



MEMORANDUM

TO: Suzanne Sack, Chairperson, Region 17 Board of Education
Jeffrey Wihbey, Superintendent, Region 17 Public Schools.

FROM: Thomas Mooney, Shipman & Goodwin

RE: Summary of Findings regarding the District Self-Insurance Reserve Fund

DATE: February 16, 2022

Per your request, I have reviewed the status of the self-insurance reserve fund that the Region 17 Board of Education (the “Board”) created many years ago as a mechanism for paying health insurance claims of district employees covered by a self-insured health plan. This fund has been inactive since 2018 when the Board moved its employees into the State Partnership Plan, which is a premium-based PPO plan operated by the State of Connecticut.

In summary, I was unable to find any legal authority for the Board’s action in creating the self-insurance reserve fund, but I was able to find analogous authority for the appropriate procedure for discontinuing a reserve fund maintained by a regional board of education in Connecticut. Two separate statutes provide that regional boards of education may discontinue reserve funds established for authorized purposes, which then by statute moves the proceeds from the fund to the general fund. Once in the general fund, by operation of Conn. Gen. Stat. § 10-51(c), these funds must be used to reduce the charges assessed to the member downs in the subsequent fiscal year. That procedure appears to be the best approach here.

By contrast, there is no statutory authority for paying the proceeds out to the member towns or for diverting some of the proceeds to employees who have participated in the district’s health insurance plan. The fund operated simply as a mechanism for a third party administrator to pay employee health insurance claims. Indeed, the calculation of premium-equivalent rates did not include any consideration of the amount in the self-insurance fund. While the amount in the fund was affected by the variations in claims from year to year, the premium-equivalent charged to employee was based on projected costs and did not change once set.

A. The Board May Have Lacked the Legal Authority to Establish the Fund.

Regional school boards are creatures of statute, and as such they have only the powers granted them by the General Assembly. On two occasions, the Attorney General considered and opined on the legal authority of regional boards of education to establish reserve funds for specific purposes, and both times the Attorney General determined that, in the absence of enabling legislation, the regional board of education lacked the authority to establish and

maintain such a reserve fund. *See Letter to Sergi* (April 9, 1997), found here: <https://portal.ct.gov/AG/Opinions/1997-Formal-Opinions/Honorable-Theodore-S-Sergi-State-Board-of-Education-1997011-Formal-Opinion-Attorney-General-of-Conn> , *Letter to Sergi* (May 30, 2003), found here: <https://portal.ct.gov/AG/Opinions/2003-Formal-Opinions/Honorable-Theodore-S-Sergi--Connecticut-State-Department-of-Education--20030010-Formal-Opinion-Attor>. Indeed, the latter opinion (which held that a reserve fund for teacher retirement benefits was not authorized) ends with the following statement, “If the creation and maintenance of such accrued liability funds would be efficacious, interested parties should pursue legislative action to enact the requisite statutory authority for such funds.” As it turns out, Conn. Gen. Stat. § 10-51b (authorizing such reserve funds) was enacted three years later.

B. Authorizing Legislation Provides a Model for Discontinuing the Fund.

Under current law, there is statutory authority for regional school districts to create only two types of reserve funds: a reserve fund for “capital and nonrecurring expenditures” as authorized by Conn. Gen. Stat. § 10-51d, and a reserve fund for “accrued liabilities for employee sick leave and severance benefits” as authorized by Conn. Gen. Stat. § 10-51b. In both cases, the statutes provide that the regional board of education may discontinue such funds, with the result that “any amounts held in the fund shall be transferred to the general fund of the district.” Moreover, regional boards of education would not then have the authority to hold such funds from year to year. Rather, Conn. Gen. Stat. § 10-15(c) requires that “The board shall use any budget appropriation which has not been expended by the end of the fiscal year to reduce the net expenses of the district for the following fiscal year.”

Given the absence of any other guidance, following this procedure for the discontinuation of the self-insurance funds is advisable. As I understand the Board’s procedures, accounts are audited annually, and surplus funds verified through audit after the close of one fiscal year are then used to reduce charges in establishing the budget for the following fiscal year. Under this procedure, if the Board discontinues the fund during the current fiscal year, the available funds will be determined during 2022-2023 through the audit of district finances for 2021-2022, and in setting the budget for 2023-2024 the Board will be required by Conn. Gen. Stat. § 10-51(c) to use these funds to reduce charges to the member towns.

C. There is No Statutory Authority Providing for the Direct Payment of the Proceeds from the Self-Insurance Reserve Fund to Haddam and Killingworth.

Under Conn. Gen. Stat. § 10-56, the regional school district, under the direction of the Regional School District 17 Board of Education, is a body corporate that has the power to operate the school district. However, as described above, the Board has only the powers the statutes provide to it. As described above, there is significant question whether the Board had the authority in the first place to create and maintain the fund. However, the Board is now

aware of this question, there is no current need for the fund, and the Board is well-advised to discontinue the fund.

There is no statutory authority for the Board simply to transfer the proceeds to the member towns when it discontinues the fund. The Board would be subject to potential legal challenge if it chose to use the proceeds from the fund to augment its budget and expend the funds to make additional purchases for the district or to hire additional personnel. The same challenge could be made if the Board transferred the proceeds to the member towns. Either such action would be inconsistent with the statutory process for setting an annual budget and making expenditures from that budget as approved at the district meeting. By contrast, as described above, the statutes provide that the proceeds from a reserve fund that is discontinued should be placed in the district general fund, with the result that, once audited, the proceeds will then be applied to reduce the assessments to the member towns in the subsequent fiscal year.

D. District Employees Have No Claim to the Proceeds from the Fund.

The premium-equivalent contributions of employees when the Board self-insured for employee health care was part of a contractual agreement between the Board and the respective unions. The employees in each of the bargaining units contributed toward the cost of health insurance based on a negotiated percentage of projected costs, and the Board paid their health insurance claims. The self-insurance reserve fund was separate, operating as a funding mechanism for a third party administrator to pay employee health insurance claims, and it was never a joint enterprise with those employees. After consulting with the Board's insurance broker, I understand that the calculation of premium equivalent rates for employees under the self-insurance plan was based on projected claims and administrative costs (including network charges and stop-loss insurance premiums), and that the setting of rates from year to year was not affected by the status of the fund. The Board was obligated to pay all claims irrespective of the health of the fund, and once established, employee premium-equivalent contributions were not affected by the actual claims in a given year.

E. Conclusion.

Given the foregoing, neither the member towns nor district employees will have a claim to proceeds from the fund when it is discontinued. Rather, upon discontinuation of the fund, the Board is well-advised to follow the statutory precedents and return the proceeds to the general fund. Once the proceeds are so transferred, the Board cannot spend those funds; rather, they must be used to reduce charges assessed to the member towns as provided in Conn. Gen. Stat. § 10-51(c). I am not aware of any authority that Board would have to spend any part of the proceeds for any other purpose, including payments to the member towns or to employees.

I hope that this summary is helpful to you and the Board of Education. Please let me know if I can be of any other assistance. Thank you.