

**DEPARTMENT OF LOCAL GOVERNMENT FINANCE  
100 NORTH SENATE AVENUE  
IGC-N, ROOM N1058  
INDIANAPOLIS, INDIANA 46204**

**IN THE MATTER OF THE PETITION )  
OBJECTING TO THE TAKING OUT OF )           OBJ 23-002  
A FIRE LOAN OR BOND BY THORNCREEK )  
TOWNSHIP, WHITLEY COUNTY )**

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**FINAL DETERMINATION**

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This is an Order of the Department of Local Government Finance (“Department”) making a final determination on a petition regarding the above captioned matter. The Department has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. Indiana law allows a township to seek a loan or bond for the purchase of firefighting apparatus and equipment (“Bond”) that can be paid for with a property tax levy pursuant to Ind. Code § 36-8-13-6. Ten or more taxpayers may object to a township’s proposed Bond. After a hearing on the objection and consideration of the evidence, the Department approves or denies the proposed Bond.
2. This Order is a response to a petition filed by at least 10 taxpayers within Thorncreek Township, Whitley County (“Township”) objecting to the Township’s proposed Bond.
3. Since at least 10 taxpayers in the Township filed a petition objecting to the taking out of the Bond, the Department was required to conduct a public hearing on the taxpayers’ objection petition.
4. For the reasons stated below, the Department **APPROVES** the Township’s proposed Bond.

**RELEVANT PROCEDURAL HISTORY**

5. The township board and trustee may, on behalf of the township, borrow the necessary money from a financial institution in Indiana for the purchase of firefighting apparatus and equipment, including housing. Ind. Code § 36-8-13-5; 6.

6. The negotiable note or bond executed by the township board and trustee must be payable in equal or approximately equal biannual installments over a period not exceeding six (6) years. The township must appropriate and levy a property tax each year sufficient to pay the obligation according to its terms subject to Indiana law. Ind. Code § 36-8-13-6.

7. A petition may be filed by at least ten (10) taxpayers in the township who disagree with the determination to borrow for the purchase of firefighting apparatus and equipment. The petition must be filed with the county auditor no later than thirty (30) days after publication of the township's notice of determination. Ind. Code § 36-8-13-6.5(a).

8. The Township Board ("Board") adopted the resolution authorizing the Bond on July 31, 2023. The resolution stated that "[i]n order to provide funds to purchase the Equipment and to pay the costs of issuance of the Bonds, the County[sic] shall borrow money and issue the Bonds" for which the Board expects to use to reimburse expenses related to the purchase. The Resolution refers to "equipment" as "certain fire truck and equipment, and any necessary equipment appurtenant thereto." The Resolution states the principal and interest due on the Bond will be payable from *ad valorem* property taxes on all taxable property within the Township located outside the corporate boundaries of any municipality that has not agreed to have the Township provide fire services inside the municipality without a contract. *Resolution 2023-01 of the Township Board of Thorncreek Township, Whitley County, on the Proposed Bond, July 31, 2023* ("Resolution #2023-01").

9. On August 12, 2023, the Township published a Notice of Determination on the proposed Bond in *The Post and Mail*. *The Post and Mail Publisher's Affidavit, August 7, 2023*.

10. The Notice of Determination stated the proposed bonds "shall be issued in an original aggregate principal amount not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000)." The Notice then stated the purpose of the bonds were to "purchase certain fire truck and equipment, and any necessary equipment appurtenant thereto, to pay related and incidental expenses to be incurred in connection therewith, and to pay the costs of the issuance of the Bonds." Finally, the Notice stated the Bond will have a term ending no later than July 1, 2029, and will bear interest at a rate per annum not exceed 6%, as determined by negotiation with the Indiana Bond Bank. *Notice of Determination on Proposed Bond, The Post and Mail. The Post and Mail Publisher's Affidavit, August 7, 2023*.

11. An objection petition containing an excess of ten (10) total signatures was timely filed with the Whitley County Auditor on September 7, 2023, and was duly certified to the Department on September 15, 2023. The Department must therefore hold a hearing no earlier than five (5) days and no later than thirty (30) days after it receives the certification. Ind. Code § 36-8-13-6.5. *Objection Petition on Proposed Bond* ("Petition"); *Certificate of Auditor*.

