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OF COUNSEL  
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ROGER P. KELLEY  
LABOR RELATIONS CONSULTANT

July 17, 1995

Mark Keegan  
Superintendent of Schools  
Boothbay-Boothbay Harbor C.S.D.  
96 Townsend Avenue  
Boothbay Harbor, ME 04538

RE: Boothbay-Boothbay Harbor Community School District Charter

Dear Mark:

I am writing this letter to follow up our conversation late last week regarding several questions that you raised concerning the Boothbay-Boothbay Harbor C.S.D. "charter" (although I will continue to use the word "charter" in this letter the more accurate reference is Chapter 156 of the Private and Special Laws of 1953, as amended, the Private and Special Act by which the C.S.D. was formed). I will attempt to respond to each of your questions in turn.

1. Can a community such as Southport join the C.S.D. for only grades 7-12?

Under the general education statutes, the answer to this question would likely be no. 20-A M.R.S.A. § 1601 defines a community school district in pertinent part as follows:

A community school district means a school administrative unit consisting of the inhabitants of and the territory within 2 or more municipalities. It shall be a body politic and corporate responsible for the operating of kindergarten through grade 12, or any combination thereof. It may include a school administrative district, which does

received  
7-18-95

not operate a secondary school, for the secondary school grades of 9 to 12 only . . .<sup>1</sup>

As can be seen from the above definition and in addition from the wording of the municipal votes required to form a C.S.D. (see 20-A M.R.S.A. § 1602(1), the purpose of a community school district is to function as the school unit for the municipalities which it comprises. While a C.S.D. need not contain all grades K-12, the statutes do not provide for a C.S.D. in which a municipality is a member for purposes of only certain grades.

While the general education statutes would not seem to allow a community to join a C.S.D. for only some grades, however, it is important to note that the Boothbay-Boothbay Harbor Community School District is not organized under the general education statutes. Rather, it was as you know created by a private and special law. Because the Legislature has plenary authority over educational units in the State of Maine, and because the Legislature can (as it has in the case of Boothbay-Boothbay Harbor C.S.D.) override the general educational statutes in individual circumstances, it would be legally possible for the Legislature to amend the Private and Special Act which created the C.S.D. to incorporate Southport for grades 7-12 only. Whether the Legislature would in fact pass such a statute, however, may be more problematic. Much might well depend upon the position of the Department of Education, since the resulting C.S.D. would be an anomaly. If you wish, this is clearly an issue which you and I could pursue with the Department of Education.

**2. How much time and money would it cost to have the charter completely updated and approved by the State Legislature?**

It is very hard to give any kind of definitive answer to this question, because until we have a better sense of what changes in the charter would be required it is virtually impossible to predict how much time would be taken in drafting those changes and in thereafter working with the Legislature to get them approved. On the telephone, I threw out a rough guess of \$5,000, but as we discussed the amount could easily be much higher depending upon the complexity of the changes requested.

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<sup>1</sup> The term "community school district" is also defined in 20-A M.R.S.A. § 1(5), as follows:

Community school district means a state-approved unit of school administration composed of more than one municipality or school administrative district which may provide public education for any combination of kindergarten through grade 12.

Additionally, we also discussed on the telephone the risks of approaching the Legislature to make substantial changes in the existing charter. In some cases (for example, with respect to the amount of tuition which can be charged pursuant to Section 9 of the charter), the Legislature has granted your C.S.D. favorable legal provisions which other C.S.D.s do not have. It is always possible that, in any complete revision of the charter, some of these benefits might come under scrutiny and as a result be changed.

**3. Does the 60%/40% taxation limitation of Section 12 under Capital Expenses also apply to Section 13 dealing with general operation expenses?**

The answer here is no. Section 12 deals with the annual capital budget, and provides that that budget shall be apportioned to the participating towns on a per-pupil basis, provided that "no more than 60% nor less than 40% of such net sums shall be so apportioned to any such town in any year." By contrast, Section 13, which deals with the annual operating budget, provides only for an apportionment to the participating towns on a per-pupil basis. The 60%/40% safe harbor provision included in Section 12 is not included in Section 13.

