

City of East Liverpool,)
))
Appellant,) CASE NOS. 97-D-1516
) 97-D-1517
vs.)
))
Columbiana County Budget Commission;) BUDGET COMMISSION
Townships of Butler, Center, Elkrun,) {ULGF - R.C.574753}
Fairfield, Franklin, Hanover, Knox,) {ULGRAF - R.C.5747.63}
Liverpool, Madison, Middleton, Perry,)
Salem, St. Clair, Unity, Washington,)
Wayne, West, and Yellow Creek; Villages)
of Columbiana, Lisbon, Summitville,)
Hanoverton, Rogers, Washingtonville,) DECISION AND ORDER
Leetonia, New Waterford, Salineville,)
and Wellsville; Cities of Salem, and) Reversed on Appeal
East Palestine; and Columbiana County) Sept. 8, 1999
Park District,)
) 86 Ohio St.3d 317, 1999-Ohio-168
Appellees.)

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ENTERED: August 7, 1998

Mr. Johnson, Ms. Jackson concur;
Mr. Manoranjan not participating

The Tax Commissioner notified Columbiana County that its estimated 1998 share of the state's local government fund was \$3,484,960 and its estimated 1998 share of the state's local government revenue assistance fund was \$846,150, totalling \$4,331,100. The two fund amounts were subject to a further allocation in 1997 by the Columbiana County Budget Commission among the various participating subdivisions of the county and subject to distribution in the year 1998.

The Budget Commission allocated these county fund amounts among the various participating subdivisions of the county according to a particular formula. The formula which the Budget Commission in fact used to calculate the amount of the funds that were allocated to each of the various subdivisions is the subject of the present appeals.

In particular, the City of East Liverpool was allocated \$643,324 (18.46% of \$3,4894,960) of the county's undivided local government fund ("ULGF") and \$156,199 (18.46% of \$846,150) of the county's undivided local government revenue assistance fund ("ULGRAF"), totalling \$799,523. The City of East Liverpool, being dissatisfied with these two fund allocated amounts, has perfected the present appeals therefrom to this Board pursuant to R.C. 5705.37. The City of East Liverpool claims that the only legal alternative formula for the distribution of these funds was

promulgated in 1990, pursuant to R.C. 5747.53 and 5747.63, which was and continues to be the only binding alternative formula for each year since 1990. The City of East Liverpool contends, under the express terms of the 1990 alternate formula, it was and is annually entitled to an allocation of 26.96% of such funds, rather than the 18.46% it was in fact allocated by the Budget Commission in 1997.

A threshold issue is raised by this Board, sua sponte, whether an alternative formula was legally applicable to the 1997 allocations by the Budget Commission. An informal conference was scheduled for July 9, 1998 to consider such issue and all parties were given notice thereof.

Subsequent to the conference, on July 21, 1998, a "Stipulations of Fact," bearing the signatures of counsel who attended the conference and represented the various parties, was filed with this Board, the body of which states:

- "1. The Columbiana County Budget Commission did not allocate the ULGF and ULGRAF in 1997 for distribution year 1998 pursuant to the statutory formula set forth in R.C. 5747.51 and 5747.62.
2. The Columbiana County Budget Commission did not allocate the ULGF and ULGRAF in 1997 for distribution year 1998 pursuant to the alternative formula adopted and approved in 1990.
3. The City of East Liverpool is the city with the greatest population in Columbiana County for purposes of approving an alternative method of distributing the ULGF and ULGRAF pursuant to R.C. 5747.53 and 5747.63.
4. the East Liverpool City Council did not, by motion or otherwise, approve the method used to allocate

the ULGF and ULGRAF in Columbiana County in 1997 for distribution year 1998.

5. The Columbiana County Budget Commission did not receive the City of East Liverpool's approval to implement the method used to allocate the ULGF and ULGRAF in 1997 for distribution year 1998 as required by R.C. 5747.53 and 5747.63.
6. On October 10, 1997, the Columbiana County Budget Commission took the following action and the same is memorialized in the minutes of its meeting on such date:

- a) found that the alternative formula used to distribute the ULGF and ULGRAF for distribution years 1990 through 1997, inclusive, was not fair and reasonable, and such alternative formula would not be utilized for the distribution of the ULGF and ULGRAF for distribution year 1998; and

- b) adopted a new alternative formula, proposed by the Township Trustees, for use in distribution year 1998, for the allocation of the ULGF and ULGRAF.

7. The parties hereto reserve the right to file further stipulations of fact as may be necessary."

The Board finds the facts set forth in the stipulation filed are adequately corroborated by the existing record and are therefore approved and relied upon for purposes of the resolution of the threshold issue.

