

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 14, 1977

To James J. Vickerson, Jr., Director Dept. Educational & Cultural Services
Management Information
From Waldemar G. Buschmann, Assistant Dept. Attorney General
Attorney General
Subject: Hardship Waiver Petitions to the State Board - LD #1165

FACTS:

Pursuant to 20 MRSA § 3453-A, all school administrative units must conform to the fiscal year beginning July 1 and ending on June 30. LD #1165, "AN ACT Relating to the Spending Ceiling for Education Purposes," would authorize them to make additional appropriations for school purposes above the ceiling level otherwise imposed by the School Finance Act of 1976. (See Conference Committee Amendment A to LD #1165--Filing No. H-520.) It is anticipated if LD #1165 is enacted that several administrative units will be applying to the State Board of Education for hardship waivers. It is anticipated that a special meeting of the State Board will be necessary to determine if hardships do exist in the petitioning units. Such a special meeting would have to be held by the 20th of June, 1977, to allow the applying units to be able to put the question before their voters prior to June 30, 1977.

QUESTION:

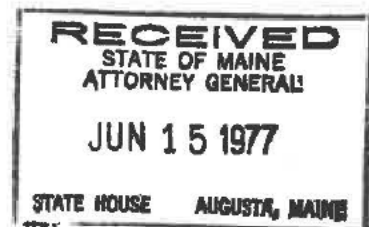
Who, on behalf of the school administrative unit, may petition the State Board of Education for a hardship waiver as contemplated in LD #1165 (20 MRSA § 3749, sub-§ 3)?

ANSWER:

Only the governing body of a school administrative unit may petition the State Board of Education for a hardship waiver under the proposed language of LD #1165 (20 MRSA § 3749, sub-§ 3). The governing bodies of the school administrative units would include boards of directors, school committees, cooperative boards and boards of trustees.

REASONS:

The suggested language in LD #1165 would authorize "any units" to petition to the State Board of Education for a hardship waiver from the spending ceiling imposed by the School Finance Act of 1976 (20 MRSA § 3749, sub-§ 3). 20 MRSA §§ 851 and 3452 define an



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administrative unit to include "all municipal or quasi-municipal corporations responsible for operating or constructing public schools." The governing bodies of the school administrative units in the State of Maine include boards of directors for school administrative districts (20 MRSA § 301), school committees and boards of trustees in charge of community school districts (20 MRSA §§ 351-365) and school committees in charge of other school administrative units (20 MRSA § 471).

The governing bodies of the various school administrative units in the State have the sole authority for the hiring of teachers, (§ 161.5), managing the schools (§ 473, sub-§ 1), and preparing the budgets for the respective school administrative units (§ 226 and § 362).

The voters, taxpayers and residents within the geographic boundaries of a school administrative unit have been given specific authority to petition for a line item budget format (§ 226.2B and § 3752), to vote on the school budget (§ 226, sub-§ 3), except for single administrative units within cities or towns whose charters provide that the budget will be adopted by the city or town council, and to petition the State Board of Education regarding the apportionment of school directors within a school administrative district (§ 301).

It is my opinion that when the Legislature has stated that an administrative unit may perform a specified function, then it shall be the governing body of that administrative unit which shall perform that function and not the citizens at large living within the given administrative unit. The Board would have no authority to honor a petition seeking a hardship waiver if it were filed by members of the public at large within the administrative unit.

My opinion is based on the premise that the governing boards of the school administrative units have the responsibility for the general maintenance and operation of the school systems under their control and for preparing the budgets for the operations of the school administrative units. Also, my opinion is based on the fact that the Legislature has specified when the public at large has the right to petition the Board; it has not given the public the right to petition the Board in this matter.


Waldemar G. Buschmann
Assistant Attorney General

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