

WASATCH TAXPAYERS ASSOCIATION

White Paper Series

Volume 1

August 29, 2012

Issue 1

“Addressing The Fiscal Responsibility of The Wasatch School District”

The Wasatch Tax Payers Association has been reviewing the 2013 budget of the Wasatch School District. This has raised fiscal responsibility questions which we have posed to the Wasatch School Board and School District Administrators for answers, or clarification. Unfortunately, the answers to those questions were less than enlightening and only raised more questions. In an effort to better inform the taxpayer of Wasatch County, the Wasatch Tax Payers Association is offering the contents of this White Paper analysis.

Wasatch Taxpayers Association Discovers An Excessive Burden On The Taxpayers Of Wasatch County By The Wasatch County School District during 2007-2012. Over Taxed by Millions of Dollars While Not Adhering to Utah State Code.

This paper addresses the methods of how the Wasatch School District has assembled their line item budget categories in such a manner so as to appear legitimate, yet violates the Utah State Law. The circumstances employed to prepare an annual budget by the Wasatch County School District is virtually identical to the circumstances adjudicated by the Utah State District Court and affirmed by the Utah State Supreme Court. The conclusion is that the taxpayers in Wasatch County have been taxed excessively compared to the **actual needs** of the Wasatch County School District. The Wasatch School District has manipulated the line items categories of their budget in “undesignated or unassigned funds” in excess of 5% of the total annual budget. The WSD pattern of conduct for financing school projects since 2007, amounting to tens of millions of dollars WITHOUT public approval, leads to speculation that these uncategorized or unassigned line items are in the annual budget to finance **the wants** of the school district and unjustifiably taxing the Wasatch County taxpayer

- **Wasatch Taxpayers Association has requested a \$5 million tax cut for the 2013 fiscal year at the July 2012 public hearing. Based on the enclosed information, that can be achieved without affecting the day-to-day operations of the WSD.**
- **With the discovery of the Utah Supreme Court decision since that hearing, we respectfully ask to be placed on the agenda for the September 2012 School Board meeting to discuss this issue in detail.**

**Thank you in advance for your timely response to our request by September 7, 2012
at: wasatchtaxpayers@gmail.com**

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I. Introduction

The Wasatch School District’s stated budget process is a good one, as reported in the 2011 Audit:

*“Governmental funds – The focus of the District's governmental funds is to provide information on how money flows into and out of the funds and to show balances left at year-end available for spending. Under Utah law, it is illegal to budget for an undesignated fund balance. This is in alignment with the concept that **the revenues provided to a District are intended to be used during the period for which they were generated.** That is to say that at the beginning of a fiscal year, undesignated fund balance is budgeted to be \$0. If over the course of the year, the difference between budgeted and actual revenues and expenditures leaves an unspent balance, that unspent balance must be budgeted to be used in normal operations during the next fiscal year so as to prevent a District from accumulating excess funds.”*

Utah law contains the unambiguous requirement that a school district not collect more money in taxes than it knows what to do with. The Utah Legislature has codified this requirement in §53A-19-103 http://le.utah.gov/~code/TITLE53A/htm/53A19_010300.htm, which states that a school district may not keep more than 5% of its maintenance and operation budget in an “undistributed reserve”.

In the past, school districts have attempted to evade this law through creative budgeting practices, calling undistributed reserves by different names and splitting the unspent money into multiple funds. These practices have created a painful burden upon the people who support the school district with their property taxes, and they have sued in the past for relief and won.

Wasatch School District has engaged in this unlawful behavior for quite some time, but it is in the last five years that their actions have become too egregious to ignore. The total of the undistributed and unassigned funds in the budget are well over 5%. In fact, from fiscal year 2009 to fiscal year 2012, these total fund balance have repeatedly exceeded 30% of the budget. In practice, this means that the

people of Wasatch County have been paying millions more in taxes each year than the school district has a legal right to impose. In order to be in compliance with the laws of this state, Wasatch School District must drastically reduce taxes and reorganize its budget, as well as return the money it has unlawfully taken from the communities which support the school district.

II. Utah Law Requires that a School District Keep No More Than 5% of its General Fund Budget in Any Type of Undistributed Reserve.

The undistributed reserve of a school district's budget (or 'rainy day' fund) must be 5% or less of the district's General Fund budget, regardless of what the school district chooses to term the item or whether the school district divides the undistributed reserve into several different funds. The question is not what the district calls the funds, or how many pieces they are separated into, but instead whether the amount of funds set aside by the school district to use for unexpected contingencies exceeds 5% of that school district's budget.

Utah Code Ann. §53A-19-103 (1) states that a local school board may adopt an 'undistributed reserve' that "may not exceed 5% of the... budget" of the school district. The Utah Supreme Court has interpreted this statute to read very broadly, and to govern any budgeting conduct that a school district may undertake in an effort to disguise reserve funds.

The Court held in *Olson v. Salt Lake County School District*, 724 P. 2d 960 (Utah 1986) http://scholar.google.com/scholar_case?case=6638698430783832770&hl=en&as_sdt=2,45 , that the plain language of the statute, the existing legislative history of the statute, and the underlying rationale of the statute all held in favor of this broad interpretation. Although *Olson* ruled on Utah Code Ann. §53-20-2, there is no substantive difference between the statutes, which use the same language to limit the size of the 'undistributed reserve' fund intended to be budgeted to cover unforeseen contingencies. The text of the laws are identical, the only difference is the numbering of the statute.

First, the plain language of the statute shows that the purpose of the law is to restrict a district's ability to hoard funds and budget more than is necessary for school operations. Although the statute

does not explicitly state that there may be only one reserve fund, *Olson* states that it would render the statute meaningless to be interpreted in a manner where all a district would need to do to completely circumvent the statute is to establish a second, non-statutory reserve.

