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March 17, 2011

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RE: Applicability of Budget Validation Referendum
Requirements and Procedures in the Town of Kittery

Dear Jon and Allyn:

You have requested that we advise as to the applicability of various regional school unit budget validation referendum requirements and procedures to the Town of Kittery. We have tried to identify and then respond to each of the issues that have been raised. For purposes of organization, our responses first address general issues and then address specific issues.

A. General Issues.

1. Must Kittery use the budget validation referendum?

Response: Yes. Kittery is a “municipal school unit.” *See* 20-A M.R.S.A. §1(19) (defining “municipal school unit” to be a state-approved unit of school administration composed of a single municipality). Subject to various exceptions, section 2307 of Title 20-A provides that municipal school unit budgets “must follow the same school budget requirements as regional school units.” Regional school units (“RSUs”) are required to follow the requirements for a budget validation referendum (“BVR”) unless and until the RSU voters adopt a referendum vote to discontinue the process. The vote to discontinue the BVR process occurs every three years. Last spring, Kittery voted not to discontinue the BVR process.

We note that in many respects, the statutory BVR requirements are inconsistent with the budget approval process of the Kittery charter. Section 2307, however, applies “[n]otwithstanding any other law.” Thus, to the extent the charter and the BVR statute conflict, the statute controls. Certain interpretational difficulties, however, do exist.

First, in some instances a town charter and the statute may have different, but not necessarily directly conflicting, requirements. In these cases, one must determine whether to apply both charter and statutory requirements when possible, or whether the directive of section 2307 to “follow the same school budget requirements” as RSUs means that charter school budget requirements, not directly in conflict with the statute, may be ignored.

Second, one must determine whether “same school budget requirements” extends to merely procedural details, or whether it refers only to substantive requirements. This is particularly at issue when the procedure in question applies because of the existence of multiple towns in an RSU.

For example, section 1486 of Title 20-A requires that the validating RSU referendum must be called by means of a warrant issued by the school board, and that the procedures of sections 1502 and 1503 must be followed. Sections 1502 and 1503 require that the RSU board issue a warrant to an RSU resident; that the RSU resident must deliver the warrant to the town clerks within the RSU; that the clerks must call the municipal officers to meet; and that the municipal officers in each town must countersign the warrant and have it posted. These sections include other procedural requirements as well, such as requirements that the school board prepare ballots and specimen ballots to deliver to the clerks, and that the school board meet following the referendum to compute and declare the referendum results. *See* 20-A M.R.S.A. §1486 (incorporating provisions of sections 1502 and 1503 of Title 20-A).

Such statutory procedures must exist for RSUs, however, because in a multiple town school unit, there must be a supervisory body - to ensure that the referendum is called and conducted on the same date and in the same manner throughout the RSU, to tally the results from the several towns, and to declare the outcome. Such procedures, however, have no apparent role in a municipal school unit consisting of a single town with an established procedure for calling and conducting a referendum vote. Thus, arguably, “same school budget requirements” refers only to the substantive requirements of the BVR – such as the use of defined cost centers, the school board’s recommendation of a budget to the budget meeting, the budget meeting approval of the school budget, an expedited validating voter referendum with certain limitations on absentee ballot voting, statutory transfer authority, procedures to follow when the referendum fails, and procedures to reconsider use of the BVR every third year – and not to merely procedural requirements with no apparent function in the absence of multiple towns.

In our responses to some of the questions below we confront these types of interpretational issues. In such cases, the matter may not be free from doubt. We note, however, that our office confers frequently with the legal staff at Maine Municipal Association on such interpretational issues, and our views are generally consistent with those of the MMA attorneys. We further note that our responses are consistent with the practices of other comparable school units throughout the state.

2. Must the Kittery school committee approve and present the school budget to the council in the “cost center budget summary format”?

Response: Yes. Section 1485 of Title 20-A requires that the budget be approved and presented in the “cost center summary budget format.” This is a designated line item format that is aligned with the Department of Education’s reporting requirements. It consists of 11 discreet expenditure articles, as many as three articles that may be used to raise local tax dollars, and a budget summary article. The three articles that may be used to raise funds are the “EPS article,” which requires that a certain level of funds be raised locally to qualify for a designated amount of state funding; the “non-state funded school construction debt service article,” which is used to raise local dollars for school construction¹ debt service that does not qualify for state subsidy purposes; and the “additional local funds article,” which is used to raise funds above the amounts raised through the other two articles used to raise funds. The budget summary article essentially is a restatement of all expenditures for the school budget from all revenue sources.