I note that in a letter nearly 20 years ago to then Superintendent Corkum from Attorney Alan Pease, the same issue appears to have been addressed. In that letter, dated May 16, 1978, Mr. Pease indicated that the charter "leaves little doubt that both operating and capital expenses are to be apportioned on a per-pupil basis, except that not more than 60% nor less than 40% of the capital expenses (sic) be allocated to either town." A similar statement was also included in an earlier letter to Superintendent Corkum dated May 4, 1978.

**4. What is the possibility of charging Southport the previous year's costs for secondary tuition students as outlined in the last part of Section 9?**

Section 9 of the charter provides generally that once the C.S.D. is established, all provision of the general laws will apply to the C.S.D. An exception is made, however, for tuition charges; in this regard, Section 9 provides that tuition charges for pupils outside the District are to be determined by the trustees, notwithstanding other provisions in the general education statutes, provided that such tuition may not exceed the average per-pupil cost paid by a participating town for the preceding year. Since the Legislature has the authority to vary the general statutes which determine tuition charges, and has done so in the case of the Boothbay-Boothbay Harbor C.S.D., the trustees may if they wish charge tuition as set forth in Section 9.

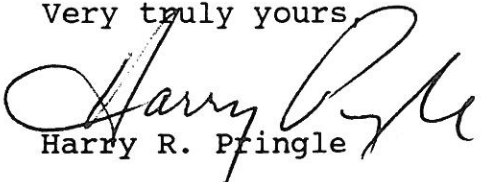
5. Can a single town form a C.S.D.?

During our telephone conversation, you also raised the question of whether an individual town could form a C.S.D. The question was prompted as I understand it by the possibility that Boothbay and Boothbay Harbor may merge, to form a single municipality.

Again, the answer under the general education statutes, is likely no. 20-A M.R.S.A. § 1601(1), quoted above, makes it clear that a C.S.D. is a school unit consisting of "two or more municipalities." By definition, therefore, a community school district established under the general education statutes cannot comprise a single municipality. As with the answer to Question No. 1, however, this does not mean that the Legislature could not amend the existing C.S.D. charter to provide for a continuation of the C.S.D. in the event that the towns of Boothbay and Boothbay Harbor were to merge. The same caveat set forth in Section 1 with respect to obtaining legislative approval for such a change apply, although I would think that the likelihood that the Legislature would approve those amendments to the charter necessary to allow the C.S.D. to continue notwithstanding the merger of the two municipalities would be fairly good.

I trust that this letter has been responsive to the questions we discussed. If you have any further questions of any kind, or if you feel that a meeting with you or your committee would be helpful, please feel free to give me a call.

Very truly yours,

  
Harry R. Pringle

HRP/gmr



School Union #49  
Community School District #3

*Boothbay-Boothbay Harbor-Edgecomb & Southport*

Mark F. Keegan, Superintendent  
96 Townsend Avenue  
Boothbay Harbor, Maine 04538-1198

Telephone 207-633-2874  
Fax 207-633-5458



June 23, 1995

Harry Pringle  
Drummond Woodsum Plimpton & MacMahon  
245 Commercial Street  
Portland, ME 04101-1117

Dear Harry:

Enclosed are copies of two letters I recently came across that may help you respond to my letter of May 23 regarding the Boothbay-Boothbay Harbor Community School District charter. We look forward to hearing from you.

Sincerely,

Mark F. Keegan  
Superintendent

Enclosures

SNYDER & JUMPER  
ATTORNEYS AT LAW  
THE CARRIAGE HOUSE  
WISCASSET, MAINE 04578-0399  
207-882-5500  
207-882-7482

ERVIN D. SNYDER  
DENNIS J. JUMPER

SHERYL L. DAUTE  
PARALEGAL-REAL ESTATE

February 11, 1994

Mark Keegan, Superintendent  
Boothbay/Boothbay Harbor CSD  
Townsend Avenue  
Boothbay Harbor, Maine 04538

**Re: Trustees - School Committee  
Responsibility for Transportation**

Dear Mark:

I have done some further research on the issue of responsibility for transportation.

