IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SCHOOL DISTRICT NO. 91, BONNEVILLE COUNTY, STATE OF IDAHO, an Idaho School District, Plaintiff, vs. IDAHO STATE TAX COMMISSION, Defendant.	Case No. CV01-23-14165 ORDER FOR SUMMARY JUDGMENT
IN THE MATTER OF: A PLANT FACILITIES LEVY PASSED ON MAY 16, 2023, RELATED TO IDAHO FALLS SCHOOL DISTRICT NO. 91, Petitioner.	

I. INTRODUCTION

The School District No. 91 Bonneville County ("School District") moves the Court for Summary Judgment as there are no issues of fact and only the interpretation of I.C. § 33-804 is required, which is an issue of law. The Idaho State Tax Commission ("Tax Commission") agrees there are no issues of fact, only the interpretation of I.C. §33-804. The Bonneville County Prosecuting Attorney ("Prosecuting Attorney") has intervened and put before this Court his Petition to Set Aside Plant Facilities Levy ("the Petition") which will also be decided.

II. PROCEDURAL HISTORY

This case comes in a peculiar procedural posture as the School District moved for a declaratory judgment (in Ada County, where the Tax Commission is situated), that the 2023 Plant

Facilities Levy ("2023 Levy") passed in Bonneville County was valid. The School District brought the suit because, after the 2023 Levy passed, the Attorney General published an opinion interpreting I.C. § 33-804 that would render the levy unauthorized. This is important because if a levy is unauthorized, the Tax Commission is required to contact the Prosecuting Attorney to petition to set aside the levy. Under I.C. § 63-809, if the governing authorities have fixed a levy for any purpose not authorized by law, or in excess of the maximum provided by law, the Tax Commission is required to notify the Prosecuting Attorney by the fourth Monday in October. The Prosecuting Attorney is to immediately bring suit in the county in which it appears the unauthorized levy has been sought. However, in this case, the School District beat the Prosecuting Attorney to the punch and filed a declaratory judgment action in September 2023, in Ada County, that the levy is authorized by statute, and an injunction to enjoin the Tax Commission from notifying the Prosecuting Attorney that the 2023 Levy was unauthorized.

Although this Court initially granted the temporary restraining order, at hearing on October 6, 2023, it ultimately denied the preliminary injunction and set the matter for hearing on the School District's motion for summary judgment.

On October 13, 2023, the Prosecuting Attorney moved for joinder as I.C. § 63-809(3) required him to file a petition to set aside the unauthorized levy in Bonneville County. The School District and Tax Commission filed a stipulation for intervention of the Prosecuting Attorney and a non-objection to joinder because the petition to set aside the 2023 Levy would have a common question law: the validity of the 2023 Levy. The School District and Tax Commission agreed venue and jurisdiction was proper and agreed to be bound by this Court's determination of the central issue – the validity of the 2023 Levy – raised in the declaratory judgment action and also

raised in the Prosecuting Attorney's Petition to Set Aside Plant Facilities Levy (the "Petition") while maintaining their respective appellate rights.

On October 26, 2023, this Court held a hearing on the School District's motion for summary judgment. At the hearing, the Court granted the Prosecuting Attorney's motion for joinder. At the hearing, the Prosecuting Attorney explained that in the interest of expediency, he would like to file his petition to set aside the 2023 Levy in this Court as two of the declaratory judgments focused on the validity of the 2023 Levy. The Prosecuting Attorney explained he had just filed a Petition to Set Aside Plant Facilities Levy and requested the Petition be decided in tandem with the School District's motion for summary judgment. All parties agreed that the issue of the validity of the 2023 Levy was central to both the motion for summary judgment and petition. The Prosecuting Attorney joined in the Tax Commission's argument that the levy was unauthorized but did not submit additional briefing. Furthermore, he stated there was no need for additional briefing regarding the Petition. The School District and Tax Commission agreed. The Court allowed the Petition to be decided along with the motion for summary judgment. After the hearing, on October 31, 2023, the School District, Tax Commission and Prosecuting Attorney filed a stipulation agreeing to the above.

