reported that Woodbridge School District levied an unauthorized technology match tax. Table 2 below demonstrates the amount of tax revenue generated by the unauthorized tax rate.

<sup>11</sup> Variances less than \$1,000 and 5% for each appropriation are considered insignificant. The net variances shown in Table 1 are offset by variances in the current expense, debt service, and tuition appropriations, not shown in Table 1. Thus, the total net variance for all tax revenues is zero.

<b>Description</b>	<b>Woodbridge School District</b>
Total Tax Receipts Collected	\$ 4,847,380
Authorized Collections	4,843,958
Unauthorized Collections <sup>12</sup>	3,422

**Procedure 3:** For the four restructured school districts within New Castle County, obtained support for and recalculated DOE’s monthly calculations to verify that DOE properly allocated each school district’s tax revenues and accurately recorded them into FSF. [14 Del. C. §1924] Any variances less than 5% and \$1,000 for each appropriation are considered immaterial and will not be reported.

**Results:** The supporting documentation obtained from the school districts revealed that the tax revenues were not deposited in accordance with the tax warrant and underlying tax rate calculations as shown in Table 3 below. In other words, the school districts did not provide DOE with proper allocation instructions.

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<sup>12</sup> The unauthorized collections amount in this table is an estimate calculated by AOA and does not consider delinquent tax collections or interest.

**School District Local Tax Collection and Debt Service  
State of Delaware Management Agreed-Upon Procedures Report**

**Table 3: Tax Receipts not Allocated per the Restructured School Districts' Tax Warrant<sup>13</sup>**

Match Tax Appropriation	Allocation Method	Brandywine	Christina	Colonial	Red Clay
<i>Extra Time</i>	Actual Deposit			-	-
	Correct Deposit Per Tax Warrant	Tax not levied	Tax not levied	246,636.11	444,197.33
	Variance			(246,636.11)	(444,197.33)
<i>Match</i>	Actual Deposit			Tax not levied	Tax not levied
	Correct Deposit Per Tax Warrant	Tax not levied	Tax not levied	Tax not levied	Tax not levied
	Variance				
<i>MCI</i>	Actual Deposit	748,908.89	1,701,479.85	1,118,361.46	2,568,138.56
	Correct Deposit Per Tax Warrant	352,438.33	808,725.87	447,944.51	826,966.70
	Variance	396,470.56	892,753.98	670,416.95	1,741,171.86
<i>Reading and Math Resource Teachers</i>	Actual Deposit	-		-	-
	Correct Deposit Per Tax Warrant	396,204.98	Tax not levied	383,656.17	703,736.23
	Variance	(396,204.98)		(383,656.17)	(703,736.23)
<i>Technology</i>	Actual Deposit	472,204.55	-	379,377.19	-
	Correct Deposit Per Tax Warrant	471,970.78	894,315.60	411,647.74	606,010.44
	Variance	233.77	(894,315.60)	(32,270.55)	(606,010.44)
<b>Net Variance by District<sup>14</sup></b>		<b>\$ 499.35</b>	<b>\$ (1,561.62)</b>	<b>\$ 7,854.12</b>	<b>\$ (12,772.14)</b>

1. The Brandywine School District deposited their Reading and Math Resource Teachers match of \$396,204.98 into their Minor Capital Improvements appropriation.
2. The Christina School District deposited their Technology match of \$894,315.60 into their Minor Capital Improvements appropriation.
3. The Colonial School District deposited their Extra Time, Technology, and Reading and Math Resource Teachers match of \$630,292.28 into their Minor Capital Improvements appropriation.
4. The Red Clay School District deposited their Extra Time, Reading and Math Resource Teachers, and Technology match of \$1,753,944 into their Minor Capital Improvements appropriation.

<sup>13</sup> The Correct Deposit per Tax Warrant amounts in Table 3 includes the rates used in the school districts' tax warrant and corresponding source documents.

<sup>14</sup> The variances that exist are likely because DOE considers prior year tax rates for delinquent tax collections when they recalculate tax revenues whereas AOA did not consider delinquent tax rates in our procedure.

*School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report*

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*State of Delaware*

In Procedure 1, we reported that the Colonial School District levied unauthorized taxes. Table 4 below demonstrates the estimated amount of tax revenue generated by the Colonial School District’s \$394,000 bond issuance in excess of referendum approval. This estimate does not factor interest payments.

Description	Colonial School District
Total Tax Receipts Collected	\$ 47,856,920
Authorized Collections	47,843,787
Unauthorized Collections <sup>15</sup>	13,133

**Procedure 4:** Obtained from each respective county the amount of taxes levied and delinquent taxes, for each school district during Fiscal Year 2014.

**Results:** As a result of applying procedures one through four above, AOA constructed Table 5 below, which summarizes the funds that the Counties levied and collected. The variance between the taxes levied and collected should equal delinquent taxes; however, there is a portion of funding that the Counties could not account for. The responsibility for this process resides at the County level, not with the school districts.

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<sup>15</sup> The unauthorized collections amount in this table is an estimate calculated by AOA and does not consider delinquent tax collections or interest.