The original charter from 1953 was amended in 1975. That amendment set out that the transportation of pupils should be handled as provided under the general education laws of Maine. In 1975 the provision in 20 M.R.S.A. 358 was that in Community School Districts the School Committee should provide for transportation. That section is now found at 20-A M.R.S.A. 5401(3). It is my understanding that your review of the District's records indicates that in the recent past all matters regarding transportation have been handled by the School Committee. That practice is consistent with the provisions of the law from 1975 to date.

It appears to me that the Trustees' role relating to transportation was eliminated for all practical purposes with the enactment of the 1975 amendment.

Please let me know if any of your trustees or school committee members have other questions regarding this point.

Sincerely



Ervin D. Snyder

EDS/sf



SNYDER & JUMPER

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ERVIN D. SNYDER  
DENNIS J. JUMPER

SHERYL L. DAUTE  
PARALEGAL-REAL ESTATE

December 20, 1993

Mark Egan, Superintendent  
Boothbay/Boothbay Harbor CSD  
Townsend Avenue  
Boothbay Harbor, Maine 04538

Re: Roles of the School Committee and the Trustees

Dear Mark:

I have reviewed our files back through the year 1980. Enclosed are the letters which I send to Superintendent Corkum and Superintendent Hopkins concerning questions which they had raised about the duties and authorities of the two governing bodies. It seems to me that your predecessors and I have had more dealings about the issue than is reflected in these two letters, but I may be recalling oral discussions.

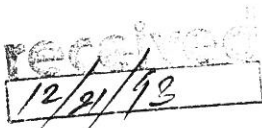
Hopefully this information will be helpful to you and I would welcome any further inquiries about such matters.

Happy Holidays.

Sincerely,

  
Ervin D. Snyder

EDS/sf  
Enc.



February 16, 1983

Ronald F. Corkum, Superintendent  
Boothbay-Boothbay Harbor Community School District  
Wiscasset, Road  
Boothbay Harbor, Maine 04538

Dear Ron:

You have requested that I look at the special legislation which created your Community School District and give an opinion concerning whether one person could hold the positions of a member of the School Committee and a member of the Board of Trustees at the same time. I have reviewed the laws concerning the Boothbay-Boothbay Harbor Community School District as well as the general laws concerning community school districts.

I note that under your special law, the Board of Trustees is set up under section 2 and that Board's powers and duties are set out in that and subsequent sections. The Community School District Committee is set up under section 8 and its powers and duties are set out in that and other sections of the act.

I also note that section 11 of the act calls for a joint meeting of the two groups for the purpose of making an annual report.

Based on my reading of this act, it is my opinion that the two groups have specific, separate areas of responsibility. At a given time each year the two bodies are required to meet together and to reconcile their areas of responsibility in order to present an annual report. Therefore, I conclude that it is not compatible for one person to serve simultaneously on both boards. It is also my opinion that if one person, being on one of the boards ran for and was elected to the other board, that election would result in the person being disqualified from serving any further on the first board. There would be a vacancy on the first board by reason of the later election to the incompatible position.

I do note that the general law has been changed to allow CSD committees to take over the duties of the Trustees after going through the necessary legal steps. I do not believe that that general provision applies to your specially created district.



Ronald F. Corkum, Superintendent  
February 16, 1983  
Page Two

If other points need to be addressed please call me.

Sincerely,

Ervin D. Snyder

EDS:rb

SNYDER & JUMPER  
ATTORNEYS AT LAW  
THE MACURDA HOUSE  
WISCASSET, MAINE 04578-0399

ERVIN D. SNYDER  
DENNIS J. JUMPER

September 17, 1986

207-882-5500  
207-882-7482

David Hopkins, Superintendent  
Boothbay-Boothbay Harbor CSD  
Wiscasset Road  
Boothbay Harbor, Maine 04538

**Re: Question regarding the continued employment of a member of the  
Board of Trustees**

Dear Dave:

I have received your request for an opinion concerning whether a teacher who is the spouse of one of the individuals elected to the Board of Trustees can continue to be employed as a teacher in the District after the election of the trustee. You forwarded, along with your request, a copy of an opinion by Henry L. Hall of Ropes and Gray, a law firm which has worked extensively with your charter. You also forwarded a copy of an opinion by Frank G. Chapman of Augusta. The statute which is being raised in this question of 20-A M.R.S.A. §1002 (2). That prohibits a member of the school board or one of their spouses being employed by the school district.

