

STATE APPEAL BOARD

In Re:	Davenport, Iowa)	
	Budget Appeal)	Order
)	
	FY 2004-2005)	June 7, 2004

BEFORE STATE AUDITOR, DAVID A. VAUDT; STATE TREASURER, MICHAEL L. FITZGERALD; AND THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, CYNTHIA P. EISENHAUER:

A hearing on the above captioned matter was held pursuant to the provisions of Chapters 24 and 384 of the Code of Iowa on April 21, 2004. The hearing was before a panel consisting of Stephen Larson, Deputy Treasurer and presiding officer, Office of the State Treasurer; Stephen Ford, City Budget Director, Department of Management; and Kevin J. Borchert, Professional Development Director, Office of the State Auditor.

Corporation Counsel for the city of Davenport, Attorney Mary J. Thee, and others represented the City, and the primary spokesperson for the petitioners was Keith Meyer.

Upon consideration of the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted subsequent to the hearing and after a public meeting to consider the matter, the State Appeal Board has voted to sustain the FY2005 budget as filed.

PROCEDURAL HISTORY

The FY2005 City of Davenport proposed budget summary was published on February 18, 2004 in the Quad Cities Times. The required public hearing was held and the budget was adopted on March 9, 2004.

A petition protesting the certified FY2005 City of Davenport budget was filed with the Scott County Auditor on March 25, 2004, and was received by the State Appeal Board on March 29, 2004.

On some of the petition documents, the petitioners stated in part "We the people of Davenport in protest of the Garbage Tax (fee), the City Administrator's Employment Agreement, the Courtland Apartments, the Cobblestone Project and The Alder Theatre-Mississippi Hotel etc., file an appeal of the fiscal year 2005 City Budget." The other petition documents stated in part "We the people of Davenport, Iowa, in protest of the Garbage Tax (fee), the City Administrator's Employment Agreement, the Cobblestone Project and on and on, file an appeal of the fiscal year 2005 City Budget."

DISCUSSION

The petitioners and representatives of the City provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of the public hearing and information provided on this matter is as follows:

PETITIONERS

At the budget appeal public hearing, petitioner Keith Meyer represented the petitioners and was assisted by Nickie Bowles.

In their remarks, Mr. Meyer and Ms. Bowles stated the primary reasons for the appeal are the petitioners' concerns that fees are taxes, an employment agreement is illegal, city projects are flawed, the city has violated open meeting laws and the city has violated city resolutions and code. As spokespersons for the petitioners, Mr. Meyer and Ms. Bowles expanded upon why the garbage fee and the fire inspection fee are taxes. If the garbage and fire inspection fees were not paid, a lien would be placed on their property. The petitioners also expanded upon why the Adler Theatre – Mississippi Hotel, Vision Iowa Project task force met illegally and Davenport One is receiving Self Supported Municipal Improvement District (SSMID) money and is not being accountable. Finally, the City Administrator's employment agreement contracts away legislative authority.

Mr. Meyer wanted the City Council to come to the public hearing and tell everyone why these issues were in the best interest of the public. Mr. Meyer stated the city's budget hearing for the Fiscal Year 2005 budget was illegal because he wasn't notified. Although he is a City Council member, he'd learned of the hearing by reading it in the newspaper. The petitioners' spokespersons requested the State Appeal Board do whatever is within their power to do. The State Appeal Board should initiate an investigation into the actions of the city in reference to the budgetary matters and the city's use of taxpayers' money.

In closing, the petitioners' final remarks were they were having to exhaust resources so if these issues go to court in the future, the petitioners can state all avenues of budgetary review had been exhausted.

CITY OF DAVENPORT RESPONSE

Prior to the public hearing, the City of Davenport filed both a Motion to Dismiss The Petition and a Motion for Declaratory Order on April 12, 2004 and followed these motions with a Second Motion for Declaratory Order on April 19, 2004.

Mary J. Thee, Corporation Counsel for the City of Davenport, and Alan Guard, City of Davenport Budget Manager, were the primary spokespersons for the City of Davenport. Ms. Thee introduced Mayor Charles Brooke who would be making the City's opening statement and stated the Mayor's comments would address four main points. Regarding

all of the allegations being made by the petitioners, they are absolutely and totally false. The City struggled with the budget process the same as other cities. He stated they had many meetings with the citizens and the Council. None of their allegations are germane. Whether the garbage fee, or tax, is illegal has nothing to do with the 2005 budget. That is a legal question for the Justices of the Supreme Court. The same can be said of the six items the petitioners listed. The objections they have raised are not objections to the budget.

