



Hinsdale Middle School Construction Legislative and Litigation Issues Frequently Asked Questions

What is the issue? What exactly was the "error" that occurred?

Prior to referendum questions appearing on the ballot during an election in DuPage County, among the administrative details which the DuPage County Election Commission is responsible for is the publication of a required public notice. By law, the notice must be published in a local, community newspaper no more than 30 days and not less than 10 days before an election. In the case of the November 8, 2016 General Election, the DuPage County Election Commission caused that notice to be published three days too early (33 days before the election).

Why is there a potential issue with the publication being too early?

The validity of the voter-approved Hinsdale Middle School referendum could potentially be questioned. If the referendum is deemed to be invalid or there is no legislative or judicial remedy to this issue, the District may not be able to move forward with the construction of a new Hinsdale Middle School.

Was District 181 the only group affected by the error?

We were one of four taxing bodies affected by the error of the DuPage County Election Commission, each having ballot measures that were approved by voters in DuPage County in the November election.

- Bloomingdale Park District was given voter approval to borrow \$9.9 million to repair and improve its facilities.
- Salt Creek Elementary District 48 was given voter approval to borrow \$8 million to repair a maintenance building and schools in Elmhurst, Oakbrook Terrace, and Villa Park.
- Helen M. Plum Memorial Public Library in Lombard was given voter approval for a tax limiting rate increase.
- Our voters approved a \$53.3 million referendum to build a new Hinsdale Middle School.

Who caught the error, and when was the District notified of the error?

Chapman & Cutler, LLP is a law firm; they serve as our District 181 bond counsel. They oversee the process of selling bonds, which in turn provides the District with funding for the construction project. On the evening of December 5, nearly one month after the election, representatives from Chapman & Cutler notified our District attorneys that there might be a publication error by the DuPage County Election Commission. During the Special Board meeting on December 5, our Board approved a resolution that would allow the District to sell the first \$10 million in bonds to take advantage of potentially favorable market conditions at that time (Vote 5-0; Absent: Turek, Vorobiev). The Board was advised by its legal counsel to proceed with that action, as the issue with the election notice had not been confirmed.

On December 8, 2016, the Election Commission confirmed that it did in fact make the publication notice error. We provided families, staff, and Key Communicators with a report on this issue later that same day. During the Board of Education Business meeting on December 12, 2016, the Board approved a resolution "authorizing legal counsel to initiate and prosecute appropriate judicial action to validate the results of the November 8, 2016 referendum," (Vote 7-0). Since that time, Superintendent Dr. Don White has been working closely with attorneys and the District's financial advisor to stay informed of the situation and support efforts to explore potential solutions. We have also continued to discuss the matter with the other affected taxing bodies and their legal representatives, as well as leaders from the Legislative Education Network of DuPage County (LEND).

What has been the role of Illinois government to resolve this issue, and what is the current status of related legislation?

The Illinois Senate and the Illinois House of Representatives passed an Amendment to Senate Bill 3319 which would ensure the validity of referenda approved by voters in the November 2016 election in DuPage County after notice

(Continued)



published up to 35 days in advance of the election. (The House vote was 100 yeas, 9 nays, and 1 voting present. The Senate vote was 50 yeas, 0 nays. A document showing how individual Senate and House members voted and the full language of the Bill is posted at www.d181.org > Our District > HMS Construction.) We are continuing to await a signature on this legislation by Governor Bruce Rauner. Dr. White has been told by an outside source that the Governor's Office may have a concern regarding this issue because it involves a tax increase. In response, Dr. White reached out to the Governor's Office to provide additional information in the hope that we can resolve any concerns. However, as explained below, passage of this legislation may not be enough to allow our project to move forward.

Is there also a lawsuit on this issue?

Yes, five D181 residents filed a lawsuit on December 28, 2016 asking a judge to declare the election invalid (which if successful, would make the results of the election invalid, as well). District 181 was named as the defendant in this suit. (The individuals listed as the plaintiffs in Case Number 2016MR001670 are Andrew Schmidt, Kirsten Schmidt, Karen Weber, Bradford Tocher, and Edward Corcoran.)

If the Governor signs the Bill, will the District be able to proceed with the bond sale and move construction forward?

If the Governor signs Senate Bill 3319, that would be a very significant step toward moving the construction project forward. However, Chapman & Cutler has already indicated that the lawsuit must also be resolved before they can provide an opinion letter on the sale of bonds, which is necessary to proceed. If the Governor signs the bill, it would become law and the District's legal counsel could present our case in an effort to quickly resolve the outstanding lawsuit. We are working to expedite the legal proceedings, and we are exploring all potential solutions to remedy the issue as quickly as possible.

How might this affect the construction of a new HMS and the November referendum that voters already approved?

During the January 17, 2017 Board Business meeting, Board members discussed the litigation and legislative issues. The Board approved a resolution authorizing a \$2 million loan from the District's Working Cash Fund to the District's Operations and Maintenance Fund and a resolution authorizing a transfer of the same amount from the Operations and Maintenance Fund to the Capital Projects Fund (Vote 5-1; Nay: Gray; Absent: Clarin). That action ensured the District could pay current bills and some projected expenses for the construction manager and architect services. It was confirmed that assuming the legal issues are resolved, the Board could approve a resolution that would allow for the reimbursement of expenses via bond sale proceeds for design and bid development work. (The complete *Board Summary* and a link to access the meeting audio recording can be found at www.d181.org > Board > Meetings.)

Without the bond sale proceeds, we do not anticipate having enough funds in reserves or other sources to continue the project much past mid-March. We are working with the District's financial advisor, PMA, to determine the exact point when the Superintendent may need to make a recommendation that the project be stopped. Until the lawsuit is resolved, we may not plan to begin construction.

At this time, planning is continuing, but it may be necessary to put a hold on the process if the legal issues are not resolved. A hold on the process could result in a delay of the project. The delay could be months or potentially a year or more. Our architect and construction manager are working diligently with the administration to outline the impact of a delay on the construction timeline. The project is currently scheduled to begin in the spring of 2017. Preliminary estimates from Bulley & Andrews show that delaying the start of construction by one year (spring of 2018) will increase project costs between \$2.1 million and \$3.2 million based on an escalation factor between 4-6%. A delayed start date of two years (spring of 2019) is estimated to add project costs between \$4.3 million and \$6.4 million, again based on a 4-6% escalation factor.

The referendum amount approved by voters (\$53,329,194) cannot be exceeded, regardless of these issues. Therefore, if there are delays that add millions of dollars to the project cost, difficult decisions would need to be made about how those increases would be addressed. We would work with our financial advisor to thoughtfully consider all options available to the District. One such option could be a change to the design to decrease the total cost, though it is the administration's desire to avoid any impact to the learning environment.

(Continued)



A report on this work is scheduled to be presented to the Board at the February 13, 2017 Business meeting.

In Conclusion

The community voted to approve the sale of bonds for the construction of a new Hinsdale Middle School, and it is the administration's goal to move the project forward. It is our hope that the school can open on time, in August of 2018 as we had been communicating throughout the referendum process. A delay will more than likely impact taxpayers throughout the District, as a delay could result in a significant increase in the overall project cost. A final, critical point in this situation is that the impact of this mistake could potentially have negative consequences on the ability of our students to access an improved learning environment.

We will continue to provide our community with timely updates on this topic as new information is confirmed.

###