<b>School District<sup>16</sup></b>	<b>(A) Taxes Levied by County per Assessed Value (Procedure 4)<sup>17</sup></b>	<b>(B) Taxes Collected by County (Procedures 2 and 3)</b>	<b>(C) Fiscal Year 2014 Delinquent Taxes (Procedure 4)</b>	<b>(A-B-C) Fiscal Year 2014 Taxes Unaccounted For by Counties</b>
Appoquinimink	\$ 33,283,957.25	\$ 32,781,376.87	\$ 568,381.00	\$ (65,800.62)
Brandywine	74,286,578.34	73,398,065.08	869,646.07	18,867.19
Caesar Rodney	9,546,339.85	9,314,424.50	231,983.14	(67.79)
Cape Henlopen	30,066,687.76	29,724,585.56	382,379.00	(40,276.80)
Capital	21,671,004.34	20,917,425.86	753,592.00	(13.52)
Christina	108,971,140.07	106,918,934.55	2,039,014.87	13,190.65
Colonial	47,398,029.65	46,718,393.87	783,769.16	(104,133.38)
Delmar	1,774,248.59	1,655,735.70	95,739.00	22,773.89
Indian River	35,980,455.25	35,001,544.58	754,660.00	224,250.67
Lake Forest	5,708,158.89	5,494,421.53	213,770.56	(33.20)
Laurel	4,033,799.69	3,718,886.91	220,253.00	94,659.78
Milford (KC)	2,960,470.56	2,870,949.55	89,690.00	(168.99)
Milford (SC)	4,680,850.35	4,558,017.53	133,743.00	(10,910.18)
NCC Vo-Tech <sup>18</sup>	28,129,365.63	27,618,442.82	506,017.18	4,905.63
Polytech (NCC)	120,215.35	115,021.32	4,592.17	601.86
Polytech (KC)	4,649,468.73	4,492,755.07	156,737.00	(23.34)
Red Clay	90,622,651.89	89,076,437.70	1,354,948.17	191,266.02
Seaford	6,326,269.97	6,095,545.64	260,904.00	(30,179.67)
Smyrna (KC)	7,774,009.91	7,502,793.63	271,207.00	9.28
Smyrna (NCC)	1,200,440.26	1,152,507.32	41,471.78	6,461.16
Sussex Technical	8,042,894.56	7,879,165.75	185,143.00	(21,414.19)
Woodbridge (KC)	409,424.99	388,487.86	20,937.62	(0.49)
Woodbridge (SC)	4,027,228.56	3,784,800.18	220,648.00	21,780.38
<b>Total</b>	<b>\$ 531,663,690.44</b>	<b>\$ 521,178,719.38</b>	<b>\$ 10,159,226.72</b>	<b>\$ 325,744.34</b>

<sup>16</sup> Four School Districts are located within multiple counties. Abbreviations are defined as follows: NCC: New Castle County; KC: Kent County; SC: Sussex County.

<sup>17</sup> As reported in Procedure 1 and illustrated in Tables 2 and 4, the Woodbridge and Colonial School Districts levied a tax that was higher than authorized.

<sup>18</sup> New Castle County Vocational Technical School District

*School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report*

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*State of Delaware*

AOA determined that there were significant variances between the amount of taxes levied and the amount of taxes collected.

**Procedure 5:** Obtained from the Office of Management and Budget (OMB)<sup>19</sup> the amount of Elderly Property Tax Relief funds received by each school district and verified that they were deposited in accordance with each school district's tax warrant. [14 Del. C. §1917 (c), 29 Del. C. §6102 (q)] Any variances less than 5% and \$1,000 for each appropriation are considered immaterial, and will not be reported.

**Results:** We identified 14 of the 16 school districts who deposited the match portion of their Elderly Property Tax Relief funds incorrectly. These exceptions are illustrated in Tables 6 and 7 below. Many districts represented that, after the initial deposit, they transferred their Elderly Property Tax Relief payments to the correct appropriations; however, this procedure does only considers the initial deposit of tax receipts.

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<sup>19</sup> OMB holds the responsibility for accounting and for and accurately allocating funds to districts, as Elderly Property Tax Relief funds originate from OMB.



Tax Appropriation	Allocation Method	Appoquinimink	Brandywine	Caesar Rodney	Cape Henlopen	Christina	Colonial
<i>Extra Time</i>	Actual Deposit	-	Tax not levied	-	-	Tax not levied	-
	Correct Deposit Per Tax Warrant	8,643		18,148	12,786		7,198
	Excess/(Deficit)	(8,643)		(18,148)	(12,786)		(7,198)
<i>MCI</i>	Actual Deposit	34,390	25,972	58,392	50,453	30,046	35,613
	Correct Deposit Per Tax Warrant	19,492	16,811	27,478	16,362	22,588	13,074
	Excess/(Deficit)	14,898	9,161	30,914	34,091	7,458	22,539
<i>Reading and Math Resource Teachers</i>	Actual Deposit	-	-	-	-	Tax not levied	-
	Correct Deposit Per Tax Warrant	13,264	18,902	28,564	16,210		11,197
	Excess/(Deficit)	(13,264)	(18,902)	(28,564)	(16,210)		(11,197)
<i>Technology</i>	Actual Deposit	-	22,516	-	-	-	-
	Correct Deposit Per Tax Warrant	9,475	22,514	15,400	23,973	24,966	12,018
	Excess/(Deficit)	(9,475)	2	(15,400)	(23,973)	(24,966)	(12,018)
<i>Match</i>	Actual Deposit	16,480	9,738	31,198	18,802	17,508	7,874
	Correct Deposit Per Tax Warrant	-	-	-	-	-	-
	Excess/(Deficit)	16,480	9,738	31,198	18,802	17,508	7,874
<b>Total Warrant to Deposit Excess/(Deficit)</b>		<b>\$ (4)</b>	<b>\$ (1)</b>	<b>\$ -</b>	<b>\$ (76)</b>	<b>\$ -</b>	<b>\$ -</b>

<sup>20</sup> The districts illustrated in Table 6 deposited the entire match portion of their Elderly Property Tax Relief funds into either Minor Capital Improvements or “match” appropriations. Brandywine School District incorrectly allocated their Reading and Math Resource Teachers match tax to the Minor Capital Improvements and “Match” appropriations.

