

1991 WL 299105

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United States District Court, N.D. Illinois, Western
Division.

PEOPLE WHO CARE, et al., Plaintiffs,
v.

ROCKFORD BOARD OF EDUCATION SCHOOL
DISTRICT NO. 205, Defendant.

Civ. A. No. 89 C 20168. | Oct. 4, 1991.

Opinion

INTERIM FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PROVIDING FOR REMEDIAL RELIEF

ROSZKOWSKI, District Judge.

*1 This cause coming on to be heard on the Motion of Defendant for Leave of Court to Permit Implementation of Corrective Action, said motion having been filed with the Court on September 12, 1991, and the Court having heard the arguments of the parties concerning the same, and the Court being fully advised in the premises, it is hereby Ordered, Adjudged and Decreed as follows:

1. This Court has jurisdiction over the subject matter of this cause and personal jurisdiction over the parties.

2. This Court entered an Order on April 24, 1991, the Second Interim Order, requiring the Defendant to take certain actions, including:

A. that the Defendant will construct by September 1993 a new building to serve the Church Elementary School attendance area (C.1.a., p. 31);

B. that the Defendant shall reacquire and rehabilitate Marsh School and open for the 1991–92 school year [C.1.f.(1), p. 34];

C. that the Defendant renovate and build an addition to the Riverdahl School (C.1.d., p. 33);

D. that the Defendant open a second magnet school (C.6, p. 40);

E. that the Defendant renovate and equip a Parent Center at the Garrison School site (B.5, p. 15);

F. that the Defendant develop computerized data systems capable of reporting and analyzing student and financial data (B.9, p. 25);

G. that Defendant develop computerized transportation planning and modeling (C.4.b., p. 37);

H. that Defendant renovate the Roosevelt School site (C.1.b, p. 32).

3. This Court recognizes the inherent authority of Defendant to provide for the foregoing relief, pursuant to the equitable jurisdiction of this Court, and within the provisions of law granting the Defendant the authority to arrange its school sites, all as contained in Chapter 122, Section 10, *Illinois Revised Statutes* (Illinois School Code).

4. This Court finds the Defendant is not possessed of sufficient funds to provide for the remedial action specified in said Motion.

5. This Court believes that such remedial action as specified in paragraph 3 A–E, *supra.*, should be commenced without further delay.

6. This court finds that certain provisions of law, namely Chapter 85, Section 9–101 *et. seq.*, *Illinois Revised Statutes*, provide that the Defendant is subject to the provisions of the Local Governmental and Governmental Employees Tort Immunity Act of the State of Illinois, as amended (The “*Tort Immunity Act*”). The *Tort Immunity Act* empowers and directs a local public entity such as the Defendant to pay any liability imposed upon it for a tortious act under Federal or State common or statutory law or to pay any tort judgment or settlement for compensatory damages based on any injury caused by an alleged negligent or alleged wrongful act or omission of the local public entity. The Board of Education of the Defendant may, if it considers the action advisable, issue general obligation bonds without referendum to pay such liability, judgment or settlement. In addition thereto (or in the alternative), the Defendant may pay for such recurring and continual incremental costs for such programs specified in this Order by additional levies in the Defendant’s Tort Immunity fund. Pursuant to this Order, the Defendant is mandated to fund the cost of the activities required herein, including, but not limited to, the capital expenses of acquiring sites and altering, building, equipping, improving, rebuilding, reconstructing, renovating, repairing, and restoring school buildings and facilities. This Court has considered the provisions of Article IX—Payment of Claims and Judgment—of the *Tort Immunity Act* and finds that the funding by the Defendant of the cost of said activities constitutes and is the payment by the Defendant of a liability, tort judgment

or settlement that authorizes the issuance of the District's non-referendum general obligation bonds referred to in Section 9–105 of the *Tort Immunity Act* and the levying of an annual rate of tax in the Defendant's annual levy for Tort Immunity purposes, to pay for annual and recurring program costs (other than the institution of capital improvements) as required by this Order.

*2 7. This Court further finds that the relief requested by Defendant is in the nature of remedial action taken to protect Defendant against a potential finding of liability for violations of constitutional rights of the Plaintiffs, all as set forth in the original Complaint and second Amended Complaint filed in this cause. As such, the remedial action undertaken by Defendant on a voluntary basis would protect itself from such a finding of liability and hence is a proper expenditure of funds of Defendant to protect against a judgment which would sound in tort, pursuant to the provisions of Illinois Law.