12. The following objections were described in the Petition:

1. The Taxpayers of Thorncreek Township did not have an opportunity to review the bids.
2. One of the advisory board members is a volunteer firefighter with the Thorncreek Township Volunteer Fire Department.
3. The same firefighter/board member has not filed “conflict of interest reports” with the Whitley County Clerks’ Office.
4. The signed adoption form of August 24, 2023, states that the Board of the Town of Pittsboro.
5. The Township has over \$400,000 in the cumulative fire fund. It generates no revenue. This money should be used for the purchase of the firefighting apparatus, in order to borrow a smaller amount at 4%.
6. The amount to purchase the truck is \$1.2 million. The bond amount is \$1.7 million. These amounts should be the same.

*Petition.*

13. The Department set the date for a public hearing on the objection petition for October 11, 2023, and mailed notice of the hearing to the Township Trustee and the first ten taxpayers whose names appeared on the petition. *Notice of Hearing to Trustee on Proposed Bond; Notice of Hearing to Taxpayer on Proposed Bond.* Ind. Code § 36-8-13-6.5.

14. The Department conducted a public hearing on October 11, 2023, at 4:00 p.m. local time, electronically through Microsoft Teams. David Marusarz, Deputy General Counsel for the Department, conducted the public hearing.<sup>1</sup> *Notice of Hearing to Trustee on Proposed Bond; Notice of Hearing to Taxpayer on Proposed Bond.* Ind. Code § 36-8-13-6.5.

15. At the hearing, following testified on behalf of the Township:

Matthew Shipman, Township Attorney

The following testified as Objectors:

Karen Western, Township resident

Sheryl Kaminski, Township resident

Carli Maguire, Township resident

16. As stated in the notice of hearing and in the course of the hearing, the Department Hearing Officer stated that additional written testimony and evidence may be offered

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<sup>1</sup> The hearing was audio recorded by the hearing officer. The recording is available at the Department’s Indianapolis office for inspection and copy.

through and including October 18, 2023. *Notice of Hearing to Trustee on Proposed Bond; Notice of Hearing to Taxpayer on Proposed Bond; Recording of Hearing.*

17. Objectors presented the following exhibits, which are thus part of the Record:

Objectors Exhibit A: Written statement from Karen Western, received October 11, 2023.

Objectors Exhibit B: Written statement from Carli McGuire, received October 18, 2023.

Objectors Exhibit C: Screenshot of Ind. Code § 36-6-6-14.

Objectors Exhibit D: Minutes of the Meeting of the Township Board, January 31, 2023.

Objectors Exhibit E: Minutes of the Meeting of the Township Board, July 31, 2023.

Objectors Exhibit F: Minutes of the Meeting of the Township Board, August 24, 2023.

Objectors Exhibit G: Minutes of the Meeting of the Township Board, September 6, 2023.

Objectors Exhibit H: Letter from Luke Britt, Public Access Counselor, to William Brice, dated September 28, 2023, with attachment.

Objectors Exhibit I: Printout of Ind. Code § 5-3-1-2.

Objectors Exhibit J: Screenshot of Ind. Code § 36-1-23-2.

Objectors Exhibit K: Copy of quote from J&K Communications, dated April 18, 2023.

Objectors Exhibit L: Blank copy of State Form 54266 – Uniform Conflict of Interest Disclosure Statement.

Objectors Exhibit M: Printout of Ind. Code § 35-44.1-1-4 (2017 version), from [www.justia.com](http://www.justia.com).

Objectors Exhibit N: Copy of Resolution #2023-02.

Objectors Exhibit O: Letter from Baker Tilly to Township, dated June 16, 2023, regarding proposed Bond.

18. Proponents presented the following exhibits, which are thus part of the Record:

Proponent Exhibit 1: Resolution No. 2023-01, adopted by the Township Board on July 31, 2023.

Proponent Exhibit 2: Letter from Jacob Blasdel, Indiana Bond Bank Executive Director, to Township and Barnes & Thornburg, dated August 29, 2023.

Proponent Exhibit 3: Township Fire Protection General Obligation Bond, Series 2023.

Proponent Exhibit 4: Qualified Purchase Agreement, with Appendix.

Proponent Exhibit 5: Signature and No Litigation Certificate.

Proponent Exhibit 6: Debt Service Schedule.

Proponent Exhibit 7: Letter from Baker Tilly to Township, dated May 16, 2023, regarding proposed Bond.

Proponent Exhibit 8: Letter from Baker Tilly to Township, dated June 16, 2023, regarding proposed Bond.

Proponent Exhibit 9: Letter from Baker Tilly to Township, dated June 26, 2023, regarding proposed Bond.

Proponent Exhibit 10: Letter from Baker Tilly to Township, dated August 7, 2023, regarding proposed Bond.

