

January 12, 2018

Elementary School District Number 58
ATTN: Board of Education
1860 63rd Street
Downers Grove, IL 60516

Via e-mail: dpurcell@dg58.org, esigale@dg58.org, gharris@dg58.org, dhughes@dg58.org, jmiller@dg58.org, jsamonte@dg58.org, bethtaylor@dg58.org, kcremascoli@dg58.org

RE: AVOIDING BOND FRAUD

Dear members of the Board of Education:

I and the other members of the *Downers Grove Watch* ask that you give your fullest attention to the following statement.

“All proper bond resolutions state that **all of the proceeds are needed** to do the work and generally will be expended within a certain time period. **Issuing bonds in excess of reasonable estimates of costs verges on fraud.**”

(Illinois State Board of Education, General Counsel Julia Quinn Dempsey, Legal Opinion Letter to ROEs dated January 20, 1983 re bond sales, use of bond proceeds, and bond tax levies) Emphasis added

There are “opinions” and then there are the “opinions” of the General Counsel for the ISBE who has been statutorily directed by the Legislature since 1859 to interpret the School Code for all “school officers” such as the seven of you. (See 105 ILCS 5/2-3.7, “Legal adviser of school officers - Opinions.”)

It would be totally rational for your constituents to assume that when the ISBE’s General Counsel uses the phrases “**all of the proceeds are needed**” and “**verges on fraud**”, the seven elected members of this board would sit up and take notice. Now that you have been given notice of the law by an unimpeachable source, none of you can claim a “reliance” argument if you elect tonight to follow the “advice” of some other “authority” in attendance (Superintendent, Business Manager and/or Bond Salesman).

THE KNOWN vs. THE UNKNOWN (a.k.a. – Bids vs. Estimates)

Now that the Lester Project bids have been unsealed, the Board is required to substitute the “known” amounts in place of previous “estimates” when considering *any* bond sale to pay for the projects, even an arguably questionable “Working Cash Fund” bond sale for *building projects and maintenance work*.

Attached are two pages for your review. They document the fact that the \$2,810,000 recommendation of Superintendent Cremascoli and CSBO Bein found within tonight’s Agenda at 13(D) ... “**verges on fraud**”. (Stated bluntly, what the two of them have actually recommended is that the seven of you commit bond fraud via misplaced trust, willful blindness and/or simple ignorance!)

As General Counsel Dempsey stated, in order for a bond resolution to be *proper*, it must demonstrate that “all of the proceeds are needed.” Superintendent Cremascoli and CSBO Bein absolutely cannot demonstrate the need for \$2,810,000; and yet, they have made a recommendation to the seven of you with the fullest of expectations that you will simply acquiesce to their unchallenged recommendation.

However, in order to uphold your Oath of Office, the members of the Board must reduce the recommendation placed on the table for consideration to an amount *not in excess of* **\$2,255,000** ... a reduction of \$555,000. Only after steps are taken to avoid a fraudulent bond issuance, can the members of the Board discuss the passage of the *modified* Resolution.

If the Board acquiesces to the recommended sale amount, \$550,000 of cash will be collected for *no specified purpose or purposes “to be named later”*. Consider the following absurd example. If the administration recommended that the Board sell a single \$550,000 bond for no specified purpose or for needs that will be named later, I sincerely hope that you, as elected officials, would vehemently vote down such a proposal and recognize it for the abusive fraud that it is.

BINA – A Second Hearing?

If ... *if* ... the Board still wishes to sell \$2,810,000 of “Working Cash Fund” bonds for building projects, the Board must 1) formally approve at an open meeting a new list of projects (along with “reasonable estimates”) and 2) hold a second BINA hearing so that members of the community-at-large may voice their opinions (pro & con) on the need for the “new” list.

The Bond Issue Notification Act (30 ILCS 352/10) states:

“Sec. 10. Hearing requirements. Notwithstanding and in addition to any other law, before adopting an ordinance selling non-referendum general obligation bonds or limited bonds, the governing body of the governmental unit proposing to sell the bonds shall hold **at least one** public hearing concerning the governing body's intent to sell the bonds.” (Emphasis added)

If the Board attempts to simply add additional projects *without* holding a second BINA hearing, the community members would have a legitimate argument that a due process violation has occurred.

