

What action did the Board take?

On April 17, 2006 at the regularly scheduled Board meeting, the Boerne ISD voted to ask for an Attorney General opinion as to whether our school district must continue to make “Robin Hood” payments now that the state has declared the present taxation system unconstitutional. (See the language of that motion below.)

Why did the district take this action?

- We believe it is in the best interests of the children of Boerne ISD, taxpayers, and BISS employees to safeguard the local property taxes entrusted to us.

How much money are we talking about?

- Boerne ISD is required to make Robin Hood payments of approximately \$600,000.00 per month from February through August 2006 for a total of 4.1 million dollars. We have already made about 1.8 million dollars in Robin Hood payments (Feb through April) and we have approximately 2.3 million dollars remaining to be paid between May and August.
- Last year, the district made “Robin Hood” payments totaling 1.3 million dollars. This year, the total is 4.1 million dollars; under the present unconstitutional system, we estimate a payment of 6 million dollars or more next school year.

What the legal basis for your request/action?

- The Attorney General has stated “the Court did find that our current Robin Hood tax system violates the tax provision of Article VIII of the Texas Constitution”.
- We must therefore determine whether it is illegal for Boerne ISD to continue to make “Robin Hood” payments to the state in light of the Supreme Court decision declaring the taxation scheme unconstitutional.
- We believe our action is additionally prudent if the legislature fails to take any action in the current special session or if its actions fail to meet the mandates of the Texas Supreme Court decision.

What will you do with the money that would otherwise go to the state?

- We are in good faith planning to hold in a separate account the remaining funds as we await the Attorney General’s opinion.
- If the Attorney General determines that continuing to make our payments is illegal, the district will have the funds necessary to avoid cuts to personnel and programs during the next school year, particularly in the event that the state does not provide adequate funding.

How do you personally feel about this?

- Both the Board and myself believe our paramount duty is to safeguard the tax revenue of our citizens.
- We believe that all Texas school districts, and particularly those with limited property values, should receive equitable amounts of revenue from the state but not through an unconstitutional statewide property tax as is now the case.

- We understand that the state now has a budget surplus of 8 billion dollars. This is far more than what is needed for the state to fulfill its constitutional obligations without forcing local school districts to forfeit their property taxes to the state.

The following is the Board motion/action taken at the April 17, 2006 Board meeting:

MOVE THAT:

- A. The District seek a request for opinion from the Attorney General of Texas, requesting an advisory opinion with respect to the following legal issues or variations thereof as determined by the District's counsel:

Given that the Supreme Court of Texas has held Texas' school finance system unconstitutional, affirmed the trial court's injunction against State funding of the system, and stayed the injunction until June 1, 2006:

1. Is Boerne ISD required at the present time to make any further wealth equalization payments to the State under Chapter 41 of the Texas Education Code?
 2. Will Boerne ISD be required to make wealth equalization payments to the State after the Supreme Court's injunction takes effect on June 1, 2006 (or other date)?
 3. Would payment of equalization funds to the State constitute a gratuitous donation or illegal payment of District funds in violation of Sections 51 and 52, Article I, of the Texas Constitution?
- B. The Business Office be directed to withhold any further wealth equalization payments to the State, and to place such funds in an interest-bearing account separate from other District funds, pending further direction from the Board.
- C. The Director of Legal Affairs and counsel for the District be directed to provide appropriate briefing to the Attorney General

Additional points:

Quote from the Texas Attorney General on his website (Nov 2005): "However, the Court did find that our current "Robin Hood" tax system violates the tax provision of [the Texas Constitution]".

<http://www.oag.state.tx.us/oagnews/release.php?id=1268>

Based on legal advice, we understand that if we continue to make Robin Hood payments, our actions may be construed as a "voluntary payment" and prevent us from being reimbursed for making what are arguably illegal payments to the Texas Education Agency.

According to the most recent Texas Education Agency report on our school district (AEIS Report – Fall 2005), Boerne ISD spent approximately \$660.00 less per student than the state average. Yet we produce student achievement results far above the state and national averages. We are hardly a rich school district, now that Robin Hood takes millions of dollars from us.

Remember that it is the state's constitutional obligation to provide for the education of its citizens. With the newly announced state surplus of \$8 billion dollars it appears the state has funds far in excess of those confiscated from local property tax payers throughout Texas under the Robin Hood plan. Does this state surplus not provide the state a way to fund school districts without taking them from local property tax payers? Aren't Governor Perry and other leaders attempting to cut property taxes?

TEA has pointed out that Boerne ISD signed a contract to make Robin Hood payments. But it is our understanding we may not be obligated to honor an illegal contract forced upon the school district by the state. Note that a TEA spokesman said that our property would be de-annexed if we did not make the Robin Hood payments.

Wording from the Trial court and the Texas Supreme Court: The trial court enjoined the State from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 of the Texas Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied.

West Orange-Cove II, 176 S.W.3d at 771. The Supreme Court affirmed this injunction and deemed it to take effect on June 1, 2006. *Id.* at 799. The Court also made clear that the public education system functions as an integrated whole—the injunction cannot be limited to the tax cap, for example (as advocated by the lone dissenter, Justice Brister). *Id.* at 798; *see also* , *Carrollton-Farmers Branch I.S.D. v. Edgewood I.S.D.*, 826 S.W.2d 489, 515 (Tex. 1992) (*Edgewood III*). "It is the system that is invalid, and not merely a few of its components."