

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
OF ADAMS COUNTY, ILLINOIS

In Re: )  
)  
) Case No. : 04-TX-41  
Objection to Tax Levy of )  
Quincy School District No. 172 )  
For the Year 2003 )  
)

**ORDER ON**  
**CROSS-MOTIONS FOR PARTIAL AND SUMMARY JUDGMENT**

Tax Objectors appear by their attorney Robert K. Slattery on their Motion for Partial Summary Judgment and in opposition to the Intervenor, Quincy School District No. 172’s Motion for Summary Judgment.

Intervenor Quincy School District No. 172 appears by its attorneys, Kenneth M. Florey of Robbins, Schwartz, Nicholas, Lifton & Taylor and Brett K. Gorman of Schmiedeskamp, Robertson, Neu & Mitchell on their opposition to the Tax Objector’s Motion for Partial Summary Judgment and on their Motion for Summary Judgment.

**THE COURT FINDS AND ORDERS AS FOLLOWS:**

**I. JURISDICTION**

1. The Court has jurisdiction of the parties and subject matter;

**II. STATUTORY REFERENCE**

2. 745 ILCS 10/9-107 - Policy; tax levy - reads, in relevant part, as follows:

(a) The General Assembly finds that the purpose of this section is to provide an extraordinary tax for funding expenses relating to tort liability, insurance, and risk management programs . . . Notwithstanding the extraordinary nature of the tax authorized

by this Section, however, it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization.

Therefore, the General Assembly declares, as a matter of policy, that (i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section shall be strictly construed consistent with this declaration and the Act's express purposes.

(b) A local public entity may annually levy or have levied on its behalf taxes upon all taxable property within its territory at a rate that will produce a sum that will be sufficient to: (i) pay the cost of risk management directly attributable to loss prevention and loss reduction . . . and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction . . . (iv) pay the cost of risk management programs;

### III. PROCEDURAL HISTORY

3. On November 15, 2004, Tax Objectors (“Objectors”) filed a Tax Objection Complaint directed against the Tort Immunity levy dated December 17, 2003 of Quincy School District No. 172 (“School District”);
4. Thereafter, the parties filed cross Motions for Partial Summary Judgment and Summary Judgment;
5. At the first oral argument on these motions (May 25, 2006), the parties stipulated to presenting, at that time, solely the narrow issue of “whether Tort Immunity funds may be used, **under any circumstances**, to pay for any portion of a taxing district employees’ salaries under the Tort Immunity Act.” Order, July 25, 2006, ¶ 8 (emphasis in original);
6. In ruling on this narrow issue, the Court held that “School District personnel may be properly compensated from Tort Immunity Funds, *provided* that the expenditure of those funds complies with the requirements imposed by [745 ILCS] § 10/9-107.” Order, July 25, 2006, ¶ 15 (emphasis in original);

7. Following the order of July 25, 2006, counsel proceeded on their original Motions for Summary Judgment to allow the Court to determine whether there existed any remaining issues that could be determined by summary judgment;
8. Both parties chose to re-file and rely upon their previously filed Motions for Summary Judgment, expanding their stipulation beyond the narrow issue previously considered by this Court. Both parties also rely upon all previously filed briefs, responses, replies, etc. In addition, the School District filed a Supplemental Motion for Summary Judgment;
9. In light of there being no narrow stipulation, this Court was given leeway to consider both Cross-motions and the original detailed stipulation in its entirety;
10. On March 27, 2007, before a ruling was issued on the Cross-motions for Summary Judgment, the Second District Appellate Court issued a decision in three consolidated cases involving objections to the levying and use of Tort Immunity Funds. As the Second District's decision is binding authority, this Court granted both parties leave to file new memoranda and present new oral arguments regarding the effect of that decision on this case;
11. In short, this Court is now presented with ruling upon all issues raised by the original and additional Motions for Summary Judgment as the parties have not stipulated to any restriction of the issues, as well as whatever effect the Second District's ruling may have;
12. This Court grants the Tax Objectors' Motion for Partial Summary Judgment. This Court denies the School Board's Motion for Summary Judgment;

