

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
)
COUNTY OF MARION) CAUSE NO. 49D01-2308-PL-032783

BOARD OF SCHOOL)
COMMISSIONERS FOR THE)
CITY OF INDIANAPOLIS,)
)
Plaintiff-Counterclaim Defendant,)

v.)

TODD ROKITA, in his official capacity)
as Indiana Attorney General,)
DR. KATIE JENNER, in her official)
capacity as Indiana Secretary of)
Education and Board Member of the)
Indiana State Board of Education,)
SCOTT BESS, ERIKA DILOSA,)
WILLIAM E. DURHAM, JR.,)
DR. BYRON ERNEST, IRIS HAMMEL,)
GREGORY F. GASTINEAU,)
PAT MAPES, KATHLEEN MOTE,)
KRISTIN RENTSCHLER, and)
B.J. WATTS, in their official capacities)
as Board Members of the Indiana State)
Board of Education,)
)

Defendants-Counterclaim Plaintiffs.

FILED
November 13, 2023
CLERK OF THE COURT
MARION COUNTY
SW

ORDER GRANTING IPS'S MOTION FOR INJUNCTIVE RELIEF
AND
DENYING THE STATE'S CROSS MOTION FOR INJUNCTIVE RELIEF

These matters now come before the Court on Plaintiff's/Counterclaim Defendant's, Board of School Commissioners for the City of Indianapolis ("IPS"), Motion for Preliminary Injunction, which was filed on August 21, 2023, and Defendants'/

Counterclaim Plaintiffs’, Todd Rokita, in his official capacity as Indiana Attorney General (“Attorney General Rokita”), and Dr. Katie Jenner, in her official capacity as Indiana Secretary of Education (“Secretary Jenner”) (collectively “the State”), Motion for a Temporary Restraining Order and a Preliminary Injunction, filed on September 25, 2023.

The State filed an Opposition to Plaintiff’s Motion for Preliminary Injunction and Consolidated Permanent Injunction on September 29, 2023. IPS filed a Response to Defendants’ Cross-Motion for Preliminary Injunction and Reply in Support of Motion for Preliminary Injunction on October 6, 2023. The State filed a Reply in Support of Motion for Preliminary Injunction and Consolidated Permanent Injunction on October 13, 2023.

A hearing on this matter was held on October 18, 2023. The Parties all agreed that the hearing was to be considered a consolidated trial on the merits of the case and that any order issuing injunctive relief would be considered permanent.

Having been fully briefed on the issues, the Court finds now as follows:

I. INTRODUCTION

This case concerns whether the sale of two buildings, Raymond Brandes School 65 (“Brandes 65”) and Francis Bellamy School 102 (“Bellamy 102”), by IPS to non-charter school parties can proceed as currently scheduled or if IPS must offer them instead to charter schools under the requirements of the Dollar Law. The Dollar Law was enacted first in 2019 and subsequently amended in 2023, and it gives applicable charter schools the right to purchase buildings no longer being used for educational purposes by school corporations for \$1. The General Assembly included an exemption to this requirement if the school district was already providing funds from a property tax

referendum to charter schools and met all other requirements for the exemption (the “Levy Exemption”).

The underlying facts are largely undisputed. The Parties ask the Court to apply the statutory language to the facts at issue and determine whether the IPS must suspend this sale to comply with the requirements of the Dollar Law or whether IPS is exempted from these requirements based on their existing agreements to share revenues with charter schools following the 2018 Referendum.

The parties agreed that the hearing on this matter should be treated as a consolidated trial on the merits and that the ruling from this Court should be deemed final.

II. STANDARDS ON INJUNCTIVE RELIEF

A party seeking injunctive relief under Ind. Trial Rule 65 must demonstrate that: (1) the party is reasonably likely to prevail on the merits; (2) the remedy at law is inadequate and the party will suffer irreparable harm pending resolution of the action; (3) the threatened injury to the party if an injunction is denied outweighs the threatened harm to the adverse party if the injunction is granted; and (4) the public interest will be disserved if injunctive relief is not granted. *See Barlow v. Sipes*, 744 N.E.2d 1, 5 (Ind. Ct. App. 2001); see also Ind. Code § 34-26-1-5 (statutory requirements for obtaining pre-judgment injunction). “The hearing for permanent injunction allows the parties to adjudicate the facts of the controversy in much greater detail.” *United States Land Servs. v. United States Surveyor, Inc.*, 826 N.E.2d 49, 67 (Ind. Ct. App. 2005) (citations omitted).

