

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE
Room 1058, IGCN – 100 North Senate
Indianapolis, IN 46204

IN THE MATTER OF THE PETITION)
FOR REVIEW ALLEGING)
ARTIFICIAL DIVISION OF A) **CP016-002**
CONTROLLED PROJECT BY)
SCHOOL TOWN OF HIGHLAND)

1. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 provide that a political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. A controlled project is, with some exceptions, any project financed by bonds or a lease that will cost a political subdivision more than the lesser of \$2,000,000 or an amount equal to 1% of the total gross assessed value of property within the political subdivision on the last assessment date, if that amount is at least \$1,000,000. *IC 6-1.1-20-1.1.*

2. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 also provide that a person that owns property within a political subdivision or a person that is a registered voter residing within a political subdivision may file a petition with the Department of Local Government Finance (“Department”) objecting that the political subdivision has artificially divided a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. The petition must be filed not more than ten days after the political subdivision makes the preliminary determination to issue the bonds or enter into the lease for the project. If the Department receives such a petition, it must, not later than 30 days after receiving the petition, make a final determination on the issue of whether the capital projects were artificially divided.

3. On April 27, 2016, Richard Volbrecht submitted a petition (“Petition”) to the Department alleging that the School Town of Highland (“School”) “approved on 2015-10-20 Capital Project 1 to Renovate the [middle school/high school] Academic Facility, financed with a \$9,990,000 Lease Rental Bond” and then “approved on 2016-04-19 Capital Project 2 to Renovate some of the [middle school/high school] Athletic Facilities, financed with a \$2,000,000 General Obligation Bond,” that “Capital Projects 1 and 2 are Renovations of the same MS/HS Facility,” and that the School “Artificially Divided what is really a Single \$11,990,000 Capital Project to Renovate the [middle school/high school] *Academic Facility* and some [middle school/high school] *Athletic Facilities*” (emphasis in original). *Petition, pp. 5–6.*

4. According to the School’s bond counsel, James Shanahan, the School did not make a preliminary determination on April 19, 2016 with regard to an “Athletic Facilities Project” as the “cost of the Project will not exceed \$2,000,000 and the provisions of IC 6-1.1-20-3.1 did not apply.” *E-mail from James D. Shanahan, School Bond Counsel, to Michael E. Duffy, General Counsel for the Department of Local Government Finance, April 28, 2016, 10:02 AM EDT.*

5. Because the opportunity for a party to petition the Department under IC 6-1.1-20-3.1(c) or IC 6-1.1-20-3.6(j) is triggered by a political subdivision's making a preliminary determination to issue bonds or enter into a lease for a project, and because the School did not make a preliminary determination on April 19, 2016, the Department does not have a statutory basis upon which to take action on the Petition. A preliminary determination occurs under IC 6-1.1-20-3.1 or IC 6-1.1-20-3.5 and is what creates the opportunity for taxpayers to request either the petition and remonstrance or referendum process, respectively. The term refers to the fact that a unit cannot impose property taxes to pay debt service for bonds or a lease for a controlled project until taxpayers are given the opportunity to utilize a petition and remonstrance or referendum process if they desire it. Hence, until the taxpayers decide, the unit's determination is preliminary. Here, the School contends that because the project is not a controlled project (because it does not exceed \$2,000,000 in cost), it cannot be subject to IC 6-1.1-20-3.1 or IC 6-1.1-20-3.5, and thus no preliminary determination would occur with regard to the project.

6. The Department acknowledges Mr. Volbrecht's sincere concern that the School has artificially divided a project to avoid the referendum process and in a way that precludes an opportunity for Mr. Volbrecht or another taxpayer to seek review under IC 6-1.1-20-3.1(c) or IC 6-1.1-20-3.6(j). The Department brought this concern to the School's attention and requested a response. Mr. Shanahan responded thusly on behalf of the School:

A preliminary determination was adopted last year relating to the renovations and improvements inside the high/middle school. As you know, it is never required to have a PR or a referendum once you reach certain thresholds. Political subdivisions are only open to the possibility if requested or if they take the option of putting it on the ballot in the absence of such a challenge. There was no taxpayer challenge to that last year's project or a request that any applicable process be followed.

