

April 23, 2018

SCRANTON, PENNSYLVANIA

The Scranton School Board of Directors held a Special Meeting on Monday, April 23, 2018 at 6:30pm prevailing time for the specific purpose of the Bonds to Balance the 2018 Budget including Fees and Not to Exceed Amount Bond Purchase Agreement.

President Dixon asked for a moment silence for the passing of Director Schuster's father.

President Dixon called the meeting to order at 6:33pm with a Pledge of Allegiance to the Flag.

Roll Call: By the Secretary.

Present: Directors Casey, Cognetti, Duffy, Gilmartin, McAndrew, Schuster and Dixon.

Absent: Directors Lesh and Oleski.

Public Comment

No one from the public signed in to speak.

Budget and Finance Committee

The following was submitted by Director Cognetti.

B-1

BE IT RESOLVED, THAT THE BOARD OF SCHOOL DIRECTORS OF THE CITY OF SCRANTON AUTHORIZE AND DIRECT THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE SCHOOL DISTRICT, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED SIXTEEN MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$16,475,000.00) PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 53 PA. C.S. CHAPTERS 80-82, AS AMENDED, REENACTED AND SUPPLEMENTED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "ACT"); AS AMENDED AND SUPPLEMENTED AS PER THE ATTACHED BOND ISSUE.

See attachment.

The resolution was seconded by Director Casey.

ON THE QUESTION:

Director Casey asked Mr. Mike Judge of CaseCon if he was able to get in writing from PNC that the fees would not exceed .65%.

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Mr. Judge was not able to get it in writing, only verbal confirmation but he will also get it in writing.

Director Casey said that he will not hold anything up given the timeline but asked the board that in the future something like this not be considered until it is in writing.

Director Schuster asked if it is confirmed in writing from RBC.

Director Casey said RBC came in with "not to exceed", PNC came in at .65% so however the board feels best.

Director Cagnetti explained that RBC and PNC both came in with a not to exceed amount and at last week's meeting, it was left that she would work with Director Schuster to make sure he was comfortable moving forward with both RBC and PNC. Having co senior managers seemed like the best way to go so that each receive the same fee, 50/50, choosing RBC as the lead book runner given that they are number one in their lead table and since the district has worked with both firms in the past it seemed like the cleanest way to select.

Mr. Judge said he spoke with RBC and PNC today, explained the terms that it would be a 50/50 split, memorialized amongst the underwriters, and your wishes should be okay.

Mr. Brian Koscelansky, Stevens & Lee noted the resolution has RBC as the lead with PNC as co-issuers.

Director Cagnetti expressed concern about the schedule, Exhibit 'C' – Cost of Issuance, and questioned Mr. Judge about his fee, how he came to work with the district, if there may be any potential conflicts of interest, how he determines his fees and his responsibility as fiduciary with the district. Mrs. Cagnetti added that Mr. Judge came to work with the district with his first contract in November 2014 and it is her understanding there was no RFP process and she is curious how that came about.

Mr. Judge said he has worked with the district for twenty years or more, he believed Mr. John Marichak contacted him and asked for ideas considering the looming financial situation in the district. Mr. Judge referred to a memo he has dated October 3, 2014 to Mr. Marichak which he gave him various ideas and he met with Mr. Marichak and Mr. Gregg Sunday, they discussed the ideas and they asked him to attend the November meeting to present the ideas to the board, which he did, they liked what he had to say, they asked for an agreement, the agreement was passed by resolution and the rest is history.

Director Cagnetti asked how he determined the fee structure of .75% of the principal or \$75,000, whichever is greater.

Mr. Judge responded his knowledge, his discussion of what the district needed at the time to go forward to help the school district, his time and effort and he thought that was a fair arrangement to get where they needed to be.

Director Cagnetti commented that a percentage fee is viewed as a conflict of interest.

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Mr. Judge disagreed and said it *can* be considered a conflict of interest and that was explained to everyone at the meeting. The board had the option of retainer, a flat fee for every piece of work he does, hourly at \$450/hour or on a contingency basis adding that obviously if he is taking the risk his fees would be higher and that's what the board decided to do.

Director Cagnetti asked Mr. Judge how he would be taking a risk in what way, he is not an underwriter, he is a financial advisor; no transaction would be coming out of his bank account or business.

Mr. Judge answered that there is a considerable amount of risk if not all deals structured for you come through and if something should happen with a troubled credit, bond counsel has the responsibility that the transaction is done correctly so there is considerable amount of liability.

Director McAndrew asked, with regards to liability and risk, over the last couple meetings there was discussion whether an agreement exists and asked if the district is at risk.