“Where the action to be enjoined is unlawful, the unlawful act constitutes per se ‘irreparable harm’ for purposes of the preliminary injunction analysis.” *Short on Cash.net v. Dep’t of Fin. Institutions*, 811 N.E.2d 819, 823 (Ind. Ct. App. 2004). “When the *per se* rule is invoked, the trial court has determined that the defendant's actions have violated a statute and, thus, that the public interest is so great that the injunction should issue regardless of whether the plaintiff has actually incurred irreparable harm or whether the plaintiff will suffer greater injury than the defendant.” *Id.* “The *per se* rule drops two prongs from the usual four-prong test used to determine whether a preliminary injunction should issue.” *Union Township School Corp. v. State*, 706 N.E.2d 183, 192 (Ind. Ct. App. 1998), *trans. denied*.

Pursuant to Ind. Trial Rule 52(A)(1), the court shall make special findings of fact without request (1) in granting or refusing preliminary injunctions.

III. FINDINGS OF FACT

A. 2018 Referendum and IPS’s 2021 Agreement with Innovation Network Charter Schools

1. In 2014, the General Assembly authorized IPS to establish and contract with a network of schools (including charter schools) that operate independently from IPS yet within IPS facilities, allowing IPS to transfer underused or vacant buildings to an innovation network partner. See House Enrolled Act. No. 1321, 118th Gen. Assemb., Second Reg. Sess. (Ind. 2014) (codified at Indiana Code Article 20-25.5).

2. In 2018, Marion County voters approved an operating referendum for IPS in the amount of roughly \$220 million over the course of the following eight years (the “2018 Operating Referendum”). IPS’s Motion for Preliminary Injunction (“Plf.’s PI Motion”), p. 3-4; Declaration of Weston Young (“Young Decl.”), ¶¶ 3–6.

3. In November 2021, the IPS Board of School Commissioners approved Resolution No. 7902, directing funding from the 2018 Operating Referendum to be distributed to the Innovation Network Charter Schools (“INCS”) in an amount up to \$500 per in-district resident student until December 31, 2026. Plf.’s PI Motion, p. 4; Young Decl. ¶¶ 7–8, Ex. E; Mulholland Decl. ¶ 13).

4. INCS consists of over twenty innovation network charter schools.

B. IPS’s Building Stronger Initiative and planned uses for former school buildings

5. On November 17, 2022, the IPS Board of School Commissioners unanimously passed Resolution No. 7964, approving the Rebuilding Stronger initiative. (Mulholland Decl. ¶ 17, Ex. D.) Resolution No. 7964 directed the administration to “proceed with all necessary planning to conclude classroom instruction on required curriculum” at the end of the 2022-2023 academic year at six school buildings (the six buildings are hereinafter “Consolidated Buildings”). (Mulholland Decl. Ex. D at 6.)

6. Planned uses for the Consolidated Buildings were made in compliance with Indiana Code chapter 20-26-7.1 (the Dollar Law).

7. Following the adoption of Resolution No. 7964, the Legislature amended the Dollar Charter Law, effective July 1, 2023, providing an exemption from the chapter for “[a] school corporation that distributes money that is a received as part of a tax levy collected under IC 20-46-1 or IC 20-46-9 to an applicable charter school.” Ind. Code § 20-26-7.1-1.

8. IPS subsequently adopted Resolution No. 7985 and declared Raymond Brandes School 65 (“Brandes 65”) and Francis Bellamy School 102 (“Bellamy 102”) as

surplus to the educational, operational, and administrative needs of IPS. (Mulholland Decl. ¶ 18, Ex. E.)

9. Pursuant to Indiana Code § 20-25-4-14, the IPS Board of School Commissioners directed the administration to pursue disposition of the properties. (Mulholland Decl. Ex. E.)

10. IPS identified a prospective buyer for Bellamy 102 with a community non-profit organization VOICES Corp. (“VOICES”). (Mulholland Decl. ¶¶ 21–22).

C. The State challenges IPS’s proposed uses of the Brandes 65 and Bellamy 102 buildings

11. On August 15, 2023, Indiana Secretary of Education Dr. Katie Jenner sent a letter to IPS, asserting that IPS is “subject to IC 20-26-7.1” (the Dollar Law) and “is required to provide notice of the closures to IDOE in accordance with IC 20-26-7.1-4.” (the “IDOE Notice”; Compl. Ex. C.)

