

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

December 6, 1983

Honorable Frank P. Wood
State Senator
Box 365
Springvale, Maine 04083

Dear Senator Wood:

You have inquired into the extent of the power of a "district budget meeting" of a School Administrative District (SAD) to approve particular expenditures which were defeated at a prior district referendum. For the reasons which follow, it is the opinion of this Department that the budget meeting may only approve an expenditure in such a circumstance if it differs in some material respect from the proposed expenditure which was defeated at the referendum.

The statutory scheme under which your question arises is as follows: Prior to 1978, approval of budgets by SADs was accomplished exclusively through the medium of the "district budget meeting," at which, following the preparation of a proposed annual budget by the Board of Directors of the SAD, and appropriate public notice, the voters of the constituent municipalities of the SAD gather at a specified time and place and approve or disapprove each item in the budget by a majority vote. 20 M.R.S.A. § 226 (now codified as 20-A M.R.S.A. §§ 1302-07). In 1978, however, the Legislature enacted an alternative voting procedure (20 M.R.S.A. § 226-A, now codified as 20-A M.R.S.A. § 1305), through which 10% of the number of voters voting in the last gubernatorial election in the constituent municipalities may cause the voters of the municipalities, at a general or statewide special election, to determine whether the SAD budget should be approved in the

future by voters voting in their respective municipalities using referendum procedures.^{1/} The Legislature further provided, however, that if a budget (or any part thereof) was defeated at a referendum, a regular district budget meeting may subsequently be held "for the purpose of approving an alternate operating school budget." 20 M.R.S.A. § 226-A(6). This subsection was the subject of further amendment in 1982, at which time the Legislature repealed the language just quoted and substituted therefor a provision that the Board of Directors at a subsequent district budget meeting may "submit a revised budget which differs from the operating budget rejected by the voters in the referendum vote." P.L. 1981, ch. 655.^{2/} The meaning of this new language was further clarified by its legislative history. The original bill from which the amended section sprang specified that the subsequent budget meeting could approve "the same or an alternate operating school budget to replace the proposed budget or the part thereof which the voters failed to approve." L.D. 1715 (110th Legis. 1982) (emphasis added). This language was deleted and the present version of the statute substituted in committee. Comm. Amend. A. to L.D. 1715, No. H-686 (110th Legis. 1982), the Statement of Fact of which provided that:

This amendment makes it clear that if a School Administrative District rejects all or a portion of their budget in a referendum vote, the board of directors may not submit and the general meeting may not approve the budget as originally submitted but must adopt a revised budget.

It thus appears that the Legislature not only intended to prevent the resubmission of an identical entire budget to the budget meeting, but intended to prevent the resubmission of identical items specifically rejected at a referendum.

^{1/} In the original version of the statute, P.L. 1977, ch. 695, § 2, the power of the voters in an SAD to compel such a procedure was limited to the two years following passage of the Act. After extending this period for two more years in 1979, P.L. 1979, ch. 356, the Legislature made it permanent in 1981. P.L. 1981, ch. 442, §§ 8-10.

^{2/} This provision was not included in the recodification of the education laws which was passed by the Legislature at the same session, P.L. 1981, ch. 693, but was reinserted the next year into those laws before the recodification went into effect. P.L. 1983, ch. 422, § 4.

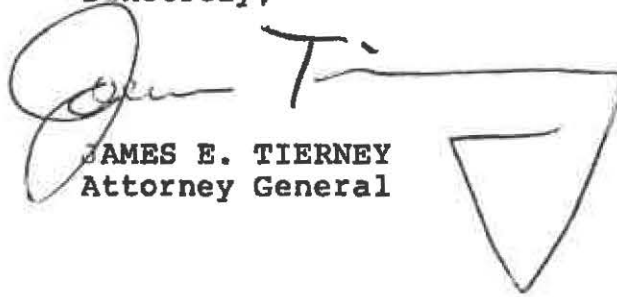
Your question concerns whether a budget meeting may approve a particular item defeated in a referendum, or if not, the extent to which a substitute item must vary from the one defeated. The facts which give rise to your question, as we understand them, are as follows: Sometime subsequent to 1978, the voters of the constituent municipalities of School Administrative District No. 57 determined that the articles of the budget for the District should be approved at district referenda, rather than by the Board of Directors. On May 17, 1983, a district referendum was held at which 23 separate articles were presented to the persons voting, and several were disapproved. One of the disapproved articles proposed to appropriate \$136,000 for the administration of the district's central offices. Another would have authorized the expenditure of \$73,385 for school purposes from local funds without state participation. Following the defeat of these articles, the Board of Directors then reduced the amounts to be appropriated by \$1500 in each case and resubmitted them to a special district budget meeting on June 2, 1983, at which time they were approved.^{3/}

In the opinion of this Office, the submission of the defeated articles to the special district budget meeting cannot be said clearly to violate 20-A M.R.S.A. § 1305(3) As indicated above, the only way in which the Board of SAD No. 57 could have secured approval of any of the items rejected at the May 17, 1983 referendum was to alter such items in some material way before resubmission. How much of an alteration is required, however, is a subjective, factual question which is therefore difficult to predict. All that can be said under the current statute is that the alteration must be material and represent a good faith effort by the board to respond to the will of the referendum. In this case, the Board chose to reduce the proposed appropriations by a modest amount before resubmitting them to the district meeting. It would thus appear to be a close question as to whether the reductions were substantial enough to meet the requirement of Section 1305(3) that they "differ" from the proposals defeated at the referendum. Nonetheless, this Office cannot say as a matter of law that the amounts involved are so insubstantial as to constitute a flouting of the will of the referendum. Thus, their approval by the district budget meeting was probably not illegal.

^{3/} This approval was further ratified at a district meeting on June 29, 1983, following the receipt of a petition for reconsideration.

Whatever the result is for the SAD No. 57 case, however, it is certain that the legislation in question here is not of the clearest. I would therefore suggest that if you would like to introduce amendatory language, you contact my office so that it might assist you in drafting a more concrete alternative. It would appear that only in this way can a statutory scheme be put into place which will not produce the kind of problems of interpretation which the SAD No. 57 case presents.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is stylized, with a large, looping initial "J" and a long horizontal stroke extending to the right, ending in a sharp downward-pointing triangle.

JAMES E. TIERNEY
Attorney General

JET/ec