## IV. FACTS

### A. 2003 Tort Immunity Levy

13. Starting in 1997 and continuing through at least 2004, the Tort Immunity Levy imposed by the School District drastically increased compared with the increase in the amount of the total budget. During this period, the Tort Immunity levy increased from \$220,878 in 1997 to \$4,519,618 in 2004 (a 1,946% increase). During this same period, the total levy imposed by the School District increased from \$17,863,804 to \$21,989,818 (a 23% increase). The School District's Tort Immunity Liability Reserve Fund Balance decreased from \$5,904,010 in 1999 to \$0 in 2005. Much, if not all of the Reserve Fund in 1999 was from the \$10,000,000 in Tort Bonds the School District issued in 1987. Stipulation 17-24, 16-32;

14. In December 2003, the School District imposed a Tort Immunity levy of over \$3.5 million to be used in the 2004-2005 fiscal year (July 1, 2004 - June 30, 2005). This levy was adopted on November 30, 2003. Stipulation 48;

15. Pursuant to 23 Ill. Admin. Code § 110.110, an independent auditor audited the School District's financial statements of the 2003 Levy (expended during the 2004-2005 fiscal year). This auditor did not report any non-compliance as required by § 110.110. Stipulations 52-53;

### B. The School District's Risk Management Plan

16. The School District adopted its "Safety and Risk Management Plan" ("Plan") on December 15, 2004, after the 2004-2005 fiscal year levy had been imposed, but before it had been expended. This Plan was in effect for the 2004-2005 fiscal year. Stipulations 10-13, 48, 55;

17. The Plan authorized the expenditure of over \$4.1 million from the Tort Immunity fund for the 2004-2005 fiscal year for employee compensation. Stipulation 12;
18. Over \$3.7 million of this amount authorized was actually expended pursuant to the Plan. Stipulation 24;
19. The Plan incorporates, but is not limited to, Board policies and procedures related to safety and risk management, Board rules, regulations and procedures related to special education, employee job descriptions and evaluation forms, employee time study procedures and evaluations, and various accident and insurance policies, procedures, and forms, all of which comprise the School District's Safety and Risk Management Plan. Stipulation 57;
20. The express purpose of the School District's risk management program is to reduce the exposure of liability risk to the School District and to prevent losses, injuries, and illness by anyone who may be on the school grounds or in school buildings at any time. Stipulation 58;
21. The Plan listed percentages of times and duties that various School District employees should spend on what the School District labeled risk management activities and stated that an equal percentage of their salaries should be paid out of the Tort Immunity fund. Stipulations 71 & 74;
22. The School District's Safety and Risk Management Plan states:  

The District's Risk Management Plan shall provide for: (1) identification of the various components of the Safety and Risk Management Plan; (2) clearly delineated personnel responsibilities; (3) adequate insurance against liability exposure; and (4) identified and allowable costs for the maintenance of the Safety and Risk Management Plan. Stipulation 60;

23. The School District's risk management program provides, in part, that employees are expected to devote time to risk management activities. Stipulation 62;
24. The School District's risk management program that was in effect during the 2004-05 fiscal year sets forth percentages of time that employees are expected to devote to risk management activities. Stipulation 63;
25. The School District's Plan lists the administrator and employee positions that have express responsibilities for risk management under the School District's risk management program. Stipulation 64;
26. The School District's Plan identifies the administrator and employee responsibilities and duties that are part of the District's risk management program. Stipulation 65;
27. In developing its 2004-05 Plan, the School District engaged in a detailed analysis of which employee positions were best suited to help the School District reduce or prevent exposure to tort liability through conducting one-on-one employee interviews with over 70 of its employees. John Tignor conducted these interviews. Stipulation 66;
28. The process included the School District identifying specific tort liability prevention responsibilities in the job descriptions of certain School District personnel, and the amount of time each employee was required to perform risk management activities. Stipulation 67;
29. It should be noted that the Plan did not assign School District personnel any new or additional specific tort liability prevention responsibilities. Rather, as counsel for School District stated "[i]n developing its . . . Plan, . . . [t]he District identified specific tort liability prevention responsibilities in the job descriptions of certain School District personnel, and the amount of time each employee was required to perform risk

management activities.” School District Memorandum of Law in Support of Motion for Summary Judgment, pg. 9 (March 22, 2006);

