

ORIGINAL

IN THE SUPREME COURT OF OHIO

FRED SANBORN, et al.

Appellants,

v.

INDIAN HILL BOARD OF
EDUCATION, et al.

Appellees.

: Case No. 2013-1598
:
: Appeal from the Ohio Board of
: Tax Appeals
:
: Appeal from BTA Case
: No. 2010-K-938
:
:
:

MERIT BRIEF OF APPELLEE HAMILTON COUNTY BUDGET COMMISSION

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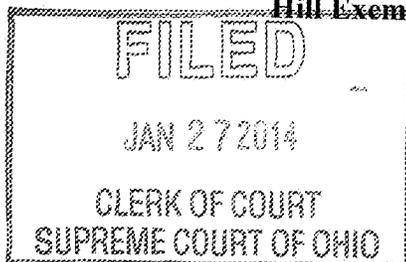
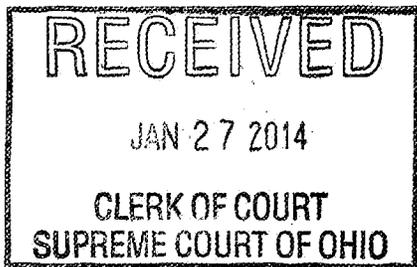


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<p>The Board of Tax Appeals erroneously concluded that the un-voted tax increase at issue, the 1.25 millage move, was “clearly required for the ensuring fiscal year” by the Indian Hill Exempted Village School District. (sic)</p>	
<p><u>Authorities Relied Upon In Support of Appellant’s Assignment of Error No.1 (sic):</u></p>	
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STATUTES

R.C. 5705.315
R.C. 5705.3415

ATTORNEY GENERAL OPINIONS

2005 Ohio Atty. Gen. Ops. No. 0025

I. STATEMENT OF FACTS

A. Procedural Posture

On April 20, 2010, the Hamilton County Budget Commission issued an Order approving the budget of Indian Hill School District.

On May 20, 2010, the Appellants filed an appeal of that decision to the Ohio Board of Tax Appeals (BTA).

On September 13, 2013, the BTA issued an Order affirming the decision of the Budget Commission.

On October 8, 2013, the Appellants filed this appeal with the Ohio Supreme Court.

B. Statement of Facts

The Auditor agrees with the Statement of Facts in the Appellants' Brief as to what actually happened, but disagrees with the tone and extended argument about the legality of what happened and why it happened which the Appellant extensively repeats again in its Argument.

II. LAW AND ARGUMENT

Appellant's First Assignment of Error No. 1:

THE BOARD OF TAX APPEALS ERRONEOUSLY CONCLUDED THAT THE UNVOTED TAX INCREASE AT ISSUE, THE 1.25 MILLAGE MOVE WAS "CLEARLY REQUIRED FOR THE ENSUING FISCAL YEAR" BY THE INDIAN HILL EXEMPTED VILLAGE SCHOOL DISTRICT.¹

Appellants do not argue that the actual budget as submitted did not clearly require the movement of the 1.25 inside millage. Rather the argument apparently is that Indian Hill did not

¹ No proposition of law is offered by Appellants as required by Sp. Ct. Rule V. Nonetheless, the Auditor will respond.

require the movement of the millage presented because of what it calls a “public budgeting gimmick”² which is “perfectly lawful in some circumstances” (Pg. 1, Appellant’s Brief).

The Appellant’s apparent position is that the Budget Commission had a duty to scrutinize each element of Indian Hill’s budget and find that the budget not only was “a gimmick” but that it was unlawful. Unfortunately, the Budget Commission has no such authority to determine all of the items that go into a School District’s budget or the wisdom of such.

If the Budget Commission’s role is to forensically examine each School Board’s budget to determine the wisdom of such budget, the Legislature needs to amend the statute to give it such authority and hopefully to grant it additional resources to do so.

“If the budget shows that a certain amount of inside millage is needed for public improvements, the county budget commission must accept the school boards determination on that matter . . . the county budget commission is not empowered to evaluate the wisdom of the school district’s budget or to exercise judgment regarding the expenditures included in the budget.” 2005 Ohio Atty. Gen. Ops. No. 002

The Ohio Supreme Court has addressed the authority of a county budget commission under *R.C. 5705.31* and *R.C. 5705.341* to approve or modify tax levies in excess of the ten-mil limitation:

* * *

. . . Under this section of the tax levy law [R.C. 5705.341], the phrase “clearly required by 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. (Emphasis added)

² Obviously, the Appellees disagree with this characterization.

Village of South Russell v. Geauga Cty. Budget Comm'n, 12 Ohio St.3d 126, 32, 465 N.E.2d 876 (1984).

CONCLUSION

The BTA's decision correctly states the "appellants' objections relate to the wisdom of converting such funding for permanent improvements, a discretionary budget decision for which neither the budget commission nor this board may substitute its own determination". (Pp. 4-5)

If there truly exists any "gimmick" lawfully permitted in public budgeting, that is an issue for the Legislature to address.

The wisdom of the School District's budget is an evaluation to be made by the voters of the Indian Hill School District who can choose to change the School Board if they so desire. That is a political question - - not one to be decided by the Budget Commission or the Board of Tax Appeals, who have no authority to decide the wisdom of the budget.

We respectfully urge the Court to affirm the decision of the BTA.

Respectfully submitted,

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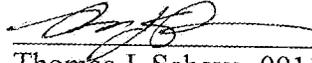
PROOF OF SERVICE

I hereby certify that a copy of the foregoing Appellee Budget Commission's Brief was served by ordinary U.S. mail on this 23 day of January, 2014, on the following:

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