Coates' Canons Blog: County Funding of Public Schools: Dispute Resolution Process

By Kara Millonzi

Article: https://canons.sog.unc.edu/county-funding-of-public-schools-dispute-resolution-process/

This entry was posted on July 11, 2013 and is filed under Finance & Tax, Public School Finance

For most units July 1 (or the date that the annual budget ordinance is adopted) marks the end of the formal budgeting season. Each year, however, at least a few counties and local school boards face a protracted budgeting process. That is because state law allows a local school board to challenge a county’s appropriations to the local school administrative unit (local school unit) if the school board believes that the amount allocated for either capital or operating expenditures (or both), when combined with moneys made available to the school unit through other sources, is not sufficient to support a system of free public schools.

Commonly referred to as the dispute resolution process, G.S. 115C-431 sets forth the procedures for challenging a county’s appropriations. This post summarizes the dispute resolution process and highlights a recent legislative change.

County Budgeting Process for Local School Units

Each year a county engages in a detailed budgetary process to estimate revenues and make appropriations for the forthcoming year. A county must include its appropriations to its local school unit(s) for current expenses and capital outlay in its annual budget ordinance. The Local Government Budget and Fiscal Control Act (G.S. Ch. 159, Art. 3), as supplemented by the School Budget and Fiscal Control Act (G.S. 115C, Art. 31), prescribes the procedural and substantive requirements for adopting the county’s budget ordinance and appropriating money to its local school unit(s). The statutory budget process is fairly straightforward and can be broken down into the following six steps:

1. School superintendent submits proposed budget to local school board
2. Local school board considers/amends/adopts superintendent’s proposed budget
3. Local school board submits budget request to county board of commissioners
4. County board of commissioners makes appropriations to local school unit(s) in its annual budget ordinance
5. (Optional) Local school board initiates dispute resolution process
6. Local school board adopts school budget resolution

For the most part, this budget process mimics that of other boards or agencies that derive at least a portion of their revenue from the county. The significant difference, of course, is the ability of a local school board to avail itself of a statutory process to dispute its county appropriations. No other board or agency has this direct recourse against the county.

Statutory Dispute Resolution Process

As stated above, G.S. 115C-431 provides that if a local school board “determines that the amount of money appropriated to the local current expense fund, [for operating expenses] or the capital outlay fund, or both, . . . is not sufficient to support a system of free public schools” it may initiate a dispute resolution process with the board of county commissioners to challenge the appropriation(s).

There are four stages to the dispute resolution process:

Step 1: Boards Meet

First, to trigger the process, a local school board must so notify the county board and arrange a joint meeting between the two boards within seven days of the adoption of the county budget ordinance. The boards are required to make a good decision regarding the sufficiency of the county's appropriations.
faith effort to try to resolve their differences. A mediator presides over the meeting and acts as a neutral facilitator. The boards may jointly select the mediator or may request that the Senior Resident Superior Court Judge appoint someone.

**Step 2: Official Mediation**

If the meeting is not successful, the boards proceed to official mediation. Unless the two boards agree otherwise, the participants in the mediation are the chairs of each board, attorneys, and finance officers of each unit, the public school superintendent, and the county manager. The compensation and expenses of the mediator are shared equally by the local school administrative unit and the county. The mediation is conducted in private and statements and conduct are not discoverable. The mediation must end by August 1, unless both boards agree otherwise.

If the mediation continues beyond August 1, the county must appropriate to the school unit’s local current expense fund a sum equal to the local appropriation for the previous fiscal year. (Note that this requirement only applies if the mediation fails and it extended beyond August 1. Otherwise, the county is not obligated to appropriate the same amount of local current expense funds to the local school unit that it appropriated the previous year.)

**Step 3: Superior Court**

If mediation ultimately fails, the local board of education may file an action in superior court. The action must be filed within five days of the failed mediation. Either side may demand a jury trial. If a jury trial is demanded, the cause must be scheduled for the “first succeeding term of the superior court in the county, and shall take precedence over all other business of the court.” If the presiding judge certifies that “because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term.”

The judge or jury must determine (1) “the amount of money legally necessary from all sources” to maintain a system of free public schools “as defined by State law and the State Board of Education policy,” and (2) “the amount of money legally necessary from the board of county commissioners.” G.S. 115-431(c). A recent amendment to this statute clarifies what the judge or jury must consider in making the determination.

In making the finding, the judge or the jury shall consider the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.

S.L. 2013-141 (HB 765). This statutory directive largely codifies the North Carolina’s Supreme Court’s holding in Beaufort County Board of Education v. Beaufort County Board of Commissioners, 363 N.C. 500 (2009) (discussed here).

If the school board succeeds in the litigation, the court will order the board of county commissioners to appropriate a specific amount to the local school administrative unit and, if necessary, to levy property taxes to cover the amount of the appropriation. Any payment by the county may not be considered or used to deny or reduce appropriations to a local school administrative unit in subsequent fiscal years.

**Step 4: Appellate Review**

Either board may appeal the superior court’s judgment in writing within ten days after the entry of the judgment. Final judgments at the conclusion of the appellate process are legally binding on both boards.

Although the statute directs the trial court to take up the matter as soon as possible, it is silent as to the timing of appellate review. And, in practice, the appellate review process often takes over a year or more to complete. For example, in Duplin County the local board of education initiated the dispute resolution process following the adoption of the county’s budget ordinance for the 2009 fiscal year. A trial was held in September 2008 which resulted in an award to the local school board of approximately $4.8 million in additional current expense funds for the 2008-2009 school year. See Duplin County Bd. of Educ. v. Duplin County Bd. of County Comrs., 2008 WL 8905528 (Sept. 24, 2008). The county appealed. The court of appeals affirmed the trial court’s decision but not until November 2009 (well into the following school year).
County Bd. of Educ. v. Duplin County Bd. of County Com’rs, 201 N.C.App. 113 (2009). The litigation final concluded when the North Carolina Supreme Court denied discretionary review in April 2010. See Duplin County Bd. Of Educ. v. Duplin County Bd. of County Com’rs, 364 N.C. 128 (2010).

This illustrates a substantial deficiency in the dispute resolution process. Even if a judge or jury determines that a local school board needs additional funds from the county to meet its constitutional and statutory educational responsibilities for a particular school year, the school unit may not receive those additional funds that school year. In fact, the school unit may not receive the funds until well into the following school year. And, from a county’s perspective, it may end up paying more money in a future fiscal year to its local school unit than is needed to support the school unit that year. Additionally, both boards incur the (often substantial) costs of litigating the issue. For these reasons most dispute resolution processes do not proceed beyond steps 1 or 2.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-431.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_159/Article_3.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_115C/Article_31.html
- www.ncleg.net/Sessions/2013/Bills/House/PDF/H765v5.pdf
- canons.sog.unc.edu/?p=650