Illinois School Finance - A Primer

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Article X, section 1, of the Illinois Constitution of 1970 mandates the creation of a free system of public schools through the secondary level.¹ To carry out this constitutional mandate, the Illinois General Assembly has created school districts. As creatures of the legislature, school districts’ boundaries may be altered or districts abolished. School district property may be transferred to other school districts or their facilities totally eliminated. The methods of school governance may be altered. The legislature may compel these and other changes in school operations without the consent of the residents of the school district subject to few constitutional restraints.² School finance, as all school governance, is also a creature of the legislature. Further limitations on the school districts’ powers are stated in the Illinois Constitution of 1970, article VII, section 8, which provides: "[S]chool districts . . . which exercise limited governmental powers in respect to limited governmental subjects . . . shall have only powers as granted by law."³

In interpreting school legislation, the courts often apply “Dillon’s rule,” that is, “when in doubt as to whether a given power exists, the court will deny the power.”⁴ In light of legislative, constitutional, and court doctrine on limited school board authority, it is surprising the.

¹ ILL. CONST. art. X, § 1.
² See Pritchett v. County Bd. of School Trustees, 5 Ill. 2d 356, 125 N.E.2d 476 (1955); Community Unit School Dist. No. 6 v. County Bd. of School Trustees, 9 Ill. App. 2d 116, 132 N.E.2d 584 (1956). ILL. REV. STAT. ch. 85, § 2201 (1977) requires that the state must pay for state imposed mandates and create an administrative review process to hear appeals from local governments for the state’s failure to do so.
³ ILL. CONST. art. VII, § 8.
⁴ Dillon’s rule states that unless there is a specific statute or state constitutional provision granting a local governmental unit a specific power, the exercise of that power will not be allowed by the courts. J. DILLON, MUNICIPAL CORPORATIONS 448 (5th ed. 1911); cf. Goedde v. Community Unit School Dist. No. 7, 21 Ill. App. 2d 79, 157 N.E.2d 266 (1959); Illinois Educ. Ass’n v. Board of Educ., 62 Ill. 2d 127, 340 N.E.2d 7 (1975). Compare ILL. REV. STAT. ch. 122, § 103-30 (1977) which reverses Dillon’s rule in reference to community colleges.
extent of discretion that the approximately 1,000 Illinois school districts exercise over vast sums of money. In legal theory, the state controls a school board’s exercise of authority, including its power over financial matters and that power is limited. In practice, the legislature and courts have allowed school districts to exercise extensive discretionary powers over revenue and expenditures. The dichotomy between legal theory and practice has developed because school districts have political strength and dedicated school board members, and there is a strong philosophic belief in local control.

This article will describe and analyze the financial system through which federal, state, and local funds flow to school districts and the legal tools and means by which school boards manage their revenue. After this survey of practice, procedure, and law, some conclusions will be drawn as to the efficiency and usefulness of the system.

THE SOURCES OF SCHOOL DISTRICT REVENUE

Federal Government Funding

Education has been considered a local responsibility since the origin of the United States. The federal Constitution contains no grant of power to the United States to legislate on educational matters. Education is within the scope of the police powers and left to governance by the states. The federal role in financing elementary and secondary schools was minimal until recent years, except for the Smith-Hughes Act for Vocational Education and the National Defense Educational Act. The enactment of the Elementary and Secondary Education Act of 1965 thrust the federal government into the financing of elementary and secondary schools. Other important federal laws are the Education of All Handicapped Children Act of 1975 and the Rehabilitation Act of 1973. The right of the federal government to enact educational legislation, premised upon implied powers in the commerce clause, the taxation clause, or the general welfare clause of the federal Constitu-

5. Twenty and one-tenth percent of the total state budget for fiscal 1980, or $2.685 billion, was distributed to common schools. J. Witkowski & J. Cronin, State, Local, and Federal Financing for Illinois Public Schools 2-4 (1978) [hereinafter cited as Witkowski & Cronin].
7. Id. §§ 821-900 (current version at 20 U.S.C.A. §§ 2701-3389 (Supp. 1979)).
8. Id. §§ 1401-1461.
tion, seems to be no longer a disputed legal issue.\textsuperscript{10} Federal education assistance is now a fact of school financial life. It now constitutes about nine percent of Illinois school revenue.

Federal aid to education is usually in the form of categorical aid, or a legislative appropriation to fund specific federal programs. School districts receive funding if they adopt the federal program or comply with federal standards in operating a state or local program. Federal funding generally does not provide open-ended resources to meet general educational concerns.\textsuperscript{11} It is the school district's most restrictive source of revenue,\textsuperscript{12} as contrasted to the great bulk of state aid which is general educational funding.

Federal legislation which does not deal with schools per se also has a significant impact upon school districts. The Fair Labor Standards Act of 1938,\textsuperscript{13} the Equal Employment Opportunity Act of 1972,\textsuperscript{14} and the Civil Rights Act of 1964\textsuperscript{15} are some of the most important general purpose federal laws that directly affect the finances of public school districts. If Congress places school districts under a federal labor law, there will be additional significant impact upon school finances as well as personnel policies.

Although federal aid to education has a high public visibility, it is state and local revenue that furnishes the majority of the public schools' financial support.

\textit{State Government Funding}

In accordance with its constitutional mandate, Illinois provides

\textsuperscript{10} See generally Helvering v. Davis, 301 U.S. 619, 640 (1937) (Congress may tax and spend for the general welfare); U.S. CONST. art. I, § 8, cls. 1, 3.

\textsuperscript{11} The total federal dollars appropriated for education programs in Illinois during fiscal 1978-79 was $411,395,567. WITKOWSKY \& CRONIN, \textit{supra} note 5, at 37. These funds were spent primarily through the Elementary and Secondary Education Act, 20 U.S.C. §§ 236 to 241-1 (1976). See Education Amendments of 1978, Pub. L. No. 95-561, §§ 126(a), (c), (d), (e), 92 Stat. 2168-70 (1978) (amending 20 U.S.C. §§ 821-900 (1976)). Categorical aid was given to the school food services, vocational education, Emergency School Assistance Act, regional deaf-blind education, environmental education, community education, metric education, consumer education, child abuse and neglect services, career educational opportunity regional resources center, career education area service centers, bilingual/bicultural education, and special education. WITKOWSKY \& CRONIN, \textit{supra} note 5, at 15-36. Between 1966 and 1978, the percentage of federal moneys received by Illinois public schools rose from 6.07 percent to 9.33 percent. This percentage dropped to 8.88 percent, however, for the fiscal year 1978-79. \textit{Id.} at 4.

\textsuperscript{12} See \textit{In re Proposal C,} 384 Mich. 390, 185 N.W.2d 9 (1971) where the court stated: "[F]ederal funds do not become public moneys . . . [they] are impressed with a trust and must be used . . . for the purpose for which the funds were granted." See also Shepheard v. Godwin, 280 F. Supp. 869 (E.D. Va. 1968).


\textsuperscript{14} 42 id. § 2000e.

\textsuperscript{15} \textit{Id.} §§ 2000c to 2000d-6.
significant financial assistance to school districts. In the school year 1971-72, for example, the state provided approximately forty percent of school district budgets. By fiscal 1977, forty-seven percent of school district revenue was from state funds. However, the drop in student population and the effects of inflation causing an increase in assessed valuation of local property has caused state aid to drop in 1978-79 to forty percent from the state. The governor’s budget for 1979 education indicates that state aid is fifty-three percent, but that calculates the corporate personal property tax replacement as part of the state aid. It can be argued, however, that this aid simply replaced funds that school districts formerly received from personal property in their districts and should not be counted as state aid. In this latter calculation, state aid would be about forty-three percent.

State support for the public schools is provided through a yearly legislative appropriation primarily to the common school fund, and also from the General Revenue Fund, the Federal Fiscal Assistance Trust Fund, and the Personal Property Tax Replacement Fund. State revenue is generated primarily from the retailers’ occupation and use tax (sales tax) and the state income tax. Individual school districts receive state aid from the common school fund by submitting a certified claim by June 20th of each year to their regional superintendent who transmits the claim to the state board of education. The state board of education approves the claims and submits vouchers to the state comptroller for payment. The state comptroller draws warrants upon the state treasury for the common school fund which are payable by the state treasurer to the regional superintendent in semi-monthly installments. The regional superintendent then distributes the funds to the local school district. If the state aid claims of school districts exceed the money available in the common school fund, the state board of educa-

16. See Ill. Const. art. X, § 1. WITKOWSKY & CRONIN, supra note 5, at 1. Under the governor’s budget for 1978-79, there was $5.1 billion for school aid, $2.4 billion or forty-seven percent from local sources, $2.7 billion from the state or fifty-three percent, and $0.5 billion from federal bids or ten percent. Under state department of education figures, total aid was $4.8 billion with $2.2 billion or forty-six percent from local funds, $2.1 billion or forty-four percent from the state (discounting the personal property tax replacement), and $0.4 billion or 8.5 percent from federal sources.