30. To determine these percentages, the School District administrators reviewed employee job descriptions and responsibilities, observed the employees in their jobs, and interviewed the employees about their job responsibilities and performance. Stipulation 68;

31. The School District’s employee job descriptions describe the duties of each of the employees as part of the School District’s attempts to reduce or prevent tort liability. Stipulation 70;

32. The School District’s Plan allocates a percentage of each employee’s actual work time each employee is expected to perform what the School District considers to be risk management tasks directly attributable to loss prevention and loss reduction. Stipulation 71;

33. The percentages are ostensibly a conservative approximation of the amount of time each employee spends on risk management duties **based on a job study** conducted by the School District. Stipulation 72;

34. The School District’s job study included interviews and job duty analyses for 69 representative School District employees, including the following positions: athletic director, business manager, cook, cook director, counselor, custodian, dean, electrician, fiscal services, maintenance, para educator, high school principal, junior high school principal, elementary school principal, alternative education principal, assistant principal, psychologist, secretary, security director, security - night, social worker, special

education teacher, superintendent, assistant superintendent, K-3 teacher, junior high teacher, high school teacher. Stipulation 73;

35. For accounting purposes, the percentages reflect the part of each employee's compensation that should be taken from the tort levy based on their job descriptions. Stipulation 74;

#### V. ANALYSIS

36. The issue before the Court is whether the School District's expenditure of its 2003 Tort Immunity levy to pay for employees' salaries pursuant to its Risk Management Plan was proper under the Tort Immunity Act;
37. This case presents the court with two main issues. The first issue presented is one of statutory interpretation, namely, what constitutes "risk management directly attributable to loss prevention and loss reduction" and "educational, inspectional, and supervisory services directly related to loss prevention and loss reduction" as found in 745 ILCS §§ 10/9-103(a) and 107(b). The second issue presented is whether the School District's expenditures pursuant to its Risk Management Plan fall within the definition of these phrases;
38. 745 ILCS 10/9-103 - Insurance contracts - reads, in relevant part, as follows:

(a) A local public entity may protect itself against any property damage or against any liability or loss which may be imposed upon or one of its employees for a tortious act under Federal or State common or statutory law, or imposed upon it under the Worker's Compensation Act, the Workers' Occupational Diseases Act, or the Unemployment Insurance Act by means including . . . risk management directly attributable to loss prevention and loss reduction, . . . educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction . . .

(a-5) A local public entity that maintains a self-insurance reserve or that levies and extends a property tax for tort immunity purposes must include in its audit or annual report any expenditures made from the property tax levy or annual report;

39. 745 ILCS 10/9-107 - Policy; tax levy - reads, in relevant part, as follows:

(a) The General Assembly finds that the purpose of this section is to provide an extraordinary tax for funding expenses relating to tort liability, insurance, and risk management programs . . . Notwithstanding the extraordinary nature of the tax authorized by this Section, however, it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization.

Therefore, the General Assembly declares, as a matter of policy, that (i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section shall be strictly construed consistent with this declaration and the Act's express purposes.

