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## COMPLETE ANALYSIS OF WIN-WIN AGREEMENT

By Jeffrey A. Rich

Ten School districts were parties to the 1986 and 1992 Win-Win Agreements. While commonly referred to as "Win-Win" agreements, each of these agreements is an "annexation agreement" under R.C. 3311.06(F). The 1992 Agreement is titled "Extended Joint Agreement Among and Between the Boards of Education of Certain School Districts in Franklin County, Ohio."

A brief history of the 1986 and 1992 annexation agreements is as follows.

### (1) Transfer of School District Territory On Annexation By A City

Prior to 1955, whenever a city annexed territory within a township, the territory was automatically transferred to the city school district. Prior to 1955, R.C. 3311.06 provided, in part, as follows:

When territory is annexed to a city or village, such territory becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part.

In 1955, this section was amended to provide that any future annexation by a city of territory within a township would not cause the automatic transfer of the territory to the city school district, but rather the transfer required the approval of the State Board of Education. This 1955 amendment to R.C. 3311.06 provided as follows:

When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory shall become a part of the said city school district or the school district of which the village is a part only upon approval by the State Board of Education.

The City of Columbus annexed substantial parts of the surrounding townships after 1955, but much of the territory was never transferred to the Columbus City School District pursuant to R.C. 3311.06. However, at any time, the Columbus School District could have petitioned the State Board of Education to transfer all or any part of the annexed territory to the Columbus School District under R.C. 3311.06. While it is not known how the State Board of Education would have reacted to such a request, under some circumstances the State Board has applied a general rule that favors the transfer of annexed territory to the city school district.

The transfer of the annexed territory in Franklin County became an issue in the mid-1980's. Consequently, negotiations began between the suburban school districts and the Columbus School District and resulted in the Annexation Agreement of May 20, 1986. The General Assembly then amended R.C. 3311.06 to authorize school districts to enter into "annexation agreements."

(2) 1986 Annexation Agreement

The 1986 Annexation Agreement contained the following provisions:

- (A) The Agreement allowed the suburban school districts to retain the territory that had been annexed by the City of Columbus prior to May 20, 1986 (the Agreement refers to this territory as 'Annexed Territory');
- (B) The Agreement provided that territory annexed by the City of Columbus after May 20, 1986, would be automatically transferred to the Columbus School District, unless otherwise agreed to by the districts involved (this territory is referred to as 'Future Annexed Territory'). Certain identified territory was protected from transfer to the Columbus School District when eventually annexed by the City of Columbus (this is referred to as 'protected territory');
- (C) The Agreement provided for an annual payment by each suburban school district (except Worthington) to the Columbus School District, that was equal to one percent of the annual non-inflationary increase in the assessed value of commercial, industrial, and public utility real and personal property, and tangible personal property used in business, located in the 'Annexed Territory' (territory that was not transferred to the Columbus School District).
- (D) The Agreement provided for an annual payment by the Columbus School District to four suburban districts (Canal Winchester, Grove-Port Madison, Hamilton, and Plain Local) of four-tenths of one percent (0.4%) of the assessed value of the types of property referred to in paragraph (C), above, in any of the 'Future Annexed Territory' that was transferred to the Columbus School District, so

long as the 'pupil valuation' of each such district was 'less than the pupil valuation of the Columbus School District.

The Ohio General Assembly funded the first three or four annual payments to be made by the suburban school districts to the Columbus School District under paragraph (3), above. When the General Assembly stopped funding the annexation agreement payments to the Columbus School District, the 1986 Annexation Agreement required all of the districts to enter into negotiations to work out the procedure for the payments that were then to be made by the suburban school districts themselves.

In the course of the preliminary negotiations, it was discovered by our law firm, then known as Teaford, Rich & Wheeler, that parts of the 1986 Annexation Agreement dealing with these payments did not correspond to the amendments made to R.C. 3311.06 back in 1986, which had authorized annexation agreements to be entered into. For instance, the statute contained a formula for calculating the payments to be made by the suburban districts that was not consistent with the formula that was set forth in the Annexation Agreement and the Agreement contained minimum payments that the statute did not authorize.