17. In fiscal year 1972-73, seventy cents out of every dollar of state aid went for general aid; five cents for urban aid; two cents for transportation; seven cents for special education; thirteen cents for teacher retirement and operations of the regional superintendent’s office; and three cents for gifted, bilingual, adult education, driver education, and breakfast and lunch programs. See Finance Task Force, Governor’s Commission on Schools, A New Design: Financing for Effective Education in Illinois 35 (1972) [hereinafter cited as A New Design].


19. Id. ch. 122, § 18-11.
The State of Illinois began to offer financial assistance to school districts in 1825 when the legislature authorized the appropriation of $2 for school purposes out of every $100 paid into the state treasury. In 1923, George D. Strayer and Robert M. Haig devised a mathematical formula to embody a state government's policy determination as to the distribution of state aid to public school districts. The Strayer-Haig state aid formula was adopted in Illinois in 1927. The formula is the mathematical equivalency of the state's policy determination on state educational fund distribution. Its theoretical purpose is to enable the distribution of state funds in such a manner and amount as to enable public schools by a combination of state and local funding to support an adequate educational program. The state aid formula requires the school district to levy a minimum tax or qualifying rate. It embodies a foundation level, which is the minimum level of educational support per pupil required for each child to receive an adequate education. The foundation level in 1927 was $34 per pupil. Today, under Strayer-Haig, it varies from $520 per pupil for elementary school districts to a higher sum for high school and unit districts depending upon weighting. Weighting is a term used for factors which provide for different funding levels for pupils with differing needs, thus modifying the foundation level. In 1973, an alternate funding formula, the resource equalizer state aid formula, was adopted. This formula weighs pupils differently and guarantees minimal level of support in another manner.

The state aid formulas generally relate the amount of state funding for education in part to the school district's tax levy and its assessed valuation or wealth. School districts are geographic areas. Within their boundaries is real estate upon which is placed an assessed valuation for tax purposes by the local tax assessor applying the state equalization rate.

20. *Id.* § 18-8(9). A board of education has no legal right to state aid; it is a discretionary legislative grant. Cronin v. Lindberg, 66 Ill. 2d 47, 360 N.E.2d 360 (1976).

21. The school districts were "empowered to levy a maximum annual school tax of $10 per person; payable in cash or in merchantable produce." REPORT OF THE CITIZENS COMMISSION ON SCHOOL FINANCE, presented to the State Board of Education, Springfield, Illinois (July 14, 1977) [hereinafter cited as REPORT OF THE CITIZENS COMMISSION].

22. The formula, or some variant of it, was widely adopted by many states throughout the nation at about the same period of time.


24. The assessed valuation per district varies considerably. In October 1971, the assessed valuation per pupil in elementary districts ranged from $355,386 to $4,917; in secondary school districts from $231,331 to $24,219; and in unit districts from $103,670 to $3,481. Circular Series A
larger assessed valuation than other school districts which are not so blessed, assuming the number of pupils is similar. A wealthy district's real estate tax levy produces more income than the same tax levied against the assessed valuation of a poorer district.\textsuperscript{25} It is the wealth of the district as a factor in the state aid formula that is the basis for equal protection litigation on school financing.\textsuperscript{26}

The state aid formulas also factor in their calculations the number of pupils in attendance. Attendance of pupils is averaged for the district's best six month attendance period. The number of students in attendance are considered in the formula's calculations as ciphers. The process of accounting for students by average daily attendance and in cipher form is referred to as the "weighted average daily attendance." By weighting students, the legislature provides for different funding levels. Thus, each high school student is counted, or weighted, for purposes of the state aid formula, as 1.25 pupils. Similarly, a kindergarten student is weighed as .50 pupil.\textsuperscript{27} These factors are then used to calculate the amount of state aid which the school district will receive. Under Strayer-Haig, the state calculates whether the tax rate of a school district levied upon its assessed valuation would produce sufficient revenues per student to equal the foundation level. If the school district's revenue is below the foundation level, then state aid is granted to bring the school district's educational spending up to the foundation level. If the school district's revenue exceeds the foundation level, however, it receives minimal state aid. This description of the formula is oversimplified and, therefore, not completely accurate. However, the description at least conveys how the state aid formula is applied without discussing the many complex factors involved in the calculation.

The original Strayer-Haig formula and to a lesser extent the resource equalizer formula have been complicated, manipulated, twisted, added to, and subtracted from by a succession of legislatures because of various and conflicting political forces. The result of this endless tinkering is a calculation process that is difficult and one that does not always result in equity between school districts.

The public focus on school finance reform led to the passage in

No. 293, issued by the Division of Research, Planning and Development, Office of Superintendent of Public Instruction (October 1971).


1973 of an alternative state aid formula called the resource equalizer. The resource equalizer formula did not radically alter the way state aid is calculated. This formula has several factors in common with the Strayer-Haig formula: (1) aid is based on weighted average daily attendance; (2) pupils are weighted, reflecting different grades; (3) pupils from districts with low income families are given additional weighting; and (4) qualifying tax rates are required to receive state aid. The major difference in the two formulas is the treatment of assessed valuation. Under the Strayer-Haig formula, the school district's assessed valuation is a significant factor in determining the amount of aid. Under the resource equalizer formula, the state seeks to offset the effect of school district wealth by guaranteeing in the formula that each type of school district shall have a minimal assessed valuation based on the type of school district. Elementary districts are guaranteed $70,430 assessed valuation; high school districts, $124,762 assessed valuation; and unit districts, $46,290 assessed valuation. Again, a simplified version of the formula will illustrate how it is calculated. The number of pupils is calculated, they are weighted, and the guaranteed equalized assessed valuation per pupil of the school district is calculated. There is a deduction for the district's actual assessed valuation. The difference between the assessed valuation figures is multiplied by the operating tax rate and the product of this calculation is multiplied by the school district's weighted pupil count. The complex mathematical provisions of the formula are not described in this illustration.

The resource equalizer formula, while narrowing the gap in funding between relatively wealthy and relatively poor districts, has not brought about equalization of expenditures between school districts. It has become, since its initiation, the predominant method by which school districts have elected to receive their state aid. Ninety-eight percent of all state school aid is now apportioned through the resource

31. Id. §§ 18-8(8), 18-8(9)(a).
equalizer formula.34

State aid is also provided through categorical support for specific types of educational programs. The major categorical aids are special education, bilingual education, vocational education, drivers' education, school food services, textbook aid, adult education, and transportation. Categorical grants represent a continually growing proportion of all state education aid, particularly with increased aid to transportation and special education.35

Local School District Funding from Property Taxes

Local taxes are the most significant source of school district revenue, although as a percentage of total revenue, it has been slowly declining. More than ninety percent of local tax revenue is raised through the real estate property tax.36 A brief discussion of its advantages and disadvantages as a revenue source is warranted.

The major disadvantage of the property tax is its visibility. School district taxes are the largest part of the homeowner's real estate tax bill. The taxpayers are aware of educational expenditures because a school district must publish an annual statement of affairs showing assets, liabilities, and fund balances. Expenditures are reported in the local press. Income taxes, by contrast, are deducted from each pay check and are not visible in a lump sum. The property tax is also the only major tax upon which the taxpayer can cast a vote. Resentment against all taxes can be expressed in a negative vote on a school tax referendum.

The property tax does have advantages. It does not fluctuate with the economy in the same manner as income and sales taxes. The ready availability of expenditure information and the ability to protest should make local officials more responsible to their constituencies than state and federal officials. Local funding means more effective local control

34. In fiscal 1978-79, twenty-four percent of the state's school districts claimed aid under the Strayer-Haig formula. These districts received only two percent of the total state aid. School districts receiving aid under the Strayer-Haig formula have increased. In fiscal 1977-78, 165 out of the state's 1,025 school districts used the Strayer-Haig formula, receiving one percent of the general state aid distributed. WITKOWSKY & CRONIN, supra note 5, at 9.

35. In 1973, categorical aid was 18.2 percent of assistance; it increased to 26.4 percent in 1977. REPORT OF THE CITIZENS COMMISSION, supra note 21, at 16. Categorical aid was thirty-seven percent of aid in 1979-80.

36. WITKOWSKY & CRONIN, supra note 5, at 4. In fiscal 1972-73, local school districts produced 57.2 percent of their school revenues; the state produced 36.7 percent; and the federal government produced 6.1 percent. The figures for 1977-78 were 46.3 percent or $2.1 billion for local school districts; 44 percent or $2 billion for the state; and 9.3 percent or $429.8 million from the government.
over the school district. If the state fully funded public schools, public education would be forced deeper into the vortex of conflicting political demands on state revenue. Local school boards, without control of their revenue, would become functionaries of the state—responsive to broader state issues rather than their local concerns.³⁷ While there is much justified criticism of local government, many observers believe that it offers a more responsive and responsible form of governance for local problems.

