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July 1, 2009

John O'Connor, Superintendent
Dover School District
61 Locust Street, Suite 409
Dover, NH 03820

Re: Authority of City Council to Review and Adjust Operating Budget Line Items

Dear Superintendent O'Connor:

Recently, the City Council reduced the District's revenue estimates, effectively increasing the school tax rate. You have inquired as to whether the Dover City Council has the authority to amend School Board revenue estimates in appropriating the operating budget for the Dover School District, (aka the Dover School Department). The answer is probably no. Although it would not be unreasonable to argue that the City Council has such authority, state law and the wording of the Dover Charter more strongly support the argument that the City Council lacks the authority to adjust the School Board's revenue estimates.

In any particular instance, the degree of control to be exercised by either school board members or municipal officers must be ascertained by reference to underlying statutory and charter provisions. Under no circumstances, however, will municipal officers be permitted to exercise any greater degree of control over school finance than that clearly intended by the legislature. City of Franklin v. Hinds, 101 NH 344, 345 (1958) (citing Edwards, The Courts and Public Schools, rev. ed., 1955, p. 106). In New Hampshire, the extent to which school finances are subject to municipal control in each city is determined by its charter and by state law. Id.

The Dover School District and the City of Dover are a single municipal corporation. Since at least 1926, the City of Dover Charters have provided that the City of Dover "shall constitute a single municipal corporation with powers for municipal and school purposes, including all the powers of a school district." See Chapter 329 (1929) "An Act to Revise and Codify the Charter of the City of Dover." The current iteration of the City Charter contains the

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exact same statement. See Dover City Charter C4-1 (adopted by the City Council, City of Dover 03-09-77 by resolution); see also Legislative Chapter 275 (1977).¹

The Dover City Charter provides for the election of City Councilors in whom “all of the powers of the City shall be vested,” except as otherwise provided in the Charter. See C3-1. The City Council is the “governing body” of the City of Dover and shall set policies for City government and bear full responsibility for the implementation of those policies. The City Council has the authority to revise, codify and adopt ordinances. See C3-8; see also C3-10. Finally, the Charter indicates that, “[e]xcept as herein otherwise provided, the City Council shall have all the powers and discharge all the duties conferred or imposed upon City Councils, Boards of Mayor and Aldermen and Selectmen of Towns by law.” See C3-11.

Article IV establishes the City of Dover as a school district in addition to a city. The City of Dover maintains all the powers of a school district conferred by state law. Similarly, Article IV of the Charter establishes a school board consisting of seven (7) members elected at large who govern the school district. There is no Charter provision vesting in the City Council authority over the operations of the School District. The Charter is silent as to the responsibilities of the School Board. While the Charter provisions and a Dover Ordinance do address submission of the School District budget, they do not directly address the authority of the City Council and the School Board vis-a-vis estimating revenues.

City Charter Section C6-3, entitled “Budget Procedure,” provides that “each officer or director of a department shall submit an itemized estimate of the expenditures for the next fiscal year for the departments or activities under his/her control to the Manager, who shall submit them with his/her recommended budget to the Council...which shall be the budget submitted to the public hearing...” The same section provides that the City Council “may examine and amend the recommended budget on a line for line basis.” Id. While the Charter requires that “departments submit an itemized estimate of expenditures, Dover City Ordinance 9-1 specifically addresses the School “Department,” providing that “[t]he School Board shall submit to the City Manager, for inclusion in his/her proposed budget on or before March 15th of each year, its recommended budget amounts, revenues and expenditures for the next fiscal year for the various functions and funds of the School Department.” Note that Dover Ordinance 9-1 does not contain the same language of City Charter Section C6-3 specifically authoring the City Council to “amend the recommended budget on a line by line basis.” In addition, note that the “School District” or “School Department” is treated differently than all other City Departments in the various budgeting provisions of the City Charter. See, e.g. Charter C6-7, “Quarterly budget reports; reductions” (manager may reduce appropriation for items in non-school portion of budget); C6-8,

¹We have not undertaken to determine the lawfulness of these various Charter iterations and amendments.

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“Transfers” (requiring manager approval of non-school department transfers, but not for school department transfers). This disparate treatment of the “School Department” reflects the responsibility with regard to school budget administration which the legislature has granted to school boards through various state statutes. See e.g., N.H. R.S.A. 198:4-a, (report of appropriations voted required from school board); R.S.A. 198:4-b, (school board required to report contingency fund expenditures); R.S.A. 198:4-d, (financial reports must be certified by school board chairperson).

It is within the context of Dover’s ambiguous Charter provisions that we turn to the state law, mindful of the premise that “under no circumstances . . . will municipal officers be permitted to exercise any greater degree of control over school finance than that clearly intended by the legislature.” City of Franklin v. Hinds, 101 NH 344, 345 (1958).

The City Council is the appropriating body for the School District budget. The School Board lacks the authority to appropriate funds and has no authority to spend in excess of the total amount appropriated for schools by the City Council. Id. The City Council has a duty to appropriate funds sufficient to provide an adequate education to the students within the City of Dover School District. See e.g., Laconia Board of Education v. City of Laconia, 111 NH 389, 392 (1971).