Mr. Judge said no, and there is a disagreement whether there is an agreement or not and he referred to an addendum, that on February 13, 2017 in an email to Mr. John Minora and Mr. Gregg Sunday asking them to review this addendum and make sure it is okay with them and the board. Mr. Judge now read from an email dated February 15, 2017, Mr. Sunday, Mr. Minora, met with Gregg this afternoon, to review various items including suggested revisions to CaseCon agreement, please see the attached which reflects our discussion which includes Greggs suggestions and his comments, also went through various details of estimated fees, the various professionals and please touch base with Gregg and make sure everything is in your agreement with what you want.

Mr. Judge continued to say that since it wasn't passed by resolution which he did not know, it was reflected to him that it was already discussed and it was represented that the addendum was okay and if the addendum is not okay his fee structure is higher. Mr. Judge said he legitimately came in and told them that based upon the size of the deals that we are doing now his fee structure is too high and we need to amend it, he unilaterally did that at a meeting at Scranton High School, then Gregg called him, told him everything was fine, so he has been billing based on the amendment not the original agreement.

Director Cagnetti said that this amendment to the addendum dated November 2014, from February 15, 2017, was never board approved and asked Mr. Judge who told him he had a contract and that it was approved.

Mr. Judge answered Gregg Sunday. Mr. Judge added that CaseCon's perspective, all CaseCon is required to do is to notify all of you what a compensation package is, when and what to expect the terms and conditions and whether it is put it in an agreement form or not is up to the district, he would prefer it but it is not a requirement.

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Director Cagnetti asked Mr. Judge, in terms of the liability he said he has a lot of risk, read from section 4 of the original CaseCon agreement, she doesn't understand the argument.

Mr. Judge said that paragraph has nothing to do with the financial liability, it is professional misconduct liability and the last sentence in that paragraph says that.

Director Cagnetti remarked that she doesn't understand the extent of the risk that Mr. Judge stated his reason for his fee structure past and current, there's been discussion before and her research from people who work in PA/NY/ NJ, and out of Washington D.C., the fees that Mr. Judge charged in the past have been excessive and the current fee proposed for \$60,000 for this transaction which is under a \$10,000,000 transaction, \$60,000 is already too high and she doesn't think that the school district should be paying him an excessive amount ever, and to the extent that now they are here with a different board and a different business administrator who she thinks is more responsible in terms of telling everyone what is and what is not in contracts, she doesn't feel the necessity to compensate him any more than he has already been compensated, adding that this number is now \$30,000 higher than it was last month, he made \$1,268,329.87 over the course of eleven transactions, it is a very high amount of money, at one point he made \$234,000 on a transaction, and she has been looking through the MSRB rules, looking at excessive compensation, and duty of care, looking at fairness and she cannot sit here and give him anymore money, he's received enough and she would like the board to put his fee at zero, pass the resolution and move on to borrowing but she cannot in good conscience give him anymore money.

Mr. Judge responded that there were fifteen deals, not eleven, there is considerable more work other than just the transactions and he can sit here all night and go through the litany of things that need to be done but they are here for a purpose and they can certainly do that in private or with the board in a work session and he is more than happy to do that, unfortunately he has to justify his work for the past four years that she hasn't been around to witness.

Director Cagnetti also said that she has done a lot of research, and during some unintelligible remarks, Mr. Judge stated there is work that she doesn't know about, he has been through this before, there is a resolution out there and the board can either consider it or don't consider it.

Director Cagnetti said she would like to make an amendment to set Mr. Judge's fees to zero.

Director Casey said he is not against looking at that, but asked Mr. Minora if they are okay with asking someone to work free.

Mr. Minora said that is up to Mr. Judge.

Mr. Judge said he will not do work for free but would have negotiated a more favorable fee given the chance had anybody would have talked to him.

Director Cagnetti disagreed and said she had written him emails, shown him a board copy, followed up with email, texted with him and Mr. Schuster and they tried to talk

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and didn't get anywhere but at 4:30PM today he texted her back with \$60,000 and he was not willing to negotiate down from \$60,000.

Mr. Judge remarked -negotiate down to zero? That's not going to happen.

Director McAndrew recalled that from a meeting or two ago, Mr. Judge said he always negotiates fees and now this is in front of him and asked if this fee was negotiated and with whom.

Mr. Judge replied that the board asked for a not to exceed fees and he provided a schedule based on conversations with professionals, not to exceed fees, it is what you asked for and CaseCon's not to exceed fees is quoted at \$60,000.

Director Gilmartin asked if there were concessions from other entities involved.

Director Cagnetti replied yes; the solicitor has graciously agreed he would not charge for this transaction, and he also came down 76% of his fee for the last transaction from what was originally proposed.