III. UNDISPUTED FACTS

The underlying facts of the case are straightforward and undisputed. On March 8, 2022, Bonneville County voters approved a Plant Facilities Fund Levy for $2,444,000 over a ten-year period for the fiscal year beginning July 1, 2022, and ending June 30, 2032. The following disclosure was given to the Bonneville County voters:

> QUESTION: Shall the Board of Trustees of School District No. 91, Bonneville County, State of Idaho (the "District") be authorized and empowered, upon the affirmative vote of fifty-five percent (55%) of the electors of the District voting in the election, to levy a School

> Plant Facilities Reserve Fund Levy in the amount of up to Two Million Four Hundred Forty Thousand Dollars ($2,440,000) for Fiscal Year beginning July 1, 2022, and continuing each year in the amount of up to Two Million Four Hundred Forty Thousand Dollars ($2,440,000) for ten (10) years through fiscal year ending June 30, 2032, for the purposes permitted by law for school plant facilities levies?
>
> The estimated average annual cost to the taxpayer on the proposed levy is a tax of $46 per $100,000 of taxable assessed value, per year, based on current conditions. The proposed levy replaces an existing levy that will expire on June 30, 2022 and that currently costs $46 per $100,000 of taxable assessed value. If the proposed plant facilities levy is approved, the tax per $100,000 of taxable assessed value is not expected to change.

<u>See</u> *Exhibit D of Declaration of Hillary Radcliffe in Support of Plaintiff's Motion for Summary Judgment.*

The 2022 Plant Facilities Levy passed with an 80.88% voter margin. Shortly thereafter, the School District decided there was a need for a new elementary school which required additional funding. In November of 2022, a bond election was held; however, it did not pass. Therefore, on May 16, 2023, Bonneville County put to the voters a new question: whether to approve a ten-year $3.3 million dollar levy which only required 55% voter approval. The following is the disclosure that was given to the voters on the ballot:

> QUESTION: Shall the Board of Trustees of School District No. 91, Bonneville County, State of Idaho (the "District") be authorized and empowered, upon the affirmative vote of fifty-five percent (55%) of the electors of the District voting in the election, to levy a School Plant Facilities Reserve Fund Levy in the amount of up to Three Million Three Hundred Thousand Dollars ($3,300,000) for Fiscal Year beginning July l, 2023, and continuing each year in the amount of up to Three Million Three Hundred Thousand Dollars ($3,300,000) for ten (10) years through fiscal year ending June 30, 2033, for the purposes permitted by law for school plant facilities levies, including lease purchase agreements, and specifically for constructing and acquiring a new elementary school through such lease purchase agreement?

> The estimated average annual cost to the taxpayer on the proposed levy is a tax of $47 per $100,000 of taxable assessed value, per year, based on current conditions.

<u>See</u> *Exhibit I of Declaration of Hillary Radcliffe in Support of Plaintiff's Motion for Summary Judgment.*

The second levy passed with 69.6% voter approval. No challenge was filed pursuant to I.C. § 34-2001A.

On August 2, 2023, the Idaho Attorney General issued Opinion No. 23-2, which stated that a new levy may only be authorized at the expiration of the current levy.

In response to this opinion, the School District filed their complaint in district court seeking declaratory judgment that: (1) I.C. § 33-804 authorizes more than one school levy; or (2) I.C. § 33-804 authorizes a supplemental levy and the 2023 Plant Authorization Levy should be viewed as an amendment to the 2022 Plant Levy; or (3) I.C. § 33-804 authorizes supplemental levies that can extend the initial ten (10) year period so long as the total supplemental levy amount is under .4% of the total assessed market value and the total period moving forward is ten (10) years.

The Tax Commission takes the position that the 2023 Levy is void because (1) there cannot be more than one levy at a time; and (2) the 2023 Levy should not be characterized as a supplemental levy when the disclosures advised it was one levy; and (3) if the initial levy was for a ten-year period, the supplemental levy cannot extend that initial ten-year period and while the school board can increase the levy amount so long as the total amount is under the .4% of the total assessed market value, the School District cannot extend the duration of the levy beyond the maximum ten-year period.

At the Summary Judgment Hearing, the Prosecuting Attorney intervened and filed the Petition. The Prosecuting Attorney joined the Tax Commission's position. Parties waived further argument on the Petition and now both matters will be addressed by the Court.

IV. STANDARD OF REVIEW

Summary judgment is proper if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P.56(c). When applying this standard, this Court construes disputed facts "in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party." *Curlee v. Kootenai Cnty. Fire & Rescue*, 148 Idaho 391, 394, 224 P.3d 458, 461 (2008). Where "the evidence reveals no disputed issues of material fact, then only a question of law remains, over which [the Supreme] Court exercises free review." *Lockheed Martin Corp. v. Idaho State Tax Comm'n,* 142 Idaho 790, 793, 134 P.3d 641, 644 (2006) (citing *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002)).

V. ANALYSIS

At the heart of this matter is the statutory interpretation of I.C. § 33-804. The basic rules used for statutory interpretation guide this Court's analysis.

> When a question before this Court requires statutory interpretation, we apply the following principles: The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of

> the legislative body must be given effect, and the Court need not consider rules of statutory construction.

State v. Schulz, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011) (quoting *Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310, 208 P.3d 289, 292 (2009) (internal citations omitted)). *Estate of Stahl v. Idaho State Tax Comm'n*, 162 Idaho 558, 562, 401 P.3d 136, 140 (2017).

1. Idaho Code § 33-804 allows only one levy at a time.

First the School District argues there is no express language in I.C. § 33-804 that there can only be one levy at a time. Both parties agree there can only be one levy fund, but the School District argues the plain language does not *disallow* more than one levy at a time.

The Tax Commission argues that that the plain language of I.C. § 33-804, when read in its entirety, allows one plant facilities levy and in certain circumstances allows a supplemental levy. They argue the only authority the School District has to ask voters to approve a subsequent levy is after the time period of an existing levy expires. I.C. § 33-804 states:

> In any school district in which a school plant facilities reserve fund has been created, either by resolution of the board of trustees or by apportionment to new districts according to the provisions of section 33-901, Idaho Code, to provide funds therefor the board of trustees shall submit to the qualified school electors of the district the question of a levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31 of the previous year, for a period not to exceed ten (10) years.
>
> …
>
> If the question be approved, the board of trustees may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than ten (10) years or the levy be less than four-tenths of one

> percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the board of trustees may submit to the qualified school electors in the same manner as before, the question whether the number of years, or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect. [emphasis added]

The plain language of the statute allows for the "question of a levy" to be submitted to the voters. The statute goes on to provide, "If the question be approved, the board of trustees may make a levy" constrained by the amount and time period. However, the statute does not end there. It goes on to provide, "[the board of trustees] may *again* submit the question at the expiration of the period of such levy … *Or* during the period approved at any such election, if such period be less than (10) years or the levy be less than [.4% market value the previous year], the board of trustees may submit… *the question whether the number of years, or the levy, or both be increased*." The plain language is clear that if there is an existing levy, the board of trustees must wait for the expiration of the period of the levy or "again submit the question" whether to approve an "increase" to the term or levy. It goes on to plainly state that "if such increase or increases be approved … the terms of such levy shall be *in lieu* of those approved in the first instance." However, if the increase is not approved, "disapproval shall not affect any terms theretofore in effect." That allows the school district to ask the voters for an increase without the risk of losing the initial levy. The phrase "in lieu of" plainly contemplates only one levy. If one were to agree with the School District's interpretation, the language regarding *increasing* the levy would all be superfluous. When the entire statute is read as a whole, the plain language of I.C. § 33-804 provides there can only be *one* levy at a time.

2. The 2023 Levy cannot be viewed as an increase to the initial levy because the mandatory disclosure requirements of I.C. § 34-914 were not met.

The School District argues that the express language of I.C. § 33-804 allows for the School District to increase the initial levy during the term of the levy. This Court agrees. The School District argues that whether or not the 2023 Levy should be viewed as an "amendment to the 2022 Levy" depends upon a determination of "disclosure and substantial compliance." However, the Tax Commission argues that the 2023 Levy cannot be seen as an amendment to the 2022 Levy because the I.C. § 34-914 "Disclosures in elections to authorize a levy" were not complied with and they are mandatory.

The School District insists the Idaho Supreme Court has consistently held that after an election has been held, only *substantial* compliance with statutory guidelines is required in order to "give full and free expression of [the voter's] will at the election, citing *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P. 562, 563 (1921). *Weisgerber* found there was substantial compliance with statutory *notice* requirements so that the election was valid. The School Board relies on the following Supreme Court holding,

> "We have consistently held that the provisions of the statutes regulating school elections are mandatory if invoked before the election*, but after the election are to be construed as directory* **in the absence of a statute to the contrary**, and if the failure to fully comply with same does not affect the results of the election." [emphasis added]

Keyes v. Class "B" Sch. Dist. N0. 421 of Valley Cty., 74 Idaho 314, 320, 261 P.2d 811, 814 (1953).

However, the School District ignores a key part of the previous holding: "in the absence of a statute to the contrary." Thus, if the statute contains mandatory language, it must be strictly complied with or the results are void.

Idaho Code § 34-914 provides:

> [A]ny taxing district that proposes to submit any question to the electors of the district that would authorize any levy, …, must include in the ballot question, or in a brief official statement on the ballot but separate from the ballot question, a disclosure setting forth in simple, understandable language information on the proposal substantially as follows:
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> (a) The purpose for which the levy shall be used; the date of the election; and the dollar amount estimated to be collected each year from the levy;
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> (b) The estimated average annual cost to the taxpayer of the proposed levy, in the form of "A tax of $__________ per $100,000 of taxable assessed value, per year, based on current conditions." If the taxing district proposing the levy has an existing levy of the same type that is set to expire at the time that the proposed levy will begin, an additional statement may be provided along the following lines: "The proposed levy replaces an existing levy that will expire on __________ and that currently costs $__________ per $100,000 of taxable assessed value." The statement shall also disclose that, if the proposed levy is approved, the tax per $100,000 of taxable assessed value is either: (i) not expected to change or (ii) is expected to increase or decrease the tax by $__________ per $100,000 of taxable assessed value. The dollar amounts referenced in this paragraph shall be calculated by multiplying the expected levy rate by one hundred thousand dollars ($100,000);
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> (c) The length of time, reflected in months or years, in which the proposed levy will be assessed; and
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> (d) If an existing levy is referenced, the expiration date of the levy must also be provided.
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> (2) The information called for in subsection (1) of this section must be placed immediately above the location on the ballot where a person casts a vote and must also be included in like manner in the official notice of the election. [emphasis added]

The subsection (1) and (2) disclosure *must* clearly state the "dollar amount estimated to be collected each year from the levy" and whether the levy "is expected to increase or decrease." In case the mandatory language is missed, subsection (3) provides, "*In order to be binding*, a ballot question to authorize a levy *must* include the information and language required by this section in

its official statement." [emphasis added] Therefore, the 2023 Levy disclosures must comply with I.C. § 34-914 to be treated as an amendment to the 2022 Levy. But they do not.

If the 2023 Levy was an increase to the 2022 Levy, it would need to disclose the total dollar amount estimated to be collected each year by the levy and the corresponding increase impacting voters.

> QUESTION: Shall the Board of Trustees of School District No. 91, Bonneville County, State of Idaho (the "District") be authorized and empowered, upon the affirmative vote of fifty—five percent (55%) of the electors of the District voting in the election, to levy a School Plant Facilities Reserve Fund Levy in the amount of up to Three Million Three Hundred Thousand Dollars ($3,300,000) for Fiscal Year beginning July l, 2023, and continuing each year in the amount of up to Three Million Three Hundred Thousand Dollars ($3,300,000) for ten (10) years through fiscal year ending June 30, 2033, for the purposes permitted by law for school plant facilities levies, including lease purchase agreements, and specifically for constructing and acquiring a new elementary school through such lease purchase agreement?
>
> The estimated average annual cost to the taxpayer on the proposed levy is a tax of $47 per $100,000 of taxable assessed value, per year, based on current conditions. [emphasis added]

See *Exhibit I of Declaration of Hillary Radcliffe in Support of Plaintiff's Motion for Summary Judgment.*

The 2023 Levy amount is 3.3 million dollars and the 2022 Levy was 2.44 million dollars. The 2023 Levy was meant to be in addition to the 2022 Levy to make a total combined levy of 5.74 million. This amount was simply not disclosed pursuant to I.C. § 34-914. Furthermore, the increase of "$________ per $100,000 of taxable assessed value" was not disclosed. The School District argues that the total levy amount is authorized because it is under the .4% of market value for assessment purposes, but this ignores the plain language in I.C. § 34-914 that the total levy

amount and any corresponding increase must be disclosed in simple, understandable language at the ballot.