Consequently, an Extended Joint Agreement was entered into on June 29, 1992, which made some slight changes in the payment formula and extended the original agreement in other respects to June 30, 1998. R.C. 3311.06 was then amended by the General Assembly in 1993, to allow for the changes that were made in the payment formula in the 1992 Extended Joint Agreement.

### (3) Analysis Of 1992 Extended Joint Agreement

The 1992 Agreement continued the provisions of the 1986 Agreement prohibiting the transfer of territory annexed to the City of Columbus prior to May 20, 1986, and providing for the automatic transfer of territory that is annexed by the City of Columbus after that date. The 1992 Agreement also continued the provisions relating to "protected territory." The 1992 Agreement also provided a more detailed formula for determining the amounts of money to be paid each year by each suburban district to the Columbus School District. The changes made by the 1992 Agreement were consistent with the original formula, and appear to have been clarifications and corrections to the original formula.

(A) Prohibition of Transfer of Annexed Territory - Section 7 of the 1992 Agreement provides that none of the "Annexed Territory" will be transferred to the Columbus School District. As indicated above, "Annexed Territory" is that which was annexed by the City of Columbus prior to May 20, 1986, but was never transferred to the Columbus School District. This section reads as follows:

Section 7. Disposition Of Annexed Territory. Unless otherwise provided herein, Annexed Territory shall not hereafter be transferred to the Municipal School District for school purposes.

(B) Automatic Transfer of Future Annexed Territory - Section 8 of the 1992 Agreement includes the same provision as the 1986 Agreement as to "Future Annexed Territory." This section provides for the automatic transfer to the Columbus School District of any territory annexed to the City of Columbus after May 20, 1986, except for certain protected territory, and unless otherwise agreed to by the boards of education involved. This section reads, in part, as follows:

\*\*\* Future Annexed Territory shall be automatically transferred for school purposes to the applicable Municipal School District [Columbus School District], except that Future Annexed Territory consisting of the property described in Exhibits A1 through A7 attached to and made a part of this Agreement [protected territory], which is presently located with the School Districts identified on those Exhibits, shall not hereafter be transferred for school purposes to a Municipal School District [Columbus School District]

The 1992 Agreement, as did the 1986 Agreement, provides that the suburban school district and the Columbus School District could negotiate and agree not to transfer a part of Future Annexed Territory within 90 days following the annexation.

(C) Payment Formula - The 1992 Agreement continues to provide for the same formula as did the 1986 Agreement for the calculation of the annual payments to be made by the suburban school districts to the Columbus School District. However, the 1992 Agreement provided a much more specific and much more detailed description of the components that are taken into account by the formula. These payments are required to be made by the suburban districts on November 15 and March 15 of each fiscal year.

Both the 1986 Agreement (section 7) and the 1992 Agreement (section 10) provide that each suburban school district will annually pay to the Columbus School District "one percent" of the:

\*\*\* non-inflationary increases in the assessed value of Commercial, Industrial, Public Utility Real, Public Utility Personal, and Tangible Personal Property in the 'Annexed Territory' (territory annexed by the City of Columbus prior to May 20, 1998, but not transferred to the Columbus School District).

However, the 1992 Agreement provides a more detailed formula for determining this annual sum (Section 10), which is as follows.

The "Base Year" values are those from 1986, and the 1992 Agreement sets forth these values in Exhibit C. The "Growth Year" is the current year for taxation purposes. Payments to be made, for instance, during fiscal year 1997 (July 1, 1997 to June 30, 1998) will be based upon property values for tax year 1996, when compared to the values for tax year 1986. The valuation figures for the current or Growth Year are to be taken off the real property abstract and from the personal property and public utility property abstracts that are prepared by the Franklin County Auditor each year.