In the operation of your District the practice has been that the Trustees functions are directed to the matters concerning the physical assets of the District with the financial aspects of those concerns while the School Committee functions are directed to the educational matters including the employment of teachers, negotiations of the teachers contracts and the financial aspects of those concerns.

There is an ambiguity in the general school law as it is applied to the Boothbay-Boothbay Harbor Community School District because the general school law does not contemplate a division of functions between governing bodies such as the one which exists in your system. Given the fact that your set of facts does not neatly fit into the scheme of the statutes it is necessary to look at the purpose of the conflict of interest provision set out in §1002 (2). The intent is obviously to prevent the public body which sets the salaries and benefits package for the employee from being influenced by a member who is the spouse of that employee. I would agree with the point made by Mr. Chapman that the only way that this can be definitively answered is through a judicial interpretation of the issue.

Nevertheless, it is my opinion that it is not a violation of the letter or the spirit of 20-A M.R.S.A. §1002 (2) to have a teacher employed by the system and to have that teacher's spouse as a member of the Board of Trustees. The Trustees do not directly involve themselves in any aspect of the employment of teachers nor of the setting of their compensation or benefits. The defining of the functions of the two bodies as set out in sections 2 and 8 of your charter clearly distinguishes between the responsibilities of each board. I believe that a Judge

David Hopkins, Superintendent  
September 17, 1986  
Page 2

would determine that the set of facts which you present does not require that the teacher give up the employment simply because a spouse is serving on the Board of Trustees.

Sincerely,

Ervin D. Snyder

EDS/sf

DEC 11 1985

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December 10, 1985

Russell B. Peplaw, Town Manager  
Town of Boothbay  
Town Office  
Boothbay, Maine 04537

Dear Russ:

Re: Community School District Trustees

I am in receipt of your letter of December 6, 1985 attaching the letter that the Superintendent of Schools got from Henry Hall. I talked with Henry concerning the interpretation of 20 M.R.S.A., Section 1002 subsection 2 and he believes that technically the Board of Trustees may not be a school board hence technically the prohibition may not arise. My view is that school board means governing body of a school administrative unit and that the Board of Trustees serves in this capacity. It is a simple statement of the facts that an employer should not be his own employee. Similar provisions are replete throughout the statute. Notwithstanding opinions to the contrary, I am satisfied that District Trustees are intended to be covered by that statute.

In my letter to you of October 21st concerning the disqualification of the trustee, a rereading of the statute indicates that the disqualification runs in the other direction. In other words, if a person is elected to the governing body, his spouse cannot continue as a fulltime employee. In view of this, my comment that a Town Clerk should not receive a nomination paper because the trustee would be disqualified is obviously incorrect. The person may run for the office, be elected, etc., but put his spouse in jeopardy if she is a fulltime employee. There also is no question in my mind that a teacher is a fulltime employee of the District.

I think the final resolution of this has to be either a legislative change in your District charter or somebody seeking a court interpretation.

Sincerely,

  
Frank G. Chapman

FGC:jh

APPROVED

APR 9 '84

BY GOVERNOR

CHAPTER

86

P & S LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-FOUR

S.P. 849 - L.D. 2307

AN ACT Amending the Charter of the  
Boothbay-Boothbay Harbor Community  
School District.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the charter of the Boothbay-Boothbay Harbor Community School District contains references to provisions in the Revised Statutes, Title 20; and

Whereas, these provisions have been repealed; and

Whereas, this repeal raises doubt as to the ability of the district to borrow money for capital purposes which must be addressed as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

P&SL 1953, c. 156, §3, first sentence, as amended by P&SL 1981, c. 87, §1, is further amended to read:

To procure funds for school construction projects as

defined in the Revised Statutes, Title 20, section 3471 or minor capital costs as defined in the Revised Statutes, Title 20, section 4743, subsection 14, for any of the purposes of the district stated in section 1 of this Act, but not for any expenses of operation and maintenance, the board of trustees of the district is authorized, by the vote of not less than a majority of all of the trustees, to borrow money from time to time and to issue bonds in the name and on the full faith and credit of the district; provided that the district shall not incur a total bonded indebtedness at any one time outstanding in excess of 12 1/2% of the last equalized valuation of the participating towns.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.



