

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Caddo Parish School Board
Shreveport, Louisiana

October 24, 2003



Investigative Audit

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Daryl G. Purpera, CPA, CFE

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October 24, 2003

MR. WILLIE D. BURTON, PRESIDENT
CADDO PARISH SCHOOL BOARD
Shreveport, Louisiana

Transmitted herewith is our investigative report on the Caddo Parish School Board. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our finding and recommendations, as well as your response. Copies of this report have been delivered to those authorities as required by state law.

Respectfully submitted,

Grover C. Austin, CPA
First Assistant Legislative Auditor

DP:EKL:DGP:dl

[CADSB03]

Executive Summary

Caddo Parish School Board Investigative Audit Report

Finding (*See page 7.*)

Questionable Land Purchase

In June 2002, the Caddo Parish School Board (School Board) purchased 20 acres of land for the proposed future construction of an elementary school. This purchase was not appropriately executed for the following reasons:

1. The School Board approved purchasing the land for \$15,000 per acre before receiving an appropriate land appraisal.
2. Though the School Board approved purchasing land from Aramco, Inc., the land was actually purchased from other owners.
3. Dr. Schiller used \$1,200 of School Board funds to pay for an appraisal ordered by Mr. Ramsey though the School Board did not receive the appraisal until October 2002, more than three months after the purchase.
4. While the School Board purchased 20 acres for \$300,000, the land developer, Mr. Johnson Ramsey, purchased 16 adjoining acres for \$25,000 leaving an appearance of impropriety and questionable value.
5. The appraisal supporting the price paid by the School Board, according to an independent certified appraiser, should have considered different comparables to better support the valuation.
6. Though the appraisal obtained by Mr. Ramsey valued the property at \$300,000, an independent appraisal obtained by the legislative auditor values the property at \$170,000.

School Board Improperly Paid Former Superintendent

From January 1, 2000, through December 31, 2002, the School Board paid Dr. Schiller \$29,732 that he was not entitled to receive including \$24,585 in sick leave related payments and \$5,147 for the employer's share of teachers' retirement and Medicare.

Recommendations (*See page 15.*)

The Caddo Parish School Board should:

- Require that complete appraisals be made available to the School Board before purchasing property.
- Ensure that payments for services be restricted to services ordered by the School Board and made available for the School Board's use.
- Ensure that sick leave is taken in compliance with School Board policy and applicable employment contracts.
- Comply with laws governing employer contributions to the Teachers' Retirement System and Medicare.
- Require that changes to the superintendent's compensation package be approved by the entire board.
- Consult with legal counsel to seek recovery of \$29,732 improperly paid to Dr. Schiller.
- Consult with legal counsel regarding legal recourse concerning the property purchase.

Management's Response (*See Attachment II.*)

Concerning the Land Purchase

- A. The School Board shows that (1) it received the correct appraisal information through Dr. Robert Schiller, the Superintendent of Caddo Parish Schools, prior to the vote by the School Board to purchase the property; (2) it properly acquired title to the 20 acres of property on Norris Ferry Road; (3) David Volentine, one of the appraisers hired by the Auditor, agreed that the \$15,000 per acre determined in the Russell appraisal report was a reasonable estimate of fair market value of the property; and (4) the appraisal performed by James Young, the second appraiser hired by the Auditor, was erroneous.
- B. Dr. Robert Schiller, as the administrative head of the Caddo Parish School System, was authorized to pay for an appraisal and actually received a verbal appraisal prior to the board meeting on April 24, 2002.

Improper Payments to Dr. Schiller

- A. The leave payments made to Dr. Schiller were proper, as they were made to secure Dr. Schiller's cooperation and appearance in forty-five (45) lawsuits that were pending when he moved to Illinois. Without the payment, the School Board had no ability to require Dr. Schiller to return to Shreveport to help the School Board defend the lawsuits. Dr. Schiller's agreement to return to Shreveport without charge and to assist the School Board and the interim superintendent with matters in transition and with various legal matters and litigation in which he was involved and/or about which he had particular

knowledge provided a valuable benefit and constituted valuable consideration for the payment. Therefore, the payment was not a donation of public funds.

- B. Revised Statute 13:5108.1 does not apply to an employee of a School Board, and the auditor's reliance on this statute is improper.
- C. Good and valuable consideration was given in return for the sick leave related payments to Dr. Schiller. Attorney General Opinion 90-486 provides that a school board is required to pay a terminated superintendent for a minimum of twenty-five (25) sick days, although in its discretion it may compensate him more.
- D. Dr. Schiller's contract provided that he could designate a portion of his salary be paid into a tax deferred annuity program.

Additional Information (*See Attachment I.*)

Concerning the Land Purchase

- A. Appraisal
 - 1) Neither Dr. Schiller nor the School Board had a formal written appraisal before voting to purchase the land.
 - 2) Though the School Board may have acquired title to the 20 acres on Norris Ferry Road, the transaction was flawed in that the actual seller was different than the seller specified in the resolution and authorized by the School Board.
 - 3) Mr. David Volentine, MAI, was hired by the auditor to review Mr. Russell's appraisal and rendered no opinion on the reasonableness of Mr. Russell's valuation. He stated that Mr. Ramsey's option on the land should have been discussed in more detail. Mr. Volentine also concluded that another analysis should be made using different comparable sales.
 - 4) Mr. Young appears to have made a competent valuation of the land in accordance with the applicable Uniform Standards for Professional Appraisal Practice.
- B. Paying for the Appraisal

Dr. Schiller stated that he relied upon the appraisal ordered by the seller and that the appraisal valuation was given to him orally before the School Board vote. Dr. Schiller stated that he received a copy of the written appraisal a day later. There was no copy of the appraisal at the School Board office until October 2002.

Improper Payments to Dr. Schiller

- A. The School Board was allowed to pay Dr. Schiller for sick leave for personal illness or in the event he left office as a result of death or retirement. Also, the School Board is not allowed to pay for anticipated future services.
- B. The reference to R.S. 13:5108.1 has been removed.

- C. Dr. Schiller resigned and was not terminated. R.S. 17:425 provides for the payment of accrued sick leave upon retirement or death; Dr. Schiller did neither. Also, Attorney General Opinion 90-486 was modified on April 2, 1991, to read the school board is not required to pay accumulated sick leave until death or retirement.
- D. Dr. Schiller did have the option of designating a portion of his salary to a tax deferred annuity, but he was not entitled to direct the employer's share of teachers' retirement and Medicare into his tax-deferred annuity. Also, Dr. Schiller was paid those additional sums without School Board approval.

Background and Methodology

The Caddo Parish School Board (School Board) was created by Louisiana Revised Statute (R.S.) 17:51 to provide public education for the children within Caddo Parish. The School Board is authorized by R.S. 17:81 to establish policies and regulations for its own government consistent with the laws of the state of Louisiana and the regulations of the Louisiana Board of Elementary and Secondary Education. The School Board is comprised of 12 members who are elected from 12 districts for concurrent terms of four years.

The Office of the Legislative Auditor received allegations of possible improper financial transactions by the School Board. This investigative audit was performed to determine the propriety of the transactions. The procedures performed during this investigative audit consisted of (1) interviewing employees and officials of the School Board; (2) interviewing other persons as appropriate; (3) examining selected documents and records of the School Board; (4) making inquiries and performing tests to the extent we considered necessary to achieve our purpose; and (5) reviewing applicable state laws.

Finding

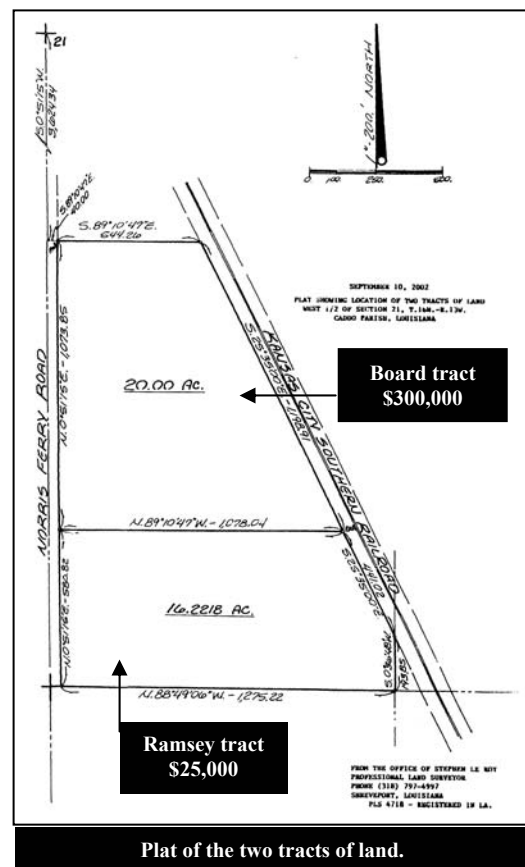
Questionable Land Purchase

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2. Though the School Board approved purchasing land from Aramco, Inc., the land was actually purchased from other owners.
3. Dr. Schiller used \$1,200 of School Board funds to pay for an appraisal ordered by Mr. Ramsey though the School Board did not receive the appraisal until October 2002, more than three months after the purchase.
4. While the School Board purchased 20 acres for \$300,000, the land developer, Mr. Johnson Ramsey, purchased 16 adjoining acres for \$25,000 leaving an appearance of impropriety and questionable value.
5. The appraisal supporting the price paid by the School Board, according to an independent certified appraiser, should have considered different comparables to better support the valuation.
6. Though the appraisal obtained by Mr. Ramsey valued the property at \$300,000, an independent appraisal obtained by the legislative auditor values the property at \$170,000.