*Additional School Revenues by Referendum*

All school districts levy a minimum tax, without voter approval.³⁸ The public may authorize the school board to increase the minimum taxes to a statutory maximum.³⁹ A referendum to increase taxes is initiated by a school board resolution which sets out the present tax rate, the proposed rate, the assessed valuation of the school district, and the proposed income to be raised by the new tax rate. There must be publication of the date of the election, and a description of the precincts, polling places, the time of opening and closing of the polls, and the form of the ballot.⁴⁰ The school board acts as the election body to canvass the election returns within ten days after the election and declares the results.⁴¹ The tax rate must be approved by a majority of the votes cast on the proposition.⁴² This election process will be changed when the new consolidated elections law becomes effective in Illinois.⁴³

*Investment Income*

School districts must invest their funds, in a statutorily approved manner at prevailing rates, but no funds need be invested if needed for expenditures within thirty days. In class II county school units (Cook County school districts), the custody of school funds is vested in the township treasurer.⁴⁴ In class I school units, custody of the funds is

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³⁷. See *A New Design*, supra note 17, at 3 which states: "Any attempt to rationalize the organization, administration and financing of a State and local public service system faces the fundamental obstacle erected by this nation's history of an uneasy balance between centralization and decentralization of government."


³⁹. Id. § 17-3; see id. §§ 17-4, 17-5, 103-14; cf. id. ch. 37, § 53.1 (for cities over 500,000, a referendum is not needed). Similar rules apply with regard to community colleges. Id. ch. 122, § 103-14.

⁴⁰. Id. §§ 9-11 (cities under 500,000), 103-7.11 (community colleges).

⁴¹. Id. §§ 9-18 (cities under 500,000), 103-7.17 (community colleges).

⁴². Id. §§ 17-3, 3.1.

⁴³. See note 81 infra and accompanying text.

⁴⁴. Illinois School Code class II county school units are those having 1,000,000 or more in-
vested in the school board treasurer.

Section 10-22.44, recently enacted, liberalized the use of interest earned on funds. It permits the:

deposit of the 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. This Section does not apply to any interest earned which has been earmarked or restricted by the board or by law for a designated purpose.45

The school board should annually adopt a resolution indicating what funds are most in need of interest income, and authorizing the transfer of interest in a specific amount to the funds in need. The funds presently restricted for interest usage are the working cash fund, the site and construction fund, and the special education building fund.

The types of investments which can be made by the school board treasurer are limited by statute.46 Investments of school funds may be in obligations backed by the Federal National Mortgage Association and federally-insured savings and loan associations. Funds may be placed in time deposits or certificates of deposit in banks insured by the Federal Deposit Insurance Corporation.47 Treasury bills may be purchased by school districts. Funds may also be placed in the public treasurer investment pool. Common stocks may not be purchased nor may investments be made in real estate. The treasurer of the school may also make investments such as loans secured by a mortgage or other security if the value of the security is at least fifty percent greater than the loan. High grade commercial paper may also be purchased. A depository of school funds must collateralize school deposits by depositing with the school treasurer securities and mortgages equal in market value to the amount deposited.48

Gifts—Replacement Tax Revenue—Rental of School Buildings

A school district may receive gifts and donations. In recent years, an increasing source of revenue has been gifts of land49 and moneys

habitants. ILL. REV. STAT. ch. 122, § 5-1 (1977). Class I county school units are those having a population of less than 1,000,000. In these districts, the school board appoints the treasurer. Id. § 8-1. Section 8-1 provides that in class II county school units, the trustees of schools appoint the treasurer. All treasurers must execute a bond. Id. § 8-2. His duties are to keep school funds invested, issue an annual statement, and pay out funds upon the order of the school board. Id. §§ 8-9, 8-14, 8-16.

45. Id. § 10-22.44.
46. Id. ch. 85, § 801.
47. Deposits in any bank must not exceed seventy-five percent of the bank’s capital stock and surplus. Id. ch. 122, § 8-7.
48. Id.
49. See id. § 16-1.
from builders and developers under municipal building contribution ordinances.\textsuperscript{50}

Effective January 1980, the Illinois General Assembly enacted a tax on corporations that replaced the personal property tax. That law does not simply replace the tax. It gave school districts revenue—but with strings. The law requires that a school district allocate a certain percentage of the personal property tax replacement funds to the retirement on bonded indebtedness incurred prior to January 1, 1979, and for reduction of the district’s pension or retirement obligations. The county clerk is required to abate the amount of the bond and interest tax levy by the percentage that the respective levy for 1978 personal property taxes, payable in 1979, bore to real property taxes.

The law requiring the school board to allocate certain of these funds for pension retirement purposes includes both Illinois municipal retirement funds and board-paid teacher retirement if such was in existence on December 31, 1978. As with retirement of bonds, the district must allocate from the corporate personal property tax payments that portion of the payments for pension and retirement purposes which was previously levied and extended against personal property in the school district. After these obligations have been met, the remaining proceeds of this tax can be used in whatever manner best suits the needs of the district.\textsuperscript{51}

Under section 10-22.11 of the Illinois School Code, school boards may lease unnecessary school property. Customarily, school lawyers have opined that the rental charge may not exceed sums necessary to meet the reasonable costs of the school district including depreciation, insurance, and upkeep. Most conservative opinions have been that rental income cannot be fair market rental or the school districts would be in a commercial business and would jeopardize their tax exempt status.\textsuperscript{52}

\section*{The Nuts and Bolts of School Board Financial Operations}

\textit{The School Budget}

The annual school budget serves as an important instrument of fiscal control and is the legal basis for revenue and expenditures. It is


\textsuperscript{51} ILL. REV. STAT. ch. 120, § 1401 (1977) abolishes the \textit{ad valorem} personal property tax and replaces the revenues lost with a tax on individuals and corporations.

\textsuperscript{52} \textit{Id.} ch. 122, § 10-22.11. For an opinion to the contrary, see unpublished letter from Assistant Legal Advisor, State Department of Education, dated March 15, 1979 (on file with author).
the school board’s fiscal plan to meet the annual educational needs of
the district. The budget must furnish taxpayers with information as
to the amount available for expenditures for which no levy is needed
and the amount necessary for expenditures for which a levy must be
made. The school budget contains a statement of cash on hand, an
estimate of anticipated receipts, an estimate of anticipated expendi-
tures, and an estimate of the balance which will exist at the end of the
fiscal year. It is a forecast of the school district’s cost of operation and
income.

The budget must state the school district’s proposed expenditures
and revenue and clearly set forth the objects and purposes of all items
and their amounts. The purposes of the expenditures or revenues are
classified generally, e.g., educational, operations, building, and mainte-
nance, transportation, and the like. The budget items must be itemized.
For example, a school board’s budget which sets forth proposed ex-
penditures for administrative salaries must reflect a breakdown as to
salaries for administrators, teachers, service personnel, and contractual
services and travel. Similarly, if revenue is expected from an adult edu-
cation program, the budget must contain an itemization of the revenue,
\textit{i.e.}, textbook rental or sales, tuition, and the like. The courts have held
that itemization in a school budget is to be given a practical and com-
mon sense construction, not a technical one. To satisfy the itemiza-
tion requirement, a school board need not state in the budget each
particular purpose for which a tax is levied or funds expended if the
purpose of the expenditure can be determined from the general
designation.

The school budget is prepared on a form furnished by the Finance
and Claims Section of the Illinois State Board of Education. The
budget is broken down into the various funds required by the Illinois
School Code. The educational fund is a general fund; all expenses not
\begin{itemize}
\item[53.] The budget of all Illinois school districts having less than 500,000 inhabitants are gov-
erned by ILL. REV. STAT. ch. 122, § 17-1 (1977). Note that section 17-1 requires that by fiscal year
1982 all school districts must use the Program Budget Accounting System. Each city having a
population of 500,000 or more constitutes one school district, \textit{id.} §§ 34-1, 34-2, whose budget is
governed by the Illinois School Code, \textit{id.} §§ 34-42 (cities over 500,000), \textit{id.} §§ 103-20 to 103-20.2
(community colleges). \textit{See id.} § 107-8. Article 8 (Finance) of the 1970 Illinois Constitution sec-
tion 1(b) provides that school districts shall incur obligations for payment or make payments from
public funds only as authorized by law or ordinance. Section 34-49 of the Illinois School Code
applicable to the Chicago Board of Education states the same thing. Although there is no specific
provision applying to other school districts, the conservative position is that there must be a
budget item to authorize all expenditures.
\item[54.] Illinois v. Siebel, 388 Ill. 98, 106, 57 N.E.2d 378, 381 (1944). \textit{See also} Illinois \textit{ex rel.}
\item[55.] Illinois \textit{ex rel.} Toman \textit{v. Belmont Radio Corp.}, 388 Ill. 11, 16, 57 N.E.2d 479, 481 (1944).
\end{itemize}
payable from other funds are payable from it. The other important funds are the operations, building, and maintenance fund; bond and interest fund; transportation fund; municipal retirement fund; and working cash fund. Each of these funds corresponds to specific tax levies which are made for that fund. Each fund must include breakdowns of receipts expected from the levy, other revenue, and the expected disbursements. The budget may also contain a contingent or miscellaneous expense fund, but this fund cannot be used for fund accumulation or for speculative contingencies. Finally, the budget must summarize the total receipts and revenues, disbursements and expenditures, and be in balance.

