

Hodges Loizzi Eisenhammer Rodick & Kohn LLP

Steven M. Richart
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May 27, 2010

Via Electronic Mail

Ms. Therese O'Neill
Oak Park Elementary School District No. 97
970 Madison St.
Oak Park, IL 60302-4430

Re: Resolution Authorizing Transfer of Interest

Dear Therese:

Please find enclosed a Resolution Authorizing the Transfer of Interest Income to the Educational Fund. Per your request, we left the resolution with blanks for you to identify the appropriate funds from which interest is being transferred.

Section 10-22.44 of the *School Code* authorizes school boards:

[t]o transfer interest earned from any moneys of the district in the respective fund of the district that is most in need of such interest income, as determined by the board...[except] interest earned which has been earmarked or restricted by the board for a designated purpose...[or] earned on funds for purposes of [IMRF], [Tort Immunity], [Fire, Safety, Energy Conservation and School Security] and Capital Improvements under Section 17-2.3. Interest earned on these exempted funds shall be used only for the purposes authorized for the respective exempted funds from which the interest earnings were derived.

Please make sure the interest to be transferred does not represent interest earned on any of the exempted funds listed in 10-22.44 (i.e., the District's IMRF, Tort Immunity, Fire Prevention and Safety and Capital Projects Funds). Also, if the interest represents interest on bond proceeds or proceeds of bond levies, you may wish to consult with bond counsel to determine whether the authorizing bond resolution(s) restrict the transfer of such interest. In any event, you must ensure that the interest to be transferred has not been earmarked or restricted for a designated purpose by Board resolution or other means.

Please note that the DuPage trial court recently issued a non-precedential ruling, in *100 Lake LLC v. Novak*, 2000 TO 1 to 10, finding that interest in a school district's Bond and Interest Fund had been "earmarked" by the Board simply by virtue of the Board not having included the interest transfer in its annual budget. To avoid any risk of such a result, the District's budget should include the interest transfer and/or the District should adopt an amended budget.

Assuming the District has complied with the conditions stated in this letter, and the interest earnings do not fall into any of the excepted categories in 10-22.44, interest may be transferred to the "fund most in need" as determined by the Board, including, but not limited to, the Educational Fund.

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If you have any questions regarding the enclosed Resolution, please do not hesitate to call.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP



Steven M. Richart

SMR/jah

Enclosures

183592_1.DOC

**RESOLUTION AUTHORIZING THE TRANSFER OF INTEREST INCOME FROM THE
_____ FUND(S) TO THE EDUCATIONAL FUND**

WHEREAS, pursuant to Section 10-22.44 of *The School Code* (105 ILCS 5/10-22.44), the Board of Education of Oak Park School District No. 97, Cook County, Illinois (“School District”), is empowered to transfer interest earned from any moneys of the School District to the fund of the School District that is most in need of such interest income, as determined by the Board; and

WHEREAS, such transfer authority does not apply to any interest earned which has been earmarked or restricted by the Board for a designated purpose, and further does not apply to any interest earned on any funds for purposes of Illinois Municipal Retirement under the *Pension Code* [40 ILCS 5/1-101 et seq.], Tort Immunity under the *Local Governmental and Governmental Employees Tort Immunity Act* [745 ILCS 10/1-101 et seq.], Fire Prevention, Safety, Energy Conservation and School Security Purposes under Section 17-2.11 [105 ILCS 5/17-2.11], and Capital Improvements under Section 17-2.3 [105 ILCS 5/17-2.3], the interest on which funds may be used only for the purposes authorized for such exempted funds

WHEREAS, the School District has interest money in its _____ Fund(s) which has not been earmarked or restricted by the Board for a designated purpose, and which does not constitute interest earned on any of the enumerated, exempted funds in the foregoing paragraph; and

WHEREAS, the Board of Education finds and determines that the Educational Fund is most in need of interest income earned from monies in the _____ Fund(s); and

WHEREAS, the Board of Education finds and determines that it is in the best interests of the School District to transfer unrestricted and not otherwise earmarked interest earned from money in the _____ Fund(s) to the Educational Fund.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Oak Park School District No. 97, Cook County, Illinois, as follows:

Section 1: The Preamble above is hereby incorporated into the body of this Resolution.

Section 2: Interest earned from money in the _____ Fund(s) in the amount of _____ Dollars and ___/100 (\$ _____), which is not earmarked, restricted or otherwise exempted, shall be transferred to the Educational Fund;

Section 3: The Treasurer is directed to transfer such interest from the _____ Fund(s) to the Educational Fund; and

Section 4: This Resolution shall be in full force and effect immediately upon its adoption.

ADOPTED this _____ day of _____, 2010, by the following roll call vote:

AYE:

NAY:

ABSENT:

President, Board of Education

ATTEST:

Secretary, Board of Education