We identified an exception with the eight districts illustrated in Table 7 solely because the second Fiscal Year 2014 distribution of Elderly Property Tax Relief funds was deposited into one “match” appropriation rather than allocated per the districts’ tax warrants.

**Table 7: Incorrect Elderly Property Tax Relief Payment Allocations Caused by 2<sup>nd</sup> Payment Distribution<sup>21</sup>**

Tax Appropriation	Allocation Method	Delmar	Indian River	Laurel	Milford (KC)	Milford (SC)	Red Clay	Seaford
<i>Extra Time</i>	Actual Deposit			2,894			-	7,138
	Correct Deposit Per Tax Warrant	Tax not levied	Tax not levied	5,943	Tax not levied	Tax not levied	20,003	7,138
	Excess/(Deficit)			(3,049)			(20,003)	-
<i>MCI</i>	Actual Deposit	2,523	21,023	3,721	5,113	8,691	-	8,363
	Correct Deposit Per Tax Warrant	3,857	30,197	7,691	5,668	9,840	37,178	14,932
	Excess/(Deficit)	(1,334)	(9,174)	(3,970)	(555)	(1,149)	(37,178)	(6,569) <sup>22</sup>
<i>Reading and Math Resource Teachers</i>	Actual Deposit			1,860			-	11,946
	Correct Deposit Per Tax Warrant	Tax not levied	Tax not levied	4,020	Tax not levied	Tax not levied	31,691	11,946
	Excess/(Deficit)			(2,160)			(31,691)	-
<i>Technology</i>	Actual Deposit	720		1,860			-	5,779
	Correct Deposit Per Tax Warrant	1,013	Tax not levied	3,846	Tax not levied	Tax not levied	27,242	5,779
	Excess/(Deficit)	(293)		(1,986)			(27,242)	-
<i>Match</i>	Actual Deposit	1,627	9,174	11,164	556	1,149	116,115	6,569
	Correct Deposit Per	-	-	-	-	-	-	-
	Excess/(Deficit)	1,627	9,174	11,164	556	1,149	116,115	6,569
<b>Total Warrant to Deposit Excess/(Deficit)</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ (1)</b>	<b>\$ 1</b>	<b>\$ -</b>	<b>\$ 1</b>	<b>\$ -</b>

<sup>21</sup> These eight districts utilized an appropriation labeled “Match Tax” for all match tax revenues received during the second half of the Fiscal Year at the recommendation of the Department of Education. Therefore, AOA could not determine whether match tax revenues were properly allocated as authorized.

*School District Local Tax Collection and Debt Service  
State of Delaware Management Agreed-Upon Procedures Report*

Tax Appropriation	Allocation Method	Smyrna (NCC)	Smyrna (KC)	Woodbridge (KC)	Woodbridge (SC)
<i>Extra Time</i>	Actual Deposit	-	-	208	2,203
	Correct Deposit Per Tax Warrant	1,279	7,996	396	4,437
	Excess/(Deficit)	(1,279)	(7,996)	(188)	(2,234)
<i>MCI</i>	Actual Deposit	1,594	9,732	496	5,232
	Correct Deposit Per Tax Warrant	2,147	13,450	941	10,542
	Excess/(Deficit)	(553)	(3,718)	(445)	(5,310)
<i>Reading and Math Resource Teachers</i>	Actual Deposit	-	-	147	1,556
	Correct Deposit Per Tax Warrant	1,595	10,028	278	3,129
	Excess/(Deficit)	(1,595)	(10,028)	(131)	(1,573)
<i>Technology</i>	Actual Deposit	-	-	173	1,832
	Correct Deposit Per Tax Warrant	924	5,793	329	3,694
	Excess/(Deficit)	(924)	(5,793)	(156)	(1,862)
<i>Match</i>	Actual Deposit	4,350	27,535	924	10,978
	Correct Deposit Per	-	-	-	-
	Excess/(Deficit)	4,350	27,535	924	10,978
<b>Total Warrant to Deposit Excess/(Deficit)</b>		<b>\$ (1)</b>	<b>\$ -</b>	<b>\$ 4</b>	<b>\$ (1)</b>

The Capital and Lake Forest School Districts deposited their match portion of Elderly Property Tax Relief funds in accordance with their tax warrant. In addition, the New Castle County Vocational Technical School, Polytech School District, and Sussex Technical School District do not receive Elderly Property Tax Relief funds.