Proponent Exhibit 11: Letter from Baker Tilly to Township, dated August 16, 2023, regarding proposed Bond.

Proponent Exhibit 12: Letter from Matthew Shipman to Department, dated October 16, 2023.

Proponent Exhibit 13: Publisher's Claim from the *Post and Mail*, Notice of Decision to Issue Bonds.

Proponent Exhibit 14: Publisher's Claim from the *Post and Mail*, Notice of Determination to Issue Bonds.

19. The Department recognizes the following items as part of the Record: (1) the Hearing Procedures Script; (2) the Hearing Record of Evidence; (3) a digital audiovisual recording of the hearing; and (4) the transcript of the hearing. Throughout this Order, any reference to a particular individual's testimony will also be a reference to the digital recording of the hearing.

## SUMMARY OF THE PARTIES' CONTENTIONS

### A. Summary of Objectors' Contentions

20. The Objectors' first contention is that the public were not given an opportunity to review the bids at any point in the process. The Objectors provided minutes from the July 31, 2023, Township Board meeting indicating that the bid information was not made available to the Township Board before that meeting. These minutes also show that Joy Bennett, a member of the Board and its secretary, asked for the bids, to which fellow Boardmember Adam Hurley responded they are forthcoming.<sup>2</sup> The Objectors claim the public deserves the opportunity to review bids. *Testimony of Carli McGuire.*

21. The Objectors then claim the Township has not been transparent to the public about the bond. Some of the Objectors said they did not know about the proposed bond until seeing door postings. *Testimony of Karen Western; Testimony of Sheryl Kaminski.*

22. The Objectors' second contention is that Mr. Hurley was allowed to vote on a resolution regarding radios even though he is also a volunteer firefighter. *Testimony of Karen Western; Testimony of Sheryl Kaminski.*

23. The Objectors' third contention is that there is a typographical error in a document dated August 24, 2023, which references the "Town of Pittsboro" instead of the Township. Later evidence provided to the Department shows that the document in question is Resolution #2023-02, a resolution of the Township Board for an additional appropriation on the bond proceeds, adopted on August 24 by a vote of 2-1. The Objector argue that the typographical error illustrates how the process has been rushed. *Testimony of Carli McGuire.*

24. The Objectors' fourth contention is that the Township is failing to use the cumulative fire fund to acquire the fire truck. The Objectors explain that previously, the Township officials would have a 5-year spending plan to acquire fire equipment using this cumulative fire fund, and that the recent change to issue debt instead of using revenue from this fund is an improper decision. *Testimony of Karen Western; Testimony of Sheryl Kaminski.*

25. The Objectors' final contention is that the bond issuance was for \$1.7 million but the fire truck was valued at \$1.2 million, whereas the numbers should be the same. Objectors state they believe the difference is for buying additional equipment. *Testimony of Karen Western.*

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<sup>2</sup> Objectors Exhibit E.

## B. Summary of Proponent's Contentions

26. The entirety of the Proponent Township's contentions were from Matthew Shipman, the Township's attorney, speaking on behalf of the Township Trustee.

27. The Township stated that the need to purchase a fire truck is because the current fire truck is 23 years old and would need to be replaced in a couple of years to comply with National Fire Protection Association (NFPA) Standard 1901. The Township states that with supply chain issues it would take approximately 600 days to deliver the specific fire truck.<sup>3</sup> The Township argues that Tax Court precedent has supported the Township's issuance of the Bond, specifically citing *Brown v. Dep't of Local Gov't Fin.*<sup>4</sup>

28. The Township claims the bids were announced and made available at the July 31 meeting, when the Board reviewed and voted on the Resolution.

29. The Township claims Mr. Shipman along with bond counsel determined that there was no violation of law for Mr. Hurley to vote on the Resolution.

30. The Township claims the reference to "the Town of Pittsboro" was a mere scrivener's error, but could not identify the document where the error occurred.

31. The Township claims that Baker Tilly, financial advisor for the Township, determined that a debt issuance was preferable to the cumulative fire fund to purchase a new fire truck.

32. Finally, the Township contends that Resolution 2023-01 states that the bond amount is "not to exceed \$1.7 million" but the actual bond amount is \$1.2 million, the latter being the price of the truck. The Township adds that about \$90,000 is attributable to the cost of legal counsel, financial advisor, and Indiana Bond Bank and other fees.