All boards of education must adopt their budgets within or before the first quarter of each fiscal year and most typically do so before the tax levy is filed. They also must adopt a fiscal year. By custom and usage (although not by law), virtually all school boards having fewer than 500,000 inhabitants adopt the fiscal year July 1 through June 30. The fiscal year is customarily adopted at the same school board meeting at which the budget is adopted.

A school board must prepare its budget in tentative form and make it available for convenient public inspection at least thirty days prior to adoption. The board must publish notice of the availability of the budget for public inspection and the date and time of public hearing on the budget. This notice must be placed in a newspaper published in the school district at least thirty days prior to the public hear-

56. Ill. Rev. Stat. ch. 122, §§ 17-1, 103-20, 34-42.1 (1977). The categories are as follows: educational fund (id. § 17-2); operational, building, and maintenance fund (id. § 17-2); bond and interest fund (id. §§ 17-9, 19-1); transportation fund (id. §§ 17-2(5), 17-4, 17-8); municipal retirement fund (id. ch. 108 1/2, § 7-171); working cash fund (id. § 20-3); tort community insurance fund (id. ch. 85, § 9-107); fire prevention and safety fund (id. § 17-2.11); community college tuition fund (id. §§ 106-1); summer school fund (id. § 17-2.1); and rent fund (id. § 35-23). Under the principles of fund accounting, resources for various purposes are classified into funds in accordance with activities. Each fund has a self-balancing set of accounts showing assets, liabilities, and a balance. The amount in each fund must be reasonably necessary to meet expected expenditures. See Illinois ex rel. Goodman v. Wabash R.R., 395 Ill. 520, 70 N.E.2d 718 (1946); Matthews v. City of Chicago, 342 Ill. 120, 174 N.E. 35 (1930).


58. Budgets for all other boards of education must be adopted within the first quarter of the fiscal year. Ill. Rev. Stat. ch. 122, § 17-1 (1977) (districts under 500,000); id. § 103-20.1 (community colleges). The budgets for boards of education in school districts having a population of 500,000 or more must be adopted within the first sixty days of each fiscal year. Id. §§ 34-42 to 42.3.

59. Id. § 17-1 (districts under 500,000); id. § 103-20.1 (community colleges). The fiscal year for boards of education in school districts with 500,000 or more inhabitants is September 1 to August 31. Id. § 34-42.3.

60. Id. § 17-1 (districts under 500,000); id. § 103-20.1 (community colleges). In districts having 500,000 or more inhabitants, the inspection period is ten days. Id. § 34-46.
If no newspaper is published in the school district, the board must give notice by posting a notice of the public hearing in five of the most public places in the school district. Traditionally, most school districts schedule the public hearing on the budget immediately before or during a school board meeting in which the budget is to be adopted. They hold the public hearing (and make whatever budget changes are deemed necessary) and then adjourn the meeting sine die. The school board meeting is then convened and the budget is adopted by a roll call vote of the majority of the quorum.

A school board may amend its budget by following the same procedure used for its adoption, that is, by publication of the availability of the amended budget and notice of a public hearing. Supplemental budgets may be adopted in the same fashion. Usually, a supplemental budget is adopted after the budget is adopted and the tax levy has been filed if a referendum is passed authorizing an increase in the tax rate.

A school district is required to have an annual audit, by a public accountant, by June 30. The audit must be submitted to the regional superintendent before October 15 of each year. Failure to comply with this provision will subject the school district to an audit by the regional superintendent at the expense of the school district.

The Levy

The annual tax levy is customarily authorized by a school board resolution after the budget is adopted. The levy must be filed annually with the county clerk authorizing the clerk to extend the taxes upon the tax rolls. The school board passes a resolution authorizing the tax levy for the education fund and operations, building, and maintenance fund, as well as other funds. A separate resolution is passed authorizing the tax levy for the fire prevention and safety fund, and for special education building purposes. The county clerk extends the tax for the bond and interest fund after receipt of a bond resolution and does so automatically thereafter until maturity of the bond issue.

61. Id. § 17-1 (districts under 500,000); id. § 103-20.1 (community colleges). Section 34-46 provides for publication of the budget notice in a newspaper having general circulation in the city one week prior to hearing. Id. § 34-46.

62. The budget resolution must be adopted by a yea and nay vote. This means a vote by individual board members, not a vote recording all present members voted yea and none voted nay. Id. §§ 20-3 (working cash fund); 17-2.11 (fire prevention and safety fund); 10-22.31b (Illinois municipal retirement fund); ch. 108 1/2, § 1-17 (special education building purposes).

63. Id. ch. 122, §§ 17-3.2 (districts under 500,000); 103-20.2 (community colleges); 34-54 (districts over 500,000).

64. Id. § 3-7; id. § 103-22.1 (community colleges); id. § 34-79 (annual account of treasurer).
The form of the certificate of tax levy is prescribed by the statute. The county clerk calculates the amount of taxes which must be extended based upon the dollars requested by the school district and determines the tax rate necessary to meet that request, subject to the maximum rate authorized under the Illinois School Code. The certificate of tax levy for school districts located in counties which have a population of fewer than 1,000,000 must be filed with the county clerk on or before the last Tuesday in December. In school districts with a population of less than 500,000 which are located in counties of 1,000,000 or more (Cook County), the certificate of levy must be filed annually with the county clerk on or before the last Tuesday in September.

The adoption of a budget is not a condition precedent to filing a tax levy. If the school district’s fiscal year commences after the date on which the tax levy for such fiscal year is filed, then the annual budget must be adopted before the tax levy is made. In such a case, the amount of the tax levy will be limited by the amount set out in the adopted budget. If not, the tax will be subject to abatement.

Despite a planned budget and a tax levy requesting specific monies for anticipated expenditures, a school board can never accurately predict how much revenue will be raised or funds expended during any fiscal year. This unpredictability should be understood as an integral part of the financial process of school districts. It is a product of several elements beyond a school board’s control. The levy is filed in one year but paid in another year. When the certificate of tax levy is filed, the equalized assessed valuation of the school district (upon which the tax is to be levied) is unknown because it is computed at the end of the year following the filing of the certificate of tax levy. If the assessed valuation is lower than was calculated when the tax rate is extended by the county clerk, it will not produce the funds requested. On the other hand, if the assessed valuation is higher than anticipated, the taxes extended will produce more funds than theoretically are needed, subject-

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65. *Id.* § 17-11.
66. *Id.* §§ 17-2, 17-3, 17-2.2, 17.5, 17.4, 17-2.4, 17-2.3.
67. *Id.* § 17-11; *id* § 103-20.5 (community colleges). See also *id.* § 34-54.1.
ing the school district to possible taxpayer suits for an improper levy.71
The state applies an equalization factor to all Illinois property to theo-
retically equalize property assessments. That factor is unknown at the
time the school district guesses at its assessed valuation. The factor
may raise or lower the assessed valuation.72 A school board also can-
not predict how much of the tax levy will be collected. Various coun-
ties and townships have different degrees of success in collecting taxes.
Obviously, the collection of eighty-five percent of the taxes levied,
when it was calculated that ninety-five percent was collectable, affect
the amount of revenue.

Litigation challenging the amount levied or the tax rate adds to the
uncertainty of the school district's financial planning. Taxpayer suits
are usually filed by railroads or major industrial companies claiming
the levy is illegal as either producing an accumulation of funds in ex-
cess of the school district's requirements or requesting a tax rate ex-
ceeding the authorized tax rate limit.73 Although the burden of proof
in taxpayer suits is on the party objecting and a presumption exists that
school officials properly discharged their duties in levying taxes,74 still
such litigation makes collection uncertain. Finally, the assessor's prac-
tices are accorded wide discretionary latitude and there may be uneven
payment of taxes, delayed assessments, and the like.75 Thus, the
financial picture of a school district, laid out in a budget, is hedged with
uncertainty and budget forecasts do not always hold true.