**Procedure 6:** Obtained the amortization schedule from the OST for any new bond sales that occurred in Fiscal Year 2014 and added them to AOA’s comprehensive amortization schedule, which is a compilation of the amortization schedules for each school district’s outstanding bonds. Once updated, agreed AOA’s comprehensive amortization schedule to the Fiscal Year 2014 local bond payment schedule prepared by the OST. [14 Del. C. §2108]

**Results:** No exceptions were found as a result of applying this procedure.

<sup>23</sup> These eight districts utilized an appropriation labeled “Match Tax” for all match tax revenues received during the second half of the Fiscal Year at the recommendation of multiple oversight agencies. Therefore, AOA could not determine whether match tax revenues were properly allocated as authorized.

**School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report**

**State of Delaware**

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**Procedure 7:** Obtained a listing of all payments made on bond anticipation notes (BAN) from the OST and agreed these payments to the actual payments recorded in FSF (Report ID DGL011) for each school district. [14 Del. C. §1922]

**Results:** No exceptions were found as a result of applying this procedure.

**Procedure 8:** Verified that the total Fiscal Year 2014 debt service expenditures per the amortization schedules agreed to the Fiscal Year 2014 debt service expenditures per the FSF Accounts and Expenditure Amounts Report (Report ID DGL115) for each school district. [14 Del. C. §2108]

**Results:** No exceptions were found as a result of applying this procedure.

**Procedure 9:** Verified that each school district’s debt service ending balance as of June 30, 2014 was sufficient to meet the total required debt service payments for July 1, 2014 through October 31, 2014. [Attorney General’s Opinion 89-I017]

**Results:** The five school districts listed in Table 8 below did not have a debt service reserve sufficient to cover the total required debt service obligations for July 1, 2014 through October 31, 2014. [Attorney General’s Opinion 89-I017]

School District	Ending Fund Balance	Recommended Reserve Amount	(Deficit)
Appoquinimink	\$ 2,614,488	\$ 2,991,450	\$ (376,962)
Brandywine	2,818,608	3,820,969	(1,002,361)
Capital	3,979,129	4,459,347	(480,218)
Colonial	3,045,980	3,323,205	(277,225)
Milford	724,117	802,522	(78,405)

All five districts were aware of the insufficient balance. To meet their debt service obligations from July 1, 2014 through October 31, 2014, the Milford School District represented that they utilized Kent County Impact Fees. The remaining four districts indicated that they used July through October tax revenues to meet obligations as they came due.

**Procedure 10:** If the debt service ending balance as of June 30, 2014 was sufficient, verified that the balance did not exceed 110% of the debt service obligations from July 1, 2014 through June 30, 2015 (Fiscal Year 2015). [Attorney General’s Opinion 1W-024]

**Results:** No exceptions were found as a result of applying this procedure.

**Procedure 11:** Using the Cumulative Budgetary Report (Report ID DGL011), verified whether each school district temporarily borrowed funds from another restricted-use appropriation (e.g. current expenses) to meet its debt service obligations. If so, confirm that the funds were transferred back to the original appropriation once sufficient bond proceeds were available. [14 Del. C. §2103]

**School District Local Tax Collection and Debt Service  
State of Delaware Management Agreed-Upon Procedures Report**

**Results:** No exceptions were found as a result of applying this procedure.

**Procedure 12:** Obtained from each respective county, the amount of delinquent taxes by tax year and school district.

**Results:** The amount of delinquent taxes due to each school district is reported in Table 9 below.

School District <sup>24</sup>	2013	2012	2011	2010	2009	2008- Prior	Total
Appoquinimink	\$ 422,647	\$ 326,572	\$ 141,406	\$ 62,777	\$ 61,057	\$ 231,664	\$ 1,246,123
Brandywine	527,942	338,772	219,780	174,120	118,510	445,762	1,824,886
Caesar Rodney	124,059	79,684	59,583	46,626	36,395	243,494	589,841
Cape Henlopen	204,358	107,126	83,978	69,466	59,316	164,850	689,094
Capital	356,094	178,623	104,062	70,572	52,209	239,333	1,000,893
Christina	1,001,350	581,341	390,799	234,774	175,561	823,119	3,206,944
Colonial	429,447	334,087	254,328	165,894	220,815	1,435,079	2,839,650
Delmar	56,660	31,362	20,500	16,930	13,917	52,979	192,348
Indian River	397,990	281,097	200,276	160,587	108,501	409,077	1,557,528
Lake Forest	91,216	63,019	48,006	41,189	32,258	215,773	491,461
Laurel	143,006	77,492	43,959	36,064	27,161	114,130	441,812
Milford (KC)	27,936	16,003	8,154	4,651	3,155	30,511	90,410
Milford (SC)	78,649	57,563	48,591	41,377	32,416	104,398	362,994
NCC Vo-Tech	305,719	198,949	124,566	83,280	70,667	333,748	1,116,929
Polytech (NCC)	4,119	3,632	1,144	533	417	4,564	14,409
Polytech (KC)	65,868	41,152	23,140	16,841	12,793	70,830	230,624
Red Clay	837,916	535,231	351,009	252,933	161,016	685,667	2,823,772
Seaford	149,375	108,431	83,847	72,162	55,553	278,261	747,629
Smyrna (NCC)	36,723	32,632	10,987	4,010	4,042	37,725	126,119
Smyrna (KC)	76,585	33,787	21,435	17,186	14,212	71,632	234,837
Sussex Technical	112,251	71,435	51,109	41,607	28,816	108,594	413,812
Woodbridge(KC)	7,651	2,785	1,642	1,134	430	4,132	17,774
Woodbridge (SC)	142,333	89,291	62,091	48,295	40,420	159,718	542,148
<b>Grand Total</b>	<b>\$ 5,599,894</b>	<b>\$ 3,590,066</b>	<b>\$ 2,354,392</b>	<b>\$ 1,663,008</b>	<b>\$1,329,637</b>	<b>\$6,265,040</b>	<b>\$20,802,037</b>

**Procedure 13:** Obtained from the Division of Accounting the schedule used to prepare the State's Comprehensive Annual Financial Report (CAFR) that summarizes the Real Estate Taxes received by each school district for Fiscal Year 2014. Verified that the taxes reported in the CAFR agree to the taxes

<sup>24</sup> Four School Districts are located within multiple counties. Abbreviations are defined as follows: NCC: New Castle County; KC: Kent County; SC: Sussex County.