By adoption of an ordinance, the City Council has sought to prescribe the form in which the School District’s/Department’s budget should be submitted to the City Manager for inclusion in his/her proposed budget, which in turn is submitted to the City Council. The ordinance provides that, “[t]he School Board shall submit to the City Manager, for inclusion in his/her proposed budget on or before March 15th of each year its recommended budget amounts for revenues and expenditures for the next fiscal year of the various functions and funds of the school department.” See Dover City Ordinance 9-1, “Submission Date,” (adopted by the City Council, City of Dover, December 14, 1977, amended in its entirety May 26, 1982 by Ordinance 9-82, subsequently amended November 15, 2000 by Ordinance 15-2000.) While Ordinance 9-1 details the line items to be provided by the “school department” to the City Council, it does not vest any authority in the City Council to adjust those line items.

If Charter Section C6-3, permitting the City Council to engage in line by line amendment of the budget, is applicable to the District, the Charter limits the District’s mandatory budget submission to an estimate of expenditures. While there is no express authority to adjust the School Board’s revenue estimates, it would not be unreasonable to conclude that the ability to adjust line items in the budget includes the ability to adjust revenue estimates.

On the other hand, historically the School Board, as the governing body of the School District, has been responsible for setting and certifying revenue estimates. To date, the School Board, Superintendent and/or Business Administrator have been required to certify the School

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District's revenue estimates to the State Department of Education and Department of Revenue Administration. Neither the City Council, nor the City Finance Manager, has been required to certify the School District's revenue estimates. If the City Council is permitted to adjust the School District's revenue estimates, how could the School Board (or its officials) certify estimates it did not make? If the City Council were to have the authority to lower School Board revenue estimates, then it would have to have the corresponding duty to certify those estimates. See N.H. R.S.A. 198:4-d (requiring certified revenue reports). It is unclear whether R.S.A. 198:4-d would permit the City Council to make such certification in place of the School Board or its officials.

As further support for the School Board's ability to control the revenue estimates, note that revenue estimates are not generally within the purview of the legislative body to amend. For example, in a School District meeting, the citizens lack the authority to reduce a School Board or Budget Committee's revenue estimates. See e.g. N.H. R.S.A. 40:13, X.

In a close call such as this, an interpretation permitting the School Board to retain control over revenue estimates is consistent with the New Hampshire Supreme Court's decisions addressing the division of authority between municipal governing bodies and school boards. For example, even in cities such as Rochester, where "all fiscal and prudential affairs of the School District," are vested in the City, the Supreme Court still acknowledged that the general management and control of the school district is vested in the school board, and not the city council. See Rochester Educ. Assoc. v. City of Rochester, 116 N.H. 402, 405 (1976). In that case, the Court observed that, "[c]harter provisions similar to this have consistently been interpreted by this court to signify that the city council is the appropriating agency, while the school board is the manager and controller of the public schools within the limits of the appropriation made by the city council." Id. Similarly, in Tappan v. Shaw, the Court ruled that school teachers "are employees of the school district not the city and ordinances directed at city employees are not applicable to school teachers." 113 N.H. 353, 354 (1973).

In those cases where cities have sought to usurp a district's fiscal autonomy and administrative authority, the Court has reiterated that there is "a general scheme of legislation which preserves the fiscal autonomy of local schools except as expressly limited by applicable charter provisions." Sullivan v. Flynn, 116 N.H. 547, 550 (1976). In Sullivan, where the City of Nashua and its School Board had arguably been merged, the School Board still had the authority to control the budget and has responsibility for "fiscal management of the schools." Id. at 551. The Court has also consistently noted that "[u]nder no circumstances ... will municipal officers be permitted to exercise any greater control over school finances than that clearly intended by the legislature." Franklin v. Hinds, 101 N.H. 344, 345 (1958). In this regard, the Court has characterized its decisions as "recognizing a policy favoring financial independence for school districts wherever possible." Baker v. Hudson School Dist., 110 N.H. 389, 392 (1970). Thus,

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Charter provisions like Dover's have been interpreted to retain as much authority as possible within the School Board to control the School District's budget.

In sum, under state law granting budget authority to municipal governing bodies, neither selectmen of towns nor City Councils are granted direct authority to revise a school district's revenue estimates. There simply is no statutory grant of authority in this regard in any of the state statutes addressing municipal budgeting or school district administration. To the extent that the Dover City Council is granted authority to adjust the budgets of City Departments on a line by line basis, there is no language explicitly extending that authority to School Board revenue estimates. Given the policy of favoring fiscal independence for school districts, it is more reasonable to conclude that since the Dover Charter does not grant express authority to the City Council, the School Board should retain control of its revenue estimates.

Very truly yours,



Dean B. Eggert

/ajm

cc: Allan Krans, Esq., Dover City Attorney
Dover School Board