**Bonded Indebtedness**

To finance large scale building projects, school districts commonly
incur long term indebtedness by issuing general obligation bonds.
Bonding powers are not unlimited. The Illinois Constitution of 1970
prohibits a school district from incurring debts payable from *ad
valorem* property taxes that mature more than forty years from the date
that the debt is incurred.76 The Illinois School Code limits bonded in-
debtedness to twenty years.77 Elementary and high school districts may

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71. The assessed valuation of real estate is subject to taxpayer protest through an administra-
tive process before the board of appeals in Cook County and the board of review in all other
counties and, ultimately, to the Illinois Property Tax Appeal Board from all counties except Cook
72. *Id.* § 630.
not incur bonded indebtedness exceeding six percent of the value of the school district's taxable property. In school districts maintaining grades kindergarten through twelve (unit districts), bonded indebtedness may be incurred up to twelve percent of the value of taxable property.\textsuperscript{78}

The indebtedness of a school district consists of all the valid outstanding obligations that must be discharged, including outstanding bonds, judgments, long term contracts, and claims.\textsuperscript{79} Indebtedness does not include tax anticipation warrants, working cash fund bonds, teachers' orders and claim bonds, tort judgment bonds, and fire and safety protection bonds.\textsuperscript{80}

School districts are authorized to borrow money and issue general obligation bonds after a referendum.\textsuperscript{81} In a bond referendum, as in a tax referendum, the school board acts as the election authority. It selects the judges, publishes notice of the election, canvasses the results, and performs all other necessary functions.\textsuperscript{82} After a successful referendum, the school district has the authority to issue bonds. The referendum, however, is not a mandate requiring a school district to issue the authorized bonds.\textsuperscript{83}

Illinois law does not require that school bonds be sold at a public sale. The prevailing custom, however, is for school districts to do so. The bonds must be sold at a price not less than par, must accrue interest to the date of delivery, and cannot bear interest greater than the maximum permissible interest rate.\textsuperscript{84} The market for the bonds and the interest rate which the bonds bear are related to the bond market and the school district's financial rating. Generally, the higher the rat-

\textsuperscript{78} Id. § 19-1. There are exceptions for districts anticipating an increase in enrollment but not less than thirty-five percent or 200 students. Id. § 19-1(b).

\textsuperscript{79} See East St. Louis & Interurban Water Co. v. City of Belleville, 360 Ill. 490, 493, 196 N.E. 442, 443 (1935).

\textsuperscript{80} ILL. REV. STAT. ch. 122, § 20-2 (1977) (working cash fund bonds); id. § 19-8 (teacher orders and claim bonds, tort judgment bonds); id. ch. 85, § 9-105 (fire protection and safety bonds). See, e.g., Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

\textsuperscript{81} ILL. REV. STAT. ch. 122, § 19-3 (1977). See id. § 34-22.1 (such bonds are tax exempt); see also id. §§ 103-7-13, 103-33, 103A-1 (community colleges); id. §§ 9-1, 9-23 (Supp. 1978). For cities over 500,000, see id. § 34-1.

\textsuperscript{82} ILL. REV. STAT. ch. 122, § 19-3 (1977). These elections in the future will probably be held under the Illinois general election law. See id. ch. 46, § 2A-1 (Supp. 1978), which will take effect on Dec. 1, 1980. At this time, this provision is in a state of flux.

\textsuperscript{83} Id. ch. 122, §§ 19-2, 103A-1 (1977) (community colleges). For cities over 500,000 population, see id. §§ 34-22.1, 34-22.3.

\textsuperscript{84} Various debt instruments described in the Illinois School Code have limitations on the amount of interest which can be paid. ILL. REV. STAT. ch. 122, § 19-3 (1977) (interest not to exceed seven percent); id. § 34-22.1 (interest rate not to exceed four percent). But see id. ch. 74, § 82 (Supp. 1978) (eight percent interest rates). Under id. ch. 74, § 82, school districts may pay higher interest than the statutory maximum.
ing a school district has established, the lower the risk that is involved to the purchaser, the lower the rate of interest the bonds must bear, and the easier they can be sold.85 Bonds may be purchased by individuals or groups of individuals. Most often, a bank or other financial institution purchases school district bonds for its portfolio or for its customers. School bonds are negotiable coupon bonds in denominations of not less than $100 nor more than $5,000, with an interest rate not exceeding the statutory maximum rate.

The bond purchaser, of course, is concerned as to the legality of the bond issue. If bonds are sold to urban banks or metropolitan financial institutions, they often hire attorneys specializing in municipal financing to furnish an opinion as to the validity of the bond issue. A number of banks in smaller communities and some major financial institutions will accept the opinion of school counsel as to the validity of the bond issue, eliminating the costs of a second opinion.86

After a successful referendum, the school board must adopt a resolution providing for the issuance of the bonds, the maturity schedule, the payment schedule for the principal and interest, and the delivery of the bonds. A certified copy of this bond resolution is filed with the county clerk of each county in which any portion of the school district is situated. It is the basis for extension of the tax levy to pay the principal and interest on the bond issue. The school treasurer also must receive a copy of the bond resolution after executing a surety bond in the amount of the bond issue. The surety bond must be approved by the school board in class I county school units, or by the township trustees in class II county school units. The surety bond also is filed with the regional superintendent of schools.

Although school sites can be purchased without voter approval, general obligation bonds are usually issued for the purchase of school sites and the erection or alteration of school buildings.87 If the school

85. The financial standing of a school district is established by rating organizations, the most prominent of which are Standard & Poors and Moody's.
86. When the school district has hired a financial consultant to handle the bond issue, they usually draw up a prospectus, prepare the advertisements for the bonds, notify the underwriters, engage the bank note company to print the bonds, and prepare a maturity schedule. These lay consultants may deal with the bond counsel to assist them in drawing their opinion for their bank customers as to the validity of the bond issue. Bond counsel, of course, cannot represent the school district and their clients. If bond counsel deal with the lay financial consultants without school counsel involvement, potential conflicts of interest arise, since the lay financial consultant may rely upon bond counsel to resolve disputed issues.
87. ILL. REV. STAT. ch. 122, §§ 19-2 (1977) (all school districts unless a special exception); id. § 103A-1 (community colleges); id. § 34-22 (school districts with population over 500,000) (1977 & Supp. 1978).
board has been authorized to accumulate funds to build a building or has the necessary funds in its operations, building, and maintenance fund, it may not need the proceeds of a bond issue. A referendum for the issuance of construction bonds may contain several propositions. It may authorize the equipping, alteration, or repair of the school building, the improving of the school site, the equipping of a playground, or the furnishing of recreational grounds. If there are major changes in the plans of the school district between the time of the original bond referendum and the actual construction, the school board may secure authority by referendum to change the usage (within limits) of the proceeds of the bond issue.

General obligation bonds may be issued for a variety of reasons other than construction. The most common uses of bond funds are set forth in the following sections.

Working Cash Bonds

A school board may establish a working cash fund to borrow money internally for the ordinary and necessary expenditures of the district. The fund may be established through the issuance of working cash fund bonds or by a five cent tax levy for the working cash fund. The amount of the bonds that may be issued cannot exceed the aggregate of seventy-five percent of the taxes permitted to be levied for educational purposes in the preceding years. This percentage is computed by multiplying the maximum educational tax rate of the school district extended (not levied) by the last assessed valuation as determined at the time of the issuance of the bonds. The amount of bonds so issued is subject to a deduction of the funds previously raised by the .05 percent working cash tax levy or any previously issued bonds. Working cash fund bonds are limited to a maximum interest rate with a twenty year maturity and are subject to a backdoor referendum.

To issue working cash fund bonds, a school board adopts a resolution declaring its intention to issue the bonds and directing publication

88. Under section 17-5.1, there may be an accumulation of funds after a referendum. Id. § 17-5.1 (1977).
89. Id. § 19-3. See id. §§ 34-21.2 (play grounds); id. § 34-22.2 (building and repair for cities over 500,000 population).
90. Id. §§ 19-4 (all school districts unless a special exception); id. § 103A-2 (community colleges).
91. Id. §§ 20-2, 20-3. See id. § 103-33.2; cf. id. § 34-31 (without referendum but subject to ordinance). It is not necessary to submit the proposition to issue working cash bonds to voters under id. § 34-31e or for cities over 500,000 population nor for a community college, id. § 103-33.2.
of a notice of its intention. The notice must be published at least once in a newspaper published in the school district or, if none is so published, it must be published in a newspaper having a general circulation in the school district. The notice must inform the public of the amount of working cash fund bonds to be issued and of the public right to petition for a referendum on the issuance of the bonds. A referendum must be held if, within ten days after publication of the notice of intention to issue the bonds, a petition is signed by not less than twenty percent of the district’s voters, and is filed with the recording officer of the district requesting that the proposition to issue working cash fund bonds be submitted to the voters. Once authorized, the bonds are sold in the same manner as other general obligation bonds. Payment of the principal and interest on the bonds is made by taxes extended annually by the county clerk until maturity. The tax extended to retire these bonds is in addition to other taxes levied by the district. If bonds are issued, the district may not concurrently levy the .05 percent life safety tax assuming the amount of bonds was issued in the aggregate amount discussed above. If the working cash fund is abolished, the tax levy continues until bond maturity.