12. The IDOE Notice further claims that IPS must submit a Notification of Closure Form to an IDOE email address by August 28, 2023. (*Id.*)

13. The State is aware of at least one charter school interested in Bellamy 102. Ranney Declaration, ¶¶ 4-7. On September 13, 2023, the State received a letter from Richard D. Hailey (“Mr. Hailey”), President of the Board of Directors of Andrew J. Brown Academy. *Id.* ¶ 5, Ex. A. Andrew J. Brown Academy is a tuition-free public charter school in the Indianapolis area with approximately six hundred students currently enrolled. *Id.* ¶ 6. In the letter, Mr. Hailey submitted a preliminary request to purchase or lease Bellamy 102 to relocate for the academic year 2024- 2025. *Id.* ¶ 7.

14. Additionally, on November 17, 2022, Eddie Rangel, Founding Executive Director of Adelante Schools, expressed interest in Brandes 65 at an IPS board

meeting. 2022 Board of School Commissioners Meeting, November 17, 2022, (Statement of Eddie Rangel, at 1:30:50).

D. The Dollar Law

15. Pursuant to the Dollar Law, “[a] school corporation shall notify the department not later than thirty (30) days after the date the governing body elects to close a covered school building and include with the notification whether the school corporation contends that the building should or should not be made available as provided by this chapter. Ind. Code § 20-26-7.1-4 (a). Within fifteen days of this notice, The State is to make “available for inspection by a charter school or state educational institution that notifies the department that it is interested in leasing or purchasing the covered school building.” Ind. Code § 20-26-7.1-4 (b).

16. Upon compliance with the requirements of the statute, “The school corporation shall lease the covered school building to a charter school or state educational institution for one dollar (\$1) per year for as long as the state educational institution uses the covered school building for an academic purpose or the charter school uses the covered school building for classroom instruction, for a term at the state educational institution’s or charter school’s discretion, or sell the covered school building for one dollar (\$1)...” Ind. Code § 20-26-7.1-4(e).

E. The Levy Exemption

17. Passed alongside the most recent adoption of the Dollar Law as a provision that exempts “A school corporation that distributes money that is received as part of a tax levy collected under IC 20-46-1 or IC 20-46-9 to an applicable charter school” from the requirements of the Dollar Law (the “Levy Exemption”). Ind. Code § 20-

26-7.1-1(2). This section was added as part of the most recent amendment to the statute and came into effect in July 2023. *Id.*

18. The 2023 amendment also added provisions on how the proceeds from a referendum were to be distributed from school corporations to charter schools in four specific counties, including Marion County.

19. Under Ind. Code. § 20-46-1-21:

(a) This section applies to revenue received from a resolution that is approved by the governing body to impose a referendum levy under section 8 or 8.5 [IC 20-46-1-8 through IC 20-46-1-8.5] of this chapter after May 10, 2023, for a school corporation located in:

- (1) Lake County;
- (2) Marion County;
- (3) St. Joseph County; or
- (4) Vanderburgh County.

(b) The county auditor in which the school corporation is located shall distribute an amount under subsection (d) to each charter school, excluding virtual charter schools or adult high schools, that a student who resides within the attendance area of the school corporation attends if the charter school elects to participate in the referendum under section 8(i) of this chapter. The department shall provide the county auditor with data and information necessary for the county auditor to determine:

- (1) which charter schools are eligible to receive a distribution under this section; and
- (2) the number of students who reside within the attendance area of the school corporation who are included in the ADM for each charter school, excluding virtual charter schools or adult high schools, described in subdivision (1).

(c) The following schools are not eligible to receive a distribution under this section:

- (1) A virtual charter school.
- (2) An adult high school.

(d) For the purposes of the calculations made in this subsection, each eligible school that has entered into an agreement with a school corporation to participate as a participating innovation network charter school under IC 20-25.7-5 is considered to have an ADM that is separate from the school corporation. The amount that the county auditor shall distribute to a charter school, excluding virtual charter

schools or adult high schools, under this section is the amount determined in the last STEP of the following....

Id.