The procedural requirements for promulgating an alternative method (formula) for apportioning the two funds are essentially the same and are prescribed by R.C. 5747.53 and 5747.63, respectively.

R.C. 5747.53, which pertains to the undivided local government fund of the county, provides in part:

"(A) In lieu of the method of apportionment of the undivided local government fund of the county provided

by section 5747.51 of the Revised Code, the county budget commission may provide for the apportionment of such fund under an alternative method or on a formula basis as authorized by this section. Such alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city with the greatest population. In granting or denying such approval, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. *** Any method of apportionment adopted and approved under this section may be revised, amended, or repealed in the same manner as it may be adopted and approved. In the event a method of apportionment adopted and approved under this section is repealed, the undivided local government fund of the county shall be apportioned among the subdivisions eligible to participate therein, commencing in the ensuing calendar year, under the apportionment provided in section 5747.52 of the Revised Code, unless a new method of apportionment of such fund is provided in the action of repeal."

The Supreme Court has declared that the statutory scheme implies that there must be a determination made each year as to the method of distribution applicable for the ensuing year.

The Budget Commission adopted a new alternate formula for use in the distribution year 1998 (Stipulation, Para. 6) which the City of East Liverpool, which was the city with the greatest population in Columbiana County, did not by motion or otherwise approve; therefore, such formula was not promulgated in the required manner prescribed by R.C. 5747.53 and 5747.63 (Stipulation, Para. 4 and 5).

The three governmental units (i.e., [1] the County, [2] the City of East Liverpool, and [3] the remaining political subdivisions) did not individually or collectively approve the creation of a new alternate method of allocation or formula expressly for the allocation year 1997, nor were they asked to re-adopt or re-approve the alternative formula adopted and approved in 1990 for use in the making of the 1997 allocation of the funds for distribution in the year 1998.

Whether the 1990 alternative method of apportionment or formula was properly promulgated in 1990 or not is here not a legally relevant issue and therefore no opinion is expressed or implied with reference to it since, as a matter of law, an alternative method of apportionment or formula has a legally "implied statutory limitation of one year.

Andover v. Ashtabula County Budget Commission (1977), 49 Ohio St.2d 171, at page 174, states:

"The city of Ashtabula has agreed to participate in the more flexible method of allocation of funds, yet has sought to limit its participation by annual resolutions which commit it to the 'alternative method' for the next succeeding year only. After having considered, in pari materia, all the Ohio statutes pertaining to the annual distribution of the local government fund, we are unable to agree with the Board of Tax Appeals' decision requiring that the city be indefinitely locked into the 'alternative method,' when it has expressly limited its participation in that method to a definite period of time and the entire statutory scheme implies an annual determination of the method of distribution." (Board's emphasis added.)

The legal requirements for the promulgation of an alternative method of allocation and distribution of the two funds each year was further clarified by the Court of Appeals of Ohio, Tenth District, Franklin County, in Union Twp. v. Butler Cty. Budget Comm. (1995), 101 Ohio App.3d 212, motion to certify denied, 72 Ohio St.3d 1551, at 220:

"The fact that undivided local government funds are historically distributed by a method other than the statutory method is not, in itself, evidence that an alternative method of distribution is properly in existence and is continuously approved by all subdivisions. Alternative methods of distribution of local government funds must be proposed by the county budget commission each year and specifically approved by the tax subdivision required by the statute each year." (Emphasis added.)

Seemingly, while an alternative method of apportionment may or may not be expressly limited by the terms of the approval of an alternative method by the participating subdivisions or the budget commission to one year, such a one year limitation period is implied by the statutory scheme, according to the Courts' interpretation of the statutory provisions relating to the alternative methods of allocation or formulas.

The Board of Tax Appeals further finds and determines upon the record and as a matter of law that no alternative method of apportionment or formula, as authorized and prescribed by R.C. 5747.53 and 5747.63, was applicable to the Columbiana County Budget Commission's 1997 allocation and the related 1998 distribution of the County's undivided local government fund and

undivided local government revenue assistance fund. The allocation and distribution determined by the Columbiana County Budget Commission based upon the alternative formula it used in making its 1997 determinations was unreasonable and unlawful.

IT IS ORDERED that the 1997 decision of the Columbiana County Budget Commission which made the allocations for distribution in the year 1998 be and hereby is reversed. The two funds are therefore subject to allocation in compliance with the statutory provisions of R.C. 5747.51 and 5747.62.

IT IS FURTHER ORDERED that a certified copy of this decision and order be sent to the Columbiana County Auditor, and to each of the parties hereto by and through their respective counsel or other representative of record.