Funding Bonds

Funding bonds are a method of transforming short term debts into long term debts. They may be issued to fund the payment of orders issued for teachers' wages and the payment of claims against the district. Teachers' orders are evidence of indebtedness for wages issued pursuant to a school board resolution. Notice of intention to issue funding bonds must be published in the same manner as notice of the issuance of working cash fund bonds. These bonds also are subject to backdoor referendum. A referendum must be held if a petition signed by ten percent of the voters is filed with the school board within thirty days of publication of notice. These bonds may have a twenty year maturity. The tax extended to pay for funding bonds, principal, and interest is in addition to other taxes levied by the district. The term "claims" used in the statute authorizing funding bonds probably refers

92. See id. § 20-7.
93. Id. §§ 19-8 to 19-14 (all school districts unless a special exception); id. §§ 103A-6 to 103A-11 (community colleges).
94. The power to pay teachers' orders is implied from three sections. Id. §§ 19-8, 19-9, 103A-6. A teacher's order may be deposited in a financial institution by a teacher and redeemed for cash. The institution redeeming the orders receives its funds plus interest from the school board.
to legal judgments, unliquidated debts, and accounts payable.\footnote{Id. \S 19-8. See \textit{Mann v. Board of Educ.}, 406 Ill. 224, 92 N.E.2d 743 (1950) (approved bonds to pay tuition claims).}

**Refunding Bonds**

Refunding bonds are used to retire previously issued bonds or other evidence of outstanding indebtedness for which the school district has binding and subsisting legal obligations.\footnote{\textit{ILL. REV. STAT.} ch. 120, \S\S 19-15 to 19-26, 34-65 to 34-75 (1977); id. \S\S 103A-13, 103A-23 (community colleges). \textit{See \textit{Prohm v. Non-High School Dist. No. 216}}, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).} Refunding bonds enable the school district to decrease the cost of indebtedness (assuming the previous evidence of indebtedness was at a higher cost than the current market) or to extend the time for repayment. These bonds refinance existing debts and do not increase the school district's indebtedness. Refunding bonds are not subject to voter approval. The bonds are issued by filing a school board resolution with the county clerk who extends the taxes for the annual payment of principal and interest until maturity.

**Revenue Bonds**

Revenue bonds, unlike general obligation bonds, are not supported by the taxing powers of the school district. Rather, principal and interest on revenue bonds are retired from the proceeds of the revenue-producing building or other improvement. The only revenue bonds that school boards may issue are for exhibition facilities for athletic spectator sports. If the proceeds are not sufficient to pay the cost of the bonds, a referendum may be held to authorize payment of bond payment deficits.\footnote{Id. \S 19a-1 (1977). \textit{See also id.} \S\S 103A-25 to 103A-29 (cannot issue bonds for a building used primarily for a physical education program); id. \S 19a-4 (allows referendum to authorize funds for deficit bond and interest payments).}

**Fire Prevention and Safety Bonds**

Fire prevention and safety bonds, commonly referred to as life safety bonds, are used to finance repairs or alterations to school buildings necessary to meet fire prevention and safety standards. They also may be issued for the protection of the environment pursuant to the Illinois Environmental Protection Act.\footnote{Id. \S 17-2.1 la. The tax levied must be abated by the amount of tax necessary to pay for the environmental protection bonds.} The funds secured from these bonds finance the same type of work and repairs for which a school
district may levy a tax for fire prevention and safety purposes.99

A school board initiates a bond issue by enacting a resolution to issue fire prevention and safety bonds for the needed repairs. The resolution must state that there are insufficient funds available in the operations, building, and maintenance fund for the alterations or reconstruction.100 The board then must take all the steps previously described for the issuance of general obligation bonds. Before enacting a life safety resolution, a school board must have received a survey by a licensed architect or engineer, indicating the school facilities in need of repairs or alterations to meet fire prevention and safety standards. Repairs also may be commenced after an agency, having the authority to enforce laws or regulations on fire or safety, issues an order requiring a school district to alter or reconstruct any building or equipment to conform with the fire or safety laws or regulations. The regional superintendent of schools and the state board of education must approve the estimates of repair costs for life safety work. The school board resolution containing the bond maturity schedule, certified copies of the regional superintendent's order to repair, the estimate of repairs, and the approvals from the regional superintendent and the state board of education are filed with the county clerk of the county or counties in which the school district is located. The county clerk then extends the tax annually until the bonds reach maturity.

*Short Term Indebtedness*

Due to a variety of problems involved in the billing, collection, and transmittal of tax funds, school districts are often short of funds to meet monthly expenses. A variety of short term funding devices are available in those situations.

*Inter-Fund Loans*

A common short term borrowing device is an inter-fund loan, authorized by school board resolution. Loans may be made among the operations, building, and maintenance fund, the educational fund, and the transportation fund. Inter-fund loans must be repaid within one

99. *Id.* § 17-2.11.

100. *Id.* § 17-2.11a which applies to each school district which has levied a tax in the amount and for the purposes specified in section 17-2.11. The determination of what repairs or construction are within the scope of fire prevention and safety work is controversial. It has been argued that a school's running track, for example, is not within life safety concepts. School officials have argued to the contrary that a decrepit track may cause injuries. As expected, school officials have tended to read the requirements of life safety work in a broad fashion. No cases have been decided on the issue.
calendar year. Failure to repay requires the regional superintendent to withhold payments on the school district's state aid claims. Inter-fund loans cannot be used as a method of depleting one fund and augmenting another fund so as to artificially affect the fund's tax levy or improperly manipulate funds.

Inter-Fund Transfers

An inter-fund transfer is technically not a short term borrowing device, but it often arises in the context of an immediate need and so will now be discussed. An inter-fund transfer is a permanent transfer from one school fund to another. An inter-fund transfer may be made from the bond and interest fund of any money remaining in that fund after the purposes for which the bonds were issued have been accomplished and paid for in full. These funds may be permanently transferred by board resolution to the "fund . . . which bears the nearest relation to the purpose for which the bonds from which such excess funds arose were issued." That fund is the operations, building, and maintenance fund. Section 10-22.44, recently enacted, liberalized the use of interest earned on funds.

Tax Anticipation Warrants

Tax anticipation warrants are commonly employed as a short term borrowing device. Tax anticipation warrants are an assignment of anticipated taxes. The school district promises to pay the debt from the taxes collected—but does not guarantee to pay the loan from its general funds. A school board may issue warrants when it has temporarily depleted a fund and cannot pay ongoing expenses, usually as a result of slow tax collections. Tax anticipation warrants may be issued in anticipation of taxes to be collected on the educational fund, operations, building, and maintenance fund, transportation fund, and Illinois municipal retirement fund, as well as the bond and interest fund. If a

101. Id. § 10-22.33. See also id. §§ 34-22.8, 103-34.
102. Illinois ex rel. Redfern v. Penn Central Co., 47 Ill. 2d 412, 266 N.E.2d 334 (1971) (court held loan invalid since transfer to municipal retirement fund was not authorized by statute).
105. Id. § 17-16 (under 500,000 population), id. § 103-2 (community colleges). Tax anticipation warrants do not constitute an indebtedness of the district or a liability against its assets as measured against its statutory limitation; they are merely assignments for present consideration of taxes to be collected. See Pratt v. Board of Educ., 326 Ill. App. 610, 63 N.E.2d 275 (1945).
school district has established a working cash fund, moneys in that
fund must be exhausted before the issuance of tax warrants.\textsuperscript{106}

Warrants are authorized by the school board after the adoption of
a resolution specifying the tax to be anticipated, the form of the war-
rants, and directions for their sale. The warrant proceeds are restricted
to usage for the ordinary and necessary expenses of the fund.\textsuperscript{107} When
the taxes are collected, the treasurer redeems the warrants from the
taxes with interest.\textsuperscript{108} Anticipation warrants are not debts of the school
district, but simply claims upon the taxes being anticipated.

Illinois does not require public bidding on the sale of tax anticipa-
tion warrants. The sales of warrants are usually privately negotiated
with financial institutions.\textsuperscript{109} The warrants bear interest not exceeding
the legal maximum rate per annum, payable from the date of issuance
until the warrants are paid, or until publication of notice that the funds
are available for payment of the warrant.\textsuperscript{110}

Anticipation warrants may be issued up to eighty-five percent of
the total amount of the tax levied in the fund being anticipated.\textsuperscript{111} Although
tax anticipation warrants are customarily issued only against
the levy in any given year, it is possible to have tax anticipation war-
rants on the same fund against two levies by adoption of a new budget
and the filing of a new tax levy before the taxes are collected on the first
levy.\textsuperscript{112}

\textit{Tax Anticipation Notes}

Tax anticipation notes are a debt-incurring device ordinarily re-
tired over a longer period of time than tax anticipation warrants. Notes
may mature up to two years after issue. Notes are issued after a resolu-
tion of the school board fixing the amount of the notes, their maturity,

\textsuperscript{107} Id. §§ 17-16, 34-23. Regarding cities with a population of over 500,000, see id. §§ 34-23
to 34-25. \textit{See also} Illinois \textit{ex rel.} Mathews v. Board of Educ., 349 Ill. 390, 182 N.E. 455 (1932) (tax
invalid because used to pay teacher wages).
\textsuperscript{108} The warrant holder has a claim for payment only against the school or township treasurer
or officials who receive the taxes assigned on which the warrant is issued, not against the school
district. \textit{See} Koch v. Stevenson, 327 Ill. App. 209, 63 N.E.2d 677 (1945). The school district has
no obligations to pay the warrant, neither absolute nor contingent. \textit{See} Lubezny v. Ball, 389 Ill.
\textsuperscript{109} Because tax anticipation warrants are not negotiable instruments, a bona fide purchaser is
not protected in the event of an unlawful transfer. \textit{See} Hart v. Board of Educ., 278 Ill. App. 132
(1934).
\textsuperscript{110} ILL. REV. STAT. ch. 122, § 17-16 (1971); \textit{id.} § 34-23 (1977). \textit{See} id. ch. 75, § 82 (Supp.
1978) (interest rate of eight percent).
\textsuperscript{111} Id. §§ 17-16 (1977); \textit{id.} § 34-23; \textit{id.} § 103-20.10 (community colleges).
\textsuperscript{112} Illinois \textit{ex rel.} Williams v. Wabash R.R., 403 Ill. 53, 85 N.E.2d 14 (1949).
the rate of interest, the place and date of payment, and the denominations which must be in equal multiples of $1,000. They need not be sold by public bid. The resolution also provides for a levy. The resolution is filed with the county clerk before the end of the calendar year during which the taxes anticipated were levied. Tax anticipation notes, unlike tax anticipation warrants, are supported by the full faith and credit of the school district. They are thus more negotiable than warrants. Tax anticipation notes, like tax anticipation warrants, do not reduce the school district’s debt limit.

