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Via Email

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Richard M. Smith, Ed.D.
Superintendent of Schools
Martha's Vineyard Regional School District
4 Pine Street
Vineyard Haven, MA 02568

PRIVILEGED AND CONFIDENTIAL

Re: Memorandum of Agreement ("MOA") Proposed by Member Towns

Dear Superintendent Smith:

This letter is in response to a request from the Martha's Vineyard Public Schools (the "District") for an opinion from this office regarding the District's ability to enter into an MOA with the Member Towns which would, under certain circumstances, alter the manner in which the District's annual budget is submitted to and approved by voters of the District.

The proposed MOA, in its current form, would require that in the event that the amount of the proposed budget for any year exceeds the amount of the prior year's budget by more than 2.5%, the District would be required to submit the funding requests for certain operational and capital expenditures to voters at Town Meeting in the form of individual warrant articles, which would allow voters at Town Meeting to consider and determine whether or not to fund those particular operational and capital expenses on an individual basis. In addition, budget items included in those individual warrant articles would have to be approved by all six (6) member towns of the District, rather than by vote of two-thirds of the member towns, as would otherwise be required for approval of the District budget.

Legal Analysis/Discussion

The budget approval process for regional school districts is dictated by the statutory scheme established by the Massachusetts legislature and the regulations promulgated thereunder by the

Department of Elementary and Secondary Education (“DESE”). Because the budget approval process is specifically detailed in statute and regulation, absent special legislation, a regional school district cannot alter the established processes and procedures.

It is our legal opinion that the terms of the proposed MOU in its current form violate applicable law and regulation.

Massachusetts statutes are clear that, subject to the power of town meeting to determine the overall dollar amount appropriated to the school budget, the authority to set district budgets, determine expenditures within the budget, and set district policies rests firmly in the power of the independent school committee. See, *M.G.L. c. 71, §34* and *§37*. Pursuant to *M.G.L. c. 71, §34*, while town meeting sets the overall appropriation to a school district’s budget and may make nonbinding recommendations as to expenditures, town meeting “may not limit the authority of the school committee to determine expenditures within the total appropriation”. *M.G.L. c. 71, §34*. A structure such as the one incorporated in the proposed MOU, which calls for multiple warrant articles appropriating funds for school purposes in a piecemeal fashion and giving town meeting the power to identify and limit the permitted uses of those appropriated funds, would clearly violate the terms of *M.G.L. c. 71, §34* by transferring the power to determine expenditures within the total appropriation from the School Committee to town meeting.

This is underscored in the regulations promulgated by DESE with respect to the budget process, which call for regional school committees to propose a single budget containing all proposed operating expenditures, capital expenditures and debt service payments and further requires that the school budget, as adopted by the school committee, must be placed on the warrant for town meeting. See, *603 CMR 41.05 (1)* and *603 CMR 41.05 (2)*. Our office has previously discussed these regulations with representatives of DESE and they have indicated that the regulations require that the budget appropriations must be submitted to and considered by town meeting as a single warrant article; separate warrant articles for individual programs and expenses are not permitted under the regulations. Although our discussions with DESE took place a couple of years ago, DESE’s position appears unchanged as DESE representatives reiterated this position as recently as this past spring in a meeting between DESE representatives and representatives of a different regional school district. While the regulations issued by DESE may not specifically reference submitting the budget using a single warrant article, we note that courts give great deference to an agency’s expertise and experience in interpreting its own regulations and such an interpretation will stand unless “patently wrong, unreasonable, arbitrary, whimsical, or capricious”. *Brockton Power Co. v. Energy Facilities Siting Bd.*, 469 Mass 215 at 219 (2014), quoting *Box Pond Ass’n. v. Energy Facilities Siting Bd.*, 435 Mass 408 at 416 (2001). Given the specific wording of *M.G.L. c. 71, §34* forbidding town meetings from dictating specific expenditures within a school budget, in our opinion, if challenged, DESE’s interpretation of its regulations as requiring a single warrant article for regional school district budgets would be entitled to such deference and would stand.

In addition, we note that certain powers of a school committee may not be delegated to third parties; financial and budgetary powers, such as the line-item transfer authority and approval of

expenditures, are included among those non-delegable powers. See, *Opinion of Department of Revenue, Division of Local Services re School Budget Transfer Authority*, File No. 94-660 dated September 13, 1994. As such, an agreement whereby the School Committee effectively delegated its power and authority to determine expenditures within its overall budget appropriation would violate the prohibition against a School Committee delegating its financial and budgetary powers.

In view of the language of the applicable statutes and regulations, and the interpretations of the same by both DESE and the DOR/DLS, it is our legal opinion that the School Committee does not have the power or authority to make the agreements set forth in the MOA in its current form. That said, the School Committee could work with the Member Towns to reach an agreement which might allay concerns, such as noting that the overall amount of the budget is ultimately controlled by the member towns via vote of town meeting on the overall appropriation, and that is in the best interest of the District to submit a budget which will be approved by the member towns. Further, the District's borrowing authority for any given expenditure remains subject to separate vote of the member towns pursuant to M.G.L. c. 71, §16 (d) and (n). In addition, the School Committee could agree to work in good faith with the Member Towns in the annual development of the District's budget, perhaps by involving and seeking input from the local select boards and finance committees earlier in the District's budget process and prior to the initial preparation of the District's budget, to discuss at the outset of the budget process the fiscal situation of each of the member towns, to learn what the member towns would like to see in the next year's budget, and to allow all parties to communicate what their respective priorities for the next fiscal year are or are likely to be. Finally, while the District is constrained as to the particular agreements that can be included in any MOU to which the District is a party, the Member Towns may not have the same constraints and, subject to applicable law, could potentially enter into an agreement among themselves as to review and support of proposed budgets.

Summary and Conclusion

Based on the foregoing, it is our opinion that the MOU as currently drafted would violate applicable law and regulation and, as such, we could not recommend that the School Committee enter into an agreement on those terms. However, we do recommend authorizing counsel to work with legal counsel for the member towns to potentially reach an agreement that does comply with applicable law and which might allay concerns of the member towns.

Please let me know if you have any additional questions or concerns.

Sincerely,


Nancy J. Company