33. The Township also states that the bond sale took place on August 29, 2023, and about \$75,000 in proceeds was already dispersed to the Township. Upon follow-up, the Township stated that should the Department uphold the Petition, the Township would have to pay in full the Indiana Bond Bank fee (\$35,000), and return the \$75,000 already dispersed, plus accrued interest. *Letter*. The Township also stated that, as the bids are about to expire, the price of the fire truck may go up. *Testimony of Matt Shipman*.

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<sup>3</sup> This testimony also describes the current truck as a 2001 model with a 1997 chassis. The Township did not provide a copy of NFPA Standard 1901, but recited it as follows: "apparatuses greater than 15 years old that have been properly maintained and that are still in serviceable condition be placed in reserve status . . . apparatuses that were not manufactured to the applicable NDPA fire apparatus standards or that are over 25 years old should be replaced." Proponents Exhibit 12.

<sup>4</sup> 989 N.E.2d 386 (2013).

34. Following the hearing, additional written statements and documentation were provided to the Department. Other testimony and evidence by the Objectors or the Township will be given below, as necessary.

## ANALYSIS

### A. Standard for reviewing the proposed Bond, Ind. Code § 36-8-13-6.5

35. Under Ind. Code § 36-8-13-6.5(a), a petition must state the reasons why the objectors believe the Bond is unnecessary or unwise. The phrase “unnecessary or unwise” is left without further explanation in statute, therefore the phrase must be taken in its plain and ordinary meaning.<sup>5</sup> According to the Oxford American Dictionary, “unnecessary” means “not needed” or “more than is needed; excessive.” Similarly, “unwise” is defined as “not wise or sensible; foolish.”

36. The Department has authority to interpret the property tax laws of the state.<sup>6</sup> Ind. Code § 36-8-13-6.5(a) allows for a petition against a bond or loan payable in whole from property taxes. Hence, the Department must interpret and implement this statute, including the term “unnecessary or unwise.” However, providing a binding and definitive interpretation of statutes is a function ultimately left to the courts. The Indiana Tax Court has stated that the “decision as to how to best provide firefighting services within [a] township is one that properly lies with the local fire department and the [Township] Board. . . . The [Department] is required to determine whether substantial evidence support[s] that policy decision.” *Perry v. Dep’t of Local Gov’t Fin.*, 892 N.E.2d 1281, 1286—87 (Ind. Tax Ct. 2008).<sup>7</sup> “Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Amax, Inc. v. State Board of Tax Commissioners*, 552 N.E.2d 850, 852 (Ind. Tax Ct. 1990).

37. None of the Objectors who provided testimony expressed disagreement with the need for a new fire truck. The Objectors’ contentions were about the manner in which the Township acquired the fire truck and the purported lack of public transparency about the process. Therefore, the Department each of the objections raised, in turn.

### B. Opportunity to Review Bids

38. The Township stated that the bids were opened at a public meeting and was made available. Minutes provided by the Objectors represent that one copy of a bid was

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<sup>5</sup> Ind. Code § 1-1-4-1(1) states in part that in the construction of statutes in the Indiana Code “[w]ords and phrases shall be taken in their plain, ordinary, and usual sense.”

<sup>6</sup> Ind. Code § 6-1.1-35-1(1). Most of the property tax laws are contained in Ind. Code Art. 6-1.1, though there are other such laws throughout the Code.

<sup>7</sup> See also *Brown*, 989 N.E.2d at 390. In *Brown*, taxpayers challenged an emergency loan issued under Ind. Code § 36-8-13-6.5, a challenge which was rejected by the Department. The Tax Court affirmed the Department’s decision in part, but remanded the decision to the extent the Department must consider objections raised involving constitutional claims.



available at the June 15, and seven copies were available as of July 31.<sup>8</sup> The Department is aware of two relevant statutes: Ind. Code § 5-22-7-6, which requires the opening of bids; and Ind. Code § 5-22-7-9, which requires making the specific bid information available for public inspection. While the Department has no express statutory authority to oversee that either statute is implemented, there is at least some evidence that the Township provided some quantity of bid information for public inspection.

39. The Objectors also claim that Township officials made little effort to find an affordable truck, seeking only four bids from contractors and selected from two.<sup>9</sup> According to the July 31 minutes, the bids selected from were as follows:

Hoosier Fire	\$892,959
Loose Equipment	\$71,190
Total	\$964,149
Taylor'd Equipment	\$893,117
Loose Equipment	\$219,857.40
Dual band radios	No price given
Total	\$1,184,006.40

By contrast, the Objectors argue the Township should have looked into demonstration model trucks to purchase. One Objector provided, as an example of the “demo trucks” that could be found, the Department with a listing of a demonstration truck from a company that sells fire equipment and apparatus.<sup>10</sup> As required by *Perry*, the Department must defer to the decision of the Board on the choice of fire truck and equipment to purchase.