20. Under Ind. Code. § 20-46-9-22:

(a) This section applies to revenue received from a resolution that is approved by the governing body to impose a referendum levy under section 6 or 7 [IC 20-46-9-6 or IC 20-46-9-7] of this chapter after May 10, 2023, for a school corporation located in:

- (1)** Lake County;
- (2)** Marion County;
- (3)** St. Joseph County; or
- (4)** Vanderburgh County.

(b) The county auditor shall distribute an amount under subsection (d) to each charter school, excluding virtual charter schools or adult high schools, that a student who resides within the attendance area of the school corporation attends if the charter school, excluding virtual charter schools or adult high schools, elects to participate in the referendum under section 6(i) [IC 20-46-9-6(i)] of this chapter. The department shall provide the county auditor with data and information necessary for the county auditor to determine:

- (1)** which charter schools, excluding virtual charter schools or adult high schools, are eligible to receive a distribution under this section; and
- (2)** the number of all students who reside within the attendance area of the school corporation who are included in the ADM for each charter school, excluding virtual charter schools or adult high schools, described in subdivision (1).

(c) The following schools are not eligible to receive a distribution under this section:

- (1)** A virtual charter school.
- (2)** An adult high school.

(d) For the purposes of the calculations made in this subsection, each eligible school that has entered into an agreement with a school corporation to participate as a participating innovation network charter school under IC 20-25.7-5 is considered to have an ADM that is separate from the school corporation. The amount that the county auditor shall distribute to a charter school, excluding virtual charter schools or adult high schools, under this section is the amount determined in the last STEP of the following STEPS....

21. Under its agreement with INCS, IPS neither distributes according to calculations set forth in either Ind. Code. § 20-46-1-21 or Ind. Code. § 20-46-9-22 nor involves the county auditors in the process.

IV. CONCLUSIONS OF LAW

1. The critical dispute between the Parties IPS's agreement with INCS allows it to be exempted from the Dollar Law or whether IPS is obligated to offer the Brandes 65 and Bellamy 102 buildings to other charter schools under the Dollar Law.

2. As discussed, the primary inquiry before the Court is which Party's application of the Dollar Law statutory provisions is correct on the merits. Because the cross-motions both seek to enjoin a potentially unlawful act, the Court need not address the irreparable harm or balance of harm elements.

A. Success on the merits

i. Summary of arguments

3. In general, IPS argues that its proposed sale of the buildings should proceed because it satisfies the Levy Exemption to the Dollar Law. As stated, Marion County voters approved a referendum to provide IPS addition funds over the eight year term. In 2021, IPS entered into an agreement to share \$4 million annually from these referendum proceeds with charter schools in its innovation network. IPS concludes, therefore, that it qualifies as a "school corporation that distributes money that is received as part of a tax levy collected under IC 20-46-1 or IC 20-46-9 to an applicable charter school" to qualify for the Levy Exemption under Ind. Code § 20-26-7.1-1(2). IPS further argues that that State has admitted to facts which would establish the IPS is subject to the Levy Exemption, reiterating that the State has not challenged that IPS 1) distributes

(2) money that is received (3) as part of a tax levy collected under Indiana Code Chapter 20-46-1, and (4) to charter schools.

4. The State argues that IPS's 2021 revenue sharing agreement does not satisfy the requirements imposed under the 2023 amendment; therefore, the proposed buildings IPS has placed for sale cannot be exempted from the Dollar Law. Along with the amended Dollar Law and Levy Exemption, the General Assembly passed additional provisions specifying the requirements for revenue sharing agreements and referendum language to qualify for the Levy Exemption. See Ind Code § 20-46-1-21, Ind Code § 20-46-9-22, and Ind Code § 20-46-1-8(e). The State notes that IPS's 2021 agreement with INCS does not comport with these new revenue sharing calculations and the funds are not distributed by the county auditor as required under the revised statute. Further, the State argues that the Levy Exemption is only available for payments to charter schools from referendum that occur after its passage, meaning that the Levy Exemption could not apply to funds distributed from the 2018 Amendment and was not resolved with the 2021 agreement.

5. In response, IPS notes that the plain language of Ind. Code § 20-26-7.1-1(2) only requires that the school corporation "distribute[] money" under a levy collected under Ind. Code § 20-46-1 or Ind. Code § 20-46-9, not that the distribution must be subject to the new procedures set forth in Ind. Code § 20-46-1-21. IPS argues that the new requirements cannot be imposed on the 2021 Agreement retroactively. See *Church v. State*, 189 N.E.3d 580, 587 (Ind. 2022) (citing quoting *N.G. v. State*, 148 N.E.3d 971, 973 (Ind. 2020)). IPS notes that the proper inquiry for whether to apply a statute retroactively or prospectively when otherwise not stated is "identifying the conduct or

event that triggers the statute's application *Id.* (citations omitted). If the operative event simply depends on a fact that was present prior to the enactment of a statute, the interdependence alone will not cause the statute to be applied retroactively. *Id.* (citations omitted).