3. Is Kittery subject to the BVR requirements for calling and conducting a New England town meeting for the voters to approve the school budget?

Response: No. Although section 2307 of Title 20-A generally requires Kittery to follow the BVR requirements, one exception is that the budget proposed by the school committee is first approved at a Kittery council meeting instead of a New England town meeting of the voters. This council meeting is deemed to be the “budget meeting,” and thus replaces the budget meeting of the voters used by regional school units. *See* 20-A M.R.S.A. §2307(1) (RSU budget meeting is replaced by council meeting in municipal school units whose charters confer budget approval authority on council).

Further, since a New England town meeting is not required, we believe that the various statutory requirements related to a town meeting also are not required. These include the requirements of section 1482-A, “Budget Meeting,” and section 1482-B, “Annual Budget Meeting Procedures.” Thus, for example, these statutes require that the budget meeting must be called by warrant, that a moderator must be elected to conduct the meeting, that voting lists must be used to determine the number of voters, and that written ballots must be used if 10% of the voters so vote. In our view, however, these requirements do not pertain to the BVR in Kittery, in which the New England town meeting is replaced by a council meeting for school budget approval.

However, while the matter is not free from doubt, we believe it is prudent to assume that the BVR requirement that the school board prepare and “make available” a “detailed budget document” applies to charter municipality municipal school units such as Kittery. *See* 20-A M.R.S.A. §1482(2) (requiring that detailed budget document be made available at least 7 days prior to budget meeting) and §1483(describing additional requirements for inclusion in budget document). Arguably, the purpose of that document is to inform the voters who gather at the

¹ School construction projects are also referred to “major capital” projects, as distinguished from renovation, or “minor capital,” projects. *See* 20-A M.R.S.A. §15672(18-A) (defining “major capital costs”) and §15672(20-A) (defining “minor capital costs”).

budget meeting to act on each cost center and the total budget, and this is not necessary when the budget meeting is a council meeting. The contrary view, however, is that the purpose of the detailed budget document in a charter municipality with a council budget meeting is to inform the council for purposes of its consideration of the budget and to inform the voters for purposes of the validating referendum. The statute does not specify the level of “detail” required for this budget document, beyond the cost center and summary budget information, but we believe the practice in RSUs is to provide breakdowns of amounts within the various expenditure cost centers, as well as breakdowns of various revenue sources. Also, we note that the detailed budget document must include a statement to the effect that the estimated amount of the employer share of teacher retirement costs is paid by the State and is not included in the budget. 20-A M.R.S.A. §1483(1)(C). In any case, if the Kittery school committee previously has not made this “detailed budget document” available, it may make the document available by means of the school department website, with copies available at the school administrative office and sent to the council. This would avoid a possible dispute over whether the requirement applies in Kittery even though the budget meeting is a council meeting.

4. Is Kittery required to conduct a referendum vote to “validate,” or ratify, the council’s action on the school budget?

Response: Yes. The referendum occurs within 30 days of the budget meeting. It consists of a single question that essentially asks the voters if they favor approving the school budget for the upcoming school year that the council adopted. In order to assist the voters, the school committee must cause a notice to be posted at the polling places that describes the proposed and approved school budget. If the result of the referendum vote is “yes,” the school budget is finally approved. If the vote is “no,” the school committee must present a new budget to the council for approval not less than 10 days after the referendum vote. The process repeats itself until the council approves a budget that is ratified at referendum by the voters. 20-A M.R.S.A. §1486.

If July 1 passes without a successful referendum, the last budget approved by the council and sent to referendum is the interim budget. If town officials determine that taxes must be committed even though a school budget has not been ratified, the assessor may commit the taxes on the basis of the last budget approved by the council and submitted to referendum. 20-A M.R.S.A. §1487.