CONCLUSION

If the *true* purpose for the Working Cash Fund bond sale is for projects (and not for “working cash purposes”), as twisted as that interpretation may be, then the amount this Board can legally and honestly sell must reasonably conform to the amount that is *needed*. That amount is currently **\$2,255,000**. If the Board desires to sell the Series 2018 non-referendum bond for *additional* projects, hold another BINA hearing to comply with all of the procedural requirements for issuing debt. If you ignore this recommendation, you run the risk of knowingly, willingly and intentionally selling bonds for no stated purpose, which may be construed in Wheaton, Elgin, or Springfield to be fraudulent.

Thank you for your attention to this matter.

/s/ Scott O’Connell

Downers Grove ESD #58
Proposed Uses of \$2,810,000 Series 2018 Bond Proceeds
February 12, 2018

ESTIMATES

\$2,242,000	Estimate: Lester Addition Construction (\$)	Superintendent's Office Est.
\$58,000	Estimate: Lester Permits/Furniture/Equip/etc. (\$)	Superintendent's Office Est.
<u>\$2,300,000</u>	Estimate: Lester Addition (Total \$)	Superintendent's Office Est.
\$341,535	Estimate: Fairmount	Superintendent's Office Est.
\$69,010	Estimate: Lester Playground/Curbing/Asphalt	Superintendent's Office Est.
\$28,568	Estimate: Fairmount (Mechanical/Electrical)	Superintendent's Office Est.
\$132,312	Estimate: Kingsley (FireAlarm)	Superintendent's Office Est.
<u>\$571,425</u>	Estimate: Approved Maintenance Projects (\$)	Superintendent's Office Est.
<u>\$2,871,425</u>	Estimate: All Approved Projects (Total \$)	Superintendent's Office Est.

ACTUAL BIDS - LESTER KINDERGARTEN WING

\$259,000	Bid #1. General Trades: Manusos General Contracting	Actual Bid
\$175,000	Bid #2. Mass Grading: Kendal Excavating	Actual Bid
\$39,650	Bid #3. Paving: J&R Asphalt	Actual Bid
\$21,441	Bid #4. Landscaping: Hoppy's Landscaping	Actual Bid
\$175,381	Bid #5. Concrete: Martin Cement Company	Actual Bid
\$228,100	Bid #6. Masonry: Midwest Masonry, Inc.	Actual Bid
\$94,400	Bid #7. Steel: S&G Krauss Company	Actual Bid
\$137,000	Bid #8. Mechanical: Flo-Tech Mechanical	Actual Bid
\$197,800	Bid #9. Electrical: Lyons Electric	Actual Bid
\$68,700	Bid #10. Plumbing: CW Burns Company	Actual Bid
\$66,967	Bid #11. Roofing: Metalmaster Roofmaster	Actual Bid
\$98,800	Bid #12. Glazing: 3F	Actual Bid
\$34,600	Bid #13. Flooring: Vortex	Actual Bid
\$31,781	Bid #14. Fire Protection: Automatic Fire Systems	Actual Bid
<u>\$1,628,620</u>	Actual: Lester Addition Construction (Bids \$)	<u>Actual Bids</u>

\$2,242,000	Estimate: Lester Addition Construction (\$)	138% Of Actual
\$1,628,620	Actual: Lester Addition Construction (Bids \$)	
<u>\$613,380</u>	Estimate Cost (\$) minus Actual Cost (\$)	27% Less Than Estimate

\$1,628,620	Actual: Lester Addition Construction (Bids \$)	Actual Bids
\$58,000	Estimate: Lester Permits/Furniture/Equip/etc. (\$)	Superintendent's Office Est.
\$571,425	Estimate: Approved Maintenance Projects (\$)	Superintendent's Office Est.
<u>\$2,258,045</u>	Revised Estimate: All Approved Projects (Total \$)	Actual + Superintendent's Office Est.