---

In House of Representatives, ..... 1984

Read twice and passed to be enacted.

..... Speaker

---

In Senate, ..... 1984

Read twice and passed to be enacted.

..... President

---

Approved ..... 1984

..... Governor

✓

ROPES & GRAY  
225 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110

CABLE ADDRESS "ROPGRALOR"  
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IN WASHINGTON:  
1001 TWENTY-SECOND STREET, N.W.  
WASHINGTON, D.C. 20037  
(202) 429-1600

September 2, 1983

Ronald F. Corkum, Superintendent of Schools  
Boothbay-Boothbay Harbor Community School District  
Route 27  
Boothbay Harbor, Maine 04538

Dear Mr. Corkum:

You will recall that in 1982, the amendment to Section 3 of your charter that was made by Chapter 87 of the Private and Special Laws of 1981 was changed during the legislative process from the form originally drafted and submitted so as to make reference to sections 3471 and 4743 of Title 20 of the Revised Statutes.

In my letter to you of April 22, 1982, I noted that inclusion of those specific references was poor legislative drafting technique and could cause problems for the District in the event Title 20 were amended or repealed. As you know, our worst fears came to pass when Title 20 was repealed and Title 20-A enacted to replace it. Thus there is now doubt whether the District any longer has any power to borrow for any capital purpose.

With the thought that you may wish to submit corrective legislation before the need arises. I enclose a simple draft amendment to delete those references to Title 20. The analogous provisions of Title 20-A should not be inserted lest the Revised Statutes be changed again. School construction projects and "minor capital costs" of the District are defined in and covered by Title 20-A, whether or not described in your charter, and I see no reason why your District should be singled out for such a problem creating limitation in its charter which can have no beneficial effect.

It may be that the Department of Education would include the enclosed provision in an errors and inconsistencies act for the next legislative session. In any event, you may

✓

AN ACT AMENDING THE CHARTER OF THE  
BOOTHBAY-BOOTHBAY HARBOR COMMUNITY SCHOOL DISTRICT

Be it enacted by the People of the State of Maine, as follows:

The first sentence of section 3 of Chapter 156 of the private and special laws of 1953, as amended, is further amended to read as follows:

To procure funds ~~for school construction projects as defined in the Revised Statutes, Title 20, section 3471 or minor capital costs as defined in the Revised Statutes, Title 20, section 4743, subsection 14,~~ for any of the purposes of the district stated in section 1 of this act, but not for any expenses of operation and maintenance, the board of trustees of the district is authorized, by the vote of not less than a majority of all of the trustee, to borrow money from time to time and to issue bonds in the name and on the full faith and credit of the district; provided that the district shall not incur a total bonded indebtedness at any one time outstanding in excess of 12 1/2% of the last equalized valuation of the participating towns.

File



SNYDER & JUMPER  
ATTORNEYS AT LAW  
THE MACURDA HOUSE  
WISCASSET, MAINE 04578-0399

ERVIN D. SNYDER  
DENNIS J. JUMPER

207-882-5500  
207-882-7482

August 8, 1984

David Hopkins, Superintendent  
School Union No. 49  
Boothbay Harbor, Maine 04538

Dear Dave:

When I spoke with the School Committee several weeks ago they requested that I inform them of the best procedure for taking the necessary steps to have the School Committee assume the duties of the School Trustees. I indicated at that time that it was my opinion the special act creating the Boothbay-Boothbay Harbor CSD did not allow the School Committee to assume those Trustees functions. I reached that conclusion even though the general school law allows school committees to undertake trustees' duties.

After meeting with the School Committee I gave more thought to the question and also have reviewed the question with Sawin at MSMA on a confidential basis. My opinion is confirmed that such a change could not be made internally. The step necessary to make the change would be to enlist the local legislators to put through a change in your private and special act. That could be accomplished either by the School Committee contacting them or by going through an advisory re-ferrundum. It is unlikely that the general legislature would act on such a change unless there was a fair degree of unity among the residents that this was a desired change. My fear is that if you make this a public issue the Trustees will be able to arouse a supporting group that would make it very difficult for the proposed change to be accepted by the legislature.