Land Purchase

In a memorandum dated April 17, 2002, Dr. Schiller addressed the School Board about the need for a new elementary school to serve students who live in southeastern Caddo Parish. Dr. Schiller offered several alternatives that included the analysis of several parcels of land and a proposed lease purchase agreement with Mr. Johnson Ramsey, a local land developer. Dr. Schiller concluded in the memorandum that the School Board should enter into a lease with Mr. Ramsey or should purchase 20 acres of land as a future school site from Mr. Ramsey.



Though the land was not appraised until April 22, 2002, Dr. Schiller estimated that acquiring 20 acres from Mr. Ramsey would cost \$15,000 to \$16,000 per acre and that "... the CPSB should immediately attempt to secure 20 acres for @ \$15,000 - 16,000 per acre."

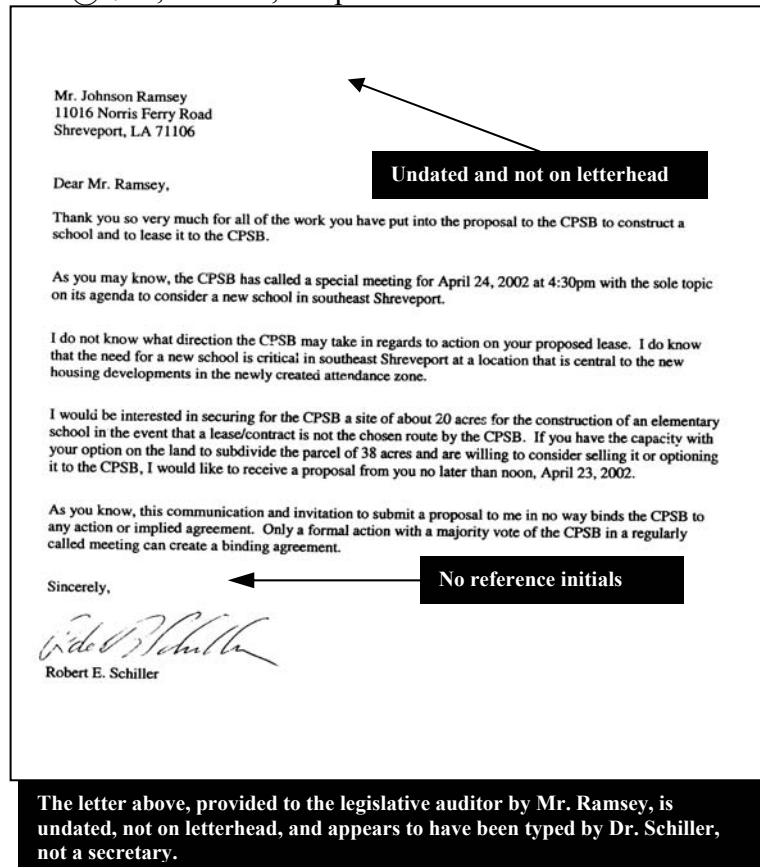
In an undated letter not on School Board letterhead, Dr. Schiller requested that Mr. Ramsey submit to him no later than noon on April 23, 2002, a proposal to sell the School Board 20 acres of land from a 38-acre parcel on which Mr. Ramsey had an option to purchase. In a letter dated April 23, 2002, Mr. Ramsey proposed selling 20 acres of land to the School Board for \$300,000. On April 24, 2002, the School Board in a special session approved the purchase of the 20 acres of land from Aramco, a corporation controlled by Mr. Ramsey, without having reviewed an appraisal.

The purchase of the land was finalized on June 20, 2002. Though the School Board's resolution specified the land would be purchased from Aramco, the 20 acres of land were purchased directly from the owners whose land was under the option agreement with Aramco. On the same day that the School Board paid \$300,000 for 20 acres (\$15,000 per acre), Aramco purchased 16.22 acres from an adjoining tract for \$25,000 (\$1,541 per acre) from the same owners. Furthermore, Ramsey and Ramsey Realtors, another corporation controlled by Mr. Ramsey, received one-half of the 6% sales commission or \$9,000 that reduced the owner's portion of the \$300,000. Thus, Mr. Ramsey received the adjacent tract of land for a fraction of what the School Board paid for the adjoining tract.

Two appraisers have valued this property differently. The first engaged by Mr. Ramsey valued the 20 acres at \$300,000 (\$15,000 per acre). The second engaged by the Office of the Legislative Auditor valued the 20 acres at \$170,000 (\$8,500 per acre).

Mr. Ramsey's Option

Before the School Board's purchase, the land was owned by Harold-Winks-Vallhonrat, L.L.C.; Sidney Herold Lazard; Gus W. Colvin, Jr.; Patty C. Hall; Jane C. Hubbard; and Crown Financial Company. According to Ms. Eleanor Vallhonrat, one of the owners, the entire property had been listed on the market for \$350,000 (approximately \$9,200 per acre) for quite some time but did not sell. The previous owners are referred to as the sellers in the following paragraphs.



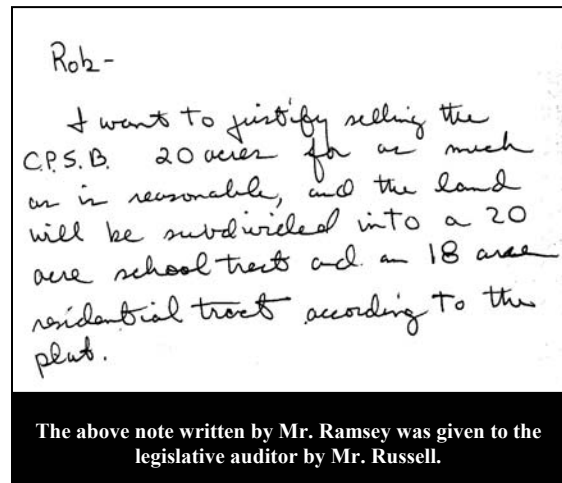
On December 29, 2001, Aramco entered into an option agreement with the sellers. Aramco paid \$100 for a 60-day option to buy 38.79 acres for \$325,000. According to the terms of the agreement, Aramco could extend the option 60 more days for an additional payment of \$10,000.

Aramco paid the sellers \$10,000 and \$20,000 to extend the option for two 60-day extensions. Mr. Ramsey stated that the \$10,000 could not be applied to the purchase price but the \$20,000 payment could.

Mr. Robert Russell's Appraisal

Mr. Russell, MAI, SRA, whose appraisal report is dated April 24, 2002, stated that he inspected the 20-acre tract on April 22, 2002. His report stated that the market value of the 20-acre tract as of April 22, 2002, was \$300,000. Furthermore, he stated that he gave two copies of his report to Mr. Ramsey, who was his client.

Mr. Ramsey stated that he ordered Mr. Russell's appraisal before the final presentation to the School Board, April 24, 2002. Furthermore, he stated that he did not have the appraisal on April 23, 2002, when he quoted the asking price to the School Board of \$15,000 per acre. Finally, he said that before his final presentation to the School Board, April 24, 2002, Mr. Russell gave him a verbal verification that the land appraised at \$15,000 per acre.



Mr. Phillip Guin, president of the School Board during this period, stated that he did not see Mr. Russell's appraisal until after publication of the story in the newspaper, October 14, 2002.

Mr. Reginald Abrams, School Board general counsel, stated that he did not see the appraisal until October 2002 following a public records' request for the appraisal. Furthermore, he stated that he does not know if anyone other than Dr. Schiller had a copy of the appraisal before the April 24, 2002, meeting. Finally, he stated that a copy of the appraisal was not in the School Board's office at the time of the public record's request, October 2002.