The School District recognized the amount of the 2022 Levy was not included in the disclosure and argued that the voters must have known about the 2022 Levy amount because they had just seen it on their tax bill. However, this is clearly not the type of disclosure mandated by I.C. § 34-914 which states the taxing district "must include in the ballot question, or in a brief official statement on the ballot but separate from the ballot question," and subsection (2) "The information called for in subsection (1) of this section must be placed immediately above the location on the ballot where a person casts a vote and must also be included in like manner in the official notice of the election." However, it was not.

The 2023 Levy did not comply with the disclosure requirements of I.C. § 34-914, therefore cannot be viewed as an amendment to the existing 2022 Levy.

3. Idaho Code § 33-804 allows the levy term to be increased, so long as the maximum term of the increased levy is ten (10) years.

The School District's third declaratory judgment action requests the Court interpret I.C. § 33-804 so that when the School District applies for a new levy in 2024, it will act within the authority of the statute. The Tax Commission argued the School District cannot ask the voters for a new levy "until the expiration of the period of such levy" or ten years in their case. The Court agrees with the School District that this ignores the second part of I.C. § 33-804(3) which allows for the levy to be supplemented:

> If the question be approved, the board of trustees may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the

> number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than ten (10) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the board of trustees may submit to the qualified school electors in the same manner as before, the question whether the number of years, or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect. [emphasis added]

The Tax Commission ignored the School District's argument that I.C. § 33-804 allows the school district to ask for a supplemental levy amount to be assessed for an additional 10-year period so long as the total of all plant levies is less than .4%. Instead, at oral arguments, the Tax Commission argued that if the initial levy is for a 10-year period, only the amount of the levy can be increased because the statute reads, "Or, if during the period approved at any election, if such period be less than ten (10) years" and that situation is not present when the initial levy is for a period of ten years.

The Court can see the practicality and utility of the School District's argument that "during the period… if such period is less than ten years" would not apply when the levy is for ten years. However, the plain language requires that in order to submit the issue of extending the term of the levy as contemplated in the statute cited above, the period of the initial levy is to be "less than ten years." Therefore, the second situation "or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year" applies. The School District may ask the voters "the question of whether the number of years, or the levy or both be increased, but not to exceed the maximum amount herein authorized." The number of years cannot be increased because it would exceed the maximum amount "herein authorized," or ten years. To adopt the School District's interpretation would require the Court to

ignore the provision stating that a levy duration cannot be increased if it was at the maximum ten-year duration. Therefore, the School District must wait for the expiration of the ten-year term to request a levy of a longer duration. Although this may not make sense for planning purposes, the Court is constrained to follow the plain language of the statute.

VI. CONCLUSION

The School District's Motion for Summary Judgment is GRANTED as there are no issues of fact and only a matter of statutory interpretation which is a matter of law.

1. When the entire statute is read as a whole, the plain language of I.C. § 33-804 provides there can only be one levy at a time. Therefore, the 2023 Levy brought prior to the expiration of the 2022 Levy is unauthorized.

2. The 2023 Levy did not meet the disclosure requirements of I.C. § 34-914, therefore cannot be viewed as an amendment to the existing 2022 Levy.

3. I.C. § 33-804 allows for a levy to be supplemented when (1) the period is less than ten years or (2) less than .4% of the assessed market value. However, in the case where a levy is for the full ten-year period, the period of time cannot be extended until the levy expires.

4. The 2023 Levy is unauthorized by law, thus, illegal.

Therefore, the Petition to Set Aside the 2023 Levy pursuant to I.C. §63-809(3) is GRANTED.

IT IS SO ORDERED.

Dated: 11/15/2023 3:49:03 PM

JAMES CAWTHON
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _______________, I served (emailed) a copy of the above document as follows:

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