40. The Objectors also allege that the Board was not providing the bid proposals to Ms. Bennett for her review before voting. While the July 31 minutes indicate Ms. Bennett asked questions about the notice and a copy of the bids<sup>11</sup>, the minutes show Ms. Bennett

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<sup>8</sup> Objectors Exhibit E.

<sup>9</sup> Objectors Exhibit A.

<sup>10</sup> Objectors Exhibit A. According to the listing, the fire truck is valued at \$664,500.

<sup>11</sup> From the July 31 minutes:

“Discussion was held on tax rate. Board member Joy Bennett asked why we did not hold any public hearing on new Fire truck & proposing raising rates. And not notification of public.

...

Before this meeting no board member had seen any information on the bids. Board member Joy Bennett asked even during presentation of bids for copies before signing. Truck committee member Adam Hurley said they would be forthcoming.”

Objectors Exhibit E. (Edited for spelling and clarity.)

voting ‘yes’ on both the bids and the bond issuance, and Resolution #2023-01 shows Ms. Bennett’s signature.<sup>12</sup>

41. While the Petition states that the taxpayers were not given an opportunity to review the bids, testimony revealed that the objection is more general, and that there was a lack of transparency throughout the process. Objectors, for example, pointed to the publication of notices in the local newspaper, stating that most people in the Township do not subscribe to it, and that the legal requirements to publish in the newspapers is “antiquated.”<sup>13</sup> The Objectors also argue that the Township should seek public input before issuing debt to purchase new equipment, including having a special meeting under Ind. Code § 36-6-6-14.

42. For the purpose of issuing a bond, Ind. Code § 6-1.1-20-5(a) requires public notice of a decision to issue bonds in excess of \$5,000 by (1) posting in three public places in the political subdivision; and (2) publication in the newspaper once each week for two weeks. The Township provided a publisher’s claim from the *Post and Mail* indicating publication of the notice of determination to issue bonds was done on August 12 and 19, 2023.<sup>14</sup> The July 31 minutes indicate that a notice was posted in three locations: the entrance to the fire station, the Trustee’s office, and on a sign at Gene Heckman Memorial Park.<sup>15</sup> The Department finds that, contrary to the Objectors’ claims of inadequate notice, the notices the Township did make fulfilled legal requirements.

43. A public hearing is not required on the issuance of a bond unless the projected cost of the bond is in excess of the controlled project thresholds under Ind. Code § 6-1.1-20-3.1(a) & Ind. Code § 6-1.1-20-3.5(a). Documentation from Baker Tilly, provided by both the Township and the Objectors indicate that the cost of the proposed Bond is below the controlled project threshold. Specifically, Baker Tilly reports that the controlled project threshold for the Township is \$5,234,967.<sup>16</sup> The cost of the Bond, represented to be at

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<sup>12</sup> Proponents’ Exhibit 1; Objectors Exhibit E. From the July 31 minutes:

“Ryan Geiger made a motion to support [Resolution #2023-01].  
Joy Bennett 2nd it. Vote was taken with 2 members passing it.  
Board members Ryan Geiger and Joy Bennett signed the resolution.  
Board member Adam Hurley had to abstain from voting due to conflict of interest.  
...  
Ryan [Geiger] made the motion to accept the bids as presented from truck committee. Joy  
2<sup>nd</sup> the motion.  
Vote was taken passed by both members.  
Adam [Hurley] abstained from voting.”

(Edited for spelling.)

<sup>13</sup> Objectors Exhibits A & B; Testimony of Carli McGuire.

<sup>14</sup> Proponent Exhibit 13.

<sup>15</sup> Objectors Exhibit E.

<sup>16</sup> Objectors Exhibit O; Proponents Exhibits 7 – 11.

approximately \$1.29 million, is below this number. Therefore, the issuance of the bond would not necessitate a public hearing prior to issuance under Ind. Code § 6-1.1-20.

44. Ind. Code § 36-6-6-14(a) states that the Board “may determine whether there is a need for fire and emergency services or other emergency requiring the expenditure of money not included in the township’s budget estimates and levy.” In referring to this statute, the Objectors state only that the Township meeting minutes “do not allude to this meeting.”<sup>17</sup> It is unclear what meeting the Objectors are claiming was the special meeting under this statute, and how not alluding to this meeting in the minutes brings the Township out of compliance this statute.

