Monica Roque

From: Joseph Biello [redacted]
Sent: Thursday, January 7, 2021 2:40 PM
To: DJUSD Board of Education; Joe DiNunzio; Thomas Adams; Vigdis Asmundson; Lea Darrah; Betsy Hyder; Maria Clayton; Superintendent
Subject: Regarding Measure M Borrowing - Letter to the Board of Trustees
Attachments: 2020.01.06 Letter to Board of Trustees re Interfund Borrowing and Oversight Committee w-Attachment .pdf

Categories: Green category

Dear Superintendent Bowes and Trustees of DJUSD,

attached is a letter signed by several members of the community in support of the Measure M Oversight Committee's opinion regarding borrowing from the Measure M fund. We urge you to follow the advice of the committee and pay back the funds with interest.

Please read this letter prior to - or during - this afternoon's closed session of the Board of Trustees.

Thank you for your service,
Joseph Biello

p.s. for Maria Clayton, if you could also bring this letter to the attention of Associate Superintendent Watkins and her staff, that would be appreciated.

Sent via e-mail

January 6, 2021

Joe Dinunzio, President and Members
Board of Trustees, Davis Joint Unified School District Board of Trustees

John Bowes, Superintendent
Davis Joint Unified School
District

Dear President Dinunzio, Members of the Board of Trustees, and Superintendent Bowes:

As parents and concerned citizens in the Davis Joint Unified School District, we are writing to request the District include funds to pay interest on the District's interfund loans from the Measure M Building Fund in the 2021-22 District budget. Please consider this letter as public comment for the January 7, 2020 Board of Trustees meeting.

We strongly agree with the finding of the Measure M Citizens' Bond Oversight Committee, as described in the Committee's May 2020 annual report and again in the December 2020 letter from Chair Donna Neville to the Board of Trustees (Attachment A), that the District is legally and ethically obligated to pay interest on the $8 million borrowed from the Measure M Building Fund in the 2019-20 fiscal year and the $15 million in the 2020-21 fiscal year, as well as all future loans. Based on Chair Neville's December letter, the District owes a significant amount in interest to the Measure M Building Fund, funding the District would otherwise use to improve school facilities.

Measure M funds earn interest in a Yolo County Treasury account before expenditure, which rightfully become part of the funds allocated to Measure M purposes as approved by the voters. Money withdrawn from that account for an interfund loan results in the loss of this interest. Given the legal arguments put forward by Chairperson Neville, not paying interest on these loans may also expose the District to a potential lawsuit. In the worst-case scenario, the District will have to expend dollars to defend itself in a losing effort in court, compounding the original error.

Thank you for your consideration of this request.

Sincerely,

Erinne O'Hara Aboytes
Jacqueline Alldritt
Grace Bassett
Joseph Biello
Sangho Byun
Jennifer Charles-Tollerup
Elisabeth Dubin
Amber Husten
Haven Kiers
Petrea Marchand

Vincent Marchand
Anne Meckstroth
Jed Miller
Connie Saint
Julia Seebach
Kristen Tollerup
William Wood

Attachment A

December 15, 2000

Board President DiNunzio, Trustees Adams, Fernandes, and Poppenga,
and Trustees-elect Asmundson, Darrah, and Hyder
Davis Joint Unified School District
526 B Street
Davis, CA 95616

<u>Re: Recommendation from the Measure M Citizens' Bond Oversight Committee that the District Repay Loans from the Measure M Building Fund to the General Fund with Interest</u>

Dear Board President DiNunzio, Trustees Adams, Fernandes, and Poppenga; Trustees-Elect, Asmundson, Darrah, and Hyder; and Community Members:

I write to you today as chairperson of the Measure M Citizens' Bond Oversight Committee (committee). At the November 2018 General Election, the voters within the Davis Joint Unified School District (district) approved Measure M, which authorized the sale of $150 million in general obligation bonds for the construction and rehabilitation of school facilities within the district. As you know, when a school district sells general obligation bonds under the authority granted by Proposition 39 it must comply with numerous accountability requirements, including, among others, the formation of an independent citizens' oversight committee tasked with overseeing the expenditure of the proceeds from the sale of Measure M bonds and reporting to the public (Ed. Code § 15278, 15282). The district formed the committee in February 2019, and the committee issued its first annual report on May 15, 2000.

The committee's first annual report was generally favorable. We had many positive things to say about the fiscal and project management aspects of the Measure M bond-funded school facilities construction program. The committee did, however, have one significant concern: it reported that the district borrowed $8 million from the Measure M Building Fund (which contains the constitutionally restricted proceeds from the sale of the bonds) in fiscal year 2019-2020 to address its General Fund cash flow needs, but failed to pay the legally required interest on this loan when it was repaid. Accordingly, the committee recommended that the district modify its existing policy related to interfund borrowing to include an explicit requirement related to paying interest on loans made from the Building Fund to the General Fund, and that it pay interest on the loan made in 2019-2020. This change in policy would bring the district in line with other local public agencies throughout California.