6. Using the guidance in *Church*, IPS contends that the Levy Exemption should be applied prospectively as the triggering event is distribution of the funds not the passage of a new tax levy subject to the new distribution formulas set forth in Ind Code § 20-46-1-21, Ind Code § 20-46-9-22. Ind Code § 20-46-1-21, IPS emphasizes that Ind Code § 20-26-7.1-1 explicitly refers to fund distribution, not the timing of the levy. IPS maintains that just because the present distributions of funds stemmed from a referendum that occurred prior to the passage of the Levy Exemption does not then mean that distribution requirements must also apply retroactively. *Church*, 189 N.E.3d at 588.

7. Had the Legislature meant for the new distribution requirements to apply to the Levy Exemption, IPS argues it could have expressly stated such in the language of the Levy Exemption itself similar to how the distribution provision was referenced in the newly codified. Ind. Code § 20-24-7-6.2 and Ind. Code § 20-46-1-8 as well as other provisions. *See also*, Ind. Code §§ 20-46-1-8.5, 20-46-9-6, 20-46-9-7. IPS concludes that when the General Assembly wrote the Levy Exemption, it chose not to link it to the procedural requirements for new referendums in Ind. Code § 20-46-1-21, so the Court should not read the requirement into the provision.

8. In reply, the State contends that IPS's reading of the statute is incorrect and holding IPS's distribution agreement to the distribution requirements of Ind. Code §

20-46-1-21 harmonizes all provisions passed in 2023. A court will construe a statute in accordance with the statutory scheme of which it is a part, *Golladay v. State*, 875 N.E.2d 389, 393 (Ind. Ct. App. 2007), or within the context of an entire act, and not in isolation. *Yates v. Kemp*, 979 N.E.2d 678, 681 (Ind. Ct. App. 2012). Since the changes to the Dollar Tax Law and the Levy Exemption were passed in the same day, the State argues it would be appropriate to construe them together. *See Holle v. Drudge*, 129 N.E. 229 (Ind. 1920). The State maintains that the General Assembly included the new requirements to be imposed on revenue sharing agreements like the one IPS has currently, and this reading would be consistent from a policy standpoint. With respect to *Church*, The State suggests that the actual triggering event to implicate the Levy Exemption would be a new referendum rather than an ongoing payment.

9. The State argues that the 2018 Referendum cannot constitute a levy which is subject to the Levy Exemption. It did not comply with the requirements of Ind. Code § 20-46-1 or Ind. Code § 20-46-9 nor allowed voters to see what amount of funds would be distributed to charter schools. The State further challenges that IPS's 2021 agreement with its innovation schools can be subject to the Levy Exemption because the Exemption contemplated a revenue sharing scheme where all charter schools would have an opportunity to receive funds from a referendum, not just the schools which IPS picks and chooses. Contending that the Levy Exemption is forward looking, the State argues it cannot apply retroactively to agreements entered into prior to its passage concerning referendums that occurred well before the Levy Exemption was enacted.

ii. Court's assessment

10. When a statute is clear and unambiguous, we need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary, and usual sense.” *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021) (internal quotation omitted). A court may not “rewrite or amend the statute.” *Parsley v. MGA Fam. Grp., Inc.*, 103 N.E.3d 651, 657 (Ind. Ct. App. 2018).

11. When a statute is ambiguous, we will engage in construction to effect the intent of the legislature. *Walls v. Markley Enters.*, 116 N.E.3d 479, 484 (Ind. Ct. App. 2018)

12. The Court will first look to the plain and ordinary terms of the applicable statutes to determine the proper reading. If the statute is ambiguous, the Court will construe the statute to give effect to the Legislature’s intent behind the Dollar Law and Levy Exemption.

13. The question before the Court is whether IPS’s current revenue sharing agreement with innovation school charters satisfies the necessary requirements to be subject to the Levy Exemption with respect to the pending building sales.

