PETITIONERS APPEARING PRO SE:
MELANIE A. CALDWELL
LILLIE MAE HUBBARD, CPA
Liberty, IN

ATTORNEYS FOR RESPONDENT:
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IN THE INDIANA TAX COURT

MELANIE A. CALDWELL and LILLIE MAE HUBBARD, CPA,	)	
Petitioners,	)	
v.	)	Cause No. 49T10-0604-TA-41
DEPARTMENT OF LOCAL GOVERNMENT FINANCE,	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE DEPARTMENT OF LOCAL GOVERNMENT FINANCE

NOT FOR PUBLICATION
March 12, 2007

FISHER, J.

Melanie A. Caldwell and Lillie Mae Hubbard, CPA (the Petitioners) appeal the final determination of the Department of Local Government Finance (DLGF) that denied their challenge to the Union County/College Corner Joint School District's (School District) 2006 budget. On appeal, the Petitioners present two issues for this Court's review:

> I. Whether the DLGF abused its discretion when it determined that the School District could provide group health insurance benefits to its school board members; and

II. Whether the DLGF abused its discretion when it determined that the School District could use its capital projects fund to finance its guaranteed energy savings contract (GESC).

FACTS AND PROCEDURAL HISTORY

In September of 2005, the School District, through its authorized officers and after the appropriate public hearings, fixed its budget for 2006. The Union County Auditor (Auditor) subsequently issued public notice advising Union County taxpayers of the proposed property tax rates in order to generate the revenue needed to cover (among other things) the School District's budget.

On October 28, 2005, the Petitioners filed an objection to the School District's budget with the Auditor. In their objection statement, the Petitioners argued that the proposed tax rates represented a tax rate increase "40% higher than last year, [and] considerably higher than [tax rate increases for] schools in the Indianapolis area. . . . [Our] agriculturally based community of fewer than 8000 people cannot absorb [such] a proposed increase[.]" (Cert. Admin. R. at 10.) Accordingly, "the proposed property tax rates can and must be reduced." (Cert. Admin. R. at 10.)

The DLGF held a hearing on the Petitioners' objection on November 23, 2005. On March 2, 2006, the DLGF issued its final determination denying the Petitioners' objection.

The Petitioners subsequently filed this original tax appeal. On December 12, 2006, the Court heard the parties' oral arguments. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION[1]

On appeal, the Petitioners assert that the School District's budget – and thus the proposed tax rates needed to generate the money to cover said budget – "unfairly burden[] the property taxpayer in Union County." (Cert. Admin. R. at 10.) More specifically, the Petitioners assert that they should not be subject to tax levies so that the School District can: 1) provide health insurance benefits to its school board members; and 2) make payments on its GESC from the capital projects fund. (*See* Cert. Admin. R. at 10-13.) (*See also* Pet'r V. Pet. for Judicial Review.)

1. Health Insurance for School Board Members

In their challenge, the Petitioners argue that the School District should eliminate the provision of health insurance benefits to its school board members. To support this argument, the Petitioners first explain that at least three school board members are receiving health insurance benefits, at an annual cost of $6,280 per board member, from the School District. (Oral Argument Tr. at 16.) The Petitioners assert, however, that pursuant to Indiana Code § 20-26-4-7, a school board member's annual compensation is capped at $2,000 plus a per diem. (Pet'r Br. at 3.) As a result,

> [the school board members] are not entitled to the additional compensation benefits of free medical insurance . . . [p]articularly[] at a time when classroom supplies, summer school programs and other critical areas have been cut in our district . . . The property taxpayer of our School District

[1] The Court notes that the relevant facts in this case are uncontroverted. Rather, the Petitioners challenge the legal conclusions underlying the DLGF's ruling (i.e., whether, in interpreting certain statutes, the DLGF correctly interpreted and applied the law). When the Court is faced with pure questions of law, it employs a de novo standard of review. *See, e.g., Pike Twp. Educ. Found., Inc. v. Rubenstein,* 831 N.E.2d 1239, 1241 (Ind. Ct. App. 2005) (stating when relevant facts are not in dispute and only the interpretation of a statute is at issue, such interpretation presents a pure question of law which is reviewed de novo).

