

STATE APPEAL BOARD

In Re:	City of Massena)	
	Budget Appeal)	Order
)	
	FY 1999-2000)	
	Amendment)	April 3, 2000

BEFORE STATE AUDITOR, RICHARD D. JOHNSON; STATE TREASURER, MICHAEL L. FITZGERALD; AND THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, CYNTHIA P. EISENHAUER:

The above captioned matter was heard on Monday, February 28, 2000, before a panel consisting of Ronald J. Amosson, Executive Secretary to the State Appeal Board and presiding officer; Stephen E. Larson, Executive Officer III, Office of the State Treasurer; and Marlys Gaston, Manager, Office of the Auditor of State.

The hearing was held pursuant to Iowa Code section 384.19. Mitch Groves, City Council member, represented the City of Massena. Charles Spieker and Donald Henkenius were spokespersons for the petitioners.

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 to the hearing panel both before and after the hearing, and after a public meeting to consider the matter, the State Appeal Board has voted to deny the FY1999-00 City of Massena budget amendment as herein described.

PROCEDURAL HISTORY

The FY1999-00 proposed budget amendment for the City of Massena, Iowa, was published on November 24, 1999. A public hearing on the proposed budget amendment was held on December 8, 1999 and the budget amendment was adopted the same day. The amendment was made to allow for the purchase of a new tractor with backhoe. Mayor Charles Spieker vetoed the amendment on December 20, 1999 and the City Council overruled the veto and approved the amendment on January 12, 2000. The budget amendment was filed with the Cass County Auditor on January 14, 2000.

A group of local citizens filed a petition with the Cass County Auditor on January 24, 2000, protesting the FY1999-00 budget amendment. A copy of this petition was forwarded to the State Appeal Board. The petitioners protested the amendment by alleging (1) the budget amendment was not prepared in the same manner as provided in section 384.16, (2) the budget amendment was not prepared and adopted in the same manner as the original budget as outlined in

the City of Massena Municipal Code of Ordinances, (3) the budget amendment did not define what programs would be amended, and (4) the City did not have a competent person (employee) or proper safety equipment, as defined by OSHA rules, to operate the proposed tractor with backhoe.

DISCUSSION

Prior to the public hearing regarding the appeal of the budget amendment, the petitioners and the city officials submitted written statements regarding the petition to the hearing panel.

In a letter to the hearing panel dated February 25, 1999, Mr. Spieker offered the following information regarding the Council's actions in trying to purchase the tractor and backhoe.

1. The council did not hold a public meeting to show a need for a new tractor-backhoe to be purchased by the City of Massena.
2. Only a budget summary was provided for approval by the Council. No detail was provided to explain what portions of the current budget would be amended. Chapter 5 Section 2-5-2 of the City of Massena Municipal Code of Ordinances states that the budget amendment shall be prepared and adopted in the same manner as the original budget. Mr. Spieker stated that the budget amendment as presented was illegal and was protested.
3. The budget amendment does not define what programs will be affected. The petitioners will present in detail line item requirements under the Home and County Environment program showing actual expenses paid from July 1, 1999 to February 1, 2000 and estimated total expenses to June 30, 2000.
4. The City did not have a full time water/waste/maintenance employee on their payroll as of January 12, 2000. The City of Massena still does not have an OSHA approved and certified operator or safety equipment for the tractor-backhoe as of February 24, 2000. The petitioners stated that the City of Massena is placing itself in a position of great liability by trying to purchase this tractor-backhoe, especially when the purchase is done illegally by the City Council.

The comments outlined in the above correspondence were also presented at the public hearing by Charles Spieker. After Mr. Spieker presented his information, Mr. Henkenius presented additional information pertaining to the Home and Community Environment Program. He presented line item budget information detailing actual expenses for each budgeted activity through February 1, 2000 and estimated expenses through June 30, 2000 for those same activities. Mr. Henkenius indicated that the current budget will be needed to meet each activities' projected disbursements through June 30, 2000 and expressed

concern that there was not enough money remaining in the ending fund balance to pay for the proposed tractor-backhoe.

The petitioners voiced some concern over whether the Council had established a need to purchase a tractor-backhoe. They indicated that for the past two years, the City has spent only \$700/year to contract out for digging work. Also, the tractor the City proposes to purchase will not dig deep enough for some sections of the City, so the City will still need to contract for some of this work.

The petitioners voiced concern regarding conflict of interest issues pertaining to the bid accepted by the City Council. They stated that the bid specifications for the proposed tractor-backhoe were drawn up by Councilman Kevin McCunn, an employee of McCunn Equipment and bidder on the tractor. The original specs specified a John Deere tractor, but this requirement was removed after objections were raised. The petitioners stated that although Councilman McCunn abstained from voting on the tractor purchase, he actively participated in the discussion at the public hearing regarding which tractor would be the best purchase for the City.

The hearing panel asked the petitioners what they wanted the State Appeal Board to do. The petitioners stated that they wanted the Appeal Board to (1) cancel the amendment, (2) start the process over so that it may be done properly, and (3) purchase the tractor/backhoe at the lowest bid. The petitioners never stated in their written materials that they were specifically opposed to the purchase of the tractor/backhoe.

At the public hearing, Councilman Mitch Groves reviewed the issues on behalf of the City, as detailed in prior correspondence sent to hearing panel on February 25, 2000. He responded to the protest as follows:

1. The budget amendment was prepared in accordance with Section 384.16 of the Code of Iowa as follows:
 - The budget amendment shows estimates of a) expenditures of each program, b) income from sources other than property taxation, and c) the amount raised by property taxation (which in this case did not change from the original budget).
 - Copies of the proposed budget amendment were posted and available for distribution.
 - The City Council set a time and a place for a public hearing. At the hearing one citizen questioned the need for a backhoe and one citizen voiced concern that there should have been a public hearing when the Council was considering the purchase of a new tractor, but no person verbally protested the proposed budget amendment.
 - After the hearing the Council adopted the budget amendment in the same manner it adopted the original 1999/2000 budget.