REQUIRED ADJUSTMENT TO AMOUNT OF BONDS TO BE SOLD FOR PROJECTS

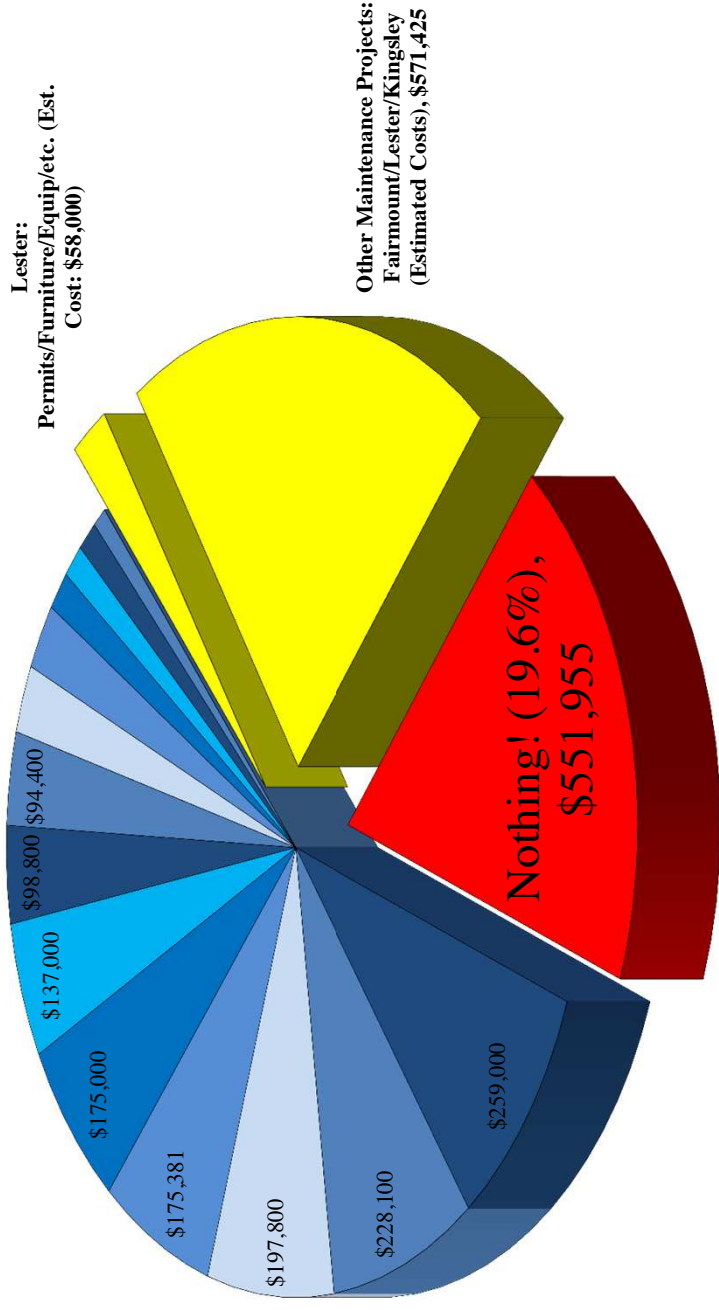
\$2,810,000	Initial Bond Offering For All Approved Projects (Based on Estimates)	Superintendent's Office Est.
\$2,258,045	Actual Costs (Lester) plus Estimated Costs	Actual + Superintendent's Office Est.
<u>\$551,955</u>	Reduction In Bond Offering	
<u>\$2,255,000</u>	Final Bond Offering For All Approved Projects (Total \$)	Actual + Superintendent's Office Est.

(\$555,000) Required Reduction In Bond Offering Due To Known Costs vs. Estimates

Downers Grove ESD #58

Proposed Uses of \$2,810,000 Series 2018 Bond Proceeds

February 12, 2018



- Lester: Bid 1 - General Trades (Actual Cost: \$259,000)
- Lester: Bid 2 - Mass Grading (Actual Cost: \$175,000)
- Lester: Bid 3 - Paving (Actual Cost: \$39,650)
- Lester: Bid 4 - Landscaping (Actual Cost: \$21,441)
- Lester: Bid 5 - Concrete (Actual Cost: \$175,381)
- Lester: Bid 6 - Masonry (Actual Cost: \$228,100)
- Lester: Bid 7 - Steel (Actual Cost: \$94,400)
- Lester: Bid 8 - Mechanical (Actual Cost: \$137,000)
- Lester: Bid 9 - (Actual Cost: \$197,800)
- Lester: Bid 10 - Plumbing (Actual Cost: \$68,700)
- Lester: Bid 11 - Roofing (Actual Cost: \$66,967)
- Lester: Bid 12 - Glazing (Actual Cost: \$98,800)
- Lester: Bid 13 - Flooring (Actual Cost: \$34,600)
- Lester: Bid 14 - Fire Protection (Actual Cost: \$31,781)
- Lester: Permits/Furniture/Equip/etc. (Est. Cost: \$58,000)
- Nothing! (19.6%)