

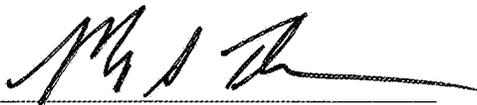
Appellants, Fred Sanborn, Richard Cocks, and Ruth Hubbard (collectively "Appellants"), hereby give notice of their appeal, pursuant to R.C. § 5717.04, to the Supreme Court of Ohio from the final Decision and Order of the Board of Tax Appeals (the "Board"), entered in Case No. 2010-938, on September 13, 2013 (the "Order"). A true and accurate copy of the Board's Order is attached hereto as Exhibit A and incorporated herein by reference.

The Appellants assert that the Board made the following errors:

- 1) The Board of Tax Appeals erroneously held that the un-voted tax increase at issue, the 1.25 inside millage move, was "clearly required" by the Indian Hill Exempted Village School District ("Indian Hill") where Indian Hill has collected excessive taxes from Indian Hill taxpayers in the past, resulting in a voluminous reserve balance of over \$25,000,000.
- 2) The Board of Tax Appeals erroneously applied an unwarranted standard of deference to the School District's determination that the transfer of inside mills was "clearly required," essentially holding that a county Budget Commission has no discretion to determine whether the tax increase is clearly required, where, however, a Budget Commission has limited discretion, which includes review of whether there has been excessive taxation in violation of R.C. 5705.341.
- 3) The Board of Tax Appeals erroneously held that Indian Hill did not have an established reserve balance under R.C. 5705.13, even though Indian Hill operated a reserve balance at 5.39%, which is in excess of the five percent limit in R.C. 5705.13(A).

WHEREFORE, Appellants respectfully submit that the Board's Order is unlawful and unreasonable, and should be reversed with judgment entered in favor of Appellants.

Respectfully submitted,



Maurice A. Thompson
Counsel of Record for Appellants

CERTIFICATE OF FILING

A copy of the foregoing *Notice of Appeal* has been filed with the docketing division of the Board of Tax Appeals, in accordance with R.C. § 5717.04, on this 8th day of October, 2013.



Kelsey E. Hackem

CERTIFICATE OF SERVICE

A copy of the foregoing *Notice of Appeal* was served by certified mail, postage prepaid, on this 8th day of October, 2013, to the following:

Joseph T. Deters
Hamilton County Prosecuting Attorney
Thomas J. Scheve
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202-1251

Harry J. Finke IV
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202-3157

Joseph A. Testa
Ohio Tax Commissioner
30 East Broad Street, 22nd Floor
Columbus, Ohio 43216


Kelsey E. Hackem

submit this appeal upon appellants' notice of appeal, the transcript certified by the Hamilton County Auditor as secretary of the budget commission, and their respective written arguments with accompanying attachments.²

After convening public hearing with respect to the issue, Indian Hill resolved to convert "one and twenty-five hundredths (1.25) mills of property taxes now being levied for current expenses within the Ten Mill Limitation to a levy of one and twenty-five hundredths (1.25) mills for permanent improvements for a continuing period of time commencing with tax year 2010." Transcript at Ex. B. Said resolution was transmitted to the budget commission which convened a hearing at which it received presentations on behalf of both Indian Hill and appellants. Indian Hill's treasurer, Julia Toth, testified regarding the district's academic achievements/objectives, its current and projected financial status and the impact of existing/anticipated local/state financial pressures which will adversely impact current and future operating budgets, and the need to have in place adequate funds for capital maintenance. Toth described Indian Hill as a AAA-rated school district, attributing such rating to its fiscal stability, whose goal is to achieve a single year's operating balance, thereby allowing it to withstand the various economic factors likely to impact its operations and enabling it to maintain the buildings within the district.³

Appellants Ruth Hubbard, Richard Cocks, and Fred Sanborn, residents within the school district, who while referencing their historic support of education and, specifically, the Indian Hill school system, testified in opposition to the proposed conversion. Hubbard referenced Indian Hill's increasing amount of operating reserves over a multi-year period and that the Indian Hill's proposed conversion of 1.25 mills is not anticipated to address an immediate crisis, but instead a possible fiscal emergency several years into the future. While Cocks acknowledged the exceptional academic rating achieved by Indian Hill, he questioned the need for its current expenditures on a per pupil basis when compared with other school districts

² Appellants filed a motion to supplement the record with additional information which became available during the pending of this appeal. While objected to, the material is hereby received but deemed to have no effect upon the outcome of our decision.