> should not have to incur higher tax levies to provide additional compensation for our school board members that is not required by Indiana Statute.[2]

(Pet'r Br. at 4 (footnote added).)

Indiana Code § 20-26-4-7 is titled "Compensation of governing body members[.]" IND. CODE ANN. § 20-26-4-7 (West 2005). In turn, the body of the statute provides, in relevant part, that

> the governing body of a school corporation by resolution has the power to pay each member [thereof] a reasonable amount for service as a member, not to exceed:
> (1) two thousand dollars ($2,000) per year; and
> (2) a per diem not to exceed the rate approved for members of the board of school commissioners under IC 20-25-3-3(d).

Id. at (a). The Petitioners' argument is based on the premise that the term

[2] With respect to this issue, the DLGF's final determination states that "[p]ursuant to [Indiana Code §] 5-10-8-1[], insurance benefits can be provided to school board members. The [School District therefore] has the authority to determine whether or not to provide insurance benefits to [the school board members]." (Cert. Admin. R. at 90.)

The DLGF's ruling is correct in that pursuant to Indiana Code § 5-10-8-2.6, a public employer may offer group health insurance benefits to its employees. IND. CODE ANN. § 5-10-8-2.6(a),(b) (West 2005). With respect to the provision of such benefits, Indiana Code § 5-10-8-1 defines a public employee as, *inter alia*, "an elected or appointed officer or official[.]" IND. CODE ANN. § 5-10-8-1(1)(A) (West 2005). Accordingly, because the School District's school board members are elected officials and therefore public employees, the School District may offer them group health insurance benefits. *Cf. with* 1978 Ind. Op. Atty. Gen. 57 (stating that under former versions of these statutes, "[a] school board member is within the definition of [a public] employee and would qualify for coverage under his public employer's insurance plan on the same basis and to the same extent as any other public employee"). Nevertheless, the Petitioners do not seem to be contesting whether the School District can offer the health insurance to its board members. (*See* Pet'r Br. at 4.) Rather, they are contesting whether the School District should pay for those benefits pursuant to Indiana Code § 20-26-4-7.

"compensation" includes both "salary" and "fringe benefits."[3] (*See* Oral Argument Tr. at 18 (footnote added).) As a result, the Petitioners state that under Indiana Code § 20-26-4-7, a school board member cannot receive both the "[$]2,000 salary plus the medical insurance of $6,288[.]" (Oral Argument Tr. at 19.) This very statement, however, reveals the flaw in the Petitioners' argument.

The term "compensation" is, generally, a broad concept that encompasses *any* form of remuneration paid in exchange for services. *See* BLACK'S LAW DICTIONARY 301 (8th ed. 2004) (stating that "compensation" is "[r]emuneration and other benefits received in return for services rendered"). Thus, "fringe benefits" and "salaries" are categories, or types, of compensation. *See id.* at 167, 1364 (defining "fringe benefit" as "[a] benefit []other than direct salary . . . received by an employee from an employer" and "salary" as "[a]n agreed compensation for services . . . at regular intervals on a yearly basis"). *See also* WEBSTER'S THIRD NEW INT'L DICTIONARY 912, 2003 (2002 ed.) (defining "fringe benefit" as "an employment benefit (as a pension, a paid holiday, or health insurance) . . . that involves a money cost without affecting basic wage rates" and "salary" as "fixed compensation paid regularly (as by the year, quarter, month, or week"); InvestorWords.com (defining, as of the date of this opinion, "fringe benefits" as

[3] To that end, the Petitioners have referred to a number of statutes and administrative regulations that define the term "compensation." (*See* Pet'r Br. at 4; Pet'r Reply Br. at 6-7.) Because these definitions are applicable in different statutory contexts (e.g., the meaning of "compensation" as it relates to the ethics of courts and court officers, the financial institutions tax, the Indiana State Fair Commission, and the Indiana Gaming Commission), however, they are not dispositive in the resolution of this case.

