



Downers Grove Grade School District 58

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PRESS RELEASE

November 24, 2009

District 58 postpones Life Safety bond sale

District 58's planned \$10 million Life Safety bond issue, which was to pay for roof repairs and other Life Safety projects throughout the district, has been postponed.

The sale was set for Nov. 23. On Nov. 19, Chapman and Cutler, the district's bond counsel, indicated they no longer planned to issue the qualifying opinion required to sell the bonds. Their decision was due to board member Scott O'Connell expressing a second threat of litigation in a letter he sent Nov. 19 to the Regional Office of Education and the Illinois State Board of Education questioning the cost estimates the district's architecture firm had provided. The ROE and ISBE had approved the Life Safety amendments and accompanying cost estimates earlier this year.

A bond sale requires a qualifying opinion from bond counsel in order to proceed, and any threat of litigation affects bond counsel's ability to issue a qualifying opinion.

O'Connell requested an investigation into all of the architect's cost estimates because two roof replacements and a playground replacement that took place this summer, which the bond issuance was to have paid for, came in under budget. The district had temporarily borrowed approximately \$2 million from its cash reserves, essentially an emergency fund, to pay for that work, with the intention of reimbursing the money with proceeds from the bond sale.

Although District 58 decided to issue \$10 million in Life Safety bonds to address the most urgent needs, staff have compiled a list of approximately \$14 to \$15 million in work that needs to be done throughout the district. If the current list of Life Safety projects approved to be paid for with the \$10 million bond came in under bid and the district had money left over, staff planned to present additional projects on the existing list to the Board of Education for approval and submit them to the ROE and ISBE. No additional projects could be completed with the bond money until they are approved by the School Board, ROE and ISBE.

O'Connell first threatened legal action against the bond sale this past June. That threat of litigation against the bonds meant Chapman and Cutler was unable to issue a letter of opinion regarding the sale, so the bond sale could not proceed. Chapman and Cutler told the board in July that if they were able to review O'Connell's objections in writing and conclude that they were without merit, they would be able to issue their letter of opinion; however, O'Connell did not provide his objections in writing.

At the direction of the district's legal counsel, Board President Elizabeth Davis abstained from voting to approve the bonds, and also withheld her signature from the resolution to issue the bonds. This created a legal controversy, which allowed the district to bring the matter before a DuPage County judge

for resolution. On Oct. 6, the judge ruled on the complaint, saying that District 58 had done everything legally required in regards to the bond sale, and directing Davis to sign the resolution. The district's attorney, Stanley Eisenhammer, said the law requires that cost estimates be provided and approved by the ROE and ISBE; those cost estimates were also included in the complaint filed with the judge.

The DuPage County judge's ruling meant Chapman and Cutler could issue the letter of opinion required for the sale to proceed. However, because of O'Connell's most recent threat of litigation, the firm indicated Nov. 19 they no longer planned to issue that letter.

During the Nov. 23 Financial Workshop, the School Board discussed options for moving forward and getting the necessary work done. Several District 58 parents also spoke out about the importance of the Life Safety projects.

Ultimately, the board directed its attorney, Stanley Eisenhammer, to issue a response to the ISBE in response to O'Connell's letter, and to research the possibility of bringing on new bond counsel. The board also directed District 58 Controller James Popernik to contact the district's audit firm to discuss a timeline for repaying the loan from the cash reserves for the work completed this summer.

District 58's citizen-driven Financial Advisory Committee spent two years studying the district's facilities needs and reviewing potential funding scenarios before ultimately recommending the Life Safety bond sale as the best way to protect the community's investment in the District 58 school buildings and ensure the continued safety of students.

Because District 58 has secured approval for the original list of Life Safety projects submitted, it must complete those projects within five years. The projects that were slated for next year include roof replacements at Belle Aire, El Sierra and Kingsley School.

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