B. Specific Issues

5. Must the school committee vote on the school budget it submits to the council?

Response: Yes. The school committee is vested with the authority and duty to manage the schools, 20-A M.R.S.A. §1001, and it is difficult to argue that the preparation of the recommended school budget is not a core function of school management. Further, in our opinion the school committee is a public, governing body, and therefore must approve its recommended budget by voting. We further note that when the maximum state and local spending target (the “spending target”) is exceeded, Maine statute expressly requires that the

school committee vote on the additional amount to be raised in a separate vote, and passage requires a majority of the full school committee membership, even if all the members are not in attendance at that meeting. 20-A M.R.S.A. §15671-A(5)(B)(1).² The express statutory requirement of a “separate vote” on this article strongly suggests that the school committee must vote to approve the rest of the school budget as well. In our experience, a school committee either will adopt a vote to approve the school budget (containing separate cost center amounts and a summary budget amount) and adopt a separate vote on the additional local funds article (if that article causes the spending target to be exceeded), or else a school committee will adopt separate votes on each of the proposed cost center articles and on the summary budget article.

6. Is a detailed budget document required?

Response: Uncertain. The matter is doubtful because there is no budget meeting of the voters. See our response to question 3 above.

7. Does the school committee issue a warrant to call the “budget meeting” of the council?

Response: No. An RSU school board issues a warrant to call a New England-style town meeting in one location of RSU voters gathered from multiple towns. As previously explained, pursuant to section 2307(1) this meeting is inapplicable in Kittery, and is replaced by a council meeting. In our view, the correct process to call the council meeting is not the warrant procedure for calling a New England-style meeting of voters residing in multiple towns. Rather, the council should call this meeting under the procedures of its charter. See our response to question 3 above, and our general discussion of interpretational issues in our response to question 1 above.

8. Does the school committee issue a warrant to call the BVR referendum?

Response: No. In our opinion, a validation referendum must be held, as described in our response to question 4 above, and the expedited referendum timeframes must be followed, since the statute requires that the process must continue to repeat itself until a successful referendum vote occurs. However, we believe the requirement of a referendum warrant signed by the RSU school board is one of the procedural requirements necessary in the context of a multiple town school unit, and not outside of that context in a single town municipal school unit. Accordingly, we do not believe that the legislature intended to change the method by which municipal school units call their referendums, and we believe the Kittery council should call the validation referendum. See our general discussion of interpretational issues in response to question 1 above.

9. Must the budget be presented to the council in articles, and does the statute mandate particular language for the three revenue articles and for the budget summary article?

Response: Yes. The statutes refer to “articles” throughout. It is true that a New England town meeting takes action on “articles,” whereas, depending upon its charter requirements, a

² See footnote 3 below for council voting requirement for this article when the spending target is exceeded.

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council takes action on “resolves,” “orders,” and “ordinances.” Nonetheless, in the case of the three revenue articles and the summary article, the statute expressly provides for the municipal council to approve “articles” and establishes the forms of those articles. *See* 20-A M.R.S.A. §15690 (providing required statutory language for the three revenue “articles” and the budget summary “article”).³ *See also* §15671-A(5)(B)(2) (requiring council approval of “article”).⁴ To act upon “articles” in a manner that does not contradict charter requirements for the form of council action, a municipal council generally will fashion an order or resolve (depending upon the requirements of its charter) that sets forth the “articles.” For example, “*Be it ordered, that the following school budget article(s) are approved: _____.*”

10. Must the school committee supply high-performing schools data for comparison purposes?

Response: **Not at this time.** Pursuant to section 1485(1)(E) of Title 20-A, a school board must supply budget data of a high-performing school “of a size and demographic profile determined by the department that is comparable to the [municipal school unit].” However, to our knowledge, the Maine Department of Education has not yet determined the high-performing school or schools that should be used for this purpose. Until the Department of Education provides this information, Maine schools are not able to provide this comparative data.

I trust that this is responsive to your inquiry. Please do not hesitate to call if I may be of any further assistance.

Very truly yours,



E. William Stockmeyer

EWS/plf

³ Section 15690 provides that the language used for the specified articles must be “substantially” in the forms provided by statute.

⁴ Section 15671-A (5)(B)(2) also provides that if the state and local spending target is exceeded, the council must act on the article by a recorded vote, and passage requires a majority of the full council membership.