Tax anticipation notes may bear interest up to the legal maximum rate, payable in coupons. The amount of the note may not exceed eighty-five percent of the taxes levied for a specific purpose for the year during which the notes are issued. Notes may be issued against the same funds as may be anticipated, but no notes can be issued during any fiscal year in which there are anticipation warrants outstanding against the tax levied in a particular fund. When tax anticipation notes are outstanding, it is the duty of the county clerk to reduce the tax rate levied for the fund by the percentage necessary to produce an amount to pay the principal and interest on the outstanding notes. If a school board has established a working cash fund, notes may be issued on that fund. The tax rate may not be reduced by the county clerk below the amount necessary to reimburse any money borrowed from that fund. It is the duty of the clerk or the secretary of the school district, annually and not less than thirty days prior to the tax extension date, to certify to the county clerk the amount of money borrowed from the working cash fund that is to be reimbursed from the specific tax levy. This must be done because no reimbursement of loans can be made to the working cash fund until an amount sufficient to pay the principal and interest on the outstanding tax anticipation notes has been accumulated from the tax levy. In other words, tax anticipation notes take priority over repayment of the working cash fund.

*Teachers’ Orders*

Teachers’ orders are interest-bearing paper issued by a school board in lieu of teachers’ wages. Orders are issued after the school board’s adoption of a resolution stating that no funds are available in  

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113. *Ill. Rev. Stat.* ch. 85, §§ 821-829 (1977). See also *id.* ch. 122, § 34-29.1, which authorizes school districts to issue personal property tax replacement notes up to seventy-five percent or income tax replacement revenues subject to the entitlement amount being certified by the director of the Illinois Department of Revenue.

114. *Id.* § 825.
the educational fund to pay teachers' current wages. Customarily, prior to the issuance of teachers' orders, the school board will negotiate with a bank to accept the orders and set the rate of interest to be paid. The teachers deposit their orders with the bank and receive full payment. The bank redeems the orders with the school board who pays the bank the face value of the orders plus interest after the education fund taxes are collected or through funds raised by the sale of funding bonds.\footnote{115}

**Working Cash Fund**

The working cash fund is a common method of borrowing funds available to school districts. If a working cash fund is established, school boards may borrow money internally for ordinary and necessary expenditures for corporate purposes. The fund may be created by a resolution of the board levying an annual tax not to exceed .05 percent or by the issuance of working cash bonds.\footnote{116} No referendum is required to levy the .05 percent tax. The fund also may be created by the issuance of working cash bonds. Bonds are authorized in the same manner as general obligation bonds, that is, by resolution, sale of bonds, and the like.\footnote{117}

A transfer of funds from the working cash fund is deemed to be a transfer in anticipation of the collection of taxes on the funds. When taxes are collected by the borrowing fund, the board must first retire any outstanding tax anticipation warrants or tax anticipation notes before repaying the working cash fund.

The fund may be abolished at any time, but the resolution to abolish the fund does not become effective until the end of the fiscal year. Any outstanding loans to the operations, building, and maintenance fund shall be repaid to the educational fund at the close of the fiscal year.\footnote{118} Uncollected working cash fund taxes when received are paid into the educational fund. The levy, of course, could be abated.\footnote{119} Upon abolishment of the working cash fund and the transfer of its assets to the educational fund, the fund may be immediately recreated

\footnote{115. Id. ch. 122, § 8-16. See id. § 34-76 regarding warrants for teachers' wages in school districts with 500,000 or more inhabitants, and id. § 32-4.14 for a charter district authority with a charter district population less than 500,000.}

\footnote{116. Id. § 20-1; id. § 34-30 (for educational purposes); id. § 34-57 (for ordinary and necessary expenditures for all community college purposes funded by a bond issue without referendum).}

\footnote{117. See text accompanying notes 80-82 supra.}

\footnote{118. Ill. Rev. Stat. ch. 122, § 20-8 (1977). There is no similar provision for cities over 500,000. See id. § 103-33.6 regarding a similar provision for community colleges.}

\footnote{119. Id. §§ 20-5, 34-57.}
and the cycle may be repeated. It has been argued that the abolishment and reestablishment of the working cash fund on an annual basis is objectionable as an improper tax because it effectively increases the education tax levy by .05 percent. That argument has not been successful.120

THE CHALLENGE TO SCHOOL FINANCE SYSTEMS

For the last decade, the method of public school financing in the United States has been under attack. The case that started the court challenges was Serrano v. Priest (Serrano I),121 where the California Supreme Court held that the state's school aid formula violated the equal protection clauses of the constitutions of the United States and California. The California formula was a variance of the Strayer-Haig formula used in Illinois. It took into account the wealth of the district and its taxing power in determining the amount of school aid. The court said that under the California state formula: "[T]he richer district is favored when it can provide the same educational quality for its children with less tax effort. Furthermore, as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the education offering of wealthier districts."122 The court held that the effect of the application of the state aid formula was to violate a student's fundamental right to an education and his right to equal protection of the law.

In Serrano v. Priest (Serrano II),123 the California Supreme Court reiterated its holding in Serrano I and gave a succinct summary of the remedies generally proposed by tax reformers to school aid formulas throughout the country. The court said California could comply with Serrano if the state enacted:

(1) Full state funding, with the imposition of a statewide property tax; (2) consolidation of the present 1,067 school districts into about

120. Id. § 20-9. See Bell v. School Dist. No. 84, 407 Ill. 406, 95 N.E.2d 496 (1950). Under the Community College Act, the fund may be recreated only after referendum. ILL. REV. STAT. ch. 122, § 103-33.6 (1977).


122. 5 Cal. 3d at 599-600, 487 P.2d at 1251, 96 Cal. Rptr. at 611.

123. 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1977).
500 districts, with boundary realignments to equalize assessed evaluations of real property among all school districts; (3) retention of the present school district boundaries but the removal of commercial and industrial property from local taxation for school purposes and taxation of such property at the state level; (4) school district power equalizing which has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen the tax effort would be the same for each school district choosing such level whether it be a high wealth or a low wealth district; (5) vouchers; and (6) some combination of two or more of the above.124

Relying upon the rationale in Serrano, a federal constitutional challenge to the method by which public schools are financed was raised in litigation by reformers seeking a ruling with nationwide impact. Their hopes were dashed in the landmark case of San Antonio Independent School District v. Rodriguez,125 where the United States Supreme Court held that education is not a fundamental interest under the equal protection clause of the United States Constitution. The Court further held that if one school district is wealthier than another and a state aid formula takes that fact into account, the state is not structuring a constitutionally suspect classification.126 The Supreme Court found that a state's method of financing its public schools must be rationally related to a legitimate governmental purpose and that a school aid formula that was related, in part, to the wealth of the district was rational and constitutional.127 The Serrano v. Priest principle was thus rejected as a principle of federal law.

Many state constitutions contain an equal protection clause or language mandating a quality education for all children. The state school finance reformers after Rodriguez sought to apply the Serrano principle to invalidate state aid formulas under state constitutions. The litigation against the states generally asserted an inequality of educational opportunity in the system caused by the school finance formula. That argument rested on the premise that educational funding which was a function of the wealth of the school district rather than a function of the wealth of the state as a whole was violative of the state educational mandate to provide equal, quality education. Opponents of the system of state school financing have litigated this issue in several states.128

124. Id. at 345, 557 P.2d at 938-39, 135 Cal. Rptr. at 354-55.
126. Id. at 28.
127. Id. at 55.
Proponents of finance reform have won a number of cases, lost others, and many cases are still pending.

Robinson v. Cahill\textsuperscript{129} is an example of a successful case. In Robinson, the New Jersey Supreme Court construed the New Jersey Constitution which stated "the legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years."\textsuperscript{130} The court held that the New Jersey system of financing elementary and secondary schools violated this provision by having a wealth factor in its state aid formula. In holding the New Jersey formula invalid, the court stated: "The quality of educational opportunity . . . depend[s] in substantial measure upon the number of dollars invested, notwithstanding that the impact upon students may be unequal because of other factors natural or environmental."\textsuperscript{131} Similarly, in Milliken v. Green,\textsuperscript{132} the Michigan Supreme Court held that the Michigan public school financial system violated the equal protection clause of the Michigan Constitution under the Serrano principle.

