

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

JAMES E. TIERNEY
ATTORNEY GENERAL



81-84

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 5, 1981

Honorable John L. Martin
Speaker, House of Representatives
P.O. Box 250
Eagle Lake, Maine 04739

Dear Speaker Martin:

You have asked for an opinion concerning the legality of a purported "recall" by the Board of Directors of School Administrative District #27 of one of its members from the Region 1 Vocational Cooperative Board. As a result of the "recall," the SAD Board has appointed another of its members to serve on the Cooperative Board. At present, both individuals claim to represent SAD #27 on the Cooperative Board.

For the reasons discussed below, it is our opinion that the purported "recall" was not authorized by law and, consequently, the original appointee is the proper representative of SAD #27 until such time as his term expires or he resigns.

FACTS .

The facts relevant to this dispute, as they have been related to this office, are as follows:

SAD #27 is joined with several other school administrative units to form Vocational Region #1, as described in 20 M.R.S.A. § 2356-G. Region 1 is governed by the St. John Valley Vocational Cooperative Board in accordance with a set of bylaws adopted pursuant to 20 M.R.S.A. § 2356-G. Several principles are set forth in these bylaws, to wit:

"The Board will operate as a single unit without regard for town lines. (School Administrative Units)" (Art. I, sec. 1)

"Election of members to the Board by the local school unit shall be for one year unless his term on the local school administrative unit expires. Whenever a vacancy exists, the local Board of School Directors or school committee shall elect a new member at its next regular or special meeting."
(Art. II, sec. 3)

SAD #27 is authorized to select two representatives to the Cooperative Board (Art. II, sec. 1). Daniel Nicolas, Chairman of the Board of Directors, and another person, not a member of the SAD Board,^{1/} were chosen as representatives from SAD #27.

By a vote of a majority of the Directors of SAD #27 on September 18, 1981, Mr. Nicolas was "recalled" as a representative to the Cooperative Board.^{2/} The Board of Directors took this action allegedly because Mr. Nicolas failed to follow the wishes of the majority of SAD #27 while a member of the Cooperative Board. According to the SAD #27 superintendent, the "recall" is seen as similar to the replacement of members of various board subcommittees, when they fail to act in accordance with the majority of the Board of Directors.

1/ Although it has been stated that Mr. Nicolas "nominated" himself, the Superintendent of Schools has indicated to this office that Mr. Nicolas' appointment was approved by a majority of the Board of Directors. It has also been stated that Mr. Nicolas was "never administered an oath of office to that position." However, this was later explained by the superintendent to mean that he was not administered an oath by the SAD Board. The oath of office referred to in 20 M.R.S.A. § 2356-G means an oath which a member of the Cooperative Board must take. It would appear that Mr. Nicolas was properly selected and took his position as one of the two representatives from SAD #27 on the Cooperative Board, with no claim by any person, until this controversy arose, that he was improperly in that position. The Director of Region 1 has told this office that no member of the current Cooperative Board has taken an oath of office. In the final analysis, we do not believe that this omission either invalidates Mr. Nicolas' selection or that it empowers the Board to recall him. See In re Nether Providence Township, 215 Pa. 119, 64 A. 443 (1906).

2/ According to the minutes of the Cooperative Board (October 1, 1981), another individual was presented as the new SAD #27 representative.

ANALYSIS

The establishment of the Cooperative Board and the conduct of Cooperative Board meetings are matters to be decided by the member school units. 20 M.R.S.A. § 2356-G(3).

The bylaws governing the St. John Valley Vocational Cooperative Board clearly and explicitly state that the term of office of each member of the Cooperative Board "shall be for one year" unless his term on the local school administrative unit expires before that time.^{3/} The bylaws do not authorize any foreshortening of the term of a representative, once duly appointed, by a "recall" or other similar mechanism. Moreover, this type of action would be inconsistent with the overall intent of the bylaws, which declare the Cooperative Board to be an entity unto itself, operating "as a single unit. . . ." Membership on the Cooperative Board is thus distinctly different from a seat on a subcommittee. Since the relationship of the component school units to the Vocational Region is controlled by the bylaws, it must be concluded that the SAD Board does not have the power to recall its representative and replace that individual with another person.

We would note that even if the bylaws did allow for a "recall," such a provision would be legally suspect. The election of public school officials is governed by Title 20 which does not provide for recall of any such officials.^{4/} It is generally held that when no explicit authorization for recall has been made by the Legislature, a school administrative unit is without power to adopt such a mechanism. Since elections are of statewide concern, procedures which differ from those prescribed by the Legislature are usually found to be invalid.^{5/} Given our conclusion that the Cooperative Board probably could not authorize recalls even through express language in its bylaws, it follows that such authority cannot be said to be an inherent power of the SAD Board.

-
- 3/ This possibility of a shortened term is not applicable to the second representative who may be a citizen other than a Board member.
- 4/ This opinion is not intended to analyze "recall" provisions which may exist in city or town charters pursuant to 20 M.R.S.A. § 476.
- 5/ See School Committee of the Town of Windsor, et al. v. Inhabitants of the Town of Windsor, et al., Me., 404 A.2d 988 (1979) (effort to establish an election process which differed from state law); Sherman v. Kemish, Ct., 279 A.2d 571 (1971) (recall election process not available for chairman of school board); and Squires v. City of Augusta, Me., 153 A.2d 80 (1959) (Legislature controls all educational policy in the State).

CONCLUSION

For the reasons set forth above, the Board of Directors for SAD #27 cannot "recall" one of its representatives from the Cooperative Board.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

SLD/ec

cc: Honorable Raynold Theriault