*State of Delaware* *School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report*

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received by the school districts for the fiscal year, which includes county tax receipts and PILOT payments.

**Results:** No exceptions were found as a result of applying this procedure. Tax receipts received during Fiscal Year 2014 can be found in the table on page V of the Background.

This report is intended solely for the information and use of the Department of Education and the management of the school districts. It is not intended to be, and should not be, used by anyone other than these specified parties.

We were not engaged to, and did not conduct an audit, the objective of which would be the expression of an opinion on compliance with specified laws. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

R. Thomas Wagner, Jr., CFE, CGFM, CICA  
Auditor of Accounts

August 03, 2015

## *Appendix A: Attorney General Opinion 89-I017 Regarding Minimum Four-Month Reserve in Debt Service*



Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

Page 1

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

\*1 Office of the Attorney General  
State of Delaware

Opinion No. 89-I017

July 26, 1989

The Honorable R. Thomas Wagner, Jr.  
Auditor of Accounts  
Thomas Collins Building  
Dover, DE 19901

Dear Mr. Wagner:

You have asked the following questions with regard to a school district's authority to issue bonds for capital expenditures:

1. Are school districts required to honor all agreements made when a referendum is favorably passed; or can school districts, once a referendum is passed, use funds for purposes other than voted upon?
2. When a school district has excess funds in its debt service account that were collected for existing bonds and desires to use those funds to help pay for proposed additional bonds, should the school district make full disclosure to the taxpayer during the referendum?

Your request was prompted by your review of the Lake Forest School District debt service accounts.

For the reasons stated below, we conclude that: 1) Bond proceeds must be used generally for those purposes which have been stated in the notice of referendum, and upon which the public has relied. Similarly, tax receipts levied to cover the debt service of outstanding bonds should be used solely for debt service; 2) the amount of money in the district's debt service account is public information. Whether the district chooses to maintain "excess funds" in its debt service account is a matter left solely to its discretion and is governed by the political process. There may be valid reasons for maintaining such a reserve, however. We find that the practices of Lake Forest in maintaining such an excess do not violate Delaware law.

#### Lake Forest Bond Issue

Your specific concerns involve the use of the receipts from a tax increase, put into effect to service interest on a new bond, to pay the debt service on two outstanding bonds in the Lake Forest School District. Lake Forest held a referendum in the Spring of 1988, and obtained authorization from voters to issue a bond to fund major capital improvements. As part of that request, the notice of referendum indicated that a tax increase of 6.5¢ property tax and a \$5.00 capitalization tax was necessary to service the interest on the bond. (See notice, attached as exhibit A).

This tax increase went into effect in June and was collected in September of 1988. However, the bonds themselves were not sold in part, until May of 1989, with the remainder to be sold in 1990. [\[FN1\]](#) Thus, there was a gap between the time that the first receipts from the tax increase were received, and the time the first payment on interest will be due. The proceeds from the tax increase were deposited into the same debt service account used to fund the two other outstanding bond obligations of the district. The first of these will mature on March 1, 1995, and has \$34,160 still

**School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report**

---

**State of Delaware**

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

Page 2

owed in principal and interest. The second will mature on November 1, 1997, and has \$410,525 still owed in principal and interest. [FN2]

There was sufficient surplus in the debt service account, prior to the June 1988 tax increase, to cover the interest payments on these bonds. In your view, because of this surplus, the June tax increase was not justified, and should not have been deposited in the same debt service fund that is used to pay interest on the other two bonds.

**Power to Issue Bonds to Fund Capital Expenditures**

\*2 Capital investments in the school districts have historically been funded through a State appropriation which is matched by a local funding share on a 60:40 basis. The State's share is appropriated through the annual appropriations and bond authorization act. The State's share is usually conditioned on the deposit of a matching local share. 29 Del. C. sec. 7503. [FN3]

The local school board has the authority to issue bonds under 14 Del. C. sec. 2102. [FN4] The power to issue bonds is not plenary, however; such expenditures must be approved by the voters of the district in a special referendum held for that purpose. See 14 Del. C. sec. 2122(a). [FN5] Elections must be validly noticed, and the notice must be posted and published. It must also "plainly set forth the amount of bonds proposed to be issued and the purposes and reasons thereof. . . ." Section 2122(c). While the general nature of the expenditures planned must be outlined in order to make the notice legally valid, an exact itemization of the proposed expenditures is not required. McComb v. Dutton, Del. Super., 122 A. 81 (1923); Brennan v. Black, Del. Supr., 104 A.2d 777 (1954). It is clear that the proceeds of the bond sale must be used for the purposes specifically authorized by the referendum. Brennan, 104 A.2d at 758-9.