8. Defendant is hereby given leave and is further directed to proceed with the selection of an appropriate site for and rebuild a Church School attendance center, in the approximate geographical vicinity of the currently existing Church School, provided however, that Defendant shall consult with Plaintiffs, as provided in Section C.1.9 of the Second Interim Order in selecting a site which would be appropriate for said facility. In the event the Defendant should require to exercise its power under state law for eminent domain, it shall in every case proceed pursuant to the provisions of Illinois law. The approximate cost of said facility shall be \$3,600,000.00, and Defendant shall have the authority to issue bonds as approved by this Order for said purposes.

9. Defendant shall forthwith perform the renovation and restoration of the Marsh School site, and shall proceed to equip the same and make the same suitable for school purposes. The approximate cost of said work is \$2,890,000.00, and, the Defendant shall have the authority to issue bonds as approved by this Order for said purposes.

10. Defendant is granted leave and is directed to forthwith make the additions, renovations, and alterations on the Riverdahl School, and to equip the same for school purposes. The approximate cost of such work is \$1,930,000.00, and the Defendant shall have the authority to issue bonds as approved by this Order for said purposes.

11. The Defendant shall make certain repairs and purchase equipment for the second magnet school, at the Wilson School site, in approximate amount of \$250,000.00, and shall have the authority to issue bonds as provided by this Order for said purposes.

12. Defendant is granted leave and is directed to forthwith

make the additions, renovations, and alterations on the Garrison School site for the Parent Center, and to equip the same for school purposes. The approximate cost of such work is \$80,000.00, and the Defendant shall have the authority to issue bonds as approved by this Order for said purposes.

13. Defendant is granted leave and is directed to forthwith acquire the necessary computer hardware, systems and software programs for computerized data systems for student enrollment, transfers, and transportation, and for budget and expenditure analysis for school purposes. The approximate cost of such work is \$2,368,378.00, and the Defendant shall have the authority to issue bonds as approved by this Order for said purposes.

*3 14. Defendant is granted leave and is directed to forthwith make the additions, renovations, and alterations on the Roosevelt School, and to equip the same for school purposes. The approximate cost of such work is \$2,900,000.00, and the Defendant shall have the authority to issue bonds as approved by this Order for said purposes.

15. The Defendant is further given leave and is directed to issue said bonds, to employ counsel necessary for the issuance of said bonds, to pay for the cost of the issuance of said bonds and to pay the underwriting fees for the same. The entire amount of bonds to be sold pursuant to this Order shall be fifteen million dollars (\$15,000,000.00), including costs and fees and the expenditure of the proceeds of said bonds shall be subject to the jurisdiction and supervision of this Court. Said amount includes the amounts set forth in finding 8–14, *infra.*, plus architectural fees, construction contingency amounts, bond and underwriting fees. It is reasonably anticipated by this Court and by the Defendant that said bonds, while being issued on a timetable submitted by the Defendant to this Court for approval, will no doubt result in the sale of all of said bonds within a short period of time. It is further reasonably anticipated by this Court and by the Defendant that said bond sale proceeds will be expended during the periods set forth in and in compliance with the provisions of Sections 148(f)(4)(C)(iv)(II) and (III) of the Internal Revenue Code of 1986 (the "*Internal Revenue Code*"). In addition, it is reasonably anticipated by this Court and by the Defendant that at least 75 percent (75%) of the net proceeds of said issue are to be used for construction expenditures with respect to property which is owned by the Defendant as required by Section 148(f)(4)(C)(iv)(IV) of the *Internal Revenue Code*. Any unanticipated delays in selecting and acquiring title to sites, delays in ordering equipment and material, and the inherent delays of architectural surveys, approvals, drawings or the bid letting of public contracts which may require time in excess of any such periods or a lesser percentage amount of construction expenditures shall not in any way

whatsoever make inapplicable to the Defendant the exception as set forth in Section 148(f)(4)(C)(iv) of the *Internal Revenue Code*.

16. The Defendant is granted leave to raise sufficient funds for the other remedial action specified hereinabove and as set forth in this Court's Second Interim Order through *ad valorem* tax rates of the Tort Immunity Fund. A preliminary analysis of said costs is more fully set forth in Defendant's Progress Report filed with the Court on August 22, 1991, (to the extent such costs can presently be reasonably estimated).

17. This Court further finds that the relief granted herein

shall not impede, delay, or interfere with any other of the obligations of the Defendant as may be required by further orders of this Court in the implementation of the Second Interim Order, either by agreement between the parties or as determined as necessary by this Court.

*4 18. This Court shall retain jurisdiction to enforce the terms and conditions of this Order. The Defendant shall file, within forty-five (45) days, a plan of implementation of this Order with precise cost estimates and scheduling of its obligations ordered herein.