(b) A local public entity may annually levy or have levied on its behalf taxes upon all taxable property within its territory at a rate that will produce a sum that will be sufficient to: (i) pay the cost of risk management directly attributable to loss prevention and loss reduction . . . and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction . . . (iv) pay the cost of risk management programs;

40. The Court recognizes that the abuse of discretion standard is to be applied in tax objection cases requiring the review of estimates and amounts of levies. In re Application of Roswell, 159 Ill. 2d 393, 402, 639 N.E.2d 559, 563 (1994). However, this standard is not applicable to the issue presented as a court “may sustain the taxpayer’s objection without resort to the abuse of discretion standard” since a “taxing body lacks discretion to impose an unlawful levy.” Id. at 400, 639 N.E.2d at 562;

### A. The Second District's Decision

41. While this Court had the Cross-motions for Summary Judgment under advisement, the Second District Appellate Court issued its opinion in a tax objection case with parallel issues and identical counsel, in Mr. Robert Slattery and Mr. Kenneth Florey;
42. Counsel was afforded a further opportunity to be heard as to how this ruling might impact this case. An initial question included the binding effect on this Court;
43. Nearly two decades ago, the Illinois Supreme Court held that the decisions of an appellate court are binding on the trial courts regardless of locale. People v. Harris, 123 Ill. 2d 113, 128, 526 N.E.2d 335, 340 (1988). In the intervening years, this rule has often been repeated by the Court, including this year. “Until th[e Illinois Supreme] Court says otherwise, an appellate court’s decision must be followed regardless of the appellate court’s district.” Bryant v. Board of Election Commr. of City of Chicago, 224 Ill. 2d 473, 479, 865 N.E.2d 189, 194 (2007);
44. Therefore, though Adams County is within the Fourth Appellate District of Illinois, decisions of the Second District Court are binding on this Court;
45. The School District argues that the Second District exceeded its authority by considering specific personnel positions outside of the certified questions presented to it on interlocutory appeal. However, appellate courts can, when appropriate, go beyond the limits of a certified question. Thomas v. Page, 361 Ill.App.3d 484, 486, 837 N.E.2d 483, 487 (2nd Dist. 2005). It is possible the Second District deemed it necessary to consider the individual positions in order

to issue an ample ruling in its case, which would allow such information to be properly considered and ruled upon by the court;

46. The School District further argues that the Second District's comments on the individual personnel positions of the Pearl City District are dicta because they resulted from this abuse of authority. The School District asserts that such dicta are not binding on this Court;

47. Dicta can be binding, and at the very least persuasive. Nelles v. State Farm Fire & Cas. Co., 318 Ill. App. 3d 399, 404, 742 N.E.2d 420, 423 (1st Dist. 2000);

48. Therefore, even though it can be argued that the Second District exceeded its authority in commenting on the specific personnel positions of the Pearl City School District, this trial court is entirely within its authority and discretion to consider those comments when deciding the instant case. The high level of similarity between the Pearl City case and the instant case makes the Second District's comments highly persuasive at the very least;

#### B. "Risk Management"

49. "The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. Where the language is clear and unambiguous, [a court] must apply the statute without resort to further aids of statutory construction." Krohe v. City of Bloomington, 204 Ill. 2d 392, 394-95, 789 N.E.2d 1211, 1212 (2003) (internal citations omitted);

50. The Second District, however, found the term "risk management," as used in section 9-107(b), to be ambiguous. In re Objections to Tax Levies of Freeport

School District No. 145, Freeport Park District, Pearl City School District No. 200, and Highland Community College District No. 519, For the Year 2000, 865 N.E.2d 361, 310 Ill. Dec. 37 (2nd Dist. 2007);

51. When ambiguity exists, courts may turn to aids of statutory construction to determine the legislature's intent. In re B.L.S., 202 Ill. 2d 510, 517 (2002);

52. Both parties argue that the legislative history supports their respective positions. *See, e.g.*, Objectors' Motion for Summary Judgment, ¶¶ 16-18, 20-22, 32; *see also* School District's Response to Objectors' Motion for Summary Judgment, pg. 12-15;

53. This Court finds reliance on legislative history (i.e., individual remarks of legislators) does not help with determining legislative intent in this instance;