**Power to Tax to Pay Interest on Bonds**

The power to tax to pay the interest on these bonds comes under 14 Del. C. secs. 1902 [FN6] and 2116. Specifically, section 2116 states that the power to tax for the purpose of providing funds for the payment of principal and interest on bonds derives from the authority to issue bonds. [FN7] Unlike bonds for capital expenditures, the district has the power to levy taxes without referendum to cover debt service requirements. See 14 Del. C. sec. 2116. [FN8] Thus, once a bond bill is authorized by referendum, the district may set the rate it deems appropriate to cover the debt service expense of that bond. We understand that this rate is projected, and based upon the best expectation of when the bond will be sold, and what the market will be at that time. Tax receipts raised for the purpose of debt service on bonds should not be used for other expenditures. See Del. Const. art. X, sec. 6. [FN9]

**Conclusion**

There is nothing in your letter to indicate that the bond proceeds are being used in an inappropriate manner, so we see no reason to find that Lake Forest has exceeded its authority under the terms of the June 1988 referendum. We further conclude that the deposit of tax revenues into a single account does not violate the terms of 29 Del. C. ch. 75, 14 Del. C. ch. 19 and ch. 21, and Del. Const. art. X, sec. 6. Nor does the application of new tax revenues to already existing bond debt violate these sections. [FN10]

While it is desirable that the relative need for a tax increase be specifically disclosed to the public, you have provided us with no information which indicates that the information was not available. Whether the tax increase was necessary is a matter which is more appropriately raised, and answered, through the political process.

Very truly yours,  
\*3 Michael F. Foster  
State Solicitor

Ann Marie Johnson  
Deputy Attorney General

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*School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report*

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*State of Delaware*

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

Page 3

APPROVED:

Charles M. Oberly, III  
Attorney General

[FN1]. In fact, we understand from Dr. Jim Spartz of DPI that the State issues the bonds and will wait for the best "market conditions" to do so. The district is therefore unaware of the exact timing of the sale. The State sold \$607,334 worth of bonds on May 1, 1989, with approximately \$1,000,000 to be sold in Spring 1990.

[FN2]. The first bond was authorized by referendum in 1969, and was used to build the Lake Forest High School. Neither your office or the Lake Forest School District was able to provide us with a copy of the notice. The second bond was authorized by referendum in 1978, was used to expand Lake Forest High School, and Lake Forest North Elementary School. (The notice for that referendum is attached as exhibit B.)

[FN3]. 29 Del. C. sec. 7503

Sec. 7503. Matching funds.

Except in the case of a school district for which a local share is not required by any school construction bond authorization act, the state share apportioned to a school district by such school construction bond authorization act shall not be expended unless the local share for such school district shall have been deposited with the State Treasurer not later than 2 years after the effective date of a school construction bond authorization act.

[FN4]. 14 Del. C. sec. 2102.

Sec. 2102. Power of district to issue bonds.

The school board of any district may issue bonds for the purpose of carrying out any plan or program for the acquisition of lands or the acquisition or construction of buildings or for the construction of sidewalks leading to a school site as may be authorized by this title when such plan or program shall have been approved by the State Board of Education.

[FN5]. 14 Del. C. sec. 2122(a).

Sec. 2122. Election to authorize bond issue; rules governing; referendum to transfer tax funds.

(a) Before any school board issues bonds under this chapter, it shall call a special election. The school board will designate the school buildings to be used as polling places and establish voting district boundaries.

[FN6]. 14 Del. C. sec. 1902

Sec. 1902. Power of district to levy taxes for school purposes.

(a) Any district may, in addition to the amounts apportioned to it by the State Board of Education or appropriated to it by the General Assembly, levy and collect additional taxes for school purposes upon the assessed value of all taxable real estate in such district, except taxable real estate which is exempt from county taxation, as determined and fixed for county tax purposes.

(b) In any instance except major capital improvement and new funds for educational advancement, as defined in Chapter 17 of this title, where the State shall make appropriations to school districts for any purpose and the applicable statute requires a local district contribution to the appropriations or expenditure, the local school board may levy such tax as is necessary to support the school district, notwithstanding sec. 1903 of this title. In the case of the school district of the City of Wilmington, such tax as is necessary to support its local district construction may be levied, notwithstanding the maximum tax rate specified in sec. 11, Chapter 92, Volume 23, Laws of Delaware, as amended by Chapter 9, Volume 46, Laws of Delaware and, unless otherwise specifically provided, such tax rate as may be so specified on or after June 3, 1968.

[FN7]. 14 Del. C. sec. 2116.

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*School District Local Tax Collection and Debt Service  
Management Agreed-Upon Procedures Report*

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*State of Delaware*

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

Page 4

Sec. 2116. Taxing power of district.

The authority to issue bonds shall be construed to be authority to provide funds for the payment of the interest and annual payments on such bonds, which without further authority shall be provided for by an additional tax levy on the property subject to taxation for county purposes in the district issuing such bonds and by a poll tax on all persons 21 years of age and upward, residing in the district, of such amount as shall be determined by the school board of the district.

[FN8]. This is distinguishable from the requirement under 14 Del. C. that taxes for school purposes be pursuant to an "election." 14 Del. C. sec. 1903, Section 1902(b) exempts taxes raised for the purpose of financing capital expenditures in which the State makes matching appropriations, from the election process.