Before I take any further action on this issue it seems to me that you as Superintendent should review the matter with the School Committee and establish your own position on the question. After you have done that if you wish me to pursue the matter I would be happy to.

If there is further information which you need with regard to this please let me know.

Sincerely,

Ervin D. Snyder

EDS:rb

~~APPROVED~~

MAR 15 '82

BY GOVERNOR

CHAPTER

87

P & S LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-TWO

H.P. 1902 - L.D. 1887

AN ACT Amending the Charter of the  
Boothbay-Boothbay Harbor Community  
School District.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there is an immediate need to commence the planning for major renovations of the Boothbay Region High School in order to provide adequate facilities for the students attending that school; and

Whereas, doubt exists whether the present provisions of the Boothbay-Boothbay Harbor Community School District charter would permit the financing of the renovations; and

Whereas, there are inconsistencies between the charter and the provisions of the Revised Statutes applicable to school construction projects; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. P&SL 1953, c. 156, §3, first sentence, as amended by P&SL 1969, c. 27, §2, is further amended to read:

To procure funds for such school construction projects as

defined in the Revised Statutes, Title 20, section 3471 or minor capital costs as defined in the Revised Statutes, Title 20, section 4743, subsection 14, for any of the purposes of the district stated in section 1 of this Act as consist of the following, namely, the acquisition of real property within the district, the erecting or acquiring of a school building or buildings or additions thereto, the erecting or acquiring of related athletic and recreational facilities, and the original equipping and furnishing of such building or buildings, additions or facilities, but not for any expenses of operation and maintenance, the board of trustees of said the district is authorized, by the vote of not less than a majority of all of the trustees, to borrow money from time to time and to issue bonds in the name and on the full faith and credit of the district; provided, however, that the district shall not incur a total bonded indebtedness at any one time outstanding in excess of 12 1/2% of the last equalized valuation of the participating towns.

Sec. 2. P&SL 1953, c. 156, §4, is amended by adding at the end a new paragraph to read:

Notwithstanding the foregoing provisions of this section, if any provisions of the Revised Statutes applicable to the district require approval by the voters of the district before a particular issue of bonds may be issued, the board of trustees shall provide for a referendum to be called and held in the manner provided for in the Revised Statutes to act upon the question of authorizing or approving the issuance of the bonds by the district and any inconsistent provisions of this section or section 16 relating to a referendum vote and the manner of obtaining approval by the voters to issue bonds shall not apply to the meeting or election.

Sec. 3. P&SL 1953, c. 156, §5-A is enacted to read:

Sec. 5-A. Authority to issue temporary notes in anticipation of authorized bond issues. When a vote of the board of trustees authorizing the issue of any bonds shall have become effective, the board of trustees may, by vote of a majority of its members, authorize the issue and sale of temporary notes in anticipation of the bonds. The temporary notes may be issued for a period of not more than 2 years and any such notes may be renewed from time to time by the issue of other notes, provided the period from the date of issue of an original note to the date of maturity of the last renewal thereof shall not be more than 2 years. The



proceeds of temporary notes issued under this section shall be used only for the purposes for which the bonds in anticipation of which they are issued may be used.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

---

In House of Representatives, ..... 1982

Read twice and passed to be enacted.

..... Speaker

---

In Senate, ..... 1982

Read twice and passed to be enacted.

..... President

---

Approved ..... 1982

..... Governor

ALAN C. PEASE  
ATTORNEY AND COUNSELLOR AT LAW  
THE MACURDA HOUSE  
WISCASSET, MAINE 04578  
207-882-7482

ERVIN D. SNYDER

May 4, 1978

Ronald Corkum, Superintendent  
Boothbay-Boothbay Harbor Community School District  
Boothbay Harbor, Maine 04538

Dear Ron:

As I understand our recent telephone conversation, the question you would like answered is what shall be the method of allocating the local share of the costs of the CSD, both capital and operating costs, between the Towns of Boothbay and Boothbay Harbor.

