

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 130)**

<i>In re Petition for Declaratory Order</i>	:	
Iowa Association of School Boards, Petitioner.	:	DECLARATORY ORDER [Adm. Doc. # 4602]

The Iowa Association of School Boards [“IASB”] filed a petition for declaratory order with the agency on or about January 4, 2005. A substantially identical petition was contemporaneously filed by IASB with the Office of the Auditor of the State of Iowa. The petition seeks a declaratory ruling that Iowa school districts may utilize funds from the district management levy to pay the management fee to participate in the Fleet Service component of the Iowa Joint Utilities Management Program, Inc. [“IJUMP”].

IASB in essence administers IJUMP, which established the Fleet Service Program for the purpose of assisting school districts in reducing or managing unpredictable and rising fuel costs. Each district participating in the Program signs a one-year renewable agreement with IJUMP, designating IJUMP to act as the district’s contracting agent for the purchase and delivery of vehicle fuel.

On January 31 of each year, IJUMP establishes a guaranteed annual price for fuel for the following fiscal year. The district is then able to purchase fuel throughout that fiscal year at the guaranteed annual price. For example, the guaranteed fuel prices for fiscal year 2005 are \$.70/gallon for diesel fuel and \$.80/gallon for ethanol gasoline. In addition, each participating district pays to IJUMP an annual “risk management fee,” which is determined on the basis of a set price per gallon (\$.50/gallon for fiscal year 2005) times the number of gallons of fuel for which the district wants protection from price increases. The number of gallons for which price protection is sought cannot exceed more than 95% of the district’s historic usage.

The IJUMP Fleet Service Program uses the risk management fee to pay the difference between the guaranteed fuel price and the actual price of fuel delivered to the district. At the end of the fiscal year, any surplus in the district’s account may be rolled over to the next fiscal year or the district may receive a dividend payment based on the number of gallons of fuel purchased during the fiscal year minus program administration costs. On the other hand, if fuel prices increase such that the risk management fee is insufficient to cover the difference between the guaranteed fuel cost and the actual fuel cost, IJUMP either bills the district for the shortfall or raises the risk management fee for the following fiscal year to cover the increased costs.

IASB describes the IJUMP Fleet Service Program as a risk management tool to provide districts with insurance against sudden, unforeseen increases in fuel prices. Therefore, its argument is that districts should be able to pay the IJUMP management fee from the district management levy.

The district management levy is described in Iowa Code section 298.4, which states in pertinent part as follows:

The board of directors of a school district may certify for levy by April 15 of a school year, a tax on all taxable property in the school district for a district management levy. The revenue from the tax levied in this section shall be placed in the district management levy fund of the school district. The district management levy shall be expended only for the following purposes:

...

3. To pay the costs of insurance agreements under section 296.7.

Iowa Code § 298.4 (2005).

None of the other delineated allowable uses for the management levy are relevant here. It is a given that section 298.4 allows school boards to expend funds from the management levy “to pay the costs of insurance agreements under section 296.7.” Accordingly, it is necessary to determine whether the IJUMP management fee can legitimately be considered a cost of an insurance agreement under section 296.7. That section states in relevant part as follows:

1. A school district or community college corporation may contract indebtedness and issue general obligation bonds or enter into insurance agreements obligating the school district or corporation to make payments beyond its current budget year for one or more of the following mechanisms to protect the school district or corporation from tort liability, loss of property, environmental hazards, or any other risk associated with the operation of the school district or corporation:

- a. To procure or provide for a policy of insurance.
- b. To provide a self-insurance program.
- c. To establish and maintain a local government risk pool.

Iowa Code § 296.7(1) (2005).

IASB argues that the IJUMP program provides insurance to protect the participating school districts “from the risks of substantial, unforeseen increases in fuel costs that can disrupt the operation of school districts during the year.” Petition, ¶ 11. However, labeling an agreement or a program “insurance” does not make it so. *Barberton Rescue Mission, Inc. v. Insurance Div. of Iowa Dept. of Commerce*, 586 N.W.2d 352, 354 (Iowa 1998).

The essence of an insurance agreement is that one party pays consideration to a second party in return for the second party assuming some specified risk for the first party. See 43 Am.Jur.2d *Insurance* § 1, at 73-74 (1982). The Iowa Supreme Court, recognizing that our statutes do not define insurance, has stated that an agreement is one of insurance if it meets the following test:

[O]ne party, for compensation, assumes the risk of another; the party who assumes the risk agrees to pay a certain sum of money on a specified contingency; and the payment is made to the other party or the party’s nominee.

Barberton Rescue Mission, supra, quoting *State v. Schares*, 548 N.W.2d 894, 896 (Iowa 1996)(quoting *Iowa Contractors Workers’ Comp. Group v. Iowa Ins. Guar. Ass’n*, 437 N.W.2d 909, 916 (Iowa 1989)). See also GASB, Statement No. 10 – Governmental Accounting Standards Board Accounting and Financial Reporting for Risk Financing and Related Insurance Issues, defining insurance as “the transfer of risk of loss from one party (the insured) to another party....”

Paragraph 7¹ of the Petition filed herein establishes that no risk is assumed by IJUMP. The risk remains with the participating districts at all times. The only advantage to a participating district is akin to a budget-billing plan wherein the certainty of the price of fuel is set for a twelve-month period, but increases are still eventually absorbed solely by the district.

Furthermore, a more expansive reading of section 298.4 is unlikely to be approved by our courts by virtue of the fact that section 298.4 is a tax statute. The sole source of revenue for the management levy is property taxes. In fact, section 298.4 authorizes an unlimited property tax levy. Inasmuch as “tax laws are to be strictly construed against the [taxing body] and in favor of the taxpayer,”² we decline to interpret the term “insurance agreements” in section 298.4 to include the Fleet Service program of IJUMP.

¹ “If fuel prices increase and the risk management fee is insufficient to cover the difference between the guaranteed fuel cost and the actual fuel cost, IJUMP will bill the school district for the short fall [sic] or raise the risk management fee during the following year to cover the increased fuel and program costs.” ¶ 7, Petition (emphasis added).

² 3A N. Singer, *Sutherland Statutory Construction* § 66:1 at page 3 (6th Rev. Ed. 2003); cf., *Carlson Co. v. Board of Review of City of Clinton*, 572 N.W.2d 146, 154 (Iowa 1997).

For the reasons set forth herein, it is the declaratory ruling of this agency that the risk management fee associated with the IJUMP Fleet Service program does not represent the cost of an insurance agreement. Accordingly, while an Iowa school district may participate in the program, a district may not fund any part of its participation from the district's management levy funds.

Date

Judy A. Jeffrey, Director
Iowa Department of Education