"[n]on-salary employee compensation" and "salary" as "[w]ages received on a regular basis, usually weekly, bi-weekly, or monthly").

Nevertheless, the primary objective in construing a statute is to ascertain and give effect to the intent of the legislature in drafting that statute. *See Johnson County Farm Bureau Coop. Ass'n v. Indiana Dep't of State Revenue,* 568 N.E.2d 578, 580 (Ind. Tax Ct. 1991), *aff'd by* 585 N.E.2d 1336 (Ind. 1992). The best evidence of the legislature's intent in enacting a statute is found in the actual language used within the statute itself. *See id.* at 581. To that end, the structure and language of Indiana Code § 20-26-4-7 must be examined as a whole, and not piecemeal. *See State v. Adams*, 583 N.E.2d 799, 800 (Ind. Ct. App. 1992) (stating that "[e]ach part [of a statute] must be considered with reference to all other parts [of the statute]"), *trans. denied*.

Given *the whole* of Indiana Code § 20-26-4-7, it is clear that the legislature intended the term "compensation" to have a more restricted meaning. Indeed, the term "compensation," used in the title of the statute, is defined by the body of the statute as "a reasonable amount for service . . . not to exceed . . . $2,000[] per year[] and [] a per diem." *See* A.I.C. § 20-26-4-7(a). This language dictates the conclusion that the "compensation" to which Indiana Code § 20-26-4-7 speaks is akin to "salary" only: it is 1) a fixed amount; 2) payable at a stated interval; and 3) related directly to the time worked/service provided. *See* BLACK'S LAW DICTIONARY at 1364; WEBSTER'S THIRD NEW INT'L DICTIONARY at 2003. *See also Ind. Office of Envtl. Adjudication v. Kunz*, 714 N.E.2d 1190, 1193 (Ind. Ct. App. 1999) (stating that the legislature's definition of a word within a statute is binding). "Fringe benefits" such as the payment of health insurance premiums at issue in this case are not "salary" in the sense of a fixed amount payable at

stated intervals; rather, they represent another form of compensation distinct from, and supplemental to, an employee's regular salary. *See* BLACK'S LAW DICTIONARY at 167; WEBSTER'S THIRD NEW INT'L DICTIONARY at 912. *See also City of Ft. Wayne v. Ramsey,* 578 N.E.2d 725, 728 (Ind. Ct. App. 1991) (citations omitted) (stating that employer provided health insurance and pension contributions are in the nature of fringe benefits and therefore not to be considered salary), *trans. denied*.

The actual words used by the legislature in Indiana Code § 20-26-4-7 signify that a school board member's annual *salary* is capped at $2,000, plus per diem. Because a salary does not include fringe benefits, the School District has not violated Indiana law by paying a portion of its school board members' health insurance premiums.[4] The DLGF's final determination with respect to this issue is therefore AFFIRMED.[5]

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[4] It should be noted that, pursuant to Indiana Code § 5-10-8-2.6(c), the School District may only pay a part, and not all, of the cost of its members' health insurance premiums. *See* A.I.C. § 5-10-8-2.6(c). *See also* 2002 Ind. Op. Atty. Gen. 5.

[5] In their written brief filed with the Court, the Petitioners have also alleged that in its provision of health insurance to its school board members, "the [School District] and DLGF fail to recognize the apparent pecuniary interest of this contract [by] our school board members." (Pet'r Br. at 3.) (*See also* Oral Argument Tr. at 29-30 (Petitioner Hubbard stating that despite the "inherent" conflict of interest in benefiting from a contract they negotiated, the school board members had not filed conflict-of-interest statements).) Because the Petitioners have not properly developed this argument, it does not present an issue for the Court to resolve.

The Petitioners have also asserted that the School District should exclude the school board members from health insurance coverage because they work less than part-time employees, and part-time employees can be excluded from coverage pursuant to Indiana Code § 5-10-8-2.6(b). (Pet'r Br. at 4; Pet'r Reply Br. at 7-8.) *See also* A.I.C. § 5-10-8-2.6(b). A thorough reading of Indiana Code § 5-10-8-2.6 indicates, however, that the School District has some discretion in to whom it can offer insurance benefits to, if it offers the insurance benefits at all. *Id.* Thus, the Petitioners' argument is one better suited for the legislature.

2. GESC Payment from Capital Projects Fund

The Petitioners have also taken issue the School District's payment on its GESC from its capital projects fund. Before addressing this issue, however, some preliminary background information is necessary.

Essentially, a GESC is a method by which a school corporation can finance the implementation of certain conservation energy measures. *See* IND. CODE ANN. § 36-1-12.5 (West 2005). More specifically, a school corporation contracts with a "qualified provider" to make some type of facility alteration or technological upgrade designed to reduce the school's energy, water, wastewater, or other operating costs. *See* A.I.C. § 36-1-12.5-1, -2. As part of the contract, however, the qualified provider must make two "guarantees." First, it must guarantee that the savings resulting from the conservation measures ("guaranteed savings") will cover the costs of implementing those measures. A.I.C. § 36-1-12.5-5(d)(2)(A). Second, the qualified provider must guarantee that if the actual savings[6] resulting from the conservation measures are less than the guaranteed savings, it will reimburse the school corporation for the difference. A.I.C. § 36-1-12.5-5(d)(2)(B) (footnote added).

The administrative record in this case indicates that the School District entered into two separate GESCs with Honeywell, Inc. for a variety of energy saving projects, including lighting retrofits, boiler replacement, and window replacements. (See Cert. Admin. R. at 74.) The first contract, entered into on December 11, 1995, was for a five-year period. (See Cert. Admin. R. at 74.) The total amount of this first contract was

[6] The term "actual savings" is statutorily defined to include "stipulated savings," and "stipulated savings" is defined as "assumed savings that are documented by industry engineering standards." IND. CODE ANN. § 36-1-12.5-.05 (West 2005); IND. CODE ANN. § 36-1-12.5-3.7 (West 2005).

$134,200, with energy savings guaranteed at $67,100 and operational savings guaranteed at $67,100. (See Cert. Admin. R. at 74.) The second contract, entered into on August 30, 1999, was for a ten-year period. (See Cert. Admin. R. at 74.) The total amount of this second contract was $336,529, with energy savings guaranteed at $224,590 and operational savings guaranteed at $244,250. (See Cert. Admin. R. at 74.) Honeywell and the School District stipulated as to the guaranteed savings, which were deemed realized upon execution of the GESCs. (*See* Cert. Admin. R. at 74.) Sometime between October 2000 and January 2002, the two contracts were combined. (*See* Cert. Admin. R. at 74.) While the actual contract has not been presented to the Court, the Petitioners state that "the remaining energy contract is approximately eight [more] years at $46,880 per year[.]" (*See* Pet'r Br. at 2.)

On appeal, the Petitioners complain that the School District does not have any information documenting actual savings realized from the GESC to date and that it does not intend to *ever* have any such documentation.[7] (*See* Pet'r Br. at 2 (footnote added).) As a result, the Petitioners assert that the School District should be "punished" because there will be no way of knowing whether, by the end of the contract term, the School District is entitled to reimbursement from Honeywell (i.e., because actual savings realized under the GESC are less than guaranteed savings). (*See* Pet'r Br. at 2; Oral Argument Tr. at 8-9.)

[7] The Petitioners cite to the Indiana State Board of Accounts' audit report of the School District for the period of July 1, 2002 through June 30, 2004, which states "the [] School District Officials do not have available for audit and conveyed that they do not plan in the future to have any additional information to document actual operating savings [from the GESC with Honeywell]." (*See* Pet'r Br. at 2; Cert. Admin. R. at 47, 76.)

As punishment, the Petitioners suggest that all remaining payments to be made to Honeywell under the GESC should be paid from the School District's general fund, as opposed to its capital projects fund.[8] (*See* Pet'r Br. at 2 (footnote added).) The Petitioners maintain that this punishment is provided for in a 2005 "Capital Projects Fund" memorandum, issued by the DLGF to all Indiana school superintendents, which states:

> Payments for guaranteed energy savings contracts might be paid from the Capital Projects Fund to the extent that actual energy and operational savings are documented from the CPF. Energy cost savings that are realized in the General Fund[] should be paid from the General Fund.[9]

(*See* Pet'r Br. at 2; Attach. 1 to Pet'r Br. at 15 (footnote added).) The Court, however, must decline the Petitioners' invitation to punish the School District.

Indiana Code § 36-1-12.5-5 provides that a school corporation is entitled to

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[8] During oral argument before this Court, the Petitioners explained why they believed this would be an appropriate punishment:

> because there's more room in the CPF fund. The CPF fund, the capital projects fund, is funded entirely by property tax at the local level. The general fund is supported by – some by property tax, some by – or the majority of it – by state tax. So – and the bulk of [the School District's] expenses, you know, our teachers' salaries and things like that, come out of the general fund. And if they have to be conscious of their operating decisions and the financing decisions that they make, we think that it'll effect a better management process[.]

(Oral Argument Tr. at 10-11.)

[9] In other words, the Petitioners assert that pursuant to the memorandum, the School District can use its CPF fund to make its GESC payments only if it documents the actual savings from the GESC therein; to the extent the School District does not intend to document actual savings at all, it cannot use the capital projects fund to make the remaining payments on its GESC. (See Pet'r Br. at 2.)

reimbursement from the qualified provider when actual savings under the GESC are less than guaranteed savings. *See* A.I.C. § 36-1-12.5-5(d)(2)(B). This determination cannot be made, however, until the *entire* contract term has expired. *See id.* (*See also* Cert. Admin. R. at 91 (2006 letter from the DLGF reminding the School District that it must have actual savings documentation by the end of the contract term).)

In this case, the GESC term has not yet expired: as the Petitioners have indicated, the subject GESC does not expire until approximately 2014. (*See* Pet'r Br. at 2.) Thus, the School District has until then to document actual savings realized over the course of the subject GESC term. Consequently, the School District has done nothing yet for which it should be punished.[10] The DLGF's final determination on this issue is therefore AFFIRMED.[11]

CONCLUSION

The Petitioners have failed to show that the DLGF's final determination violates Indiana law. The DLGF's final determination is therefore AFFIRMED.

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[10] The Court does note, however, that Indiana Code § 36-1-12.5-10 requires a school corporation to file an annual report with the lieutenant governor's office indicating "the savings resulting in the previous year" from a GESC. *See* IND. CODE ANN. § 36-1-12.5-10 (West 2005 & 2006). The Petitioners have not shown that the School District has not complied with this statute. *See* n. 7, *supra* (explaining that the School District did not provide evidence of actual savings to the State Board of Accounts). In any event, compliance with Indiana Code § 36-1-12.5-10 is an issue that resides with the lieutenant governor's office.

[11] On a final note, the School District is statutorily entitled to use its capital projects fund to pay for its GESC. *See* IND. CODE ANN. § 21-2-15-4(i) (West 2005) (repealed 2006) (current version at IND. CODE ANN. § 20-40-8-17 (West 2007)). While the memorandum upon which the Petitioners rely discusses the documentation of actual savings within the capital projects fund, it does not discuss when that documentation must occur.