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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 26, 1980

Honorable Alberta M. Wentworth
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Wentworth:

You have asked how the weighted vote should be apportioned between the Towns of Wells and Ogunquit on the Wells-Ogunquit Community School District school committee. After a careful review of this matter, we have concluded that the statutory scheme for apportioning the vote, established by P. & S.L. 1979, c. 45, is impossible to implement in that it contains inherently irreconcilable requirements. Accordingly, it is our opinion that the appropriate resolution of this problem would be through corrective legislation.

Factual Background

The 109th Legislature enacted "An Act to Separate Ogunquit Village Corporation from the Town of Wells" (P. & S.L. 1979, c. 45 ). Section 6 of that Act provided for the creation of the Wells-Ogunquit Community School District. It also provided that the governance of the Community School District would be carried out by a school committee consisting of six members, three from each town to be appointed and elected as are trustees for community school districts. The Act further stated that the "method of voting by members of the school committee shall be in accordance with Method B: Weighted Votes of the Revised Statutes, Title 20, section 301." The population of Wells is approximately 6500 and the population of Ogunquit is approximately 1500.

Analysis

The mandate of the 109th Legislature in P. & S.L. 1979, c. 45, is that "the method of voting by members of the school committee shall be in accordance with Method B: Weighted Votes of the Revised Statutes, Title 20, section 301." The Legislature further required that the school committee consist of "six members, three from each town to be appointed and elected as are trustees under the statute." In short, when the dictates of c. 45 are read in conjunction with the requirements of Method B, the following prerequisites emerge: (1) the school committee must consist of three members from each town; (2) the members from each town must collectively have voting power which reflects the ratio of the population of that town to the population of the district; and (3) no member may have voting power which exceeds by more than 2% the voting power he would have if all the votes were divided equally among the members. Without going into detail, suffice it to say that no apportionment plan can satisfy all three statutory prerequisites.

In light of the problem described above, it is our view that the Legislature should amend P. & S.L. 1979, c. 45 to clearly define the representation on the school committee. The Legislature has a myriad of alternatives which it may consider in establishing how the Towns of Wells and Ogunquit will be represented on the school committee of the Wells-Ogunquit Community School District. However, it is essential that any corrective legislation adhere to the one-person, one-vote principle guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The applicability of this principle to school districts was clearly articulated by Powers v. Maine School Administrative District No. 1, 359 F. Supp. 30 (N.D. Me. 1973).

The Court in Powers found that school committees were bound by the one-person, one-vote principle and it established some guidelines in assisting Maine School Administrative District No. 1 in its efforts to comply with that principle. Significantly, the Court acknowledged that "mathematical exactitude is not required" in establishing a plan of representation which is consistent with the "one-person, one-vote principle, so long as the limited deviations from strict population equality are . . . 'within tolerable limits.'" The Court recognized that a maximum deviation of 16.4 percent from population equality had been allowed by the United States Supreme Court in Mahan v. Howell, 410 U.S. 315 (1973), and suggested that deviations by up to that amount would be within the "tolerable limits" referred to above.

In conclusion, the appropriate resolution of this problem is for the Legislature to amend P. & S.L. 1979, c. 45 to produce a workable apportionment scheme which complies with the one-person, one-vote principle. Since this endeavor may entail resolving legal problems of a technical nature, I would be happy to have a member of my staff review any drafts of proposed amendments.

Please feel free to call on me if I can be of further service.

Sincerely,

RICHARD S. COHEN
Attorney General

RSC/ec
cc: Honorable Jerome A. Emerson
Honorable J. P. Norman LaPlante
Chairpersons, Local and County Government Committee