³ Several other individuals testified in support of Indian Hill's resolution, describing the district's history of educational success, fiscal conservation, efforts to keep the public apprised of achievements/goals/needs, and the need for the conversion of funds for permanent improvements, i.e., Tim Sharp, a member of Indian Hill's board of education and chair of its finance committee, Ted Jaroszewicz, former board member and chair, Jane Knudson, the superintendent of the Indian Hill, Sourushe Zandvakili, a parent of children within the school district, and Eppa Rixey, the former Mayor of Village of Indian Hill.

within Hamilton County. Sanborn opposed Indian Hill's ability to unilaterally achieve an increase in funding without the approval of the voters. He also questioned the need for additional monies to maintain the school's facilities given their recent construction.

Ultimately, through a split vote, the budget commission approved the requested conversion and the present appeal ensued. Appellants insist that the budget commission improperly approved the conversion of inside millage to Indian Hill's permanent improvement fund, achieved without public vote, arguing such additional funds were unnecessary and excessive given Indian Hill's existing "reserves," especially when compared with the balances of other school districts.

As is the case with respect to any statutorily created body, a county budget commission may only act in accordance with the authority expressly granted it by the General Assembly. Pertinent herein, a budget commission must review and confirm that specified levies have been "properly authorized" and, if so, must "approve them without modification." R.C. 5705.31. However, its approval is conditioned upon whether the amount levied is "clearly required" by the budget submitted. R.C. 5705.341. In *South Russell v. Geauga Cty. Budget Comm.* (1984) 12 Ohio St.3d 126, the Supreme Court considered the responsibilities of a county budget commission when reviewing budgets presented for its review, and in particular the preceding provisions, expressly pointing out the limits of its authority held:

"Under this section of the tax levy law, [i.e., R.C. 5705.341] the phrase 'clearly required by a budget' does not require, nor grant, the authority to a budget commission to make a judgment call on the desirability of programs of the health district, or in this sense to determine the 'need' of the district for the sums as set forth in the budget as submitted. The review of the budget commission of tax levies is one basically of whether there has been excessive taxation, i.e., will the tax generate more funds than shown to be needed within the budget of the district or subdivision, and whether the funds are budgeted for the appropriate purpose as voted by the electorate." Id. at 132. (Emphasis added.)

In an opinion issued by the Attorney General of Ohio, i.e., 2005 Ohio Atty.Gen.Ops. No. 002, it was again pointed out that a budget commission "may not approve any tax levy unless the amount to be levied is 'clearly required' by the budget or other information submitted by the subdivision or taxing unit." *Id.* at 9-10. Nevertheless, relying upon the court's pronouncement in *S. Russell*, the Attorney General correctly pointed out that a budget

commission is nevertheless precluded from substituting its own judgment for that of a school district:

“Thus, the county budget commission is responsible for assuring that a tax is not levied unless it is properly authorized in accordance with statutory requirements. Further, the county budget commission may not permit a school district to levy a tax that will generate more money than the amount clearly required by the school district’s budget, and must make certain that a tax levied for a particular purpose is budgeted for that purpose. However, *the county budget commission is not empowered to evaluate the wisdom of the school district’s budget or to exercise judgment regarding the desirability of the expenditures included in the budget.*” Id. at 10.

Appellants have not demonstrated that either Indian Hill or the budget commission failed to comply with the statutory procedures regarding the development, submission, or technical approval of movement of 1.25 inside mills to a permanent improvement fund. Indian Hill submitted a budget which “clearly required” specific revenue to pay for the costs of itemized improvements which were eligible for payment via such fund. Although appellants suggest⁴ Indian Hill’s “reserve balance” exceeds the amount permitted by statute, i.e., “five per cent of the revenue credited in the preceding fiscal year,” R.C. 5705.13 refers with specificity to accounts established by ordinance or resolution:

“(A) A taxing authority of a subdivision, *by resolution or ordinance*, may establish reserve balance accounts to accumulate currently available resources ***[.]

“The ordinance or resolution establishing a reserve balance account shall state the purpose for which the account is established, the fund in which the account is to be established, and the total amount of money to be reserved in the account.” (Emphasis added.)

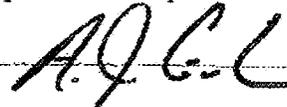
The limitation imposed by R.C. 5705.13 is inapplicable herein as there exists no evidence Indian Hill established a reserve balance account to which the above-referenced five per cent limitation applies. Ultimately, appellants’ objections relate to the wisdom of converting such funding for

⁴ While appellants also refer to this board’s decision in *City of Portsmouth v. Scioto Cty. Budget Comm.* (Mar. 7, 2003), BTA No. 2002-T-1690, unreported, such decision does not dictate disregarding the above-cited authority that a budget commission may not substitute its own judgment for that of a school board where it has been demonstrated that the movement of specified inside millage is “clearly required” based upon the budget submitted.

permanent improvements, a discretionary budget decision for which neither the budget commission nor this board may substitute its own determination.

Appellant's arguments are not well taken and they are therefore overruled. Accordingly, it is the decision and order of this board, that the decision of the Hamilton County Budget Commission must be, and hereby is, affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary