Anatomy of a School Funding Dispute: Guilford County 2000

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IN THE SUMMER OF 2000 Guilford County experienced a contentious battle over public school funding. The county board of commissioners and the county school board were drawn into a dramatic debate over the responsibility of local taxpayers to fund education.

The dispute had been foreshadowed in previous budget years, when school system budget requests emphasized the need to increase funding levels to meet the demands of a growing and diverse Guilford County school population. In May 2000 several county commissioners announced that funds did not exist in the Guilford County budget to meet the school system's needs. When in June the board of commissioners made its budget allocation to the public schools for the 2000–2001 school year, it was far short of the amount requested.

The school board met on June 19, 2000. In closed session, the board members discussed the legal issues surrounding a potential challenge to the school funding level adopted in the county budget. They came out into open session and voted nine-to-two that the funds allocated were not sufficient to support a system of free public schools in Guilford County, opening the door to a very public and very divisive lawsuit.

The dispute was resolved on August 4, 2000, with a consent judgment, but between June 19 and August 4 the county was barraged with information, opinions, editorials, and interviews dealing with school funding. Even as of this writing, there are still references in the media to the funding lawsuit and its outcome. What lessons can be learned from Guilford County's experience?

The History of School Funding

An understanding of the history of public school funding is important because the legal authority available to either side of a dispute today will include cases decided under earlier statutory funding schemes that were radically different from the present system.

As the twentieth century began, the state was awash in school districts. Each county was divided into school districts.[1] There were also specially chartered school districts—individually chartered by the General Assembly or authorized by city charters.[2] In Guilford County alone, there were 113 rural school districts in 1922.[3]

Many of these districts had their own taxing authority for the support of their schools. But in their "effort to provide better school facilities, local school units had, during the 1920s, created school obligations beyond their ability to meet."[4] Therefore the General Assembly began enacting laws to create a uniform statewide system supported by state funds, transferring much of the fiscal responsibility for the schools from the counties to the state.

Specifically, in 1923 the General Assembly enacted legislation to provide for a uniform system of public

1. *See, e.g.,* 1919 Consol. Stat. Ch. 95, Art. 10, § 5469.

2. *See, e.g.,* 1924 Consol. Stat. Ch. 95, Art. 1, § 5387(3).

3. Coble v. Board of Commissioners of Guilford County, 184 N.C. 342, 344, 114 S.E. 487 (1922).

4. Jordan v. Board of Commissioners of Durham County, 245 N.C. 290, 295, 95 S.E.2d 884, 888 (1957) (Rodman, J., dissenting).

schools supported by a combination of local funds and the State Equalizing Fund, which was designed to assist poor counties in meeting their educational obligations.[5] This began a trend that culminated in 1933, when the state fundamentally reordered the educational system in North Carolina by providing for a uniform system of public education that was state-supported.[6] The 1933 School Machinery Act "provided funds to operate all the schools on a standard fixed by it. It abolished all school districts, special tax districts, and special charter districts for administrative and tax purposes."[7] The act also "repealed or subordinated all statutes relating to the public schools in conflict with its provisions."[8]

As a result of the 1933 act, school funding became the province and obligation of the State School Commission. Local funding for school operating expenses was severely curtailed. Local funds for school support could be derived only from fines, penalties, poll taxes, and dog taxes, and were to be appropriated first to fund maintenance of plant and certain fixed charges. Only if those sources were insufficient could the local taxing authority levy taxes for these purposes.[9] If the school board wanted to operate schools of a higher standard, it could supplement state funds only with the approval of the taxing authority and a vote of the people.[10]

In 1955 this scheme was replaced with a new system in which the county's role in public school financing was expanded.[11] Then, in 1975, the entire public school financing system was repealed.[12] A new system—the School Budget and Fiscal Control Act—was adopted. This is essentially the financing system under which public schools operate today.[13]

In 1975 the General Assembly created three funds for each school administrative unit to manage in the operation of the public schools: the State Public School Fund, the Local Current Expense Fund, and the Capital Outlay Fund.[14] The State Public School Fund included appropriations from the General Assembly for operating expenses, made available through the State Board of Education. The Capital Outlay Fund included revenues from both the State Board of Education and the county commissioners, as well as the proceeds from the sale of capital assets, proceeds of claims against fire and casualty insurance policies, and other sources. The third fund—the Local Current Expense Fund—was defined in the statutes to mean "appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system."[15]

The primary source of appropriations to the Local Current Expense Fund is money appropriated by the county commissioners. The other sources (appropriations of fines and forfeitures, supplemental taxes, money disbursed by the State, and any other money made available for current operating expenses) generally have made up a small percentage of the Local Current Expense Fund in Guilford County and many other counties.

At approximately the same time this new public school funding system was enacted, county commissioners were specifically given the power to levy property taxes "to provide for the county's share for the cost of kindergarten, elementary, secondary, and post secondary public education."[16] Thus the public school financing system enacted in 1975 contemplated significant contributions of local money to the newly created fund for operating the public schools and gave county commissioners a direct method—property taxes—for raising the money. This is the financing system that exists today.

The School Board's Proposed Budget

Under the current financing system, before the close of each fiscal year the superintendent must prepare a proposed budget for the following year.[17] The budget must be submitted to the school board by May 1, along with a budget message that explains any significant changes in appropriation levels or educational or fiscal

5. Harris v. Board of Commissioners of Washington County, 274 N.C. 343, 349, 163 S.E.2d 387, 391–92 (1968).

6. *See id.* at 353, 394.

7. *Jordan,* 245 N.C. at 295, 95 S.E.2d at 888 (1957) (Rodman, J., dissenting). *See also* Kreeger v. Drummond, 235 N.C. 8, 10, 68 S.E.2d 800, 802 (1952) (the 1933 act "abolished 'all school districts, special tax, special charter or otherwise,' as then constituted for school administration or for tax levying purposes and declared them to be non-existent"); Kirby v. Stokes County Board of Education, 230 N.C. 619, 624, 55 S.E.2d 322, 325–26 (1949) (in the 1933 act, the General Assembly "provid[ed] for the operation of a uniform system of schools in the whole State for a term of eight months, without the levy of any ad valorem tax therefor, [and] declared nonexistent 'all school districts, special tax, special charter or otherwise, as now constituted for school administration or for tax levying purposes' . . . and relieved the county board of education of the responsibility for operating and maintaining the public schools of the county").

8. *Harris,* 274 N.C. at 353, 163 S.E.2d at 394 (1968).

9. 1933 N.C. Sess. Laws ch. 562, § 16.

10. *Id.* at § 17.

11. 1955 N.C. Sess. Laws ch. 1372, Art. 9.

12. 1975 N.C. Sess. Laws ch. 437.

13. N.C. GEN. STAT. § 115C-31 (hereinafter G.S.).

14. 1975 Sess. Laws ch. 437; G.S. 115C-426(c).

15. G.S. 115C-426(e).

16. 1973 N.C. Sess. Laws ch. 803, § 1(7) [now G.S. 153A-149(b)(7)].

17. G.S. 115C-427(a).

policy.[18] The school board is authorized to hold a public hearing on the proposed budget.[19]

The school board must consider the superintendent's proposed budget, make changes "as it deems advisable," and then approve the budget and submit it to the county commissioners, generally by May 15.[20] It is then the duty of the county commissioners to study the request for funds.[21] The county commissioners must complete their review and determine the amount of county funds to be appropriated to the school system by July 1, unless the school board agrees to a later date.[22]

The Dispute Resolution Process

The process for resolving funding disputes between school boards and county commissioners is outlined in Chapter 115C, Section 431, of the North Carolina General Statutes (hereinafter G.S.). Its most recent amendment was intended to improve the slow process that resulted in most disputes becoming moot before they could reach the appellate courts. Time likely will show that the amendment did not accomplish its goal. The new process is, however, more likely than its predecessor to lead to a resolution short of litigation.

The process begins when the commissioners make their appropriation to the school board and then starts to move on a very fast track. The school board has seven days to determine that the funding appropriated by the commissioners is "not sufficient to support a system of free public schools" and to have its chairman arrange a meeting with the board of county commissioners (through its chair). That meeting also must be held within the seven-day time span beginning from the appropriation.[23] The school board chair also must notify the senior resident superior court judge, and the judge has the duty to appoint a mediator. The mediator presides at the joint meeting and acts as moderator for the discussion.[24]

At the joint meeting, both boards must consider the entire school budget "carefully and judiciously, and . . . make a good faith attempt to resolve the differences that have arisen between them."[25] If no agreement is reached at the joint meeting, the mediator begins the mediation process "within a reasonable period of time."[26]

Mediation of disputes follows the general procedures established for superior courts, modified as appropriate to the circumstances. Present at the mediation are the board chairs or designees, the superintendent and county manager, the finance officers for the county and the school system, and each board's attorney. These meetings are authorized by statute to be conducted in private.[27]

The school board chair, superintendent, and attorney represent the school board and convey offers and discussion back to the full board in closed session, using the exception to the open meetings laws to "preserve the attorney-client privilege" and the exception about giving instructions to those negotiating on behalf of the school board.[28] Once litigation is filed, the specific dispute should always be referenced in the motion to go into closed session, in addition to the attorney-client privilege.

If no agreement is reached in mediation, the mediator declares an impasse.[29] The school board has five days following the declaration to file a lawsuit. The issue for the court in such a suit, according to the statute, is: "[W]hat amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools?"[30]

An Action Is Filed

If the school board determines by resolution that the funding appropriated by the county commissioners is not sufficient to support and maintain a system of free public schools, it should vote in open session to institute a suit in superior court pursuant to G.S. 115C-431(c). The statute does not elaborate on the type of action that should be filed. Our research showed actions in previous funding disputes filed as declaratory actions, actions seeking money damages under G.S. 115C-431 and -426, and writs of mandamus. We elected to file an action that asked the court to "enter judgment, issue

18. G.S. 115C-427(b).
19. G.S. 115C-428(b).
20. G.S. 115C-429(a).
21. Whiteville City Administrative Unit v. Columbus County Board of County Commissioners, 251 N.C. 826, 830, 112 S.E.2d 539, 542–43 (1960).
22. G.S. 115C-429(b).
23. G.S. 115C-431(a).
24. *Id.*
25. *Id.*
26. G.S. 115C-431(b).
27. *Id.*
28. G.S. 143-318.11.
29. G.S. 115C-431(b).
30. G.S. 115C-431(c).

mandamus, issue a mandatory injunction, or otherwise grant appropriate relief." This way, we thought, we could avoid any challenge to our selection of remedies, and, in fact, no challenge was made to the choice of action filed.

We also chose not to request a specific amount of money in the complaint. It would have been very difficult to generate final, precise numbers about funding needs when the General Assembly had not completed all of its funding decisions and the amounts specified in legislation had not yet been calculated and applied to all school districts. The process of developing "the number" was one of the most challenging aspects of our case. Seemingly daily, some new information would be sent from Raleigh or Washington, D.C., that changed a formula or a funding amount, requiring an adjustment to exhibits, testimony, and arguments. Between the time the school board filed suit and the settlement of the case—a matter of just six weeks or so—these changes resulted in a significant increase in the amount of money available from other sources and thus lowered the amount needed from the commissioners by millions of dollars.

The dispute resolution statute authorizes either a judge trial or jury trial.[31] We requested a jury trial. Though this choice risked asking citizens to make a decision that could result in increasing their own taxes, we thought we could tell a persuasive story that the level of funding sought by the school board was necessary and that we could trust our jurors to do right by the students. (We also sought a ruling from the court that would preclude the commissioners from introducing evidence about the impact of additional school funding on county taxes or tax rates.)

The Rocket Docket

G.S. 115C-431 provides that if a jury trial is demanded the matter should be placed on the "first succeeding term of superior court in the county" and "shall take precedence over all other business of the court."[32] However, the trial judge is given a mechanism to decline the case. The judge can certify to the chief justice of the North Carolina Supreme Court that because of the accumulation of other matters, the interests of the public would best be served by the appointment of a special term of superior court.

Regardless of the session of court (special or regular), the matter should be tried within several weeks of filing. There is no provision in the statute for the filing of an answer or dispositive motions, but there is no clear prohibition, either. The county commissioners filed both.

Dispositive Motions Filed by the Commissioners

In the Guilford County case, the commissioners filed a motion to dismiss the complaint. The essence of this motion and a subsequent summary judgment motion (that is, a motion for judgment before trial) was that, by statute, the commissioners had the legal obligation to fund only four very specific and limited current expenses: school repairs, instructional supplies and books, some equipment and building supplies, and school property insurance. We called these the "admitted obligations." The commissioners argued that, as long as the four admitted obligations were funded, they had fulfilled their entire legal obligation to the public schools. Anything else, according to their briefs, was not the responsibility (legally) of the commissioners. They suggested that additional funds for teacher supplements, programs, or other expenses could be raised via supplemental taxes, if the school board so desired.

The commissioners' duty to fund the Local Current Expense Fund. The commissioners' argument that they had a very limited statutory duty to fund only the four admitted obligations was based on four provisions of the General Statutes that specifically refer to a local obligation to fund these four subjects. In our case, the court was not persuaded that the commissioners' duty to the public schools was so limited.

Under the General Statutes, the county commissioners must appropriate an amount of money to the Local Current Expense Fund that is "sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system . . . in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners."[33] That statute, in and of itself, is a funding level mandate and establishes a "community standard" required in each separate school system.

31. *Id.*
32. *Id.*
33. G.S. 115C-426(e).

The legal obligation of the county commissioners to fund operating expenses is essentially reiterated in G.S. 115C-431. That statute allows the school board to protest and to seek mediation if the amount appropriated by the county commissioners to the Local Current Expense Fund is "not sufficient to support a system of free public schools."[34] And, if the two boards cannot resolve their dispute about the county commissioners' appropriation to the Local Current Expense Fund, an independent fact-finder must determine the amount of money needed from the county commissioners "to maintain a system of free public schools."[35] Maintaining the system is incompatible with eliminating significant programs and personnel put in place by past boards.

It was never clear to us how the commissioners chose the four admitted obligations. Even if the commissioners wanted to list just the individual, narrower legal duties related to the operating expenses of the public schools (that is, those that are additional to the larger obligation to appropriate money to the Local Current Expense Fund at a level needed to maintain a system of free public schools), their briefs ignored a number of other such duties. An example of one such duty stems from the legislation that created the Guilford County Board of Education and authorized the merger of the three school administrative units previously existing in the county. This legislation imposed a number of funding obligations for the operating expenses of the Guilford County public schools, and the legislative directive to provide local operating expenses at a higher level than other counties in the state was specifically held to be constitutional.[36] Another example is the obligation imposed by federal and state law to provide services to children with special needs, an obligation imposed without sufficient accompanying funding to provide those services.[37] Still another example is the requirement to provide driver's education in the public high schools.[38] There are more.

Obviously, the commissioners did not list all of the specific legal obligations in their briefs. But even if they had listed them all, their list would miss the forest for the trees. The key obligation was omitted from the commissioners' briefs, to wit, the obligation to fund the Local Current Expense Fund at a level that maintains the system of free public schools in Guilford County.

The 1954 *Onslow County* case. In seeking both dismissal and summary judgment, the commissioners' first argument was that the court lacked jurisdiction over the case. The commissioners' jurisdictional argument relied on a 1954 funding dispute case, *Board of Education of Onslow County v. Board of Commissioners of Onslow County*.[39] In the *Onslow County* case, the state supreme court expressed a very limited view of the county commissioners' funding obligation. According to the commissioners' briefs, *Onslow County* was "squarely on point" and "require[d] dismissal." The court rejected that argument and denied both the motion to dismiss and the summary judgment motion, for two principal reasons. First, the school board successfully argued that the clear legislative intent to authorize subject matter jurisdiction could be gleaned from the dispute resolution statute itself:

> Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. . . . The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.[40]

The commissioners' assertion that the court lacked jurisdiction over the action was inconsistent with the plain language of this statute. There is nothing in the statute (or in the North Carolina Constitution)[41] that limits the jurisdiction of the superior court to disputes that involve only certain kinds of operating expenses. The statute says simply that a school board may file an action in superior court and that the fact-finder is to decide the "amount of money . . . needed . . . to maintain a system of free public schools."[42] If the General Assembly had intended to limit the jurisdiction of the superior court to disputes about only certain kinds or classes of expenses, it surely would have included some sort of limiting language. That it did not—indeed, that it used very broad language to describe the authorization to file an action and the issue to be presented to

34. G.S. 115C-431(a).

35. G.S. 115C-431(c).

36. *See* SL 1991-78 and Guilford County Board of Education v. Guilford County Board of Elections, 110 N.C. App. 506, 430 S.E.2d 681 (1993).

37. G.S. 115C-106-1 – 106-15; 115C-140.1.

38. G.S. 115C-216.

39. 240 N.C. 118, 81 S.E.2d 256 (1954).

40. G.S. 115C-431(c).

41. The County Commissioners cited the North Carolina Constitution, Art. IX, § 2(2) for the proposition that a "jury may not override the discretion of a duly elected board of commissioners" regarding funding for the public schools. This is but a separation of powers argument in another guise, and the North Carolina Supreme Court had rejected it previously. Board of Education of Yadkin County v. Board of Commissioners of Yadkin County, 182 N.C. 571, 109 S.E. 630 (1921); Board of Education v. Board of Commissioners of Granville County, 174 N.C. 469, 93 S.E. 1001 (1917).

42. G.S. 115C-431(c).

the fact-finder—contradicted the commissioners' assertion that the General Assembly intended the statute to be a very limited grant of jurisdiction.

Next the court rejected the commissioners' argument that the *Onslow County* case entitled them to a dismissal[43] because the school board did not plead in the complaint that the limited areas of required current expense funding (the admitted obligations) were underfunded. The school board successfully argued that the *Onslow County* case had nothing to do with the present system of public school financing. The *Onslow County* case was decided in the context of the 1933 financing scheme, in which the state was the funding source for most operating expenses. Under this earlier scheme of school finance, local administrative units could not operate schools at a higher standard than the state standard unless the taxing authority approved, and the voters passed, a supplemental tax. Boards of commissioners had no authority to levy property taxes for operating schools except for very specific, limited purposes described in the 1933 legislation. Indeed, the title of the 1933 act was: "An Act to Promote Efficiency in the Organization and Economy in the Administration of the Public Schools of the State . . . *Without the Levy of Any Ad Valorem Tax Therefor*."[44]

The whole funding scheme from 1933 (as interpreted in *Onslow County*) has been abolished and replaced with a different system. The new system—the School Budget and Fiscal Control Act enacted in 1975—deliberately provided a different, and much expanded, role for the county commissioners in funding the operating expenses of public schools. The 1975 act created the Local Current Expense Fund and—this is the key—it imposed a legal obligation on county commissioners to appropriate money to that new fund in an amount sufficient to maintain the public school systems. At the same time, the General Assembly provided the commissioners with the tool needed to meet this obligation—authority to impose property taxes for the public schools without a vote of the people.

The North Carolina Supreme Court in *Onslow County* itself recognized the limited nature of its decision. The court knew at the time it wrote the decision that the school funding system then in effect was about to be revised. The court expressly limited the opinion, therefore, to the system as it then existed.[45]

The supplemental tax red herring. The commissioners cited the *Onslow County* case and G.S. 115C-501 to argue that a supplemental tax, voted by the citizens of the county, was required before the commissioners could be compelled to fund any current expense expenditure over the admitted obligations. After merger in Guilford County, all supplemental taxes were abolished. The somewhat outdated language in G.S. 115C-501 refers to a supplemental tax to "supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget." Hence, the commissioners urged the court to rule that a supplemental tax vote was required in order to "operate schools at a higher standard," and that without such a tax in place, the funding obligation of the commissioners was limited to the four admitted obligations.

There are a number of problems with this approach. First, there is no enforcement procedure that requires the commissioners to levy supplemental taxes even if the voters overwhelmingly support them. Second, there is no dispute resolution process should the county commissioners refuse to levy the tax. Hence, this procedure could leave schools without adequate funds or any method of obtaining increased funds. There is no contemporary case that discusses this issue.

And third, a supplemental tax could not work in practice. As required by the budget statutes, the school board must prepare its budget request and submit it to the county commissioners by May 15.[46] The county commissioners must adopt a budget ordinance by July 1.[47] By July 8, the school board must determine that the amount appropriated to the Local Current Expense Fund is not sufficient to support a system of free public schools.[48] At that point, under the commissioners' legal theory, if the appropriation is sufficient to fund the minimal amount of operating expenses that must be funded under the law (the four admitted obligations), the school board could not sue. Instead, its only option would be to request that the commissioners call an election to determine whether the voters would approve a supplemental tax to fund the operational needs of the school system.[49]

Assume, for the sake of argument, that the issue of the supplemental tax is put on the next ballot, presum-

43. FED. R. CIV. P. 12(b)(6).

44. 1933 N.C. Sess. Laws ch. 562 (emphasis added).

45. 240 N.C. at 123, 81 S.E.2d at 260 (the opinion was concerned only with the "procedure relevant to this subject matter of this proceeding").

46. G.S. 115C-429(a).

47. G.S. 115C-429(b).

48. G.S. 115C-431(a).

49. G.S. 115C-501(a); 115C-503.

ably in the month of November.[50] If the voters approve the tax, what next?

As already discussed, the first problem is that the county commissioners are not legally required to levy the supplemental tax, even if the voters approve it. The school board may request it, but the county commissioners "may approve or disapprove this request."[51] If the county commissioners disapprove, the two boards are right back where they started. But under the commissioners' legal theory, the school board then has no recourse. It has done all it can do, and it has no right to seek an independent determination of the amount of operational expenses required to maintain the school system.

Ignoring for the moment this problem with the theory, assume that the county commissioners agree to levy the supplemental tax. In that case, "the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next following such election."[52] In other words, the school board finally receives the money from the new tax sometime after July 1 of the next year, after the school year is already over. Of course, it needed the money for operating the school system during the school year for which it requested the money. But under the procedure suggested by the commissioners, that school year is finished. The school board will not receive the operational expenses it needs for one school year until, at the earliest, the beginning of the next school year.

This theory makes no sense. In essence, the commissioners argued that the school board had no recourse if it needed more funding for operational expenses: It could not sue and it could not obtain supplemental taxes to make up the deficit until the school year was over. This outcome is not what the General Assembly intended.

For all of these reasons, the North Carolina Constitution, the statutes, and simple common sense did not support the commissioners' legal theory that they had only a very narrow obligation to fund certain specified, limited school operating expenses. The General Assembly said that the school board has the right to sue if it determines that the amount of money appropriated to the Local Current Expense Fund is not sufficient to maintain the school system, and the "issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools."[53] The General Assembly meant what it said, and had the constitutional authority to say it.

Every school board considering a funding challenge should be alert to the possibility that the *Onslow County* case will be cited by the commissioners and should be ready to respond to a motion to dismiss the complaint. The motion operates to stall trial, to cause confusion on the part of judges who are generally unfamiliar with school funding, and to cost the school board significant additional expense preparing to defeat the argument. The case was cited again by the commissioners in support of their motion for summary judgment, accompanied by affidavits showing that the few areas of funding for which they admitted responsibility were fully funded.

In our case, the court denied both motions and the matter was set for trial.

Strategies for Mediation and Trial

Gather documents. When a lawyer is aware that his or her school board is considering using the dispute resolution process, it is time to begin gathering data. Copies of the North Carolina Public School Forum reports for previous years are very helpful in mediation, as are other forms of comparative data on both spending and achievement. Information about comparative teacher salary supplements, capital spending, administrator salaries, and other similarly useful topics takes some time to acquire and prepare to use as exhibits or illustrations. Fellow school board attorneys are a tremendous source of information and guidance.

Detailed information about your school system is also important, particularly the percentage of students receiving free and reduced-cost lunches, students receiving special education, students in Advanced Learner programs, students for whom English is a second language, transportation costs over the funding formula, and growth in utility costs. Staff should begin converting these numbers to understandable graphics for use both in mediation and as exhibits.

Consider all programs that are funded, even partly, with local money. If your battle is over a specific funding issue, the trial might focus on that specific issue. In the Guilford case, the commissioners took the

50. G.S. 115C-506.
51. G.S. 115C-511(b).
52. G.S. 115C-508(b).
53. G.S. 115C-431(c).

position that the school board had enough money overall and that the school board could figure out how to spend it. In other words, the whole system was on trial.

To begin our trial preparation, we sat down with every report (budget, annual, curriculum, and so forth) and compiled a list of programs or services that make up the "system of free public schools" in Guilford county. Examples include English for Speakers of Other Languages (ESOL), exceptional education, counseling, transportation, energy, construction supervision, International Baccalaureate, literacy facilitators, schools with high poverty that receive additional "equity" funding, technology staff, school safety office and school resource officers, Advanced Placement courses, social workers, school/parent liaisons, foreign language classes with low student enrollment, tech prep/vocational programs, and especially local teacher supplements. In our case, this made an impressive list and gave us a guide for the presentation of our evidence.

Make your budget easy to understand. Even to an experienced business executive, public budgets may be totally unintelligible. Jurors and citizens do not know what literacy facilitators and media specialists are. They often cannot read a budget done in the uniform budget format.

We suggest you get your finance officer working immediately on what we called the English budget (or the simple budget). Use common sense names for your witnesses' jobs. Your budget should categorize all items into a few straightforward categories, such as "Teachers," "Teachers' Aides," "Principals," "Transportation," "Insurance," and so forth. Our budget was a one-page document that broke the Guilford County school system budget into approximately fifteen such categories.

Convert budget information to plain, easy-to-understand illustrations and exhibits. Enlarge them so that jurors can see them for prolonged periods of time.

In Guilford County, the commissioners historically have focused on the central office budget as an area of supposed waste. In reality, a large part of that expense is for people and equipment that are not located at the central office, but in the schools. Your budget should recognize any disparity between appearance and reality, and allocate items where they really are, not where state and federal budgeting practices traditionally have put them.

Begin preparing witnesses. After we listed all of the locally funded programs or areas of funds, we considered which staff members would be the strongest witnesses and how to relate the funding areas to their testimony. The best way to take advantage of the talent pool is to interview each potential witness to determine whether testimony about his or her responsibilities and expertise supports the need to maintain the programs. Also consider to what kind of testimony jurors will respond. We designated a team of two lawyers to read documents, analyze testimony, and prepare outlines that could be followed by any lawyer doing the actual trial examination. The team eliminated some witnesses as unappealing to jurors, pared down and combined witnesses to reduce our original list of seventy witnesses, and helped witnesses phrase their testimony in easy-to-understand language.

We suggest that you consider including lawyers who do not specialize in education law in the preparation of witnesses. You will need the specialists for all the legal work, and the facts need to be presented so they are understandable to a layperson. Eliminating technical jargon is important and takes some work. Help witnesses learn to talk in plain, fifth grade English.

We kept our focus on people, not programs or departments. We planned to use an actual teacher of ESOL and a preschool teacher, people with experiences and stories to which a jury could relate on an emotional level. We tried to avoid senior level administrators as much as possible. Every witness from the classroom was going to be asked how much he or she spent out of his or her own pocket for school supplies or activities, and why the witness felt it was helpful or necessary to spend that money. We planned to give a sample end-of-course or end-of-grade test to the jurors so they could understand the rigor of the standard course of study. We focused on telling a story that would appeal to our taxpayers.

One practical problem was the difficulty of preparing witness testimony with a severely compressed trial schedule. Summer is not an easy time to locate school employees. The delays caused by the county's motions therefore actually aided in our trial preparation, but the team's ability to continue trial preparation while the litigators argued motions was especially crucial to getting ready for trial. These were very long days leading up to trial.

We considered the use of expert witnesses and listed several. The size of the administrative staff, the value to colleges of diversified course offerings like foreign languages and advanced placement, and the teacher shortage are all areas for potential experts. The value of preschool programs also is an area for a potential expert.

Attorneys for the school board should consider calling one or more commissioners as witnesses for the

school system. Commissioners often make statements in budget meetings and to the media that show that: (1) the commissioners determined the level of school funding without reviewing the need; (2) the commissioners made the determination that they would not raise taxes and so stated without considering the need; (3) some commissioners believed that the system was underfunded; (4) some commissioners did not read or were not familiar with the budget; or (5) some commissioners admitted that other needs in the county were being met at the expense of education. Consider examining county commissioners with your simple budget, and insist that they identify where the waste is.

If you do subpoena county commissioners, they may file motions to quash their subpoenas to avoid having to testify. They may argue that their testimony has no probative value because one commissioner cannot speak for the entire board or because they are entitled to legislative immunity. In the Guilford case, the court granted the commissioners' motion to quash the school board subpoenas, except for one subpoena to a commissioner who had submitted an affidavit for summary judgment purposes. We think the court's decision to quash was legally incorrect.

Prepare the briefs and jury instructions. Begin immediately. Preparing for a multimillion dollar trial on such a tight schedule is a Herculean task. Most judges will look to the school board attorneys to explain issues of procedure. A thorough, comfortable knowledge of state constitutional provisions concerning school funding, the funding statutes and G.S. Ch. 115C, the existing reported (and unreported) cases and opinions, and other technical issues will allow attorneys to focus their attention on the real core of the case—convincing the jury and the court of public opinion that every dollar spent by the school system is necessary to maintain the system of public schools in the county at issue.

Providing a map to the law will allow the judge to focus on the evidence. Submit a brief and proposed jury instructions before or at the beginning of trial. If the judge provides guidance on what jury instructions he or she will give, an attorney can refer to those standards throughout the trial.

Consider motions *in limine*. Depending on how your system compares to other systems in the state, it may be advisable to file a motion *in limine* (that is, a motion that seeks to exclude certain evidence from a trial) to preclude any evidence of spending, test score results, or other comparative information from other systems. G.S. 115C-426 states that the Local Current Expense Fund is composed of that amount of money needed, when added to other sources, for the current operating expenses of the public school system, in conformity with the educational goals and policies of the state and local school board, and the resources and fiscal policies of the county commissioners. This is the only relevant question, not what Halifax's or Mecklenburg's local school board requires, but what the school system at issue requires.

Another motion *in limine* to consider concerns evidence about other county programs and their financial needs. Invariably, county commissioners will want to testify that they must consider other county needs, such as social services, mental health, or the sheriff's department, in their determination of the amount of money needed to fund the public schools. Such evidence is irrelevant to the issue set out in the statute—the amount of money required to maintain the school system. Therefore evidence of other needs should be excluded.

We argued a final motion *in limine* to exclude evidence concerning the effect additional school funding might have on county taxes or tax rates. We did not want the commissioners to suggest that, if the school system budget increased by the amount the school board sought, the tax rates of county residents (including the jurors) would increase by some certain percent.

In our case, the court granted these motions.

If No Settlement Occurs, When Will You Get the Money?

The General Assembly adopted refinements to the dispute resolution process (discussed above at page 3) because of the holding in *Cumberland County Board of Education v. Cumberland County Board of Commissioners,* a 1993 Court of Appeals case.[54] In that case, the court ruled that a school funding appeal was moot because the school year at issue ended before the conclusion of the appeal. Under the new process, the trial of the Guilford County case—if we had gone to trial—would have concluded in the superior court sometime in August 2000. Without provisions for an expedited appeal that would assure quick transcripts, a short briefing schedule, and an immediate hearing, it was likely that the appellate courts would not have ruled before June 2001—after the end of the school year.

54. 113 N.C. App. 164, 438 S.E.2d 424 (1993).

School systems have a serious problem in determining how to continue programs and staff during the dispute resolution process once the fiscal year at issue is underway. In Guilford County, the school system was anticipating an additional 1,200 students, yet the commissioners were required only to fund the school system at a rate equal to the previous year's funding until the dispute was resolved (the "interim funding" requirement).[55] Considering new unfunded mandates, growth in student enrollment, and increased energy costs alone, that appropriation resulted in significantly decreased dollars reaching the Guilford County classrooms and required cuts in staff and programs.

A school funding dispute thus places a school board between a rock and a hard place: Either cut positions and programs before school starts, thus potentially showing that they are unnecessary, or keep everything and potentially have to make the cuts after school has started and scheduling is complete (a virtual impossibility in high schools). Neither choice makes a school board or the county commissioners popular.

The interim funding requirement also operates during the course of an appeal. Therefore the school system could prevail at trial but essentially lose the case. If the county commissioners appeal and continue funding at the previous year's level throughout the appeals process, they could effectively force the school system to lay employees off for that school year. Absent a sizable available fund balance, the school system may get little practical benefit out of a hotly contested victory.

The current mediation provisions of the dispute resolution statute could lead to more settlements. The dispute resolution process is still expensive, unbelievably time consuming, and stressful for school systems, and the risk of mootness is still very present. Community pressure on both sides to settle mounts as the start of the school year approaches. Our settlement—reached on August 4, 2000—included a contribution from a community foundation.

Conclusion

The best answer is and always will be to work closely with the county commissioners to avoid reaching irreconcilable positions. But if the school board must fight for funding, consider the fight the best way to show your public the wonderful assets and value of your school system, and use the opportunity to tell your story. In the end, that reward may be the most lasting. ■

55. G.S. 115C-431(d).