There is no dispute that the School Corporation has identified a laundry list of capital needs throughout the district as a part of its long term planning. Among those were the improvements to the School Corporation's athletic facilities. How a capital program is implemented is a function a [*sic*] whole host of variables including critical needs, Board priorities, tax rate impact, project costs, interest rates, community input, etc.

In the face of community input, District needs, Board priorities and a potentially changing interest environment given indications from the Federal Reserve (from historic lows – nowhere to go but up) the Board decided to advance the improvements to the Athletic Facilities this year. This project is separate and distinct from any work done at other facilities, and shouldn't be aggregated. I think it would be a tough line to draw and an unmanageable standard if a School Corporation were forced to wait "X amount of time" to act upon capital needs. The Athletic Facilities Project was a priority and was going to be done at some point. Doing this same Project in the Fall of 2016, the Spring of 2017, the Summer of 2018 would not provide any opportunity for the taxpayer to trigger any challenge provisions. He shouldn't have them now. Doing it now actually saves the taxpayer money by the Corporation minimizing the cost of borrowing, and low costs of construction.

E-mail from Mr. Shanahan to Mr. Duffy, April 28, 2016, 12:04 PM EDT.

7. The Department sought additional information from the School concerning the nature of the projects involved, including their location and purpose. The School, through Mr. Shanahan, responded, in part:

Last year's Projects included improvements to the High/Middle School Building, along with separate interior/building envelope improvements at certain individual elementary schools. No challenge was filed requesting the petition remonstrance or to those individual projects or project classifications last year when the preliminary determinations were made. All work for those Projects was done on the interior of each building and was to the "traditional academic" facilities.

E-mail from Mr. Shanahan to Mr. Duffy, May 18, 2016, 1:53 PM EDT.

Moreover, "This year's independent unrelated project is an upgrade and improvements to the District athletic facilities. Part of the facilities are located on the larger campus containing the high school, the transportation center, and the administration center." *E-mail from Mr. Shanahan to Mr. Duffy, May 18, 2016, 1:53 PM EDT.*

Mr. Shanahan also asserts that:

The Board did not undertake the Athletic Facilities Project last year because they are working through their priority list based upon board/town politics, budget, tax rate, etc. As with almost all districts, their needs far exceed their budget. They were clear last year that it was one of the projects that would be taken in the next year or two, but that the timing was not right as they were also evaluating options and studying other district's facility experiences. Naturally, certain parents wanted the Board to focus on athletic needs of the District last year, but they were in their diligence period and not yet ready to do so.

This year the Board decided to pursue the Athletic Facilities Project based upon demands from their electorate, and district needs.

E-mail from Mr. Shanahan to Mr. Duffy, May 18, 2016, 1:53 PM EDT.

8. Although the Department cannot take official action on this Petition for the reasons stated above, the Department informally concludes that if in fact the project undertaken in 2015 concerned interior renovations to *academic* facilities while the project undertaken in 2016 pertains to upgrading *athletic* facilities, even if the academic and athletic facilities are on the same campus, the Department would not necessarily view this as an artificial division of a controlled project. In other words, a school corporation that renovates classrooms in one year and then replaces a gym floor the following year, for example, would not necessarily be artificially dividing a controlled project just because the work occurs at the same location. There can legitimately be two distinct controlled projects that occur at a unit simultaneously or back-to-back. The Department emphasizes that the determination of whether a controlled project has been artificially divided is very fact-sensitive and the Department reserves the right to make that determination on a case-by-case basis in reliance on the applicable law and facts.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

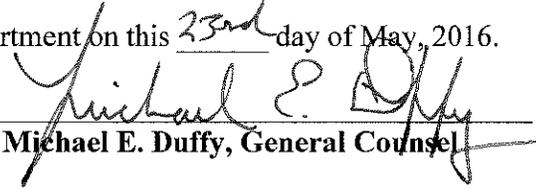


Courtney L. Schaafsma, Commissioner

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

I, Michael E. Duffy, General Counsel for the Department of Local Government Finance, hereby certify that the above is an order of the Commissioner of the Department of Local Government Finance made this date in the above-entitled matter and that the Commissioner has personally signed the same under her statutory authority.

WITNESS MY HAND AND SEAL of this Department on this 23rd day of May, 2016.



Michael E. Duffy, General Counsel