[FN9]. Del. Const. art X, sec. 6 states:

Section 6: No property tax receipts received by a public school district as a result of a property tax levied for a particular purpose shall be used for any other purpose except upon the favorable vote of a majority of the eligible voters in the district voting on the question.

We believe that this section probably refers to those taxes authorized by election under 14 Del. C. sec. 1902. Capital expenditure taxes are specifically exempted under sec. 1902(b).

[FN10]. Because the tax increase went into effect prior to the bond sale, it created the "excess reserve" to which you refer. It is the position of DPI that such a reserve is desirable in order to provide adequate cash flow for payment. DPI recommends a minimum 4 month reserve.

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

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**Appendix B: Attorney General Opinion 1W-024  
Regarding Excessive Balance in Debt Service Reserve**



STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
JUL 15 1975

RICHARD R. WYER, JR.  
ATTORNEY GENERAL

OPINION TO: The Honorable Richard T. Collins  
Auditor of Accounts  
Townsend Building  
Dover, Delaware 19901

OPINION BY: A. Gary Wilson  
Deputy Attorney General

QUESTIONS: 1. May a school district transfer funds  
from its debt service account to:

(a) Finance a capital improvements  
project which has not been approved by  
referendum?

(b) Provide the local share for the  
district's minor capital improvements  
program?

(c) Pay the costs of a capital improve-  
ments project which exceeds the maximum  
amount authorized by referendum for such  
project?

2. Does special legislation which authorizes  
any of the aforesaid transfers violate the  
State or federal constitutions?

REQUEST NO: 1W-024

ANSWERS: 1. Yes, but only if such transfers are  
specifically authorized by special legislation.  
2. No. Such legislation is not clearly  
in violation of any applicable provision of  
our State or federal constitutions.

The Honorable Richard T. Collins

Page 2

DISCUSSION:

To answer your questions adequately, it is necessary to take a brief survey of the means by which the operations of the State's several school districts are financed.\*

As you know, school district expenditures are divided into two broad categories: (1) capital expenditures and (2) non-capital or general operating expenses. The former category includes the cost of acquiring sites for school buildings, constructing and equipping such buildings, and installing incidental sidewalks and landscaping (14 Del. C., Ch. 21; 29 Del. C., Ch. 75). The latter category encompasses all remaining expenses, including teachers' salaries, supplies and routine maintenance (14 Del. C., Ch. 17, 19).

Non-capital expenditures are jointly financed by both the State and the respective school districts. The State's share is provided through general tax revenues. The share of each district is provided through local taxation, with the amount or rate of the tax being established by a referendum (14 Del. C., Ch. 17, 19).

Capital expenditures are also financed jointly. The State's share is derived from the sale of bonds, although there is no bar to financing such expenditures through general appropriations. (29 Del. C., Ch. 75).

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\*Due to the unique status of the Wilmington School District, the reader should not assume that the statements and conclusions expressed herein apply to the Wilmington School District in the same manner as they apply to the State's other school districts (14 Del. C., §1902).

The Honorable Richard T. Collins

Page 3

For major capital improvements, the share of each district is derived from the sale of local bonds, with the amount of the bond authorization being established by referendum (14 Del. C., Ch. 21). For minor capital improvements, the share of each district may be provided either through the sale of local bonds or through local taxation (59 Del. Laws, Ch. 223, §16, Fiscal 1975 Bond Act). If financed through the sale of local bonds, the district must first obtain the approval of its residents by referendum. Once the sale of bonds is approved, the district is then authorized to levy taxes sufficient to make payment of the interest and principle on such bonds, plus 10 percent for delinquencies. Revenues derived from such tax levies are then placed in the district's debt service account, with disbursements being made from such account to pay the aforesaid bond obligations when due (14 Del. C., Ch. 21).

On the other hand, if the district chooses to finance its share of its minor capital improvements program through local taxation, a referendum need not be held, inasmuch as 14 Del. C., §1902(b), provides that where the State requires a district to contribute to a State appropriation, as is the case with minor capital improvements, the district is not required to hold a referendum in order to levy taxes sufficient to satisfy the required rate of contribution. See also 59 Del. Laws, Ch. 223, §17(g).

Accordingly, with the possible exception of expenditures for minor capital improvements, the residents of the State's various school districts, Wilmington and

The Honorable Richard T. Collins

Page 4

special districts excepted, have full control over the amount or rate of their local school tax levy (14 Del. C., §1902, Ch. 26 and 31). With this brief survey completed, we now turn to consideration of your specific questions.

I

You have indicated that in recent years many school districts have begun to accumulate large surpluses in their debt service accounts. In some instances, these surpluses have been in excess of the district's bond obligations for the next fiscal year. For example:

<u>DISTRICT</u>	<u>DEBT SERVICE BALANCE 6-73</u>	<u>PRINCIPLE AND INTEREST DUE FROM 7-73 THRU 6-74</u>
A	\$ 84,503	\$ 72,983
B	307,579	216,963
C	987,852	636,722
D	110,331	80,658
E	204,186	174,926
F	67,848	35,507

Thus, even if the aforementioned districts had not collected any school taxes in fiscal year 1974, they would have been able to meet their total bond obligations!