The annual payments equal one percent of the "increase in assessed valuation," which is total of the following amounts:

(1) Increase in general personal property - The assessed value of tangible personal property for the current year minus the assessed value of such property for the 1986;

(2) Increase in public utility personal property - The assessed value of public utility personal property for the current year minus the assessed value of such property for 1986;

(3) Increase in commercial and industrial real property - The assessed value of commercial and industrial (this will also include public utility) real property for the current year minus the assessed value of such property for 1986; but from this sum are subtracted the following:

(a) the increase in values due to each 6-year reappraisal and 3-year valuation update of this property conducted by the County Auditor from 1987 onwards, and

(b) any changes in value for any such year due to other annexation adjustments taking place within the territory from 1987 onwards.

By subtracting out the increases in value due to the 6-year reappraisal and the 3-year update of real property, the remaining values are, essentially, the "non-inflationary" increases in value in the Annexed Territory. This means that the real property part of the formula generally takes into account only new improvements (new buildings and other improvements to land) added to commercial and industrial property in the Annexed Territory since 1986. Because of the way it is written, however, the formula will also reflect other changes in commercial and industrial real property values due, for instance, destroyed property being removed from the tax list, real property tax exemptions taking place, and other miscellaneous changes that might take place in the value of property in the Annexed Territory from year to year. These are not anticipated to represent significant sums.

(D) Maximum Amount of Payments - Section 19(d) of the 1992 Agreement provides for a limit on the amounts of payments made by any suburban school district to the Columbus School District, which are referred to as "Cap Amount(s)." These Cap Amount(s) are the following: for fiscal 1995 and 1996 - \$500,000; for fiscal 1997 and 1998 - \$600,000; for fiscal 1999 and 2000 - \$700,000; for fiscal 2001 and 2002 - \$800,000; for fiscal 2003 and 2004 - \$900,000. For fiscal years after 2004, the Cap Amount is \$900,000, plus an inflationary factor that is based upon the Consumer Price Index

(E) Columbus Payments To Four Districts - The 1992 Agreement also continued the requirement of the 1986 Agreement that the Columbus School District annually make payments to four suburban districts (Canal Winchester, Grove-Port Madison, Hamilton, and Plain Local) of four-tenths of one percent (0.4%) of the assessed value of the relevant types of property in any of the 'Future Annexed Territory' that was transferred to the Columbus School District, so long as the 'pupil valuation' of each such district was 'less than the pupil valuation of the Columbus School

District. The 1992 Agreement provides that these payments to any particular school district cannot exceed the Cap Amount referred to in paragraph (D), immediately above.

(F) Termination Period - The 1992 Agreement provides that the Agreement will continue in effect until June 30, 1998, and for 6-year periods thereafter, unless amended by mutual agreement of all of the boards of education, or unless terminated by one or more of the parties under Section 6 of the Agreement.

Under Section 6, any school district may terminate "its participation" in the Agreement by giving notice to all of the other district that are parties to the Agreement between April 1 and May 31, 1998. As of June 1, 1998, that school district then "shall cease to be a party to this Agreement" under Section 6(b) of the Agreement.

If any suburban school district does terminate its participation in the 1992 Agreement, then the Columbus School District also has the right to terminate the entire Agreement by giving notice to the other school districts. Section 6(d) of the Agreement also provides the Columbus School District can terminate the Agreement (i) if the statutes would provide a limit on the amount of payments required to be made by the suburban districts; (ii) if the amount of payments to be made by the suburban districts are "altered or reduced in any way;" and (iii) if any suburban district required to make payments to Columbus is relieved of that obligation.

However, Ohio Rev. Code Sec. 3311.06(F) states as follows:

An agreement entered into under this division may be altered, modified, or terminated only by agreement, by resolution approved by the majority of the members of each board of education, of all school districts that are parties to the agreement, except that with regard to any provision that affects only the urban school district and one of the other districts that is a party, that district and the urban district may modify or alter the agreement by resolution approved by the majority of the members of the board of that district and the urban district. Alterations, modifications, terminations, and extensions of an agreement entered into under this division do not require approval of the state board of education, but shall be filed with the board after approval and execution by the parties. (emphasis added)

Thus, because the law takes precedent over the agreement as the law could not exist without the enabling legislation allowing for agreements, it would appear that a majority of the signators must agree before one Board can withdraw from the agreement.

(G) Shared Educational Programs - The 1992 Agreement continued the shared educational programs and services provision of the 1986 Agreement.