54. This Court, in fact, agrees with the Second District's determination that the legislative history itself is ambiguous as to the legislature's intent on the issue presented. Objections to Tax Levies of Freeport School District No. 145, 865 N.E.2d at 378, 310 Ill. Dec. at 54;

55. The preamble of a statute provides a valuable source of legislative intent. Atkins v. Deere & Co., 177 Ill. 2d 222, 232 (1997);

56. The preamble of § 9-107(a)-(b) provides a number of indications as to the legislature's intent:

a. First, "the purpose of this Section is to provide an extraordinary tax." 745 ILCS § 10/9-107(a);

b. Second, in enacting the preamble, the legislature made it a point to recognize that "some units of local government are using the tax revenue

to fund expenses more properly paid from general operating funds.” 745 ILCS § 10/9-107(a). Such expenses, the legislature added, “are inconsistent with the limited purpose of the tax authorization.” 745 ILCS § 10/9-107(a);

c. Third, the legislature declared that “the provisions of this Section shall be strictly construed consistent with this declaration and the Act’s expressed purposes.” 745 ILCS § 10/9-107(a)(ii);

d. The legislature also declared that “the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper.” 745 ILCS § 10/9-107(a)(i). This language, however, lends no guidance as to legislative intent as the Court is faced with the very issue of determining what uses of the tax revenue are authorized by the Act;

57. Based upon these indications found in 745 ILCS § 10/9-107(a), this Court finds that the Act does not allow for compensation of normal employee activities, even if these activities have some, albeit an attenuated, relation to safety;

58. The Second District held that “risk management” meant a process that consists of:

- 1) Identifying and analyzing loss exposures;
- 2) Selecting a technique or combination thereof to be used to handle each exposure;
- 3) Implementing the chosen techniques;
- 4) Monitoring the decisions made and implementing appropriate changes.

In re Objections to Tax Levies of Freeport School District No. 145, 865 N.E.2d at 378-79, 310 Ill. Dec. at 54-55.

59. In further explaining and clarifying its definition of “risk management,” the Second District stated that:

- a. mere reference to specific risk management responsibilities in a risk management plan does not per se render salary funding for these responsibilities permissible;
- b. salary funding where “no responsibilities above and beyond the ordinary job duties are assigned to the various personnel” is improper;
- c. reading § 9-107 in such a way to “justify a portion of nearly every employee’s salary with monies levied pursuant to” § 9-107 is too broad a reading of that section;

In re Objections to Tax Levies of Freeport School District No. 145, 865 N.E.2d at 379-80, 310 Ill. Dec. at 55-56.<sup>1</sup>;

60. The definition of risk management used by the Second District is a binding part of its decision. In fact, the use of that definition is the unifying aspect of the cases decided by the Second District, as it was applied to all the cases in order to test the validity of the Risk Management expenditures of tort funds. It is entirely proper to apply the same definition in this case in order to test the validity of the Quincy School District’s Risk Management Plan;

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<sup>1</sup> Some of the reasoning supplied by the Second District relates to “pure” statutory construction (i.e., that the term “risk management” is ambiguous). This type of reasoning is relevant and binding upon the Court regardless of the factual context of this case. Other reasoning used by the Second District, however, relates to the factual context with which that Court was presented. The Court finds this reasoning relevant and binding also to the extent that the reasoning of the Second District relates to the Pearl City School District’s tax levy as Pearl City expended its tort immunity funds pursuant to a risk management plan that is substantially similar to School District’s. See In re Objections to Tax Levies of Freeport School District No. 145, 865 N.E.2d at 366-67, 310 Ill. Dec. at 42-43.

