

**MEMORANDUM**

**TO:** Portland Charter Commission

**FROM:** Jim Katsiaficas, Emily Arvizu

**DATE:** April 13, 2022

**RE:** Proposed Charter Provisions Regarding School Budget

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This memorandum seeks to succinctly articulate the reasons why we cannot state that the Charter Commission Education Committee's School Budget Proposal (the "Proposal") is not prohibited by State law.

The Legislature has enacted a statutory scheme under Title 20-A which vests "the control and management of the public schools . . . in the legislative *and* governing bodies of local school administrative units . . .". 20-A M.R.S. § 2(2) (emphasis added). With respect to the school budget approval process, this statutory scheme of divided authority is effectuated through a three-step process in which (1) the school board considers and approves the cost center articles for submission to a budget meeting; (2) the municipal council or other municipal legislative body established by the charter with authority to approve the budget holds a budget meeting and considers and approves the articles; and finally (3) the budget is submitted to a budget validation referendum. 20-A M.R.S. §§ 2307, 1485.

The Proposal effectively eliminates the second step and the City Council's role in the process. Under the Proposal, (1) the School Board prepares a budget; and (2) the City Council then submits the School Board-prepared budget to a budget validation referendum.<sup>1</sup> Either the Proposal omits the step of municipal legislative body approval, which is contrary to § 2307, or it allocates that legislative authority to the School Board, which is contrary to the division of roles and authority that is a basic part of Maine's school law.

The primary issue is that the School Board cannot serve as the "other legislative body established by the charter with authority to approve the budget" because the School Board is not a legislative body and does not have authority to approve the budget. The School Board is, by definition, a governing body. 20-A M.R.S. § 1(28), (29). Title 20-A vests control in both the legislative *and* governing bodies and if the Legislature had intended that a governing body serve in the role of approving the overall budget, it would have stated so. Instead, the Legislature has defined the School Board as a governing body and has given school budget approval authority not to the governing body, but to the legislative body.

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<sup>1</sup> Even assuming that the School Board could legally serve as the "other legislative body" under § 2307, as Drummond has argued, the Proposal makes no provision for a meeting of the "legislative body", as required under §§ 1485(3) and 2307.

Furthermore, as a governing body, the School Board “may exercise only that power which is conferred upon [it] by law.” *Churchill v. S.A.D. No. 49 Teachers Ass’n*, 380 A.2d 186, 192 (Me. 1977); *see also Hallissey v. School Administrative Dist. No. 77*, 2000 ME 143, 11, 755 A.2d 1068. “The source of that authority must be found in the enabling statute either expressly or by necessary inference as an incidence essential to the full exercise of the powers specifically granted.” *Id.* Title 20-A defines a school board or school committee as a “governing body with statutory powers and duties.” 20-A M.R.S.A. § 1(28), (29). Section 1001 establishes the duties of school boards. Notably absent from those duties is the duty to approve the school budget. The school board has not been expressly granted the authority to approve the budget by any statute and the Law Court in *York* rejected the argument that preparing a budget to be submitted to voters was essential to a school committee’s school management powers. *School Committee of Town of York v. Town of York*, 626 A.2d 935, 941 (Me. 1993).

In short, the school board is a governing body and the designation of the School Board as an “other municipal legislative body established by the charter with authority to approve the budget” under 20-A M.R.S. § 2307(1) goes against the statutory scheme of dividing school authority between the legislative and governing bodies of a municipal school unit. In light of the separate roles the Legislature has given to the school board as the governing body and to the municipal council or other municipal legislative body (which could be a town meeting, with a public hearing and vote on the articles) as the legislative body, we cannot state that the Proposal’s assignment of legislative body authority to the School Board is not prohibited by State law.