45. The Department recognizes the concerns of the Objectors about the apparent lack of transparency on the part of the Township. However, the Objectors have not provided evidence that the Township did not do what is minimally required by law with respect to the bids. The Department cannot evaluate whether the Township could have done more to notify the public, or whether public notice laws should change. The Department cannot find that the Township deprived the public of the opportunity to review the bids.<sup>18</sup>

### **C. Potential Conflict of Interest**

46. Because of the remoteness of the Department on matters concerning any particular community, the Department defers to the advice of legal counsel given to local officials. This is especially the case with respect to matters where the Department is not competent or has no direct oversight of. The proceedings of a local board is one such case.

47. As stated in the minutes of the August 24 Board meeting, there was discussion among Mr. Shipman, bond counsel, and another unnamed attorney, on whether Mr. Hurley was allowed to vote on Resolution #2023-02, a resolution approving an additional appropriation on the spending of the bond proceeds.<sup>19</sup> Mr. Hurley did not vote on

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<sup>17</sup> Objectors Exhibit B.

<sup>18</sup> The Objectors also provided the Department with a copy of a complaint with the Public Access Counselor alleging the Township improperly opened the bids before giving public notice. Objectors Exhibit H. The Department will neither comment on nor consider a matter put before another executive agency.

<sup>19</sup> Objectors Exhibit F. From the August 24 minutes:

“At this time Trustee Bill Brice asked to meet with the [Board] in the chief’s office. He said that Matt Shipman had asked the board to come early so Matt could explain the determination that Adam [Hurley] could vote on the additional appropriation resolution . . . Trustee said he contacted our bond counsel attorney in Indianapolis and she spoke to another attorney in her office as well as Matt Shipman’s determination and all three had given the yes that Adam [Hurley] could vote on the Bond appropriation for the fire truck.”

(Edited for spelling & clarity.)

Resolution 2023-01, which was on the issuance of the bond, itself.<sup>20</sup> It is unclear to the Department how Mr. Hurley’s participation in the vote on the additional appropriation is relevant to the previous action taken on the bond issuance, which is what is being objected to.<sup>21</sup>

48. The Objectors also point to Ind. Code § 35-44.1-1-4, which state that it is a crime to, among other things, “knowingly and intentionally . . . derive a profit from a contract or purchase connected with an action by the governmental entity served by the public servant.”<sup>22</sup> Specifically, the Objectors allege that Mr. Hurley, under his employment with J&K Communications, drafted a quote for a purchase of radios by the Township.<sup>23</sup> The Department has no authority to determine what constitutes a crime. More importantly here, however appropriate it was, the Objectors did not explain how this has any impact on the Board’s approval of the bond issuance, especially since Mr. Hurley later recused himself from voting on Resolution #2023-01, anyway. As previously stated, Resolution #2023-02, and Mr. Hurley’s vote on it, are outside the scope of the Department’s review under Ind. Code § 36-8-13-6.5.

49. As of the date of this Order, the Township did not produce a copy of a conflict of interest disclosure statement for Mr. Hurley filed with the County Clerk’s Office. The Objectors provided a copy of the 2015 version of State Form 54266 – Uniform Conflict of Interest Disclosure Statement, issued by the State Board of Accounts.<sup>24</sup> Again, because the Department finds that Mr. Hurley recused himself from Resolution #2023-01, whether a proper conflict of interest form has been filed is not within the scope of the Department’s review under Ind. Code § 36-8-13-6.5.

50. Objectors also cite to Ind. Code § 36-1-23-2, which states that a volunteer firefighter may not vote on the budget or levy of the unit for which the volunteer firefighter serves as a member of the fiscal body.<sup>25</sup> The Objectors argue Mr. Hurley should have recused himself from voting on Resolution #2023-02 because the bond issuance itself is a tax levy.<sup>26</sup> Again, the Department restates its finding that Mr. Hurley recused himself on the resolution to issue the bond and so there is no need to consider whether Ind. Code § 36-1-23-2 applies, here. The Department, however, doubts the Objectors’ argument that the issuance of a bond is identical to a tax levy. While many units use a property tax levy to pay off a bond, not all do and it is not necessary that one be raised to pay off a bond.

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<sup>20</sup> Objectors Exhibit E; Proponents Exhibit 1. See also footnote 8, above.

<sup>21</sup> There is no statutory right for taxpayers to object to an additional appropriation.

<sup>22</sup> Objectors Exhibits A, B and M; Ind. Code § 35-44.1-1-4(b).