Dr. Kirijan remarked to Mr. Judge that she recalls a transaction prior to this that he did reduce his fee considerably.

Mr. Judge responded that yes, he did at Director Duffy's request.

Director Duffy commented that he also reached out to others about reducing fees and he would like to see some more of the concessions as Mr. Minora has done.

Mr. Judge now spoke of the first remarketing done in 2015 when most everybody did that pro bono except for the underwriter. Mr. Judge said that given his contract was supposedly good at that time; the fee would have been \$270,000 due to CaseCon which he did for nothing. Mr. Judge added that he's definitely done a lot of work, more than most would; it was an extremely difficult time and if you're not happy with CaseCon, use someone else; he is very happy to work for the district but he doesn't want to have this conversation every time he meets with the board.

Dr. Kirijan also reminded everyone of all of the work Mr. Judge did with PlanCon.

Director Cagnetti responded to Mr. Judge about the \$270,000 that CaseCon was due in 2015 and she said again it is based on a percentage and you knew then that charging a percentage was not good, not what the FCC wanted and you told her that you told Mr. Schuster that.

Mr. Judge felt Mrs. Cagnetti was "spinning" that conversation about the potential conflict of interest and the addendums point out that any advisor has to say that but there's no other way the school district can pay.

Director Cagnetti asked Mr. Judge why couldn't the school district pay him in a flat fee, that in January or February Mr. Judge told Mrs. Cagnetti, in Mr. Laffey's office that Mr. Judge told Mr. Sunday he shouldn't be getting paid a percentage and was

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getting paid too much and Mr. Sunday said it was okay. Mrs. Cagnetti said it was also in the newspaper.

Mr. Judge said that Director Cagnetti was misconstruing and massaging his words to fit her argument.

Mr. Judge spoke of what an advisor's responsibility is regarding retainers or flat fees and the school district was incapable of doing that because they didn't have any money according to the business manager. There was a good likelihood that some of these deals from 2015 when the school district was in a cash crunch, nobody would give the district money, the capital market wasn't going to give them any money and the district was two days from not having any money; contingency based, deal doesn't happen, he doesn't get paid so if there is more risk he is paid more money.

Director Cagnetti responded that just because it was contingency fee doesn't mean it would have to be based on a percentage, it could still be a flat fee if the deal went through, and it is unfortunate that Mr. Sunday isn't here to have this conversation with them, but Mr. Sunday, the CFO of the school district is not your regulator, your regulator is in D.C., and while she still has questions she thinks the amount is enough to proceed.

Brian Koscelansky remarked that the only other thing he can offer with regards to the resolution, this is setting the framework to get this process moving and the district is not committing to the borrowing or any fees until the final addendum, there is still some time to work on it, no decision has to be made tonight and they will see the final numbers and pricing before they go to closing.

Director Cagnetti suggested setting the not to exceed amount to \$14,400 which is 76% of \$60,000.

Dr. Kirijan asked Mrs. Cagnetti how she came up with that number, if it is because Mr. Minora came down that much.

Director Cagnetti said that is the percentage he came down from the last transaction.

Dr. Kirijan said that their fees are very different and the amount of work they do for these transactions are very different and curious where the numbers came from.

Director Cagnetti explained that \$3,000 divided by \$12,500 was the calculation and the percent decrease that Mr. Minora agreed to from last transaction so that's the most recent example of negotiation on these fees and the fees do vary by the "hairiness" of the transaction so the fees look different from entity to entity.

Director Casey indicated that he is not sticking up for one side or the other but if they don't have someone to head this part of the deal, what risk do they put themselves in if they were to do this at \$14,400 and Mr. Judge says no, which he has every right to do, what is that next step if Mr. Judge says no.

Mr. Judge responded that CaseCon Capital will not work for nothing.

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Dr. Kirijan asked if there was room to negotiate.

Mr. Judge responded that if anyone would talk to him other than work for zero he would talk but right now it's not to exceed \$60,000.

Director Cagnetti responded to Mr. Casey that it would be unfortunate but she thinks we could find someone to take over and there are people that know the school district is in trouble and they want to help.

Dr. Kirijan asked if it would be bid out or appointing someone that you would contact as a board.

Director Casey expressed concern of a timeline.

Mr. Koscelansky said there really is not a lot of time, the rating process has to start this week, cash flows have to start this week, there's a lot of pieces that that need to go so they can price in a couple weeks, and close for payments in June otherwise it changes the whole nature of the deal and they start from scratch.

Director Cagnetti asked if they would really be starting from scratch since the firm has already done a very large amount of work and would it necessitate a new resolution.

