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Education: Local Budget meetings, recorded votes
20 M.R.S.A. § 3752-6

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H. Sawin Millett, Jr., Commissioner
Department of Educational and Cultural Services
State House
Augusta, Maine

Re: Recorded Vote in School Budget Articles

QUESTION:

If the moderator of a regular school budget meeting fails to require the "yes" and "no" votes on each article to be recorded as required by 20 M.R.S.A. § 3752, sub-§ 6, is the budget adopted at the meeting valid?

ANSWER:

The budget adopted at a regular school budget meeting may be valid if there has been a departure from the prescribed statutory method of recording the vote at that meeting.

20 M.R.S.A. § 3752.6 requires that the "number" of "yes" votes and the number of "no" votes on each article considered at the meeting "be recorded." The purpose for this requirement is to provide a recorded vote which may be referred to at a special school budget meeting. In particular, 20 M.R.S.A. § 3752.5 states that the actions taken at a special budget meeting will "be invalid if the vote is less than the vote recorded at the regular budget meeting on the appropriation articles."

Although the "yes" and "no" votes at a given budget meeting may not have been recorded, the vote will be valid unless it can be shown that the failure to record the "yes" and "no" votes deprived legal voters of their right to vote, permitted illegal

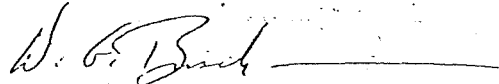
voters to vote, or cast an uncertainty on the results of the vote.* See Hood v. State (Ariz., 1975), 529 P.2d 931, 939; Lightner v. McCord (Tex., 1941), 151 S.W.2d 363, 366.

Since the purpose for recording the "yes" and "no" votes is for future reference and not for establishing the outcome of the vote, it is my opinion that the recording requirement is directive in nature and not mandatory language which would invalidate the vote.

Also, the minutes of the meetings reflect how the majority vote was cast even though the "yes" and "no" votes were not recorded. Although the failure to record the "yes" and "no" votes would create a procedural hurdle to be faced at a special budget meeting, it does not affect the validity of the vote cast nor of the budget that was adopted.

We understand that you have requested a prompt response to your question. For that reason, it has not been possible to research this issue in detail. This opinion is therefore given based on current understanding of the law and brief research.

Very truly yours,



WALDEMAR G. BUSCHMANN
Assistant Attorney General

WGB/ec

* "When a challenge is made to . . . the manner of handling an election prior to the election the courts will apply a strict statutory construction; however, when such a challenge is made after an election the courts will take a liberal view in upholding the results of the election." Hood v. State, supra, at 939.