



"Leadership in Public School Governance"

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HAND DELIVERED

December 7, 2018

The Honorable Scott Walker
Governor of Wisconsin
State Capitol
Madison, Wisconsin

Dear Governor Walker:

The Wisconsin Association of School Boards (WASB) has strong objections to provisions in Section 27 of enrolled Senate Bill 884, that would require that the Wisconsin Department of Justice (DOJ) must deposit all settlement funds into the general fund and additionally requires that all unencumbered settlement funds that are currently in the DOJ appropriation would lapse into the general fund.

Our concerns are based on our belief that these provisions, if enacted, would formalize a process which arguably violates Article X, Section 2 of the Wisconsin Constitution. That section requires that:

*"... **all moneys and the clear proceeds of all property that may accrue to the state by forfeiture** or escheat shall be set apart as a separate fund to be called "the school fund," the interest of which and all other revenues derived from the school lands shall be exclusively applied to the following objects, to wit:*

- (1) To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor.*
- (2) The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor." (emphasis added.)*

In our view, designating a payment made by a party alleged to have violated state laws or administrative rules as a "settlement" does not change its fundamental character as a forfeiture of funds. A forfeiture occurs when a person gives up money, property, or privileges to compensate for losses resulting from a breach of a civil legal obligation that the person owes to others. That is exactly what happens when payments are offered and made to settle cases brought by the DOJ. These funds paid to the state are forfeitures and ought properly to be deposited in the Common School Fund. The language of Article X, Section 2 is not only clear and unambiguous, it is broad and encompassing when it states, "**all moneys** and the clear proceeds of **all property** that may accrue to the state by forfeiture... **shall** be set apart as a separate fund to be called "the school fund," ... (i.e., the Common School Fund).

Reasonable people can agree that corporations or other parties to legal (e.g., enforcement) actions brought by the DOJ do not pay money as settlements because they want from the goodness of their heart to make a voluntary contribution to our state's general fund treasury; they pay these monies because they have violated (or have been alleged to have violated) state law and wish to be absolved of further consequences.

WASB members have adopted a resolution stating:

“The WASB opposes any legislation to repeal, modify, or jeopardize the constitutional provision of fines and forfeitures as a source of income for the common school fund.”

In accordance with this resolution, the WASB respectfully asked lawmakers to amend the provisions in Section 27 to require that discretionary settlement funds be deposited into the Common School Fund rather than the general fund to bring the state's handling of settlement funds into alignment with our state constitution. Lawmakers chose not to do so. However, that does make their decision the correct one.

For too long, stakeholders and policy makers alike have deferred to the practices of the DOJ and Attorneys General of both parties that have ignored Article X, Section 2, and have placed settlement funds into discretionary accounts. We have been remiss in not voicing our opposition to this practice earlier and louder.

The time to end that practice and deference to it is long overdue. Discretionary settlement funds are substantively equivalent to fines and forfeitures and should be going into the Common School Fund according to constitutional provisions in Article X, Section 2 of the Wisconsin Constitution.

If Senate Bill 884 contained an appropriation, we would ask you to exercise your partial veto authority to remove the provisions in Section 27 of the enrolled bill and only those provisions; however, the bill does not make any appropriations, so a partial veto is not an option in this instance.

We therefore respectfully ask that you veto this bill in its entirety, not because we oppose the other provisions in the bill or because we support maintaining the *status quo* handling of these settlement funds, but so the Legislature can rethink its actions with regard to where the settlement funds should be deposited in accordance with our state constitution and get it right the second time around.

We thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Dan Rossmiller". The signature is written in a cursive, flowing style.

Dan Rossmiller
Government Relations Director
Wisconsin Association of School Boards (WASB)