You have also indicated that it appears that these surpluses are being diverted, at an increasing rate, to pay for items which are unrelated to debt service, including general operating expenses (59 Del. Laws, Ch. 43,44). The practical effect of these transfers is to raise the local school tax levy above the amount authorized by a district's residents pursuant to 14 Del. C., §§1903 and 2122. For example, when money is transferred from a district's debt service account to its

The Honorable Richard T. Collins

Page 5

current expense account, the transfer effectively increases the non-capital tax levy to an amount exceeding that approved by the district's residents. You question the authority of the various districts to authorize such transfers.

As stated heretofore, the power of a district to levy taxes for bonded indebtedness is limited to the amount necessary to pay the interest and annual payment on outstanding bonds, plus 10 percent for delinquencies (14 Del. C., §2116, 2118). Thus, it would appear that accumulation of surpluses in the amounts cited above results, at least in part, from the imposition of artificially high tax rates or the failure of the district to adjust the tax rate downward as bonds are retired.

Since Attorney General Opinions are by definition advisory, rather than investigatory, we express no firm opinion on whether either of the aforesaid practices are being engaged in by any of the State's school districts. However, if in the course of your official audits you discover facts which indicate that a district's tax rate for bonded indebtedness may exceed the rate authorized by law, then you should immediately bring such facts to the attention of the responsible local officials and this Office.

With respect to existing surpluses, the general rule, absent specific language to the contrary, is that where the law provides for separate funds for distinct purposes, each fund is impressed with a trust for the specific purpose for which it is raised and no other. 63 Am.Jur.2d, Public Funds, §95; see also Roddy v. Andrix,

The Honorable Richard T. Collins

Page 6

201 NE2d 816 (Ohio 1964), wherein it was held that excess funds arising from a special levy for the purpose of maintenance and operation of schools for retarded children could not be used for acquisition of land for or construction of school buildings.

Here, §2116 provides that each district may levy taxes sufficient to cover its outstanding bond obligations. Section 2118 provides that monies collected pursuant to such levies be paid to the State Treasurer and deposited to the district's debt service account. Section 2118 further provides that the Secretary of Finance may draw on such deposits to pay the district's bond payments as they fall due; and there is no language to indicate that monies deposited to the debt service account may be used for any other purpose.

Thus, it is the opinion of this Office that debt service revenues qualify as "special funds" within the meaning of the rule stated above. Therefore, it follows that a school district may not transfer funds in its debt service account to pay for projects, material or services not within the scope of the referendum on which the underlying tax levy is based.

However, since the requirement that debt service funds be applied solely to payment of bond obligations is imposed by statute, such requirement can be abolished or suspended by subsequent act of the General Assembly. Thus, while a school district does not have the authority to transfer funds from its debt service account, the General Assembly may authorize such transfer through either general



The Honorab<sup>l</sup>e Richard T. Collins

Page 7

or special legislation. For example, see 59 Del. Laws, Ch. 192, authorizing the Conrad Area School District to transfer \$164,000 from its debt service account to its school administration building construction account; 60 Del. Laws, Ch. 43, authorizing the Delmar School District to transfer \$25,400 from its debt service account to its current expense account; and 60 Del. Laws, Ch. 44, authorizing the Woodbridge School District to transfer \$60,000 from its debt service account to its current operating funds account.

II

With respect to your second question, regarding the constitutionality of such special legislation as is cited above, it must be noted that it is the responsibility of this Office to defend the laws of this State against constitutional attack, except where those laws are so clearly unconstitutional as to require this Office, as an officer of the Court, to so state.

Here, we concede that it can be argued that special legislation authorizing the use of debt service funds for purposes not encompassed by authorizing referenda violates the due process and equal protection rights of residents in the affected school districts. However, it is the opinion of this Office that such arguments are not, in the legal sense, substantial. Accordingly, we conclude that the General Assembly may authorize a school district to use debt service funds for other school purposes without violating the State or federal constitutions.

The Honorable Richard T. Collins

Page 8

In summary, we conclude that:

(1) A school district may not assess debt service taxes in an amount which exceeds that necessary to pay off its bond obligations as they fall due.

(2) A school district, by itself, does not have the power to transfer funds from its debt service account or to use such funds for purposes not encompassed by the underlying referendum on which the tax levy is based, and

(3) The General Assembly, by appropriate legislation, may authorize the use of debt service funds for other school purposes without violating the State or federal constitutions.

Should you have any additional questions regarding debt service funds or this opinion, please contact the undersigned at your convenience.

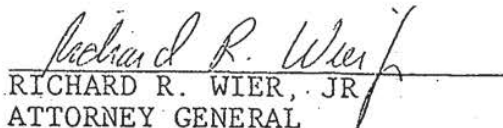
Very truly yours,



A. Gary Wilson  
Deputy Attorney General

AGW/lah

APPROVED BY:



RICHARD R. WIER, JR.  
ATTORNEY GENERAL

Appendix C: Matrix of Exceptions by School District													
School District	Procedure												
	1	2	3	4	5	6	7	8	9	10	11	12	13
Appoquinimink		X			X				X				
Brandywine			X		X				X				
Caesar Rodney					X								
Cape Henlopen		X			X								
Capital									X				
Christina			X		X								
Colonial	X		X		X				X				
Delmar					X								
Indian River					X								
Lake Forest													
Laurel					X								
Milford					X				X				
New Castle County Vo-Tech													
Polytech													
Red Clay			X		X								
Seaford					X								
Smyrna		X			X								
Sussex Tech													
Woodbridge	X				X								