<sup>23</sup> Objectors Exhibit K.

<sup>24</sup> Objectors Exhibit L.

<sup>25</sup> Objectors Exhibit C.

<sup>26</sup> Objectors Exhibit B.

Moreover, should the Objectors' argument here have merit, Ind. Code § 36-1-23-3 states that should a majority of the fiscal body be recused from voting, approval of the budget and levy would then be considered by the County Council. Therefore, the Objectors' contention that Mr. Hurley's recusal somehow defeats the bond proposal is not necessarily supported by state law.

51. Finally, if there were any impropriety at all in the Board's adoption of Resolution #2023-02, causing it to be invalid, the Board need only follow the process of Ind. Code § 6-1.1-18-5 to adopt another additional appropriation.

#### **D. Typographical Error on Document Dated August 24, 2023**

52. The Department finds no typographical error in Resolution #2023-01 of the kind stated in the Petition. There was one in Resolution #2023-02, wherein it states on the last line "PASSED and ADOPTED by the Board of the Town of Pittsboro, Indiana, this 24<sup>th</sup> day of August, 2023."<sup>27</sup> The latter resolution was what was referenced in the Petition, according to later testimony.

53. The Township argues that this is a mere scrivener's error. The Objectors argue that the error shows the process of acquiring the fire truck has been rushed. Nowhere else on the resolution does the "Town of Pittsboro" appear to replace a reference to the Township or the Board, including on the signatory lines. Typographical errors happen. The best that can be said about this instance of an error is that the drafting of Resolution #2023-02 itself was rushed. The Department believes more evidence is needed to show that the process as a whole was rushed, and the Objectors did not provide any.<sup>28</sup> Finally, and again, this error occurred on an additional appropriation resolution, which is outside the Department's scope of review under Ind. Code § 36-8-13-6.5.

54. Therefore, the Department is not inclined to consider the typographical error further.

#### **E. Failure to Use Cumulative Fire Fund**

55. The Objectors argue that the Township should continue to use the cumulative fire fund to purchase apparatus instead of a bond issuance. The Township argues that money in the fund was already being dedicated for long-term equipment purchases, through 2039. The Township also argues that it would not be feasible to use it to purchase a new truck because of the cost and the shorter timeframe needed to purchase it.

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<sup>27</sup> Objectors Exhibit N.

<sup>28</sup> For example, evidence of noncompliance with Ind. Code § 6-1.1-20 (procedures for issuing bonds), including failure of publishing notices in the newspaper and conducting of public hearings. See discussion above at Paragraph 42.

56. The Township did not cite to a purpose of the cumulative fire fund not prohibited by statute<sup>29</sup>, saying they intend to purchase equipment. The Township also cited to NFPA standards recommending a useful life of a fire truck to be 25 years,<sup>30</sup> stated the current fire truck is 23 years old, and the timetable to purchase a new truck with necessary specifications will take about 3 years.

57. The Township therefore provided evidence that it made an informed decision on the issuance of debt in lieu of a cumulative fund and alternative uses for the cumulative fund. The Department therefore finds that the Township's decision to forego using the cumulative fund to purchase the fire truck is not inappropriate.

58. The Township provided several fiscal impact analysis statements from municipal advisor firm Baker Tilly.<sup>31</sup> All of these statements show projected costs, the needed debt service tax rate, an amortization schedule, the Township's constitutional debt limit, and controlled project threshold calculation. The June 26 analysis, the closest analysis given to the Township before the adoption of the Resolution, indicates the following:

Net proceeds available for project	\$1,500,000
Bond bank fee	\$35,000
Allowance for issuance costs & contingencies	\$75,000
Total project costs	\$1,610,000
Debt service tax rate	\$0.0635
Assumed interest rate	3.64%
Illustrative total debt service	\$1,922,824
Estimated Township debt limit	\$2,157,065
Controlled Project Threshold	\$5,234,967 <sup>32</sup>

59. The Petition also alleges the cumulative fire fund is not generating revenue, to which the Township responds that the proceeds are being held in a certificate of deposit and generating about \$11,000 to \$12,000 a year. This particular claim is a matter outside the scope of Ind. Code § 36-8-13-6.5 and the Department will not consider it further.

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<sup>29</sup> Ind. Code § 36-8-14-2 (authorizing use of a cumulative fire fund for purchase of firefighting equipment, among other uses).

<sup>30</sup> The Department requested a copy of the NFPA standard at the hearing. The Township provided a written recitation of what the standard is, though it did not provide a copy of the standard, itself. Proponents Exhibit 12.