My answer is that the method of allocating costs shall be based on a per pupil basis, subject to the provision that neither Town shall pay more than 60% of the capital costs nor less than 40% of the capital costs.

My opinion is based on several factors with consideration also having been given to the question of the constitutionality of your Charter, C. 156, P. & S.L. 1953, as amended.

In your Charter, sections 12 and 13 specifically provide for the apportionment of costs of the CSD on a per pupil basis, subject to percentage limitations set forth above as to capital costs. The enactment by the Legislature in 1953 established this per pupil formula and this was approved by a majority vote of each of the Towns in accepting the CSD.

It has long been an axiom of the law that statutes are presumed to be constitutional. They should be so construed until the Court rules otherwise. In our case, the CSD Charter has the force of a statute and until the Court determines a part of that statute to be unconstitutional, it should be considered valid and the CSD should act according to the plain wording and meaning of the statute.

Ronald Corkum, Superintendent

May 4, 1978

A review of the Constitution of Maine reveals that a provision exists requiring taxes on real and personal property to be apportioned according to the just value thereof. There may be a question concerning whether the CSD charge for operating a school for the two Towns is a tax or not. If it is, there may be some question as to the constitutionality of a per pupil allocation. However, until the Court determines sections 12 and 13 of the CSD Charter to be unconstitutional, the CSD should continue to bill the Towns on a per pupil basis.

Because of questions existing as to the constitutionality of a per pupil allocation of costs, it might be well for the CSD to seek a Declaratory Judgment as to sections 12 and 13. If a judgment was rendered nullifying a per pupil allocation, it would be my opinion that the costs should be allocated on the basis of state valuation. I might add that it is my opinion that if the Court did rule sections 12 and 13 to be unconstitutional, the decision would be prospective and not serve to require a re-allocation of past costs on a basis of state valuation.

In summary, it is my opinion that until the CSD charter, as to cost allocation, is declared unconstitutional by the Court, the cost allocation should continue to be on a per pupil basis.

Very sincerely,



Alan C. Pease

ACP/jec

*Cost Sharing.*

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ERVIN D. SNYDER

207-882-7482

May 16, 1978

Ronald Corkum  
Superintendent of Schools  
Boothbay-Boothbay Harbor Community  
School District  
Boothbay Harbor, Maine

Dear Ron:

Your Board of Trustees have asked that I review my letter of May 4, 1978 with respect to the proper method of allocating to each town its share of the total cost of the District. That letter was based on a review of P.&S.L. 1953, c. 156, the statute enabling the people of Boothbay and Boothbay Harbor to organize into a special community school district.

*The C.S.D. Charter*  
I would reiterate that P.&S.L. 1953, c. 156 leaves little doubt that both operating and capital expenses are to be apportioned on a per pupil basis, except that not more than 60% nor less than 40% of the ~~capital~~ expenses be allocated to either town.

In that letter, I noted that I felt it inappropriate to have the District consider your enabling statute unconstitutional. However, I have reexamined the question of the allocation in the light of current statutes.

The School Finance Act of 1978, 20 M.R.S.A. Section 4741 et seq recognizes the C.S.D. as the school administrative unit to which the statute applies. This Act has the effect of allocating subsidy funds to administrative units on the basis of State valuation. The individual municipalities are not directly involved if they are a part of a district. I find nothing in this Act or other general statutes which tend to make invalid the per pupil allocation of the school operating costs.

Of the Act, Section 4575 relates to bonds of the district and directs the District to require that sums for the payment of bonds "be assessed and collected in the manner provided by law for the assessment and collection of taxes." What, then is the "manner provided"? Is it as provided in the District enabling act? I would answer that it is and that the constitutionality of the per pupil method is not called into question.

I might call your attention to the second paragraph of my letter to you dated April 14, 1978. You have questioned my remarks about the amounts to be allocated to the Towns and are correct that I based them on State valuations. I did that prior to any research on the question of allocation, but based my figures on State valuation alone. Those figures should be adjusted using a per pupil allocation.

As we have discussed the possible impact of the per pupil allocation to the Towns of Boothbay and Boothbay Harbor, I have sought to find some statutory justification of the State valuation basis, but without avail.

Very sincerely,

  
Alan C. Pease

ACP:jo