The Mayor's other comments were that none of these items are budgetary items and the State Appeal Board has no jurisdiction. Also, these petitioners are not affected by these items as required by state statute. Therefore, the city had requested a summary judgment, which called for rejecting the entire petition and priority application of the challenged budget. Also, the City Administrator's employment agreement complaint is only relevant concerning his salary and there is no money in this year's budget for the Cobblestone project and the Adler Theater-Mississippi Hotel. These are political issues, not budgetary issues. In fact, there is a CIP (Capital Improvement Project) for the possible purchase of the Mississippi Hotel. But, the petitioners are not protesting that. In closing, all petitions are defective, the City doesn't believe there are legitimate issues raised for the State Appeal Board, and the City asks the Board to rule on those motions. The City would like the Board to find these appeals and these petitions are frivolous and the City wants a specific finding these are frivolous.

Alan Guard, City Budget Manager, addressed the petitioners' allegation the City's budget did not follow the wishes of the Davenport citizens. He said the budget met all the statutory requirements. He continued by outlining the process the City conducted to determine the citizens' wishes. The 2005 budget will be the first year a garbage fee is collected. The City measured fees for reasonableness and every other major city in Iowa has a garbage fee.

Ms. Thee reiterated the City's position on the issues and added information regarding the inclusion of the estimated cost for the potential purchase of the Mississippi Hotel as a capital improvement project. Also, one of the projects under the Vision Iowa grant is the expansion of the Adler Theater stage that would go into the Mississippi Hotel. The Mississippi Hotel encompasses or surrounds the Adler Theater. Including this cost in the budget is certainly reasonable and necessary.

The Cobblestone project is a local development project not being done by the City. Also, there is nothing in the budget related to the Courtland project.

The spokespersons for the City responded to the petitioners' rebuttal and closing comments by commenting further on information provided in the written materials. Finally, the City requested the State Appeal Board deny the petitioners' request, rule on the two motions submitted by the City, and uphold the budget for FY2005.

FINDINGS OF FACT

1. The City of Davenport, subject to various state laws and administrative rules, shall prepare and adopt a budget, certify taxes and propose budgeted expenditures. The City met those requirements.
2. Section 384.19 of the Iowa Code provides persons who are affected by a city budget, expenditure, or levy, or by any item thereof, may appeal by filing a written protest with the county auditor "specifying their objections to the budget or any part of it." The protest must be signed by registered voters equal in number to one-fourth of one percent of the votes for governor in the last general election. The petitioners met this requirement.
3. Section 384.19 of the Iowa Code "Written Protest" states: "The state appeal board shall proceed to consider the protest in accordance with the same provision that protests to budgets of municipalities are considered under Chapter 24". Pursuant to Sections 24.28 and 24.29, a hearing was scheduled and conducted by designees of the State Appeal Board.
4. Section 24.28 of the Iowa Code states "At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which the objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare. "
5. Iowa Administrative Code Section 543-5.5 (11), "Filings", states: "There is no required format for an appeal. The language recommends a format that will facilitate resolution of the protest. It does not set a standard or requirement."
6. Iowa Administrative Code Section 543-5.5 (12) "Illustration of appeal format", "(Additional signature sheets may be attached without the full heading, it being assumed those subscribing their names are fully aware of the stated appeal, objections and reasons. Minimal headings on attached sheets should indicate "Protest to (local government) Budget, year.)"
7. Iowa Administrative Code Section 543-5.5 (13) states: "arguments need not be fully developed in the appeal petition".
8. Iowa Administrative Code Section 543-5.7 (8), "Hearing", provides "The appeal board shall exclude evidence which is irrelevant, immaterial or unduly repetitious."