61. With such considerations in mind, the School District's argument of what constitutes risk management fails as:

- a. mere reference in the Plan to specific risk management responsibilities does not render salary funding from the tort levy proper for those responsibilities per se proper;
- b. the Plan did not impose upon School District personnel any additional duties or responsibilities above and beyond those found in their already existing job descriptions;
- c. the School District's argument would enable it to fund a portion of nearly every employees' salary from a tort immunity levy;

62. The Second District rejected Freeport's argument that they had in place risk management programs because they "engaged in thorough examinations of their employees' job duties to determine which were best suited to assist in risk management." In re Objections to Tax Levies of Freeport School District No. 145, 865 N.E.2d at 380, 310 Ill. Dec. at 56. Further, Freeport paid salaries from tort funds after "reviewing job descriptions and identifying positions that were best suited to help reduce or prevent liability exposure." Id.

63. The Second District held that in order to be proper, a plan must be created by first identifying potential tort liabilities and then assigning responsive duties to minimize or eliminate those specific risks. Based on the definition of risk management used by the Second District, no risk management plan designed around an examination of the pre-existing responsibilities of employees could ever be properly funded by the Tort fund;

64. The language used by Freeport to explain its use of tort funds is mirrored by language used by the Quincy School District in defending its Plan. In developing its Risk Management Plan, the School District “engaged in a detailed analysis of which employee positions were best suited to help [...] reduce or prevent exposure to liability.” Stipulation 66. The School District also “identified specific tort liability prevention responsibilities in the job descriptions of [...] personnel.” Stipulation 67;
65. The most significant difference between the risk management plans used by the Freeport Districts and the Quincy School District is that the Quincy plan is written. It is important to note, however, that the Second District did not hold the Freeport Districts’ plans invalid because they were unwritten; it held the plans invalid because the process used to create them was invalid. It follows that any plan, either written or unwritten, created using the same process would also be invalid;
66. The similarity in language supports the conclusion that Quincy used the same process to create its plan that was rejected by the Second District when offered by Freeport. Since the School District’s Plan was created through the examination of pre-existing personnel responsibilities to determine which could be counted as risk management rather than identifying potential liabilities and then assigning corresponding responsibilities, it cannot properly be supported by the Tort Immunity Fund;
67. The School District points out that the Second District held that a taxing body can properly use a tort immunity levy to partially fund employee compensation when

that taxing body has a valid risk management plan under the Tort Immunity Act. Quincy School District's Supplemental Brief, at 5. This is an accurate statement of the Second District's opinion, but it does not apply in this case, because Quincy does not have a valid risk management plan;

68. The Tax Objectors previously asserted that it is necessary for the proceeds from a Tort Immunity levy to be placed in a separate fund or account. The School District responded that a separate account is not required by the relevant statute. In this Court's opinion, resolving this debate is unnecessary. However, this debate does reveal an issue of relevance with the School District's process or approach as it applies to Tort funds and risk management. It has been repeatedly stated that the School District makes all of its expenditures from a single fund throughout the year, and then assigns each expenditure to the proper sub-fund, such as transportation or Tort Immunity, after-the-fact. While this practice may be suitable as it applies to all other expenditures, it is faulty as it applies to risk management Tort Immunity expenditures;

69. The four-step risk management process adopted by the Second District allows expenditures for a specific technique developed to address a specific loss exposure. This would require that when risk management expenditures are made using Tort Immunity funds, the district must be fully aware that they are risk management expenditures *at that time*. Proper risk management expenditures should not be assigned to the Tort Immunity fund *after-the-fact*;

70. Throughout this case, the Quincy School District has consistently defended its Tort Immunity levy by pointing out its comprehensive Risk Management Plan,