Illinois, to date, has apparently rejected Serrano, although not conclusively. In McInnis v. Shapiro,\textsuperscript{133} a pre-Serrano case, the United States District Court for the Northern District of Illinois held that there was no constitutional requirement that public school expenditures be made on the basis of pupils' educational needs without regard to the financial ability of the school districts to finance those needs. The court held that the United States Constitution did not establish a rigid guideline of equal dollar expenditure for students.\textsuperscript{134}

In Illinois ex rel. Jones v. Adams,\textsuperscript{135} the defendant farmers paid their 1971 and 1972 property taxes under protest, arguing that the system of assessing property taxes discriminated against farmers as a class in violation of the equal protection clauses of the United States and Illinois Constitutions.\textsuperscript{136} The defendants also argued that the method

\textsuperscript{129} Oregon. Update on State Wide School Finances Cases, February 1978, published by the Lawyers Committee for Civil Rights Under Law, School Finance Project, Washington, D.C.


\textsuperscript{131} 62 N.J. at 477, 303 A.2d at 277.

\textsuperscript{132} 389 Mich. 1, 203 N.W.2d 457 (1972); \textit{but see} Olsen v. Oregon, 276 Or. 9, 554 P.2d 139 (1976) (upholding the validity of the state aid formula).


\textsuperscript{134} 40 Ill. App. 3d 189, 350 N.E.2d 767 (1973).

\textsuperscript{135} U.S. CONST. amend. XIV; ILL. CONST. art. X, § 1.
of financing schools which relied upon the local property tax caused children in poorer school districts to be deprived of equal protection of the laws. The Illinois appellate court found that there was a rational basis to support the classification of farm land. The defendants' challenge to the Illinois foundation program for funding public education was also rejected. The court noted that Rodriguez had been decided since McInnis and was the relevant authority. The court found that under Rodriguez education was not a fundamental right and that Illinois had a rational basis for its method of school financing. The court also suggested that under Rodriguez reliance on a school district's property wealth in state financing of public schools could be invidiously discriminatory only if there was proof that the education provided as a result of the state financing was inadequate and that there existed a disparity in per pupil expenditures between school districts in the state. The court found, however, that the defendants had not met this Rodriguez proof test.

CONCLUSION

The Serrano litigation has raised important philosophical questions regarding society's educational responsibilities and its method of financing schools. School district financing has also been challenged by legislative efforts to limit revenue and spending, such as California's Proposition 13. The rate of rejection of tax rate increases and bond issues for the past several years further evidences the public skepticism over the cost of public education.

This concern over taxes and costs has resulted in two major studies of financial management in the Illinois public school system in the last decade. In 1972, the Governor's Commission on Schools examined the Illinois school system. One of its task forces, the Business Management Task Force, studied school finance and business practices. After examining the system, the task force proposed few significant changes in

137. 40 Ill. App. 3d at 898, 350 N.E.2d at 776.
140. 40 Ill. App. 3d at 200, 350 N.E.2d at 776.
142. CALIF. CONST. amend. 13.
school finance, although there were many suggestions about business management practices. In 1977, the Citizens’ Commission on School Finance studied the public school system in Illinois. The commission reported to the Illinois Board of Education after an “extensive review of patterns of finance operative in Illinois.” None of its recommendations suggested major alterations in the public school financial system.

With cutbacks in state support, inability to increase tax revenues because of erosion in public support, inflation, and increased labor costs, the school boards face a very difficult financial future. The resolution of these problems is a political decision. The system of school finance has not caused the problem. It is a sound system. The budgeting process, levy mechanism, and long term and short term financing is a reasonable method to operate public school districts. The system is capable of implementing whatever solutions to the long-range problems of financing public education that the public decides is necessary. The system is ready; it awaits the political decisions to do the job.

**POSTSCRIPT**

After this article was written, the finances of the Chicago Board of Education came under investigation by the Office of the Auditor General of the State of Illinois pursuant to House Joint Resolution No. 73, adopted January 11, 1980. The results of that investigation were made available in preliminary form just prior to publication. Although the Auditor General of Illinois stated that all of his findings are tentative and subject to revision, the findings are applicable to the theses of this article and, thus, are properly brought to the reader’s attention.

The Auditor General pointed out three areas in which the financial system described in this article could be questioned: the

145. In reviewing the system, the commission made an observation that has been generally overlooked in discussing this subject. It commented upon the fact that education is a labor-intensive industry. In the budget of a typical school system, seventy-five percent or more of expenditures are for teachers, administrators, and support personnel. In a period of inflation, with rising labor costs and teacher unions becoming a significant factor in school board governance, there has been an intensified effect on the high labor costs. Significant cost savings in education can only occur by decreasing the number of employees and increasing the pupil-teacher ratio. *Id.* at 21.
147. *Chicago Board of Education Preliminary Investigation, State of Illinois, Office of the Auditor General* (March 1980) [hereinafter referred to as *Chicago Board of Education Investigation*].
budget process; payment of principal and interest on long term notes; and improper inter-fund borrowing. The report substantiated the author's contention that the problem with school finances is not the financial system, but the failure to make political decisions that are realistic and responsive to the public's needs.\textsuperscript{148} The Auditor General found that the "Board committed malfeasance each year from 1970 through 1979 by approving a budget which, in form, was in balance, but, in substance, was not in balance by a significant amount."\textsuperscript{149}

Illinois law\textsuperscript{150} requires the board of education to adopt the budget in which the board shall appropriate such sums of money as may be required to defray all of its estimated expenses and liabilities during the fiscal year. The Chicago school board budgets since 1970 appeared to be in balance but, in reality, the budget was never in balance because the board used various devices to give the appearance of a balanced budget while spending funds it did not have and, each year, increasing its budget deficit.\textsuperscript{151} Thus, in the 1974-75 fiscal budget, the board approved approximately 3,000 personnel positions at $1.00 per position for the fiscal year. If the budget was not to be in deficit, then the board could not fill those budgeted positions or, if they filled them, the board would have to have additional revenues to offset the expenditures for filling those positions. The board filled those positions and did not secure additional revenues. In fiscal year 1976, the board adopted a budget reducing estimated teachers' and civil service salaries by $70 million. This presented a balanced budget. The board then proceeded to pay salaries for these positions without receiving any additional revenue in excess of the budgeted amount. The latest budget adopted October 17, 1979, had a deficit of $115.2 million.\textsuperscript{152}

The Auditor General found that to secure the cash for general operations, the board used funds that were restricted to pay principal and interest on general obligation notes at their maturity.\textsuperscript{153} On August 31, 1978, the Auditor General found the amount used for regular operations to be at least $104.5 million.\textsuperscript{154} Finally, the Auditor General found that, under the accounting system which was in accordance with the principles of fund accounting, there was inter-fund borrowing

\begin{itemize}
\item \textsuperscript{148} \textit{Id.} at 4.
\item \textsuperscript{149} \textit{Id.} at 5.
\item \textsuperscript{150} ILL. REV. STAT. ch. 122, § 34-43 (1977).
\item \textsuperscript{151} See \textit{CHICAGO BOARD OF EDUCATION INVESTIGATION}, supra note 147, at i.
\item \textsuperscript{152} \textit{Id.}
\item \textsuperscript{153} \textit{Id.} at ii.
\item \textsuperscript{154} \textit{Id.}
\end{itemize}
which was not authorized by the Illinois School Code.\textsuperscript{155}

The response of the Chicago Board of Education, through its special counsel, was that sections 34-43 and 34-44 of the Illinois School Code may be interpreted to recognize the lawfulness of a cumulative deficit. The board further responded, stating that the facts of the cumulative deficit were well-known to state and local authorities and the public, none of whom ever protested as to the board’s conduct. The board also said that it tried to reduce its deficit each year. The board’s special counsel maintained that this conduct shows that there was not malfeasance, as the Auditor General charges.

In reference to the second finding, the board admitted making “temporary borrowings” from accounts designated for payments of note obligations. The board suggested that a temporary borrowing from restricted funds is sanctioned as against a permanent diversion or expenditure of the funds for other purposes and that since the notes were paid and payment obligations met, the board’s conduct was not improper. There was no response by the board to the claim of improper inter-fund borrowing.

It would be a misapprehension to conclude that the fiscal difficulties of the Chicago school system arose out of deficiencies in the state school finance structure. It is clear that the board’s conduct was based upon its determination to keep the educational system functioning. The basic problem, pointed out by the Auditor General, was the imbalance between revenues and expenditures and the failure of the board to increase unrestricted revenue to cover its appropriated expenditures. The board of education was trying to run a major school system while faced with the political problems of teacher unions and public demand for services. The Illinois General Assembly’s reluctance to fully fund the board’s operation, the lack of political leadership, and the philosophy of simply letting problems go from year to year all contributed to the Chicago Board of Education’s financial debacle.

\textsuperscript{155} Id.