



ISFIS, Inc.
Iowa School Finance Information Services

To: All District Superintendents & School Business Officials
From: Margaret Buckton
Date: March 13, 2020
Subject: Response to DE Guidance on Management Fund for Purchasing Commodities

Dear School Leaders,

After many years of attempting to work with the Iowa Department of Education (DE) on establishing the Iowa Local Government Risk Pool (Iowa LGRP) natural gas program, the DE issued their guidance in a statement to school districts this afternoon. As you know, any guidance from the DE is only advisory unless specifically authorized by state statute, administrative rules or court decisions. Because statute authorizes local government risk pools be paid from management fund, and there are no administrative rules to the contrary, DE's guidance is based solely on their interpretation of an old court case, *Iowa Association of School Boards v. Iowa Department of Education, 739 N.W.2d 303 (2007)*, noting in that case there was no "risk of loss". However, the former case does not apply to the current Iowa LGRP, as this program does, in fact, transfer risk from the school district to the Iowa LGRP 28E entity and service providers. The referenced case actually served as the road map to establishing this Iowa LGRP program, designed entirely to mitigate risk and transfer that risk away from the school district.

In State Auditor Rob Sand's communication dated July 8, 2019, after multiple meetings and review of documents including the referenced Supreme Court case above, his office notes:

"I have reviewed your letter dated May 30, 2019, containing a request for the Auditor of State's opinion on whether a school district's management fund can be used to pay the costs to establish and maintain a local government risk pool to transfer and reduce risk stemming from changes in natural gas prices. In addition, I have reviewed relevant statutes and court decisions. Members of our professional staff in the office have also independently reviewed your letter. For certainty, I will reiterate our mutual understanding that you were inquiring as to my opinion in the role as Auditor of State, not as an attorney, and that I am not representing you nor offering legal advice. Our office has concluded that it appears appropriate for a school district to use their management fund to cover costs related to this type of local government risk pool."

In more recent communications dated February 24, 2020, Auditor Rob Sand writes:

"I am an attorney, and am thus addressing my ethical obligations when I tell people I am not their attorney and not offering legal advice. Beyond that, previous advice from this office was written prior to the switch from Dillon's Rule to Home Rule for school districts. In addition, the natural gas LGRP transfers risk, whereas IJUMP did not. Thus, with both new facts on a controlling issue and new law to apply to them, we believe this would be decided differently. And although it is DE's job to interpret school regulations, it is our job to determine whether accounting is done properly. The latter includes whether funds were drawn from appropriate accounts for schools, which lies at the heart of this matter."

We respectfully, but strongly, disagree with the DE's guidance on this matter. We are convinced that this program is right for school districts and no action on your part is necessary. For the nearly 50 districts already participating in the pool, our advice continues to be to reserve the general fund dollars saved by the program until such time that this matter is official resolved administratively through continued discussions with DE and the State Auditor, which would be our preference, or in the courts.

If you have any questions, please call us and we're happy to discuss.

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