and more importantly, the job study it is based upon. This pattern is important because it demonstrates that the School District relied exclusively on the job study and Risk Management Plan to defend its Tort levy. “In developing its risk management plan, the District engaged in a detailed analysis to determine which employee positions were best suited to help [...] reduce or prevent exposure to tort liability.” Stipulation 66; Quincy School District’s Reply in Support of Its Mot. for Summ. J., at 6 (May 3, 2006); Quincy School District’s Supp. Br. In Support of Its Mot. For Summ. J., at 11 (June 11, 2007). In reference to John Tignor’s job study: “[T]he process included [...] observing employees [...] and conducting one-on-one interviews.” Reply in Support of Mot. for Summ. J., at 6. These interviews were used to determine what employees did during their workday, and “after [Tignor] collected this information, he identified the specific risk management tasks the employee performed.” Id. at 7(emphasis in original). Given the opportunity to apply the decision of the Second District in the Stephenson county case, the School District again referenced the Risk Management Plan and the job study: “Following a thorough review and analysis of its potential tort liability [Tignor’s Job Study],” the School District adopted the Risk Management Plan that was in place for the 2004-2005 school year. Supp. Br. in Support of Mot. for Summ. J., at 10. The School District relied so heavily on the strength of the job study that Mr. Florey told the Court, “[T]his case rises or falls based on the job study.” Transcript of Oral Arguments, at p. 33, ln. 24 (Feb. 8, 2007). This reliance is important, because it demonstrates that this job study

was the singular process by which the School District assigned the payment of Tort Funds to personnel costs;

71. In the most recent oral arguments, the School District for the first time argued that it had engaged in the four-step process of risk management ten years prior to the job study conducted by John Tignor. Transcript of Oral Arguments, at pp 48-49, (June 20, 2007). This argument by the School District appears disingenuous based on their repeated reliance on the job study to support the Risk Management Plan and the Tort levy. Throughout the case, the School District used the job study as the primary defense of its Tort levy. When the validity of that process was questioned by this Court, the School District shifted its focus and defended its Tort levy by asserting that the proper process had been completed at an earlier time. This assertion is not supported by the stipulation of the parties, any affidavit, or any evidence in the record before this court;

72. Stipulation 78 references Exhibit #24, which is a brief (1½ page) document titled *General Personnel – Risk Care Management Policy*. This document is clearly not a *plan* as it only speaks in generalities of “observing and reporting hazardous conditions” and “be[ing] alert to hazardous practices or situations.” Exhibit to Stipulations, #24. There is no mention of identifying specific exposures to tort liability or assigning particular techniques to reduce or eliminate those exposures. This 1997 policy details the general safety procedures required of the School District personnel, and does not apply the proper four-step process to constitute a risk management plan as a matter of law;

73. Even if this reference to a previous application of the four-step process had been made throughout the case, the language used by the School District supports the conclusion that it is still incorrect. If the School District had engaged in the risk management process of analyzing loss exposures, selecting techniques to reduce those exposures, and implementing those techniques (in this case, specifically assigning the techniques to personnel through revised job descriptions), there would be no need for the School District to “engage in a detailed analysis of which employee positions were best suited to help [...] reduce or prevent exposure to liability.” If the process had previously been performed, and the job study was simply the fourth step (review), the School District would already have a definitive answer as to which positions were best suited to help reduce loss exposure. There would be no need to analyze which position is best suited, if each had previously been assigned such specific responsibilities. The fact that the School District was unaware of which of its personnel were best equipped to deal with reducing loss exposure invalidates its argument that the proper risk management process had been performed before the 2004 job study. It is clear upon a review of the record, that the job study, and the job study alone, was the basis for creating the School District’s Risk Management Plan, which authorized the payment of personnel costs with Tort funds. Further, it is clear that the proper four-step risk management procedure was not performed by the Quincy School District;

74. The process used by the Quincy School District to create its risk management plan paralleled that held invalid by the Second District, and therefore, the plan

itself is also invalid as a matter of law. Since the Quincy School District does not have a valid risk management plan, it cannot use its tort immunity levy to partially fund its employees' compensation absent other justification;

C. "Educational, Inspectional, and Supervisory Services"

75. The School District has also argued that the expenditures made from its Tort Immunity levy are proper as they constitute "educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction" under 745 ILCS § 10/9-107(b)(i). This argument is unavailing;

76. The Second District stated that this term, unlike "risk management," was unambiguous. *See In re Objections to Tax Levies of Freeport School District No. 145*, 865 N.E.2d at 382, 310 Ill. Dec. at 58;