Mr. Mark Milam, a School Board member, stated that Dr. Schiller met with him less than an hour before the April 24 meeting and told him that it would be best to purchase the land. Mr. Milam stated that Dr. Schiller argued that since sales tax revenues were down a lease purchase would be more difficult to sell to the School Board. Mr. Milam further stated that Dr. Schiller told the board that the land appraised for \$15,000 per acre. Had he seen Johnson Ramsey's option agreement, Mr. Milam stated that it would have changed his mind and probably the whole board's mind about the soundness of the deal.

Mr. Alvin Mims, another School Board member, stated that he voted against the land purchase because it was not a sound investment. Furthermore, he felt like Dr. Schiller was rushing it and he had “no forewarning” that the special session on April 24, 2002, would end with a proposal to purchase the land.

Dr. Schiller stated that:

- Mr. Ramsey sent Ms. Susie Morgan, the School Board real estate attorney, his asking price for the property.
- Mr. Ramsey read the appraisal to him before the April 24 meeting.
- He received the appraisal the day after the board took action, April 25.
- He knew Mr. Ramsey had an option on the land, but he was not aware that Mr. Ramsey purchased part of the total tract.
- His only concern with the appraisal was that the land appraised for at least as much as Mr. Ramsey’s asking price of \$15,000 per acre.
- Ms. Morgan may have received a copy of the appraisal before the April 24 meeting.
- Ms. Morgan was assigned early on to deal with the lease or purchase of any land.
- He thought that Ms. Morgan would have notified the board if she thought something was “awry with the deal.”

Ms. Morgan stated that she was only instructed to prepare the closing and that Dr. Schiller negotiated the price. Furthermore, she stated that she was not at the April 24 special session and she has not seen the appraisal for the property.

From the statements, it appears that Dr. Schiller was the only School Board representative to have access to Mr. Russell’s appraisal before October 2002.

Mr. Russell’s Invoice for Appraisal

Mr. Russell stated that although Mr. Ramsey was his client, he submitted his invoice for \$1,200 to the School Board at his client’s instruction. According to Mr. Russell, it is not unusual for someone other than his client to pay for his services.

The invoice was dated May 9, 2002, and Dr. Schiller approved it for payment on May 16, 2002. A School Board check dated May 17, 2002, paid the invoice.

Review of Mr. Russell’s Appraisal

As part of the audit procedures, the Louisiana Legislative Auditor (LLA) engaged Mr. David W. Volentine, MAI, to review Mr. Russell’s appraisal. Mr. Volentine’s review states that the appraisal appears to be in substantial conformity with the Uniform Standards of Professional Appraisal Practice. The review also states that Aramco’s purchase option should have been

discussed in more detail. In addition, the review states that other comparable sales should have been used in the valuation. The review concludes that the appraisal should be done using different comparables to better support the valuation. Furthermore, the review states that:

... the report (Mr. Russell's appraisal) was prepared for Mr. Johnson Ramsey (the seller) who apparently had no official affiliation with the Caddo Parish School Board or any authority to act on their behalf. It would have been prudent for the School Board to obtain a separate appraisal prepared on their behalf. . .

Mr. James Young's Appraisal

LLA also engaged Mr. Young, MAI, CRE, to conduct another appraisal of the 20 acres of land purchased by the School Board. Mr. Young concluded in his report that the total market value of the 20-acre tract as of December 29, 2001, was \$170,000 (\$8,500 per acre). The appraisal stated that the market value on the date of the property's transfer remained the same.

Conclusion

The School Board procedures for purchasing the land were significantly inadequate to ensure the proper spending of public funds. The School Board voted to purchase the land without seeing an appraisal of the property and may have paid up to \$130,000 more than market value. In addition, Dr. Schiller directed the payment of \$1,200 for an appraisal that was not ordered by the School Board nor made available for the board's use in making a decision.

Improper Payments to Dr. Schiller

The School Board paid Dr. Robert Schiller, former superintendent of Caddo Parish Schools, \$29,732 that he was not entitled to receive including \$24,585 in sick leave related payments and \$5,147 for the employer's share of teachers' retirement and Medicare.

Dr. Schiller's Employment Contract

Dr. Schiller became the Superintendent of Caddo Parish Schools effective January 1, 2000. In September 2001, the School Board extended Dr. Schiller's employment contract until December 31, 2003.

Dr. Schiller's contract provided for a starting annual salary of \$125,000 with a \$5,000 increase after the first six months of effective performance. In addition, the contract provides for an annual performance bonus of up to \$15,000. The School Board also agreed to pay 12% of the superintendent's monthly base salary into an annuity program. Furthermore, under his contract, if the superintendent desired to participate in a tax-deferred annuity program, the School Board agreed to withhold a portion of the superintendent's salary designated by him. In addition, Dr. Schiller's contract provided that the board may increase his annual salary during the term of his employment.

Dr. Schiller's contract states that he "... shall be entitled to all benefits of the sick leave policy of the Caddo Parish School Board in effect at the time for twelve month administrative personnel and shall be entitled to accumulate earned sick leave in the same manner as is provided for such employees by the laws of the State of Louisiana and the appropriate policies of the School Board. Such accumulated sick leave may be used for personal illness only and in the event the Superintendent should leave office by reason of death or retirement, then he or his estate will be paid for accumulated sick leave not to exceed 25 days."

Dr. Schiller's Proposal

In a letter dated July 30, 2002, Dr. Schiller notified the School Board that he had been offered the job of Superintendent of Education for the State of Illinois. He further stated that he would resign his position with the School Board on August 2, 2002, and retire from the State of Louisiana on December 31, 2002.

As a condition of his resignation, Dr. Schiller asked the School Board to allow him to take leave during the period August 2, 2002, through December 31, 2002, so that he could qualify for retirement on December 31, 2002. This would require the use of his accumulated sick and vacation leave and the conversion of his performance bonus to leave. Dr. Schiller enclosed a schedule showing the use of his leave and the conversion of his bonus using the rate of \$480 per day. This schedule allowed him to remain on the payroll until December 31, 2002.

In return, Dr. Schiller stated that he would provide ongoing services as an employee of Caddo Parish on an as needed basis to facilitate the transition, ongoing consultation, and for pending and future legal matters. He also stated that he would provide his services in lieu of any further payment. The School Board accepted Dr. Schiller's proposal. Although Dr. Schiller agreed to return to Shreveport for consultation on legal matters, he returned only once. That visit was for a meeting requested by the legislative auditor.

Despite Dr. Schiller's statement that he was retiring from the State of Louisiana on December 31, 2002, he was not eligible for retirement on that date.

Improper Payment for Sick Leave

Part of Dr. Schiller's proposal provided for payment of 25 days of sick leave. Because Dr. Schiller was not leaving office by reason of death or retirement, the School Board had no legal obligation to pay his accumulated sick leave. In spite of this lack of legal obligation, the School Board paid Dr. Schiller \$15,360 for 32 days of sick leave for days that he was not sick. Because the sick pay extended Dr. Schiller's employment, the School Board also paid him for eight holidays (\$3,840) that he should not have received. In addition, the School Board paid the employer's share of teachers' retirement, deferred compensation, and Medicare amounting to \$2,515, \$2,592, and \$278, respectively.

Dr. Schiller stated that he felt entitled to the payment because he is an important witness in legal cases outstanding against the School Board. Also, Dr. Schiller stated that he did not take any sick leave on other occasions and during those periods he did not miss any days or meetings due to family illnesses.

In a letter dated January 7, 2003, Mr. Reginald Abrams, the School Board legal counsel, stated:

. . . Dr. Schiller believed that he was entitled to be paid for his accumulated leave days based on his contract language. I disagreed with Dr. Schiller's interpretation of his contract. I believed that in order for Dr. Schiller to be paid for his leave days prior to his retirement he must be "sick". I do not believe that there is any law that prohibits the Caddo Parish School Board from negotiating with the Superintendent to resolve his claim that if he left employment with the Caddo Parish School Board prior to his retirement, that he could be paid for unused accumulated sick time . . .