To give the new members of the board and community members some background, many legal and accounting requirements apply to how the proceeds from the sale of general obligation bonds must be managed and used. But two requirements are especially relevant to our recommendation related to the payment of interest: first, when a public agency temporarily borrows from a fund whose uses are legally restricted to certain purposes to provide for general fund cash flow needs, making that loan cannot "interfere in any way with the objects for which the [lending] fund was created" (*Daugherty v. Riley* (1 Cal.2d 298)). The second key requirement also comes from various judicial decisions and tells us that if there is some statute or other legal authority that requires that the interest earned on a fund must remain with the principal in that fund, then it follows that when money is borrowed from that fund the loan must be repaid with interest (See, e.g., *Metropolitan Water District* v. *Adams*, 32 Cal.2d 610; *Ostly* v. *Saper*, 147 Cal.App.2d 671).

In this case, both state law and the legally binding bond covenants explicitly require that the interest earned on the Building Fund must remain with that fund. So, based on the case law, the district must repay loans from the Building Fund to the district's General Fund with interest. Courts refer to this as making the lending fund "whole." This amount can be easily calculated in the same way that the Yolo County Treasurer calculates the quarterly interest earnings on the Building Fund. Paying interest is a widely recognized legal requirement and if you look at the interfund borrowing policies of local agencies, including cities, school districts and county offices of education, you will find express language requiring the payment of interest under the circumstances described here. I have previously provided example policies that include this requirement to district staff. I have also provided the district with a legal memorandum from a highly regarded law firm, which indicates that these loans must be repaid with interest. In addition, the literature providing guidance on the generally accepted governmental accounting standards refer to the payment of interest as a "customary practice" in this context. In a phone conversation with Chad Rinde, the Chief Financial Officer for the Yolo County Treasurer's Office, he confirmed that under the governmental accounting standards, the payment of interest is a generally accepted "best practice."

The law here is clear. In attempting to address this issue with the district I consulted with more than a half dozen legal colleagues who work in public finance and bond compliance, and they all confirmed that interest must be paid on these loans. In fact, I was unable to find a single lawyer who agrees with the district's position that there is no legal requirement to pay interest.

Setting aside the legal issue for a moment, let's look at the impact that failing to pay interest on this loan has on the Measure M building fund as well as the impact it will continue to have. In this case, the district borrowed the $8 million to address a cashflow shortage in the latter part of the 2019 calendar year. It repaid the loan in two installments in the Spring of 2020. According to the former finance director, the amount of interest the $8 million would have earned during this time if it had remained in the Building Fund and not loaned to the General Fund was approximately $100,000. But the approximately $100,000 in lost interest from the 2019-20 fiscal year is just the beginning. The district openly acknowledges that it intends to continue borrowing from the Building Fund, in even greater amounts, in future years and that it does not intend to pay interest on the loans. In the current 2020-21 fiscal year, it has borrowed $15 million from the Building Fund, which it intends to repay in two installments, without interest.

Over the life of the Measure M program this failure to repay the loans with interest could amount to as much a half a million dollars in lost interest, depending on the amounts borrowed, interest rates, and the length of the loans. This is not only illegal; it is a betrayal of the voters' trust. Nothing in the text of Measure M, which was approved by district voters in November of 2018, provided any indication that the district would be using the proceeds from the sale of Measure M bonds to make interest free loans to the district's general fund, ultimately depriving the Building Fund of a significant amount of interest it would have otherwise earned.

It has been nearly ten months since the committee first brought this concern to the attention of district staff and no action has been taken by the full board to address this issue. At a non-public meeting of the two-person policy subcommittee on September 14, 2020, the policy subcommittee decided not to recommend any changes to the district's current policy related to interfund borrowing. Because the two-person advisory subcommittee decided not to recommend any changes to the district's interfund borrowing policy, the full board has never considered this issue at an open, public meeting. Instead, a statement was made during the "trustee announcements" portion of the meeting, indicating that the subcommittee was not recommending changes to the district policy. The agenda for this meeting provided no indication that this issue would be discussed, nor was there an opportunity for the public to comment.

In an additional effort to urge the board to adopt the committee's recommendation Bret Hewitt and I met with virtually with the two policy subcommittee members on December 14, 2020 to discuss our recommendation and to stress the importance of paying interest on these loans. We appreciate their willingness to meet with us and to listen to our position. They committed to discussing the issue further but did not make any further commitments.

At this point, the Committee has done everything it can, short of litigating this matter. So, I am appealing to both the board and the community members. Board members, you can still do the right thing. Please reconsider your position on this important issue and take up the committee's recommendation at an open, public meeting after properly placing this issue on an upcoming meeting agenda. Please consider this matter in a manner that provides public notice and the opportunity for public comment.