77. The Second District also stated that "the phrase [in 745 ILCS § 10/9-107(a)], 'services directly relating to loss prevention and loss reduction,' strictly construed and justifying an 'extraordinary tax,' does not encompass ordinary duties performed by regular staff." *In re Objections to Tax Levies of Freeport School District No. 145*, 865 N.E.2d at 380, 310 Ill. Dec. at 56;

78. Like a broad reading of "risk management," a broad reading of this statutory language would improperly "justify funding of nearly every school district employee's position with tort monies." *Id.*;

79. The Second District did hold that a taxing district may pay from tort immunity funds OSHA training and ergonomics training as such expenditures "certainly constitute educational services directly relating to loss prevention and loss reduction." *Id.*, at 382, 310 Ill. Dec. at 58 (emphasis added);

80. Statutory language must be given its plain, ordinary, popularly understood meaning. Moore v. Green, 219 Ill. 2d 470, 479 (2006);

81. The Court finds the use of the word “services” illustrative of the phrase’s meaning as this term is defined as “the performance of any duties or work for another.” WEBSTER’S AMERICAN DICTIONARY 715 (2nd College ed. 2000);

82. With this definition in mind, the Court finds that the phrase at issue encompasses services provided by other than in-house personnel. The OSHA and ergonomics training provided to the Highland Community College illustrates this interpretation;

83. In light of this interpretation and the Second District’s guidance, this Court finds that even if the School District’s expenditures had been made separate from its Risk Management Plan, they do not constitute “educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction” as the expenditures were to in-house personnel;

84. Therefore since the expenditures were neither made pursuant to a valid risk management plan, nor made for services that constituted “educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction,” they cannot be properly made from the Tort Immunity Fund;

#### D. Timing of School District’s Plan

85. Separately, the Tax Objectors raised the issue that the tax levy violates the Tort Immunity Act because the School District failed to have any Risk Management Plan in place at the time it approved the levy;

86. The levy at issue in this case was approved in December 2003. The risk management plan, which authorized the expenditure of levy funds, was not adopted until December 2004;
87. Further, the Plan set forth percentages of time that employees were to spend conducting “risk management” functions. However, the job study of John Tignor was not conducted until fall 2004 and not summarized and submitted to the School District until summer 2005. Deposition of John Tignor, p. 4 ln. 21-p. 5 ln. 1, p. 6 ln. 22-p. 7 ln. 1; Exhibit 22, at 1.<sup>2</sup> As counsel for the School District stated, “this case rises or falls based on the job study.” Transcript, pg. 33 ln. 24. Counsel for the School District even conceded that “[i]f [the School District] went in and just simply said we are going to randomly pick number, percentages, without doing the job study,” then the levy would be improper. Transcript, pg. 33, ln. 22-24;
88. Therefore, even if the process used by the School District to create its Risk Management Plan was valid, the tort levy was still improper for the year in question in this case, because the Plan was not in place before the levy was made;
89. The School District relies solely on its Risk Management Plan to support its 2003 Tort Immunity Levy and its subsequent expenditure of that levy. Since both the process used to create that Plan and the Plan itself have been held invalid, both the levy and its expenditure were improper.

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<sup>2</sup> The School District disputes this point, but its arguments are deemed not persuasive.

**ACCORDINGLY:**

The Court denies the School District's Motion for Summary Judgment. The Court grants the Tax Objectors' Motion for Partial Summary Judgment. This case remains set for July 20, 2007 at 10:00 a.m. for status and further Case Management Conference and proceedings consistent with this ruling.

Entered: July 6, 2007

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Judge Mark A. Schuering

Cc: (1) Attorney Robert K. Slattery (for Tax Objectors) = \_\_\_\_\_  
(2) Attorney Kenneth M. Florey  
(for Intervenor Quincy School District No. 172) = \_\_\_\_\_  
(3) Attorney Brett K. Gorman  
(for Intervenor Quincy School District No. 172) = \_\_\_\_\_