Though the School Board is not prohibited from negotiating Dr. Schiller's termination, the School Board is prohibited from donating public funds. Dr. Schiller's contract did not provide for payment of his unused accumulated sick leave in the event of his resignation nor for any payment related to his future representation in pending lawsuits and, therefore, these payments represent violations of Article VII, Section 14(A) of the Louisiana Constitution, which provides in relevant part:

Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Tax Deferred Annuity

The School Board is required by state law to pay Teachers' Retirement an employer contribution of 13.1% and withhold 8% employee contribution on all earnable compensation as defined in R.S. 11:701 (10). Also, the School Board is required to pay the Internal Revenue Service (IRS) for Medicare of 1.45% employer share and 1.45% employee share on wages as defined by 26 USCS §3121(u)(2). During his employment, Dr. Schiller elected to have a portion of his compensation placed into a tax-deferred account. Though the appropriate amounts should have been paid to Teachers' Retirement and the IRS, Dr. Schiller was improperly paid \$5,147 by having the School Board deposit the employer's share of contributions to Teachers' Retirement and Medicare into his tax deferred annuity.

During Dr. Schiller's employment, he received his annual salary, the 12% annuity payments, raises, a bonus, and he elected to participate in a tax-deferred annuity program. Dr. Schiller designated \$35,000 of these amounts to be deposited into his tax-deferred annuity program. In addition to the \$35,000, the School Board also deposited \$4,640 representing the employer share of teachers' retirement and \$507 Medicare tax into his tax-deferred annuity account.

According to Mr. Ben Wreyford, finance director for the School Board, Dr. Schiller told him to add the employer's portion of teachers' retirement and the employer's portion of Medicare to his (Dr. Schiller's) tax-deferred annuity amount. Mr. Wreyford further stated that Dr. Schiller told him that all were costs that the School Board would have paid on his behalf if he had accepted the payment as salary. Mr. Wreyford stated that he informed Dr. Schiller that he could not do that without board approval. In a memorandum, Mr. Mike Powell, president during this period, approved the transaction. Mr. Wreyford stated that since Mr. Powell approved the original transaction, subsequent transactions did not need special approval.

Mr. Powell identified his signature on a memorandum dated September 11, 2000, authorizing that Dr. Schiller's raise be applied to his retirement account on a semiannual basis. However, Mr. Powell stated that he was not aware that the employer's share of teachers' retirement and Medicare were being added to the payments to Dr. Schiller's retirement account. On the books of the School Board, the transactions were classified as employer contributions to tax-deferred annuities. Mr. Powell approved the different form of payment without official School Board approval.

An attachment to the memorandum in the School Board files indicated that the employer's share of teachers' retirement and Medicare was included in the annuity payment. Mr. Powell stated that he does not remember seeing the attachment to the memorandum. Without seeing the attachment, Mr. Powell would not have known that the employer's share of teachers' retirement and Medicare would be included in the payment to the tax-deferred annuity.

According to R.S. 11:701, deferred compensation payments are included in earnable compensation and the School Board should have remitted the employee and employer contributions to the Teachers' Retirement System in accordance with R.S. 11:884 and 11:885. Also, the School Board should have remitted the employee and employer contributions to Medicare on wages as defined by 26 USCS §3121(u)(2).

The School Board improperly paid Dr. Schiller \$24,585 in sick pay and \$5,147 for the employer's share of teachers' retirement and Medicare for a total of \$29,732.

Recommendations

The Caddo Parish School Board should:

- Require that complete appraisals be made available to the School Board before purchasing property.
- Ensure that payments for services be restricted to services ordered by the School Board and made available for the School Board's use.
- Ensure that sick leave is taken in compliance with School Board policy and applicable employment contracts.
- Comply with laws governing employer contributions to the Teachers' Retirement System and Medicare.
- Require that changes to the superintendent's compensation package be approved by the entire board.
- Consult with legal counsel to seek recovery of \$29,732 improperly paid to Dr. Schiller.
- Consult with legal counsel regarding legal recourse concerning the property purchase.

This report has been provided to the District Attorney for the First Judicial District of Louisiana who, at his discretion, shall determine whether any further consideration is warranted regarding one or more Louisiana civil or criminal statutes.¹

¹ **R.S. 14:134** provides, in part, that malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.

Article 7, Section 14 of the Louisiana Constitution provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Attachment I

Additional Information

Additional Information

Concerning the Land Purchase

A. Appraisal

- 1) Neither Dr. Schiller nor the School Board had a formal written appraisal before voting to purchase the land.
- 2) Though the School Board may have acquired the title to the 20 acres on Norris Ferry Road, the resolution was flawed in that the actual seller was different than the seller specified in the resolution.
- 3) Mr. David Volentine, MAI, was hired by the auditor to review Mr. Russell's appraisal and rendered no opinion on the reasonableness of Mr. Russell's valuation. He stated that Mr. Ramsey's option on the land should have been discussed in more detail. Mr. Volentine also concluded that another analysis should be made using different comparable sales.
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Improper Payments to Dr. Schiller

- A. The School Board was allowed to pay Dr. Schiller for sick leave for personal illness or in the event he left office as a result of death or retirement. Also, the School Board is not allowed to pay for anticipated future services.
- B. The reference to R.S. 13:5108.1 has been removed.
- C. Dr. Schiller resigned and was not terminated. R.S. 17:425 provides for the payment of accrued sick leave upon retirement or death; Dr. Schiller did neither. Also, Attorney General Opinion 90-486 was modified on April 2, 1991, to read the school board is not required to pay accumulated sick leave until death or retirement.
- D. Dr. Schiller did have the option of designating a portion of his salary to a tax-deferred annuity, but he was not entitled to the employer's share of teachers' retirement and Medicare. Also, Dr. Schiller was paid those additional sums without School Board approval.

Attachment II

Management's Response

ABRAMS & LAFARGUE, L.L.C.

ATTORNEYS AT LAW

330 MARSHALL STREET

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October 16, 2003

Mr. Grover C. Austin, CPA
First Assistance Legislative Auditor
Office of Legislative Auditor
P. O. Box 94397
Baton Rouge, LA 70804-9397

RE: Response of the Caddo Parish School Board
to the Preliminary Investigative Audit Report

Dear Mr. Austin:

Enclosed please find our Response to the Preliminary Investigative Audit Report of the
Caddo Parish School Board.

If we may be of further assistance, please advise.

Sincerely,



Willie D. Burton, President
Caddo Parish School Board



Reginald W. Abrams
General Counsel for
Caddo Parish School Board

RWA/jdh
Enclosure

CONFIDENTIAL

SUMMARY OF RESPONSE

1. Response To Finding of Questionable Land Purchase

- Dr. Robert Schiller, as the administrative head of the Caddo Parish School System, was authorized to pay for an appraisal and actually received a verbal appraisal prior to the Board Meeting on April 24, 2002.
- Purchase of land directly from the owners was the most efficient and effective way to transfer title to the School Board.
- Auditor's finding regarding Aramco's purchase of adjoining tract is misleading.
- David Volentine, the appraiser hired by the Legislative Auditor, found that \$15,000 per acre was a reasonable estimate of the fair market value of the land.
- The appraisal of James A. Young, the second appraiser hired by the Legislative Auditor, valuing the land at \$170,000 is erroneous.

II. Response To Finding of Improper Sick Leave And Retirement Related Payments To Dr. Schiller

- The School Board had the right to negotiate a severance package with Dr. Schiller to effectuate an orderly transition.
- Good and valuable consideration was given in return for the sick leave related payments to Dr. Schiller.
- Dr. Schiller agreed to return to Louisiana on an as needed basis without charge to aid in the defense of pending and future litigation involving the School Board.
- Without the payment, the School Board had no ability to require Dr. Schiller to return to Shreveport to assist with transition or pending legal matters and lawsuits.
- Dr. Schiller's contract provided that he could designate a portion of his salary be paid into a tax deferred annuity program.

**I. MANAGEMENT'S RESPONSE TO
FINDING OF QUESTIONABLE LAND PURCHASE.**

The Auditor claims that the School Board did not properly purchase 20 acres of land on Norris Ferry Road in June of 2002. The Auditor claims that this purchase was not appropriately executed for the following reasons:

1. The school board approved purchasing the land for \$15,000 per acre before receiving an appropriate land appraisal;
2. Though the school board approved purchasing land from Aramco, Inc., the land was actually purchased from other owners;
3. Dr. Schiller used \$1,200 of school board funds to pay for an appraisal ordered by Mr. Ramsey though the school board did not receive the appraisal until October 2002, more than three-months after the purchase;
4. While the school board purchased 20 acres for \$300,000, the land developer, Mr. Johnson Ramsey, purchased 16 adjoining acres for \$25,000 leaving an appearance of impropriety and questionable value;
5. The appraisal supporting the price paid by the school board, according to independent, certified appraiser, should have considered different comparables to better support the valuation; and
6. Though the appraisal obtained by Mr. Ramsey valued the property at \$300,000, an independent appraisal obtained by the Legislative Auditor values the property at \$170,000.