<sup>31</sup> Proponents Exhibit 7 – 11; Objectors Exhibit O.

<sup>32</sup> Proponents Exhibit 9.

## **F. Inconsistent Statements about Amount of Bond**

60. The Objectors argue that the amount to purchase the truck (\$1.2 million) and the bond amount (\$1.7 million) “should be the same.” The Township responds that the actual bond amount is \$1.2 million, the cost of the truck, but also that approximately \$90,000 is for fees, including bond counsel and financial advisors.

61. The Department finds that Resolution #2023-01 states that the Board authorized bonds “in an original aggregate principal amount not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000.)” *Proponents’ Exhibit 1*. The inclusion of the term “not to exceed” means that the issued amount itself may be lower. In this case, the principal amount is \$1,290,000, the cost of the truck plus fees. *Proponents’ Exhibit 4*.

62. Because the actual issued bond amount does not exceed what was authorized in Resolution #2023-01, the Department finds no inconsistency alleged by the Petition.

## **G. Other Matters**

63. Objectors also raised issues that are tangential to the proposed Bond. Most of them relate to complaints about the volunteer fire department or the trustee. For example, that the volunteer fire department makes more runs than there are actual fires in the Township, and that they might use some of the bond proceeds to hire firefighters.<sup>33</sup> The statement about the runs is not corroborated, and addresses an issue of local firefighter management that is outside the Department’s purview. The statement about using bond proceeds to hire firefighters is only speculation. Resolution #2023-01, the notices of determination, the bids as outlined in the July 31 minutes, and the bond issuance document from the Indiana Bond Bank states that the Bond will be issued for the purpose of providing funds to purchase certain fire truck and equipment, any necessary equipment appurtenant to the fire truck, and related and incidental expenses to be incurred in connection with the purchase, and the costs of issuing the bond.<sup>34</sup> There is sufficient document that shows the Township’s intent with the Bond is to purchase the fire truck and to equip it. Any misuse of the proceeds after receipt is within the jurisdiction of the State Board of Accounts and not that of the Department.

64. Another issue raised concerns the Trustee; specifically, for not running the Board meetings, using Township funds to hire a local attorney instead of consulting with the Department or other townships “on how to be a trustee”, and in general failing to do his job as Trustee.<sup>35</sup> This concern does not pertain to the proposed Bond, itself, and so is outside the scope of the Department’s review. Additionally, while the Department may offer technical assistance to local officials on matters with which it has authority, the

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<sup>33</sup> Objectors Exhibit A.

<sup>34</sup> Objectors Exhibit E; Proponents Exhibits 1, 3, 13, and 14.

<sup>35</sup> Objectors Exhibit A.

Department as a rule does not offer legal or financial advice and encourages consultation with hired legal counsel.

65. Finally, another concern was brought up about suspected bullying of Ms. Bennett by another Boardmember.<sup>36</sup> Specifically, the claim was with respect to Ms. Bennett's vote of 'no', but it is not clear to what the 'no' vote was on. Records indicate Ms. Bennett voted 'yes' on Resolution #2023-01, so it does not appear that the alleged bullying has to do with the bond issuance vote, itself, but on some other matter. However valid and serious the claim of bullying is, it does not appear pertinent to the Department's review of the proposed Bond.

### CONCLUSION

66. After weighing the testimony and evidence, the Department is not persuaded by the Objectors and concludes that there is no legal basis for denying the Township's proposed Bond. The Department finds that there was substantial evidence for the need for the Bond, to purchase a fire truck to replace the current truck that is nearing the end of its useful life, that the Township sought out bids and made a decision on the bids in a public meeting. Therefore, the Department must defer to the judgment of the Township Board in recommending issuance of the Bond.

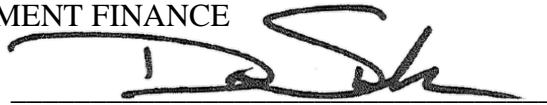
67. The Department therefore **APPROVES** the Township's proposed Bond.

68. The Department notes that it is exempt from the Administrative Orders and Procedures Act (Ind. Code § 4-21.5-2-4).

69. This Order of the Department is subject to judicial review (Ind. Code § 36-8-13-6.5(e)).

Dated this 3 day of November, 2023.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE



**Daniel Shackle, Commissioner**

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<sup>36</sup> Id. The Objector raising this issue did not name Ms. Bennett but referred to her as "the Secretary", as she was Board secretary at the time, and did not name the other Boardmember accused of bullying.