Mr. Koscelansky replied that it would if they're not able to close and don't get those numbers.

Mr. Judge pointed out that CaseCon has also put in a lot of work that the district has taken without paying.

Director McAndrew thanked Mr. Minora for the buy one; get one, obviously they're not going to get that with CaseCon but said they said they would be willing to negotiate this fee. Mr. McAndrew asked Attorney Minora if they can still pass the resolution tonight, do they break out the fees and vote on that separately or vote on an amendment to the resolution.

Mr. Minora said he believes it's a not to exceed fee in the resolution so none of those fees are locked in stone so it gives them the opportunity to negotiate.

Mr. Koscelansky again said that it's not locking into anything in tonight even if it is approved the way it is-not to exceed; they still have those final decisions to make.

Director Casey asked when they will be locked in.

Mr. Koscelansky responded that unless this is kept on track over the next week they will rapidly run out of time to get it closed by June 1st because the rating agency is going to take a couple weeks, cash flow will take a couple of weeks, a lot has to happen within the next two weeks to be able to price and then close two weeks after that, adding they need to know within the next week or so what everyone is on board with, ready to go and keep it moving.

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Director Cognetti indicated she didn't think they are in danger of not keeping it moving or stopping the train; they are talking about not overpaying for the work being done and also trying to balance the books a little bit given the excessive fees in the past but doesn't want to leave here tonight with the fees at \$60,000 and would like to amend this, however is best to read \$14,400.

Dr. Kirijan asked if the board has a point person who would be the negotiator to sit with Mr. Judge and whomever to negotiate face to face the fees.

Director McAndrew said they already have Director Cognetti negotiating.

Dr. Kirijan said they still have a week's time and they can still pass this with the not to exceed fees, then they will have someone to negotiate on behalf of the board and asked Mrs. Cognetti if Mr. Judge is the only one.

Director Cognetti said she planned on calling Stevens & Lee as well but looking at their past fees they haven't been excessive in the way that she believes CaseCon has.

Dr. Kirijan remarked that they're going back to a process which they have started to do, the board could pass the resolution this evening, with the not to exceed fees to be negotiated by an appointed member of the board.

President Dixon asked if they can negotiate; she didn't think they could negotiate at the board level.

A discussion ensued about negotiations being held by Pat Laffey, if he is comfortable negotiating on board behalf with assistance from the board with Dr. Kirijan adding that it is the board's pleasure but she believes they need to have the process move forward without slowing down getting things done.

Director Cognetti said no one is hoping to slow any of this down but she will not leave this evening with the fees at \$60,000 and yes she would like to start a process with Mr. Laffey and she would like to be part of that but she does not want \$60,000 as the starting point.

Dr. Kirijan confirmed with Director Cognetti that the not to exceed fees be less than \$60,000.

Director Gilmartin asked Director Cognetti based on her research, if \$15,000 is at the low end or the high end of what is appropriate.

Director Cognetti believes it to be in the middle.

Director Duffy said that since everyone is in favor of a decrease in fees and move forward he made a motion for a friendly amendment that the fees not to exceed \$20,000.

Director McAndrew seconded. The friendly amendment passed unanimously on roll call.

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Director Cagnetti remarked that she is confident that they can move forward and she is happy to be working with RBC, PNC and Stevens & Lee as well; the district has been working with them for a long time.

President Dixon asked for an explanation of the 50/50 split fees and what does being "a lead" mean.

Mr. Judge explained that a lead underwriter is needed, basically to do the books, make the allotments, one to be the decision maker and that is RBC and in the past the lead underwriter had always been the management team, the sales commission didn't split 50/50 and the lead underwriter usually ended up making a significant amount of money because there would be more allocated bonds to him than anyone else. He contacted PNC and RBC and is 50/50 no matter who collects or does anything it is split 50/50 and that has been done in the past.

Director Schuster said he has noticed that the amount of the borrowing has gone up from the last time he seen it and some matters with the capital improvements and asked for a rundown of that.

Mr. Koscelansky answered that they are still looking at a ten or eleven million dollar final issue but the \$16,000,000 number is to build in enough pricing room for the underwriters to have the flexibility to give the best deal on pricing, the number is bulked up but when they do the final addendum the number will be set.

Director Casey asked again to be sure that there wouldn't be legal recourse with the paying agent.

Mr. Koscelansky answered that they do have the right to pick a different paying agent and they can have those conversations with other paying agents once the funds are released; it is a typical process if a different paying agent takes over.

The resolution now passed unanimously on roll call.

There being no further business, Mrs. Dixon made a motion to adjourn, seconded by Director Casey and the meeting adjourned at 7:19PM.

By: _____
Secretary