9. Section 24.30 of the Iowa Code states in part "It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted...".
10. Section 386.2 of the Iowa Code states "A city which proposes to create a district, to provide for its existence and operation, to provide for improvements or self-liquidating improvements for the district, to authorize and issue bonds for the purposes of the district, and to levy the taxes authorized by this chapter must do so in accordance with the provisions of this chapter." The City has created this self supporting municipal improvement district.
11. The City's certified FY2005 budget includes expenditures of \$31,779,000 in the Capital Projects Function, of which \$750,000 is an estimated purchase cost for the Mississippi Hotel. Capital Projects expenditures from the FY2004 budget were estimated at \$39,776,000, so the FY2005 budget for capital projects decreases by \$7,997,000 from the previous year.
12. The City's FY2005 estimated total governmental and business type expenditures are \$159,003,212, decreasing from FY2004 estimates of \$167,438,912 by \$8,435,700.
13. The City's estimated total revenues in the FY2005 budget of \$192,822,020 increased by \$3,912,853 from the FY2004 estimate of \$188,909,167. The FY2005 revenues under Charges for Fees & Service, specifically Landfill/Garbage activity, are estimated at \$3,823,690, an increase of \$2,464,917 above the FY2004 estimate of \$1,358,773 for this activity.
14. The City has a FY2005 General Fund budgeted ending balance of \$9.2 million, down from the estimated FY2004 balance of \$11.6 million due in part to reporting Garbage/Landfill expenditures under the General Fund. Total All Funds budgeted ending balance of \$45.8 million is up from FY2004 ending balance of \$37.6 million.

CONCLUSIONS OF LAW

The State Appeal Board has jurisdiction over this appeal pursuant to Iowa Code sections 24.28 and 384.19.

BASIS FOR DECISION

The City filed three motions related to the budget protest.

- A Motion to Dismiss the Petition was filed on the grounds the petition was actually two separate petitions due to variations in the headings on the eleven signature pages, Non-registered voters among signatures, no full mailing address, illegible or forged signatures.

The Administrative Rules cited in Findings of Fact items 5 and 6 above clearly state signature pages may vary and there is no required format for an appeal. The heading on each signature page clearly states: "We the people of Davenport" and "file an appeal of the fiscal year 2005 City Budget" leading a reasonable person to assume those signing understand the petition is protesting the FY2005 budget and already states they are residents of the City.

In addition, the petition requires 73 registered voters to be valid. The petition contains 153 signatures, of which the City of Davenport disputes 54. The City also suggests 7 signature are forgeries. The remaining 92 undisputed signatures meet the requirement of Iowa Code 384.19.

- A Motion for Declaratory Order was filed stating the petition "failed to state key objections and basic reasons for objections" and contained "non-budgetary issues".

The Administrative Rules do not apply a minimum format or standard for "key objections and basic reason for objections" nor address what is or is not "non-budgetary issues". Decisions of pertinence or relevance are under the authority of the hearing officers to address at the hearing or in their recommendation to the State Appeal Board. Such issues can not be addressed in Administrative Rules.

- A Second Motion for Declaratory Order to dismiss was filed stating: "the Petitioners "Opening Statement" does not raise issues within the jurisdiction of the State Appeal Board". In addition, the specifics in the Opening Statement: Garbage fee, Fire Inspection fee, City Administrator Contract, Adler Theatre-Mississippi Hotel, Cobblestone Project, and Courtland Apartments state violations of statute or resolutions not relevant to City budgets.

The motion asserts Iowa Code Section 384.19 limits the State Appeal Board's authority to "items within the city budget and those appealed". The garbage and fire inspection fees are clearly budgetary items and petitioners meet the requirement in Section 24.27 of the Iowa Code.

The motion also objects to specifics within the opening statement. Administrative Code Section 543-5.5 (13) cited in item 7 above is clear that "arguments need not be fully developed in the appeal petition". Testimony and exhibits at the hearing are the basis used by the hearing officers in gathering information, including or excluding evidence,

and determining relevancy to report findings and recommendations to the Board, not opening statements or outlines of opening statements.

A majority of the petitioners' concerns involve their disagreement with specific decisions made by the City and not with identifiable budgetary effects of those decisions. The budget appeal process established under state law provides for the State Appeal Board to review and rule upon proposed budgets, expenditures, and tax levies. The City demonstrated it made a significant effort to identify the wants and needs of the community, to develop a budget based on that information, and the protested items are necessary, reasonable, and in the interest of the public welfare.

ORDER

The motion to dismiss and the two motions for declaratory orders filed by the City are denied. The Fiscal Year 2005 budget for the City of Davenport is sustained.

STATE APPEAL BOARD



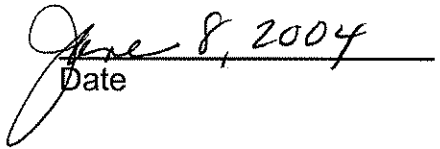
Michael L. Fitzgerald
Chairperson



David A. Vaudt
Vice Chairperson



Cynthia P. Eisenhauer
Member



Date