

May 16, 2018

Howard Colter, Superintendent of Schools  
320 Ocean House Road  
P. O. Box 6267A  
Cape Elizabeth, ME 04107

Re: Roles of School Board and Town Council

Dear Howard:

I am writing in response to your request for our opinion concerning the roles of the Cape Elizabeth School Board and the Town Council with respect to certain complaints a resident has made to the Council about the School Board.

As I understand the facts giving rise to this question, a Cape Elizabeth resident submitted a list of written complaints and concerns about the School Board's management of the schools to the Town Council. The Town Council Chair has requested that the School Board hold a joint meeting with the Council to address the complaints.

For the reasons explained below, the matters raised by the complaints fall exclusively within the purview of the School Board, and both the letter and spirit of the law require that these matters be addressed by the School Board rather than the Town Council.

In Maine, the Legislature has plenary authority over public education. *School Committee of the Town of Winslow v. Inhabitants of the Town of Winslow*, 404 A.2d 988, 991-992 (Me. 1979). Exercising this authority, the Legislature has created a system of local school administrative units to provide free public education to Maine children. A "school administrative unit" is defined by statute as "the state-approved unit of school administration and includes a municipal school unit." 20-A M.R.S. § 1(26). A "municipal school unit" is defined as a state-approved unit of school administration composed of a single municipality. 20-A M.R.S. § 1(19). Public education in Cape Elizabeth is provided by the Cape Elizabeth school administrative unit (SAU). The Maine Supreme Judicial Court has made it clear that municipal school boards "are agents of the state and are legally distinguished from municipalities." *Pickering v. Town of Sedgwick*, 628 A.2d 149, 150 (Me. 1993). The separate roles of the SAU and the municipal government are well-defined and do not overlap.

The school board is the governing body of an SAU. 20-A M.R.S. §1(28). The school board has sole authority to oversee the affairs of a municipal school unit, including adoption of policies, management of the schools (including custody, care and repair of school buildings), selection of the superintendent (who is the chief administrative officer of the school unit), employment of

May 16, 2018

Page 2

administrators, and employment of teachers. See 20-A M.R.S. §§ 1001, 1051, 13201, and 13302. A town council has no statutory duties or authority with respect to public education, with the sole exception, in its capacity as municipal legislative body, of approving the total amount of the school budget to be submitted to the voters in a budget validation referendum. 20-A M.R.S. § 2307(2). The authority to allocate funds within the total budget is reserved to the school board. *Id.*

The School Board is not subordinate to the Town Council but derives its duties and authority directly from the Legislature. “Its members,” the Maine Supreme Judicial Court has observed, “are chosen by the voters of the town, but after election they are public officers deriving their authority for the law and responsible to the State for the good faith and rectitude of their acts.” *Shaw v. Small*, 124 M. 36, 41 (1924).

The Cape Elizabeth Town Charter is consistent with state law insofar as it recognizes the statutory roles of the School Board and Council with respect to governance of the schools. Article IV, Section 5 of the Charter states:

The school board shall have all the powers conferred and shall perform all the duties imposed by law upon school boards in regard to the care and management of the public schools of the town, except as otherwise provided in this charter.

The Charter does not purport to limit the school board’s statutory powers and duties, and thus there is no need to explain why it could not lawfully do so.<sup>1</sup> The only specific duty imposed on the School Board by the Charter is to prepare and submit a budget to the Town Manager at least 75 days before the beginning of the budget year. That duty is consistent with the School Board’s duty to prepare the school budget and the Council’s role, as legislative body for the municipality, to approve that budget before submission to the voters.

In summary, the Town Council has no legal authority over the school administrative unit or the School Board, and has no power to act on complaints or concerns about how the School Board is managing the schools. Members of the public who have concerns may bring them directly to the superintendent and the School Board, and, if voters are unhappy with elected School Board members, their recourse is to elect other persons to the School Board. Additionally, the authority to enforce local school boards’ compliance with education law is assigned to the Commissioner of Education, and not to any local municipal body. 20-A M.R.S. § 6801-A.

For these reasons, the Council does not have the legal authority to require the School Board to appear before it or to meet jointly with it to respond to complaints about the operation or management of the schools. Such a joint meeting to address exclusively school matters would blur the lines of authority between the School Board and the Council, erode the legal authority of the elected School Board and increase public confusion about the respective roles of the two

---

<sup>1</sup> The charter makes reference to the school “department,” which might suggest that the school is like the police department, fire department or public works department. This nomenclature, while commonly used, is misleading, however, as the school unit is a separate legal entity under the jurisdiction of the school board that stands beside and is not subordinate to the municipal side of local government, which is under the jurisdiction of the council.

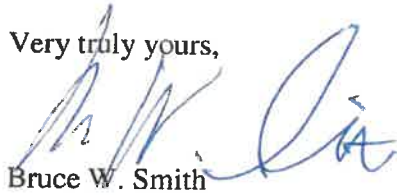
May 16, 2018  
Page 3

governing bodies. These problems would be further exacerbated if the Council were to undertake direct consideration of matters that have not even been presented to the Superintendent or the School Board for review and response.

As coequal bodies with different jurisdictions but serving the same community, the Board and the Council can benefit from understanding and demonstrating mutual respect of their respective roles.

Please let me know if you have any further questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bruce W. Smith", is written over the typed name. The signature is fluid and cursive.

Bruce W. Smith

BWS/ght