2. The budget amendment clearly shows the areas affected, "Other City Taxes" (specifically, local option sales tax) and "Home and Community Environment". A detail was completed, showing specific line items to be amended, and is available by request from the Massena City Clerk.
3. The City now has a competent operator, and proper safety equipment to operate the tractor with backhoe under proper conditions. The Council will most likely consider the purchase of additional safety equipment to allow operation of the equipment under all reasonable conditions.

Mr. Groves further clarified that approximately half of the funding for the tractor/backhoe would come from the local option sales tax monies set aside for capital purchases and the rest would come from the fund balance. No current programs/activities will be cut. He stated that the purchase of the tractor/backhoe would be an upgrade from the tractor/loader the City currently owns which is seventeen years old. The Council felt that a new tractor was needed because of the increasing cost of repairs on the current tractor/loader and stated that they felt the John Deere tractor is a better product due to its history of performance.

The audience also made several comments regarding the budget amendment. Norma Shaw, the former city clerk, expressed concern over what part of the budget was going to be cut or if spending would be increased. She also stated that she wasn't sure that the purchase of the new tractor/backhoe was necessary and that there could be a possible conflict of interest in the purchase of the backhoe because Kevin McCunn worked for the local John Deere Dealership. Former Mayor Al Venteicher stated that the Capital Equipment Improvement account, which is funded by the Local Option Sales Tax revenue, would be sufficient to pay for the new tractor/backhoe. Ted Wood stated that OSHA does not have a certification program for tractor operators, but simply provides regulations and training for operators.

In response to the allegations by the audience and the petitioners, Mitch Groves replied in a letter dated March 1, 2000, that this protest is a personal power play among citizens in the community and is directed at the McCunn family who owns the local John Deere Dealership. He further states that he believes this protest was not based on any concern for fiscal responsibility or employee safety.

FINDINGS OF FACT

1. The design of the budget forms and amended budget forms for local governments, including cities, is the responsibility of the Iowa Department of Management. The designs are based upon the various requirements of local budget law as provided in the Iowa Statutes. The City of Massena completed the appropriate budget amendment form as provided by the Department of Management. Due to the simplicity of this budget amendment, the City is not required to publish an amended budget that provides greater detail than that required on the official amended budget form. Further, additional details, if

any, should be available for review at the City offices and, according to the City, they were available. In the case of this amendment, the City provided sufficient detail to be in compliance with State law.

2. Chapter 24.28 of the Code of Iowa provides that the burden of proof shall be upon the certifying or levying board 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.
3. A notice for accepting sealed bids for purchase of a tractor/backhoe were published in the Anita Tribune and the Atlantic News Telegraph on June 17, 1999 and June 15, 1999, respectively. The notice said that sealed bids would be accepted from June 15, 1999 through July 15, 1999. Two sealed bids were received during the appointed time and not opened by the city. A third bid, from McCunn Equipment, was received on July 20, 1999 but the envelope did not indicate that the contents were a sealed bid. City staff opened the letter containing the bid. Because the bid was inadvertently opened, the Council rejected all bids. The notice for bids was again published in the two newspapers in August 1999. On September 29, 1999 the City Council received and opened three sealed tractor bids. The three bidders were Tri-Tractor of Red Oak, Greenfield Implement of Greenfield, and McCunn Equipment of Massena. After some discussion, Tri-Tractor of Red Oak voiced a complaint on conflict of interest within the city council and withdrew its bid. The Greenfield Implement's bid at net price with trade-in was \$23,278 and McCunn Equipment's bid at net price with trade-in was \$30,617.00. Kevin McCunn and Mitch Groves, brother-in-law of Kevin McCunn, abstained from voting.
4. The bid from McCunn Equipment was accepted upon completion of the budget amendment.
5. The bid price of \$30,617 accepted by the Council is 32% higher than second bid received.
6. Chapter 362.5 of the Code of Iowa states in part, "A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's city. A contract entered into in violation of this section is void. The provisions of this section do not apply to: (4) Contracts made by a city, upon competitive bid in writing, publicly opened and invited."

Chapter 362.6 of the Code of Iowa states in part that "A measure voted upon is not invalid by reason of conflict of interest in an officer of a city, unless the vote of the officer was decisive to passage of the measure."

Inherent in the above statutes is the expectation that any transaction involving a public official will be an arm's length transaction, both in fact and appearance. Accordingly, it is reasonable for the public to expect that in all matters pertaining to the purchase of the tractor-backhoe, including

preparation of bid specs and discussion during the public hearing, any officers with a potential conflict should abstain from participation.

7. Due to the conflict of interest apparent in the bidding and proposal acceptance process, the State Appeal Board does not feel the City of Massena has met the burden of proof that the approved purchase is reasonable and in the best interest of the public welfare.

CONCLUSIONS OF LAW


City budget amendments are authorized under the provisions of Section 384.18 of the Iowa Code.

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Iowa Code sections 24.28 and 331.436.

ORDER

The State Appeal Board orders that the City of Massena budget amendment for FY1999-2000 is void because the City of Massena failed to show that the purchase of the tractor was reasonable and in the best interest of the public.

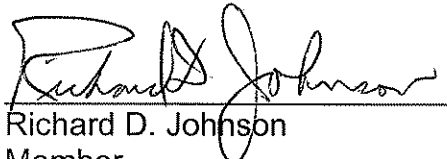
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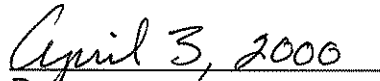
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Date