A. Summary of Response.

The School Board shows that (1) it received the correct appraisal information through Dr. Robert Schiller, the Superintendent of Caddo Parish Schools, prior to the vote by the School Board to purchase the property; (2) it properly acquired title to the 20 acres of property on Norris Ferry Road; (3) David Volentine, one of the appraisers hired by the Auditor, agreed that the \$15,000 per acre value determined in the Russell appraisal report was a reasonable estimate of the fair market value of the property; and (4) the appraisal performed by James Young, the second appraiser hired by the Auditor, was erroneous.

B. Dr. Robert Schiller, as the Administrative Head of the Caddo Parish School System, Was Authorized to Pay for an Appraisal and Actually Received a Verbal Appraisal Prior to the Board Meeting on April 24, 2002.

The Auditor claims that the procedures used by the School Board to purchase the property were defective because the Board members did not actually receive the written appraisal until October 2002. This is incorrect. Dr. Schiller was read the appraisal prior to the School Board vote on April 24, 2002 and actually received the written report on April 25, 2002.

Dr. Robert Schiller, Superintendent of Caddo Parish Schools, was elected by the Caddo Parish School Board in accordance with La. R.S. 17:54. Pursuant to contract and state law, Dr. Schiller was the Chief Executive Officer and Ex-Officio Secretary and Treasurer of the Board. The Superintendent is in charge of administration of schools. The Superintendent directs and assigns teachers and other employees under the supervision of the school system.

In accordance with School Board Policy CBA, the Superintendent is responsible for overall planning, direction, control and evaluation of school activities. The Superintendent recommends specific policies, procedures, plans and programs for attaining operating objectives and provides leadership in solving major problems. The Superintendent provides for the proper delegation of authority and responsibility throughout the organization. The Superintendent provides the School Board with reports and information which enables it to critically review operation of the Parish schools. The Superintendent directs the preparation of, and recommends to the School Board for approval, the annual budget and administers the school system within approved budget limits. Furthermore, policy CBA provides that the Superintendent shall provide for the selection of sites for locating future school facilities and recommend such sites to the Board for approval. Furthermore, the Superintendent manages the parish school affairs aggressively and imaginatively with emphasis on systematically maintaining and improving the quality of the public schools. The Superintendent is required by contract to attend all board meetings and provide administrative recommendations on each item of business considered by the Board. In sum, the Superintendent is the administrative head of the Caddo Parish School System and is required by state law and contract to provide advice to the School Board on the operation of its schools.

Dr. Schiller did an independent search for properties in the areas that he believed were appropriate for an elementary school in Southeast Shreveport. He investigated the land values throughout the area and ultimately made a recommendation to the School Board regarding the purchase of the 20 acres on Norris Ferry Road after he concluded that a proposed lease/purchase option for a school was not feasible.

Dr. Schiller then presented his recommendation to the School Board at its April 24, 2002 meeting. Prior to the meeting, the contents of the written appraisal were read to him. The written materials provided for the School Board's review disclosed that Aramco, Inc. had an option on the property. Dr. Schiller's review of the actual written appraisal on April 25, 2002 confirmed that the contents of the appraisal had been correctly represented to him and that he had accurately represented the contents of the appraisal to the School Board.

Dr. Schiller was the authorized representative of the School Board. Under Louisiana law, his knowledge of the appraisal was clearly imputed to the School Board. As a result, the School Board, as an entity, did have an appraisal of the land for \$15,000 an acre before approving the purchase. Furthermore, the School Board in its regular course of business relies on its professional staff to review contracts and other documents and to report the contents to them. It would be impractical for the School Board members to attempt to review every document related to School Board business.

Dr. Schiller had the authority to purchase an appraisal on behalf of the School Board.¹ The party bearing the cost of an appraisal in a real estate transaction is subject to negotiation. A state certified real estate appraiser shall comply with generally accepted standards of professional practice in the development and communication of appraisals of real estate located in the state with generally accepted ethical rules of conduct as contained in the "Uniform Standards of Appraisal Practice". La. R.S. 37:3410. A real estate appraiser is subject to severe penalties and suspension of his license if (1) he knowingly makes any false representation to any party in developing or communicating an appraisal; (2) if he accepts an appraisal assignment when the employment itself is contingent upon the appraisal; (3) if the appraiser reports a predetermined analysis or opinion; or (4) where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment. La. R.S. 37:3409.

Clearly, Mr. Robert Russell, the appraiser relied upon by the School Board to properly appraise the property, is well aware of his ethical duty to fairly appraise the property regardless of who is requesting the appraisal or paying his fee.

¹The School Board recognizes that the appraisal was directed to the seller even though the School Board paid for the appraisal. The appraiser recognized that the School Board was the vendee.

C. Purchase of Land Directly From the Owners Was the Most Efficient And Effective Way To Transfer Title to the School Board.

The Auditor criticizes the School Board for acquiring the property from the actual owners of the property rather than from Aramco, Inc. While it is true that the property was acquired from the owners, the School Board was aware that Aramco, Inc. only had an option on the property and did not own it. The School Board was interested only in the particular property and the purchase price. The actual owners of the property were not discussed.

The School Board passed a resolution on April 24, 2002 authorizing the purchase of the 20 acre tract on Norris Ferry Rd. from Aramco, Inc. for \$300,000.00. The owners of the property at that time were Herold-Winks-Vallhonrat, L.L.C., Sidney Herold Lazard, Gus W. Colvin, Jr., Patty C. Hall, Jane Colvin Hubbard, and Crown Financial Company. The owners and Aramco, Inc. executed a 60-day option agreement for property described as a 38.79 acre tract on December 29, 2001. (The actual acreage in the tract appears to have been 36.2218 acres.) Two extensions of the option were granted and the option was in effect on April 24, 2002 and on June 19, 2002, the date of the School Board's purchase.

On June 19, 2002, Aramco, Inc. was a relatively dormant corporation not actively engaging in operations. A warranty deed from Aramco, Inc. would have offered little or no protection to the School Board. Instead, a warranty deed directly from the owners of the property to the School Board seemed to be the most efficient and effective way to handle the transfer of title. The issues material to the School Board's April 24, 2002 resolution were (1) the location and size of the tract and (2) the purchase price. Aramco, Inc., in effect, transferred its option to buy 20 acres of the tract to the School Board for payment of \$300,000.00.

D. Auditor's Finding Regarding Aramco's Purchase of Adjoining Tract Is Misleading.

The School Board was not aware of the contents of the option agreement before it voted on April 24, 2002. Furthermore, it was not aware that the developer bought the adjoining 16 acres until some time after it acquired the subject property. Therefore, we believe it is misleading for the Auditor to suggest that there is an appearance of impropriety because the developer purchased the adjoining 16 acres for \$25,000.

On December 29, 2001, Aramco, Inc. acquired a 60 day option to purchase what was described as a 38.79 acre tract but appears to have been a 36.2218 acre tract. Aramco, Inc. paid \$10,000 and \$20,000 to extend the option for two 60 day extensions. The \$10,000 payment was applied to the purchase price but the \$20,000 payment was not.

The experience and knowledge of the principals of Aramco, Inc. led to the corporation's acquiring a valuable property right in a very desirable location. Certainly, Aramco, Inc. acquired the option prior to the School Board's interest in purchasing lands in this vicinity. Aramco, Inc. had an option to buy the entire tract for \$325,000. In effect, Aramco, Inc. assigned a portion of the option to the School Board to enable it to purchase 20 acres for \$300,000. Aramco, Inc. then exercised its option on the remainder of the tract and, since the owners had already been paid \$300,000, the owners were entitled to only an additional \$25,000.

It is misleading to state that Aramco, Inc. bought the 16.2218 acre tract for \$25,000 or \$1,541 per acre as though this occurred in a third-party transaction totally unrelated to the December 29, 2001 option. In reality, the only reason Aramco, Inc. was able to acquire the 16.2218 acre tract for \$25,000 was because it paid valuable consideration for the option agreement. At a minimum, the \$20,000 paid for the option extension that was not applied to the purchase price should be included in the analysis.

E. David Volentine, the Appraiser Hired by the Legislative Auditor, Found That the \$15,000 per Acre Value Determined in the Russell Appraisal Report Was A Reasonable Estimate of the Fair Market Value of the Land.