14. The Levy Exemption refers to dispersals from referendum and levies conducted in accordance with Ind. Code § 20-46-1 or Ind. Code § 20-46-9 inclusively. This includes the reporting requirements under Ind. Code § 20-46-1-21 or Ind. Code § 20-46-9-22.

15. It is undisputed that neither the 2018 referendum nor the 2021 revenue sharing agreement at issue comport with the specific requirements of these provisions or otherwise involve the County auditor.

16. The inquiry, however, does not stop there. Those chapters must be applied as written. Both Ind. Code § 20-46-1-21 and Ind. Code § 20-46-9-22 each contain the phrase, “This section applies to **revenue received from a resolution that is approved by the governing body to impose a referendum levy ... after May 10, 2023.**” (Emphasis added). The 2018 Referendum was approved years ago and could not have been approved by a governing body after May 10, 2023.

17. The Court finds, therefore, that the disbursal calculations set forth in Ind. Code § 20-46-1-21 and Ind. Code § 20-46-9-22 cannot apply to funds disbursed from revenue generated by the 2018 Referendum, including IPS’s 2021 agreement with INCS, based on a plain, unambiguous reading of those provisions.

18. The next question is whether IPS’s disbursal of funds to the charter schools under the 2021 agreement is permitted under the remaining provisions of either Ind. Code § 20-46-1 or Ind. Code § 20-46-9, and a plain reading of applicable statutes again indicates that is the case.

19. Ind. Code § 20-46-9-6(a) provides that “the governing body of a school corporation may adopt a resolution to place a referendum under this chapter on the ballot if the governing body of the school corporation determines that a referendum levy should be imposed for measures to improve school safety.” Subsection (b) of that provision gives further authority to school corporations to split this revenue with charter schools, stating:

Except as provided in section 22 [IC 20-46-9-22] of this chapter, a school corporation may, with the approval of the majority of members of the governing body, distribute a portion of the proceeds of a tax levy collected under this chapter that is deposited in the fund to a charter school, excluding a virtual charter school, that is located within the attendance area of the

school corporation, to be used by the charter school for the purposes described in IC 20-40-20-6(a).

Ind. Code § 20-46-9-6(b).

20. While this would suggest that that ability of a school corporation to enter into a separate agreement is limited by Ind. Code § 20-46-9-22, that apparent limitation is addressed in subsection (c):

This subsection applies to a resolution described in subsection (a) that is adopted after May 10, 2023, in a county described in section 22(a) [IC 20-46-9-22(a)] of this chapter. A resolution shall specify that a portion of the proceeds of the proposed levy will be distributed to applicable charter schools in the manner described under section 22 of this chapter if the charter school voluntarily elects to participate in the referendum in the manner described in subsection (i).

Ind. Code § 20-46-9-6(c). Subsection (d) further builds on this point by applying only to “a resolution described in subsection (a) that is adopted after May 10, 2023....”

21. Ind. Code § 20-46-1 *et seq.* lacks an analogous subchapter to Ind. Code § 20-46-9-6 that discusses distributions to charter schools from funds obtained from referenda held before or after May 10, 2023. The only direct reference to distributions from school corporations to charter schools is founded in subchapter Ind. Code § 20-46-1-21, which the Court has already found does not apply to revenue received from a referendum prior to May 10, 2023. Ind. Code § 20-46-1, however, provides no other limitation on how a school corporation can distribute funds obtained through referendum held prior to May 10, 2023, though.

22. From here, it is clear to the Court that the Legislature is contemplating two separate tranches of agreements between school corporations and charter schools: those funded with referendum adopted prior to May 10, 2023, and those funded from referenda adopted after May 10, 2023. The plain language of the statutes

unambiguously declares that the disbursal formulas under Ind. Code § 20-46-1-21 and Ind. Code § 20-46-9-22 only apply to those agreements funded by referenda held after May 2023.

23. The agreements that are funded from pre-May 10, 2023, referenda but are extended beyond their initial run are also accounted for by imposing the new reporting requirements and county auditor involvement as conditions of extension. Ind. Code § 20-46-9-7(b).

24. Under this framework that was spelled out by the General Assembly, IPS's agreement with INCS would fall under the first tranche that is not subject to the new disbursal requirements since it is funded by a levy that was passed prior to May 10, 2023 and has not had to be extended since it remains funded in this manner through 2026.