Community members, please do your part. I know that many of you care very much about the integrity of the Measure M program. You made your voices heard loud and clear when it came to issues related to the Multiple Purpose Rooms and the Aquatic Center. Please do the same thing here. It is not lawful for the district to be making interest free loans from the Building Fund to its General Fund and you should urge the district to modify its existing policy so that it repays these loans with the legally required amount of interest.

Thank you in advance for your support. If you have any questions or wish to discuss, please contact me at [redacted]

Sincerely,

Donna L. Neville

Chairperson, Measure M Citizens' Bond Oversight Committee

Monica Roque

From: DJUSD Board of Education
Subject: FW: Public Comment
Attachments: publiccommentclosedsession.docx

From: Donna Neville [redacted]
Sent: Wednesday, January 6, 2021 3:32 PM
To: Joe DiNunzio <jdinunzio@djusd.net>; Thomas Adams <tadams@djusd.net>; Vigdis Asmundson <vasmundson@djusd.net>; Lea Darrah <ldarrah@djusd.net>; Betsy Hyder <bhyder@djusd.net>
Cc: John Bowes <jbowes@djusd.net>; Matthew Best <mbest@djusd.net>; David Burke <dburke@djusd.net>
Subject: Public Comment

Dear Trustee,
Please accept this as public comment for your Thursday 1/7/2021 meeting.
Thank you,
Donna Neville

Sent from Mail for Windows 10

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January 4, 2021

Trustees, Board of Education
Davis Joint Unified School District
126 B Street
Davis, CA 95616

Dear Trustees:

Please accept this as public comment related to your closed session item identified as "[s]ignificant exposure to litigation (citation omitted) (1 case)- interfund borrowing."

As chairperson of the Measure M Citizens' Bond Oversight Committee please be advised that the committee has never threatened litigation related to this issue. To the contrary, at every step in this process, we have emphasized our intent to resolve this issue in a non-adversarial manner. While it is true that we have done everything short of litigating, we have never discussed, considered, or threatened litigation. If that were to change, the committee would certainly advise you of that intent in advance of commencing litigation.

We urge you to meet in open session to discuss our recommended change to the district's current interfund borrowing policy. This is a matter of public concern and the public has a right to understand this issue and to provide public comment.

As we have stated previously, the committee's sole concern is the district's refusal to pay interest on short term loans made from the Measure M Building Fund to the General Fund. This failure to pay interest is inconsistent with numerous California judicial decisions and governmental accounting standards and will deprive the Building Fund of a significant amount of money over the life of the Measure M program.

I have already provided a significant amount of information regarding this issue to board members and staff, so I will not repeat those points now. Please do the right thing: modify existing board policy so that it requires the payment of interest on these loans and repay them with the amount of interest the fund would have earned if the loans had not been made. This will bring DJUSD into conformity with public agencies throughout California and will honor the commitment to Davis voters that all money to which the Measure M Building Fund is entitled will be used to build the next generation of school facilities for our students.

Sincerely,

Donna Neville

Chair, Measure M Citizens' Bond Oversight Committee

Monica Roque

From: Martha S. West [redacted]
Sent: Wednesday, January 6, 2021 8:53 PM
To: DJUSD Board of Education
Subject: Public Comment for Jan. 7 Board meeting

Categories: Green category

Date: January 6, 2021

To: DJUSD Board of Education

From: Marty West, former DJUSD Board Member from 1997 to 2005

Public Comment for Jan. 7, 2021, DJUSD Board meeting

I would like to support the Measure M Citizens' Bond Oversight Committee's request that the School District repay the temporary interfund loans from the Measure M Building Fund with the nominal amount of interest that the County Treasurer would have otherwise paid to the Measure M Building Fund during the time of the interfund loans, as if the loans had not been made.

This issue of paying interest on the temporary borrowing of the Measure M funds should be put on a public agenda and discussed in public by the School Board. It should not be hidden in a closed session under the rubric of "anticipated litigation." The Oversight Committee has not threatened litigation over this issue.

The advice of the Oversight Committee on this issue should be followed by the Board and the School District. When I was on the School Board, we did not have oversight committees; our school construction bonds were passed under older rules requiring a 2/3rds electoral vote. Now that we have an Oversight Committee, as required by Prop. 39 allowing passage of a bond with a 55% popular vote, we should respect the conclusions of this Committee. The Committee is trying to protect all of the money in the Measure M Building Fund, to make sure it is used for the proper purpose. By temporarily borrowing from the Measure M Building Fund for district operating expenses, and not repaying the fund with any interest, the district is depriving the building fund of the amount of interest that the borrowed amount would have earned during that time period, if left in the Measure M fund. Even this small amount of money should not be diverted to general district operations from the construction projects supported by the building fund.

At a minimum, please put this issue on a public agenda for discussion. The Oversight Committee first raised this issue in its May 2020 report. A public discussion by the School Board should not be delayed any longer.

Submitted by Marty West, [redacted]