Robert L. Russell was engaged to prepare the appraisal of the property. He appraised the property at \$15,000 per acre or \$300,000 for the 20 acre tract on April 22, 2002. He is an MAI and SRA certified appraiser with over twenty-five years experience. He served as President of the Louisiana Chapter of the Appraisal Institute in 2001 and as President of the Shreveport Chapter of the Appraisal Institute in 1983. He has been qualified as an expert witness qualified to testify with respect to appraisals in federal and state courts. His clients include the State of Louisiana, the City of Shreveport, Bossier City and all major banks in our area.

The Legislative Auditor retained David W. Volentine, MAI, to perform three tasks set out as follows:

1. *Review Mr. Russell's appraisal for compliance with the Uniform Standards of Professional Appraisal Practice.*

Mr. Volentine concluded Mr. Russell's appraisal was "in substantial conformity with generally accepted appraisal guidelines and procedures other than items indicated on the checklist." The substantive items included on the checklist included: (1) it would have been prudent for the School Board to obtain a separate appraisal prepared on its behalf, (2) the option to Aramco, Inc. should have been more fully explained, and (3) other comparable sales should have been included.

It is important to note that none of these 3 items affected Mr. Volentine's conclusion that \$15,000 per acre was a reasonable estimate of the fair market value of the property.

2. To develop an opinion as to whether the analyses, opinions and conclusions were appropriate and reasonable.

Mr. Volentine reviewed Mr. Russell's conclusion that the fair market value of the property was \$15,000 per acre on April 22, 2002. The Legislative Auditor's report fails to note that Mr. Volentine concluded Mr. Russell's opinion was appropriate and reasonable.

To reach his conclusion, Mr. Volentine reviewed comparables of his own choosing that were at a more comparable location and had a sale date closer to April 22, 2002. **Mr. Volentine clearly and unequivocally stated that "the \$15,000 per acre value determined in the [Russell] appraisal report is within the range indicated" by the comparables Mr. Volentine chose.** Mr. Volentine went on to state that, with respect to his own comparables, "adjustments would have to be made for physical differences in order to arrive at the value for the subject property using these comparables."

The adjustments for physical differences would most likely result in the value of the School Board property being even greater. As a result, Mr. Volentine's appraisal of the School Board property might well result in an appraised value higher than \$15,000 per acre. For example, Mr. Volentine's Comparable No. 1 is located on Wallace Lake Road. The property purchased by the School Board on Norris Ferry Road is in a more much highly developed area, resulting in an upward adjustment in the value of the School Board property for location. Furthermore, the property on Wallace Lake Road did not have access to utilities, while the Norris Ferry Road tract is served by all public and municipal utilities and services. This also would result in an upward adjustment in the value of the School Board property. Adjustments would also need to be made for the size differences between some of the comparables used by Mr. Volentine and the School Board property. Mr. Volentine's Comparable 4 is a 54.61 acre tract and his Comparable No. 5 is a 54.34 acre tract. The School Board property is a 20 acre tract. Because price per acre generally increases as the size of the tract decreases, this analysis would also indicate an upward adjustment in the value of the School Board property based on physical differences.

The end result is that both Mr. Russell and Mr. Volentine have concluded that the fair market value of the School Board property was at least \$15,000 an acre and Mr. Volentine suggested that it may have been even higher.

3. To develop the reasons for any disagreement.

Mr. Volentine's disagreement with Mr. Russell's appraisal was included in the checklist attached to his report.

The substantive items included on the checklist were: (1) it would have been prudent for the School Board to obtain a separate appraisal prepared on its behalf, (2) the option to Aramco, Inc. should have been more fully explained, and (3) other comparable sales should have been included.

It is important to note that none of these 3 items affected Mr. Volentine's conclusion that \$15,000 per acre was a reasonable estimate of the fair market value of the property.

F. The Appraisal of James A. Young, the Second Appraiser Hired By the Legislative Auditor, Valuing the 20 Acre Tract at \$170,000 Is Erroneous.

The Auditor claims that the fair market value of the 20 acre tract is \$170,000. The Auditor's statement is based on the appraisal prepared by James A. Young, the second appraiser hired by the Legislative Auditor. The School Board disagrees with James A. Young's conclusion. James A. Young **failed to use Comparables 1 and 2** which David Volentine, the Auditor's other appraiser, stated should have been considered.

Attached to Mr. Young's appraisal is Exhibit "H", the engagement letter from the Auditor to him. In that letter, the Auditor instructs Mr. Young to value the School Board property as of "the date of acquisition." The School Board authorized the purchase of the property on April 24, 2002 and closed the sale on June 20, 2002. Inexplicably, Mr. Young valued the property as of December 29, 2001, four months before the School Board authorized the purchase of the property and six months before the sale closed.

Mr. Young made four obvious errors in his appraisal: (1) he erroneously based his appraisal on the date of December 29, 2001 rather than either the date the School Board authorized the purchase or the date the sale closed; (2) he did not include Volentine Comparables 1 and 2; (3) he made no time adjustment for Young Comparables 1, 2 and 3; and (4) he made no size adjustment for Young Comparables 1 and 2.

On the attached plat, the School Board property is shown in green, Volentine Comparable 1 is shown in yellow, and Volentine Comparable 2 is shown in orange. Volentine Comparable 1 is a 14.35 acre tract approximately 1 ½ miles from the School Board property. It sold for **\$19,163.76 per acre** on April 12, 2002, just 10 days before the School Board approved the purchase of its 20 acre tract. Volentine Comparable 2 is a 21.84 acre tract approximately 1 mile from the School Board property. It sold for **\$15,579.91 per acre** on January 4, 2002, approximately three months before the School Board approved the purchase of its 20 acre tract. **These are the 2 most comparable sales to the School Board purchase in terms of proximity, size and date of purchase. Yet, Mr. Young did not include either of these tracts in his appraisal.**

With respect to Mr. Young's Comparables 1, 2 and 3, he failed to make upward adjustments in the value of the School Board property based on the passage of time between the dates of his comparables and the date of the School Board purchase. Specifically, Young Comparable 1 was dated June 30, 1999, Young Comparable 2 was dated July 13, 1999 and Young Comparable 3 was dated January 31, 2001. The School Board authorized the purchase in April 2002 and closed the sale in June 2002. The Norris Ferry Rd. area is the most popular area for development in Shreveport. A reasonable upward time adjustment in the value of the School Board property would range from 5-10% per year.

Also with respect to Young Comparables 1 and 2, he failed to make a size adjustment. Young Comparable 1 is a 54.610 acre tract. Young Comparable 2 is a 54.337 acre tract. The School Board property is a 20 acre tract. Price per acre generally increases as the size of the tract decreases. A reasonable upward adjustment in the value of the School Board property based on the size of the tract would be from 15-20%.

Finally, the School Board notes that the 20 acre tract at issue is uniquely suited for a school in this area of Caddo Parish. It is located on a well-maintained public street and is of a sufficient size to support a campus. The property would have required minimal site work, which would have kept the cost of construction down. The southeast Shreveport area is experiencing rapid growth, which affects both property size and the need for a public school. The ultimate test of the value of a tract is that there be a willing buyer and seller. The unique needs of a particular purchaser, such as the School Board's need for a 20 acre tract in this area as opposed to any other portion of Caddo Parish, must be given consideration.

II. MANAGEMENT'S RESPONSE TO FINDING OF IMPROPER SICK LEAVE RELATED PAYMENTS TO DR. SCHILLER

A. Summary of Response.

The leave payments made to Dr. Schiller were proper, as they were made to secure Dr. Schiller's cooperation and appearance in forty-five (45) lawsuits that were pending when he moved to Illinois. Without the payment, the School Board had no ability to require Dr. Schiller to return to Shreveport to help the School Board defend the lawsuits. Dr. Schiller's agreement to return to Shreveport without charge and to assist the School Board and the interim superintendent with matters in transition and with various legal matters and litigation in which he was involved and/or about which he had particular knowledge provided a valuable benefit and constituted valuable consideration for the payment. Therefore, the payment was not a donation of public funds.

B. Revised Statute 13:5108.1 does not apply to an employee of a School Board, and the Auditor's reliance on this statute is improper.

The Auditor claims that the School Board improperly paid Dr. Schiller \$24,585.00 in sick leave related payments. It is alleged that the School Board donated public funds to Dr. Schiller because "Dr. Schiller had an obligation and responsibility, as a former public employee when he is sued in his official capacity, to assist in litigation matters relative to his former employment, because of the indemnification which the State provides pursuant to La. R.S. 13:5108.1." The Auditor claims no additional compensation should have been paid to Dr. Schiller in satisfaction of this obligation. This conclusion is clearly wrong.