25. As to the State's arguments that the amended disbursal formula should apply retroactively to IPS's distributions and that the Levy Exemption protections should apply prospectively only to agreements funded through referendum held after May 10, 2023, the Court looks to the *Church v. State* case cited by the Parties.

26. The critical first step in the retroactivity inquiry is identifying the conduct or event that triggers the statute's application." *Church*, 189 N.E.3d at 587.

27. Here, it is clear that the triggering event for the reporting requirements of Ind Code 20-46-1-21 is the date of the referendum since it only applies levies imposed after May 10, 2023. The 2018 Referendum occurred well before the May 2023 date. This is similar to the matter in *Church*, where the triggering event was the request for a

deposition, not the filing of the case which caused the need for the deposition to be sought eventually.

28. As for the Levy Exemption, the triggering event is the distribution of money “received as part of a tax levy collected under IC 20-46-1... to an applicable charter school.” Ind. Code § 20-26-7.1-1(2) When the payment is made, the school corporation can seek the exemption. Now, this exemption is subject to the provisions of Ind. Code § 20-46-1, including the amended disbursement requirements under Ind. Code § 20-46-1-21 if applicable. A reading of the statute, however, indicates that these new reporting requirements do not apply to funds distributed from referenda that were authorized and held prior to May 10, 2023. So, by the plain reading of the Levy Exemption, school corporations that make distributions to at least “a” charter school from funds received as part of a referendum under Ind. Code § 20-46-1 can be relieved from the Dollar Law so long as the school corporation comports with all other applicable laws of Ind. Code § 20-46-1. Because the reporting requirements under Ind. Code § 20-46-1-21 do not apply to distributions funded by pre-May 10, 2023 referenda, the Court school corporation may seek protection under the Levy Exemption if it is already distributing funds under a prior agreement without having to abide by new reporting requirements.

29. All that is to say, the Court agrees with IPS. Because it is already distributing funds to at least one (but many in reality) charter school using funds that were obtained through a referendum authorized under Ind. Code § 20-46-1 or Ind. Code § 20-46-9, the Court finds that IPS is currently exempted from the Dollar Law under the Levy Exemption for as long as it continues its distributions under the current regime.

30. The Court notes that IPS can only seek this protection due to the unique timing of the prior referendum and its election to distribute funds to charter schools. If IPS were to extend its current deal or begin distributing funds from a referendum held after May 10, 2023, it would be subject to the reporting requirements of Ind. Code § 20-46-1-21.

31. The State argues compellingly that the new reporting requirements and the Levy Exemption being past at the same time indicate that they should be treated as complimentary to one another. The State notes that the purposes of the amendments to the Dollar Law was to account for the prior version's apparent failure to ensure charter schools received the additional support from school corporations that the Legislature hoped.

32. While the Court understands that point of view, the Court must ultimately apply the statutes as written and cannot otherwise engage in further statutory construction to ascertain the General Assembly's intent for passing the 2023 amendments to the Dollar Law in the particular manner the Legislature did.

33. As has been noted, the General Assembly knew how to expressly tie any application of the Levy Exemption to the new reporting requirements if that was the Legislature's desired outcome. Just as the General Assembly added the entirety of Subsection (2) of Levy Exemption, the subsection at conflict here, as part of the 2023 amendments, legislators could have also conditioned this protection explicitly on school corporations following the new reporting requirements enacted as well by referencing subsection Ind. Code § 20-46-1-21 specifically.

34. The General Assembly did not, however, and the Court must apply the unambiguous terms of the statute as written.

35. The Court finds by a preponderance of the evidence that IPS's arrangement with Innovation Network Charter Schools permits IPS to be exempted from the Dollar Law under the Levy Exemption, meaning the proposed sales of the two buildings at issue can proceed as planned.

B. Public Policy

36. With respect to the remaining factors for injunctive relief, the Court finds that the correct application of the law satisfies public policy concerns that should allow injunctive relief to issue.

ORDER

The Court hereby GRANTS IPS's Motion for Preliminary Injunction and DENIES the State's cross motion for same. The Court permanently enjoins the State from interfering with the proposed sales of the buildings at issue by way of the Dollar Law.

The Court finds there is no just reason for delay and expressly directs entry of final judgment in this matter.

SO ORDERED, ADJUDGED, AND DECREED this 13th day of November 2023.

Heather A. Welch

Hon. Heather A. Welch, Judge
Marion Superior Court 1

Distribution: All counsel of record