Second, one of the original statute's co-sponsors, Senator MacFarlane, stated during debate that without statutory authority, school districts would have no authority whatsoever to maintain any reserve funds at all. If the prior state of the law prohibited all reserve funds, it follows irrefutably that the reserve fund established by the statute is intended to be the only and exclusive reserve fund available to the schools (the 'reserve' fund limit for a school district is completely different than that for municipal governments).

Third, *Olson* states that the underlying purpose of the statute was to improve transparency and encourage "more careful and accountable budgeting". Therefore, an interpretation of this law which leads to less transparent, responsible and accountable budgeting practices on the part of Utah school districts is an interpretation which does not preserve the intent of the legislature and violates the law as interpreted by the Supreme Court.

"[T]he undistributed reserve authorized by [the statute] is the *exclusive* reserve authorized to meet unexpected and unspecified contingencies". A budgeting system which creates another line item or uses an existing line item to fill in the gaps of that exclusive reserve exceeds the statutory authority granted by the State of Utah Legislature.

III. The Wasatch School District Retains an Undistributed Reserve Well in Excess of 5% of its Total Budget

The recent budgets of the Wasatch School District have contained several funds under different names which serve no other purpose than meeting unexpected and unspecified contingencies. Although the fund that is titled "undistributed reserve" in the budget appears to fall within the 5% guideline, there is another line item in the budget, titled "unassigned fund balance".

Nowhere in the budget is there any discussion of where these funds are intended to be spent; and direct inquiries to the school board and its members have failed to result in any concrete information about where these funds are destined. The only logical conclusion is that Wasatch School District intends to maintain control of the roughly \$5 million that the District has been carefully not spending since around 2008.

The average total 'fund balances' for Wasatch School District over the last four years averages approximately \$13.4 million a year. The average "unassigned fund" over that period is roughly \$5.4 million in the General Fund alone, an amount which is vastly higher than the 5% that the school district is permitted to retain by law.

For the fiscal year of 2012, Wasatch School District presented a budget which had a General Fund budget of about \$35 million; the maximum reserve for this amount, regardless of the title of the line item, is \$1.8 million. This limit is not only sound fiscal practice and good policy, it is the absolute legal limitation placed upon the school district.

Both the fund balances and the "unassigned fund" line item have consistently been grossly in excess of the legal limit. Other unassigned funds which may be considered to be violating this law include \$3.1 million spent constructing a new football stadium and \$ 20+/- million spent on the new high school construction. Wasatch School District has shown a pattern of willfully, and preferably, spending cash reserves on projects instead of requiring a bond election to get permission from the public they serve.

In an Email of 15 Nov, the business administrator reported "the board has been discussing a possible stadium for quite some time but nothing has been "earmarked" or approved by the board of education except for the SOIQ, the selection committee, and the approval of an architect. The board has also worked with the board president on the formation of a design committee to work with the architect. That is all that has been done to date." Budgets and minutes provided on the School website make it difficult to determine the actual source of the funding or the amount spent on the football Stadium.

IV. Conclusion

It is apparent from this analysis and the attached budget figures (Appendix A) that Wasatch School District has been in repeated and knowing violation of this law for many years.

The 2011 Audit Report is “designed to provide our citizens, taxpayers, students, and all other interested parties with a general overview of the District’s finances and to show accountability for tax dollars.” Wasatch County and the taxpayers who support it would benefit from adherence to this sentiment.

The current budgeting policies are unsound, unsustainable, and illegal. It is time for the Wasatch County School District to begin following the law and to establish a budget which contains the required amounts for the items the school district expects to pay for, plus no more than 5% in an additional fund designed for unexpected contingencies. The people of Wasatch County will no longer stand for illegal practices on the part of the government and educational system, which has the highest obligations of responsibility and integrity.

Wasatch Taxpayers Association has requested a \$5 million tax cut for the 2013 fiscal year at the July 2012 public hearing. Based on the enclosed information, that can be achieved without affecting the day-to-day operations of the WSD, and will not negatively affect the quality of instruction to the children of Wasatch School District.

APPENDIX A

Source: <http://wasatchtaxpayersassociation.com/wp-content/uploads/2012/07/WTPA-handout-WSD-budget-7-20121.pdf> For more information, visit:

www.wasatchtaxpayersassociation.com

Rainy Day Funds???

The second column is the total of all of the "Fund Balances." The third is entitled "Undesignated Fund Balance" in the General Fund which may be subject to the 5% limit. (These amounts are generally less than the Fund's "Cash on Hand")

	Fund Balance TOTAL	General Fund Undesignated Fund Balance
FY 2006	\$12,038,338	\$1,879,867
FY 2007	\$5,339,584	\$2,439,125
FY 2008	\$44,460,068	\$4,828,306
FY 2009	\$37,450,148	\$5,026,033
FY 2010	\$13,433,037	\$5,031,233
FY 2011	\$14, 161, 089	\$5,431,840
FY 2012	\$13,458,577	\$5,664,646
FY 2013	\$12,577,300	????

Here's a breakdown of the various Funds in which a balance is kept:

06/30/11	Fund balance	Purpose
General Fund	\$5,664,646	Unassigned
Student activity	None	
NonK-12	\$476,040	Unassigned
Debt Service	\$2,600,897	Unassigned
Capital Projects	\$4,623,809	Retracted=capital Outlay
Building Reserve	None	
Food Service	\$22,878	Unassigned
Other Funds	\$44,519	Unassigned
	\$13,432,789	

Utah law allows for an undistributed reserve fund balance not to exceed 5% of the general fund budget.

FY 2011 Audit statement from School Management

Prepared by WTPA - Wasatch Taxpayers Association