Revised Statute 13:5108.1 **does not apply to an employee of a School Board.** Part E(3)(a) of the statute specifically states the statute "does not include an official, officer, or employee of a ... school board." This provision has no application to a former school board employee. There is no state or federal law which could command an out of state resident to come to Louisiana to testify or assist with the defense of its former employer's legal matters.

C. Good and valuable consideration was given in return for the sick leave related payments to Dr. Schiller.

1. Dr. Schiller agreed to return to Louisiana on an as needed basis without charge to aid in the defense of pending and future litigation involving the School Board.

Louisiana law has no provision for compelling the appearance of an out of state witness at trial. Louisiana Revised Statute 13:3661 provides that witnesses in civil cases who reside or who are employed in the State may be subpoenaed and compelled to attend trials or hearings wherever held in this State. This statute does not provide for compelling the attendance of an out of state witness at a trial held in Louisiana. Further, Louisiana Code of Civil Procedure Art. 1352 provides that a witness who resides or is employed in Louisiana may be subpoenaed to attend a trial or hearing wherever held in Louisiana. However, this statute does not authorize the issuance of a subpoena to compel the attendance of an out of state witness at trial.

At the time of the negotiation of Dr. Schiller's termination, the School Board had forty-five (45) pending lawsuits. Dr. Schiller was named as a defendant in only one of those lawsuits. It was expected that Dr. Schiller would be needed both as a witness in several of the lawsuits, and to work with the attorneys representing the School Board to prepare the cases for trial. Once Dr. Schiller moved to Illinois, the School Board had no ability to compel Dr. Schiller to return to Shreveport to testify in those lawsuits, or to cooperate with the School Board in its prosecution or defense of the suits. Dr. Schiller's agreement to return to Shreveport as needed by the School Board to assist with

those lawsuits constituted valuable consideration for the School Board's agreement to pay him leave. Many of the lawsuits pending at his termination are still pending today, and his testimony may be required and he will be directed to come to Shreveport to assist the School Board in several of those lawsuits. The Auditor states that Dr. Schiller has only returned to Shreveport one time since his termination and that was for a meeting requested by the Auditor. The Auditor fails to explain, however, that he had no authority to compel Dr. Schiller's return to Louisiana. It was only because of the School Board's agreement with Dr. Schiller that he came to Louisiana to meet with the Auditors.

The payment of leave to Dr. Schiller was not a donation of public funds. The School Board had no ability to secure Dr. Schiller's cooperation or presence in Shreveport to work with the School Board's attorneys and to testify in the pending lawsuits. In return for the payment of leave, Dr. Schiller agreed to come back to Shreveport to work with the School Board, at the School Board's request, without charging the School Board for his time. Therefore, the payment was not a donation, but was payment of valuable consideration given for a service by Dr. Schiller.

The Auditor states that Dr. Schiller's contract did not provide for payment related to future "representation" in pending lawsuits. Although the Auditor characterizes the payment as one for "representation", it was not; the payment was for Dr. Schiller's cooperation and work in prosecuting and/or defending the School Board in its pending litigation. The protection of the interest of the School Board, and not of Dr. Schiller, was the motivation for the payment.

2. The School Board had the right to negotiate a severance package with the superintendent to effectuate an orderly transition.

The authority to select a parish superintendent of education and to provide for his salary and other benefits is vested in the parish school board provided only that the term of the superintendent's contract can not exceed that set forth in La. R.S. 17:54. The School Board can therefore provide in the contract for the annual leave the superintendent will have, the sick days to which the superintendent is entitled, and any other benefit agreed upon by the school board and superintendent. The contract can be modified, amended or terminated by mutual consent of the parties.

The sick leave statutes for teachers, bus drivers and other school employees, La. R.S. 17:1201, 17:1206, and 17:500, require that each employee be provided a minimum of ten (10) days of sick leave per year, which may be accumulated from year to year without limitation. A school board may, in its discretion, provide such additional sick leave, without loss of pay, or with such reduction in pay as it deems proper. Further, although the general rule is that the school system must pay to the employee or to his heirs or assigns a minimum of 25 days of unused sick leave upon death or retirement, the statutes clearly provide that the school board may pay for more than 25 days in its

sole discretion. Additionally, an employee may utilize unused sick leave days to purchase additional service for retirement purposes, and/or the employer (school board) is allowed to pay for them in connection with the development or negotiation of a severance package. La. R.S. 11:754. Furthermore, Attorney General Opinion 90-416 provides that a school board is required to pay a terminated superintendent for a minimum of twenty-five (25) sick days, although in its discretion it may compensate him for more.

The Auditor correctly states that in a letter dated July 30, 2002, Dr. Schiller notified the School Board that he had been offered a job as Superintendent of Education for the State of Illinois. In that letter, he indicated that he would resign his position with the School Board on August 2, 2002, and retire from the State of Louisiana on December 31, 2002. This letter ultimately modified the employment contract between the School Board and the Superintendent regarding the services to be rendered by Dr. Schiller as consideration for his receipt of accumulated sick leave.

However, prior to the July 30, 2002 letter, Dr. Schiller sent a proposal to the School Board on July 28, 2002. In that letter, Dr. Schiller advised as follows:

"Please be advised of my resignation/retirement from Caddo Parish and the State of Louisiana on or about December 31, 2002. The exact date will be based upon the use of accumulated leave days. With the onset of the new school year, I believe that it is vital to the district that we facilitate a smooth transition. I would like to recommend that I transfer my duties to an Interim Superintendent on or about August 5, 2002. Should you wish to effect the transition sooner, I would be amenable." (emphasis added)

The July 28, 2002 correspondence caused concern among the board members. In particular, it appeared that Dr. Schiller wanted to resign as superintendent on December 31, 2002. This also presented a legal problem in that Dr. Schiller, as superintendent of schools, was required to devote his entire time to the office of superintendent of schools. La. R.S. 17:54.

On July 30, 2002, Phillip Guin, Board President, and Reginald Abrams, General Counsel for the School Board, met with Dr. Schiller regarding the contents of the July 28, 2002 letter. Dr. Schiller advised that he believed he was entitled to his vacation pay, his bonus pay, as well as his sick time under his contract. He advised that he was not under any time restraints and did not have to report to his new job as Superintendent of Education for the State of Illinois at any particular time. He also stated that he had been given great latitude by the State of Illinois, and could begin the new job at any time. Dr. Schiller was advised that in accordance with his contract his accumulated sick time could only be taken if he was sick. In response, Dr. Schiller advised that he would then remain as Superintendent and begin to take his time as needed.

At that point, it appeared that Dr. Schiller believed he was entitled to his sick time as well as all other benefits. He also indicated that he would continue to work for the School Board as superintendent even though he was going to take another job as the Superintendent of Education for the State of Illinois at some time in the future. The School Board was therefore faced with a superintendent who had a contract of employment through December 31, 2003 that the School Board was required to honor. The School Board would have to allow Dr. Schiller to remain as superintendent or discharge him for **good and just cause** in accordance with the laws of the State of Louisiana and Paragraph 12 of his employment contract. "Cause" in his contract was defined as neglect of duty, breach of contract, dishonesty, incompetence, inefficiency, unworthiness, or any other conduct which was seriously prejudicial to the school system. It was quite clear that Dr. Schiller, as a lame duck superintendent, could continue to perform as superintendent and not be as effective as he was in the past, yet not meet the criteria for termination for "cause" under the contract. It was in the best interest of the School Board to effectuate an early termination of Dr. Schiller's contract, as such would be beneficial to the School Board in preparing, negotiating, and providing for its future administration.

Dr. Schiller then offered his July 30, 2002 termination proposal which provided in pertinent part:

"Please be advised that I will tender my resignation as superintendent from Caddo Parish effective August 2, 2002 and retirement from the State of Louisiana on December 31, 2002, if the CPSB agrees to the following: allow use of all accumulated leave and the conversion of Provision #6 of the contract to accumulated leave, beginning August 2, 2002. Further, I will agree to provide ongoing services as an employee of Caddo Parish on an as needed basis to facilitate the transition, ongoing consultation, and for pending and future legal matters. These services will be provided in lieu of any further payment with the exception of customary expenses."

The Board was advised by its counsel that payment of accumulated sick time was not provided for in Dr. Schiller's contract unless he died or retired. Dr. Schiller disagreed. The School Board was advised that accumulated sick leave could be paid to Dr. Schiller in consideration for other services he agreed to render on an as needed basis, which included facilitation of transition, ongoing consultation, and assistance with pending and future legal matters.

Paragraph 23 of Dr. Schiller's contract provided in pertinent part:

"23. CHANGES TO CONTRACT

In addition of the aforementioned provisions, it is mutually agreed by the parties to this contract that the Board and the Superintendent may at any time modify, amend or terminate this contract by mutual consent..."

This provision allowed the School Board and Dr. Schiller to modify the terms of Dr. Schiller's employment agreement at anytime by mutual consent. The School Board voted to accept his proposal, and by so doing, modified his contract pursuant to paragraph 23.

Dr. Schiller had served as the chief administrative officer for Caddo Parish Schools since 1999. It was prudent for the School Board to negotiate a smooth transition for the school system. If Dr. Schiller had left his position without the above agreement, the school system may have been placed in jeopardy. Furthermore, it was important to have Dr. Schiller agree to come back to Shreveport to testify on behalf of the School Board in pending litigation as needed without additional costs.

D. Dr. Schiller's Contract Provided That He Could Designate A Portion of His Salary Be Paid Into a Tax Deferred Annuity Program.

The Auditor claims that Dr. Schiller was improperly paid \$5,147.00 by having the School Board deposit the employer's share of contributions to Teacher's Retirement (\$4,640.00) and Medicare (\$507.00) into his tax deferred annuity. The School Board does not deny that Dr. Schiller told the Finance Director, Ben Wreyford, to add the employer's portion of the Teacher's Retirement and the employer's portion of Medicare to Dr. Schiller's tax deferred annuity. However, the School Board denies that Mr. Mike Powell, President of the School Board during that time, approved additional portions being added to Dr. Schiller's annuity. As indicated in the preliminary report, Mr. Powell was not aware that the employer's share of Teacher's Retirement and Medicare were being added to the payments to Dr. Schiller's annuity. The preliminary report indicates that Mr. Powell approved a different form of payment without official School Board approval. This is incorrect. Dr. Schiller's employment contract, which was approved by the School Board, provides as follows in Paragraph 8(B):

"8. INTERIM AND TAX DEFERRED ANNUITIES

...

- B. If the Superintendent desires to participate in a tax-deferred annuity program, the School Board agrees to withhold and apply thereto that portion of the Superintendent's salary designated by him to be so applied in accordance with appropriate policies and procedures of the Board."

As stated in Paragraph 8(B) of the Superintendent's contract, the School Board allowed Dr. Schiller to agree to withhold and apply a portion of his salary designated by him to a tax-deferred annuity program.

The September 11, 2000 memo, from Mike Powell to Ben Wreyford provides as follows:

"...

RE: Salary

At the July, 2000 Caddo Parish School Board meeting, the board voted affirmatively to increase Dr. Schiller's salary.

Approval is given for Dr. Schiller to exercise the following options:

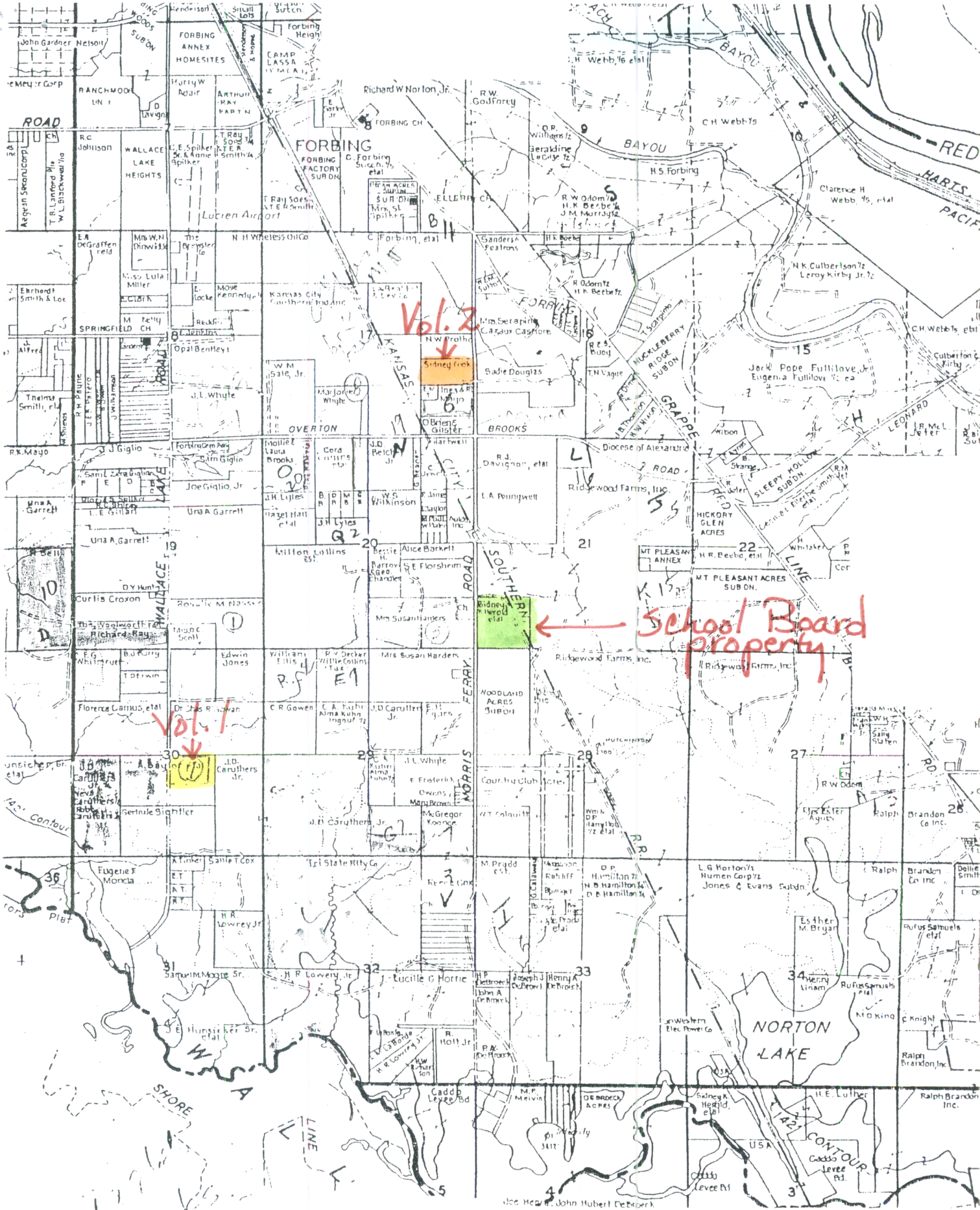
- (1) Either apply the increase to the base salary, along with associated contributions to Louisiana Teacher Retirement System and Dr. Schiller's retirement account (as per contract between Caddo Parish School Board and Dr. Schiller), or
- (2) apply it to Dr. Schiller's retirement account on a semi-annual basis."

Dr. Schiller circled and initialed Option (2) "apply it to Dr. Schiller's retirement account on a semi-annual basis".

Paragraph 8(B) of Dr. Schiller's employment contract gave him the right to designate how he would be paid his salary increases, including designating a portion of his salary as deferred income into his personal annuity. "Option 1" in the September 11, 2000 memo would provide that his increase would go to his base salary. "Option 2" appeared to apply to Dr. Schiller's retirement account, which obviously did not mean the teacher's retirement account, but was Dr. Schiller's tax deferred annuity as provided for by Dr. Schiller's employment contract.

Therefore, when Mr. Powell sent the September 11, 2000 memo, he merely approved what the School Board had already agreed to in the employment contract under Paragraph 8(B). Accordingly, the statement in the report that Mr. Powell approved a different form of payment without official School Board approval is in error.

Dr. Schiller's employment contract refers to his voluntary participation in an annuity program by reducing his earnable compensation in the same manner as any other School Board employee. If the pay raises and performance bonuses had been paid as earnable compensation, then the School Board would have paid retirement and Medicare on those amounts. The amount paid to Dr. Schiller's annuity is the same amount that would have been paid to the Teacher's Retirement System and Medicare if the raises and performance bonus had been treated as earnable compensation. The cost to the School Board was the same in either case. No additional cost was incurred by adding these employer equivalents to the base amounts, and the retirement income would be calculated on the base salary as initially specified in the contract. For example, if Dr. Schiller were to retire, he would be paid retirement income based on his base salary and not based on the amount placed in his annuity. If either the Louisiana Teacher's Retirement System or the IRS requires the School Board to pay the above questioned amounts to their respective agencies, then a recommendation will be made to the School Board to seek reimbursement from Dr. Schiller.



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