

III.A.

CONNECTICUT STATE BOARD OF EDUCATION Hartford

TO BE PROPOSED:

September 2, 2015

RESOLVED, That the State Board of Education, pursuant to Section 10-64 of the Connecticut General Statutes, amends Condition 1 of its conditional approval of the Regional Agricultural Science and Technology Education Center ("ASTE") application of Regional School District 12 granted on August 4, 2015, by substituting the following language:

Region 12 Board of Education and its constituent towns adhere to local charter and referenda requirements in determining the specific referendum procedures needed in this case and achieve a majority vote of approval for the financial support of the ASTE Center;

and directs the Commissioner to take the necessary action.

Approved by a vote of _____, this second day of September, Two Thousand Fifteen.

Signed: _____
Dr. Dianna R. Wentzell, Secretary
State Board of Education

CONNECTICUT STATE BOARD OF EDUCATION
Hartford

TO: State Board of Education

FROM: Dr. Dianna R. Wentzell, Commissioner of Education

DATE: September 2, 2015

SUBJECT: Amendment to Condition 1 of the approved Regional School District 12 Application to Establish a Regional Agricultural Science and Technology Education Center

Executive Summary

Introduction

On August 4, 2015, the Connecticut State Board of Education (“CSBE”) conditionally approved an application to establish a Regional Agricultural Science and Technology Education Center (“ASTE”) at Shepaug Valley School located in Regional School District 12, in cooperation with the boards of education of the towns of Brookfield, Danbury, New Fairfield, New Milford, Newtown, and Sherman. Approval was granted subject to four conditions delineated in Commissioner Wentzell’s August 4, 2015, memorandum to the State Board of Education.

Background

During the discussion of the application at the State Board of Education Meeting on August 4, 2015, Superintendent Patricia Cosentino raised a question regarding the statutory requirements of Condition 1, which read, “A majority of each of Regional School District 12’s towns (Washington, Roxbury, and Bridgewater) pass a referendum for the financial support of the ASTE Center.” Superintendent Cosentino noted that only matters of the Regional School District 12 Plan (charter) must be passed by a majority of *each* town, and that most matters, such as annual district budgets, are passed by a majority *across* Regional School District 12.

The Board agreed to approve the application and seek further legal guidance from the department’s Division of Legal and Governmental Affairs on any statutory requirement of Condition 1. The attached memo dated August 11, 2015, from Attorney Matthew Venhorst, outlines the issue. Attorney Venhorst concludes that there is no statutory requirement for a majority vote of financial support from *each* town. He cautions that the Regional School District 12 Board of Education and its constituent towns would need to adhere to local requirements in determining the specific procedures that may be required for the referendum.

Recommendation

I recommend that the Board amend its August 4, 2015, action concerning the Regional School District 12 Agricultural Science and Technology Education Center at Shepaug Valley High School by substituting the following language under Condition 1:

Condition 1: The Regional School District 12 Board of Education and its constituent towns adhere to local charter and referenda requirements in determining the specific referendum procedures needed in this case and achieve a majority vote of approval for the financial support of the ASTE Center.

Prepared by: _____
Ellen E. Cohn
Deputy Commissioner for the Implementation of
Education Reform

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MEMORANDUM

To: Ellen Cohn, Deputy Commissioner
From: Matthew Venhorst, Division of Legal and Governmental Affairs
Re: Region 12 ASTE Center Referendum Question
Date: August 11, 2015

You asked me to research a question related to the approval by the State Board of Education of the Regional Agricultural Science and Technology Education Center (“ASTE”) application submitted by the Regional School District Number 12 Board of Education (“Region 12”). Given the specific facts set forth here, there is no legal requirement that the towns within Region 12 hold a referendum requiring an affirmative vote in each individual town. To the contrary, to the extent that a referendum is required under the law, the referendum requires an affirmative vote in the regional district as a whole. The most reasonable reading of the first condition imposed by the Commissioner’s report of August 4, 2015, however, is that a referendum be held that requires an affirmative vote in each of the interested towns. As such, it is recommended that the SBE revisit the conditions imposed in the August 4, 2015, report on this issue.

A. Background

At its August 4, 2015, meeting, the State Board of Education granted conditional approval to the ASTE application submitted by the Region 12 Board of Education. In issuing its recommendation, the SBE recommended approval of the application, subject to four conditions set forth in the Commissioner’s report. One of those conditions (“Condition 1”) imposed by the SBE is the following:

A majority of each of Regional School District 12’s towns, Washington, Roxbury, and Bridgewater pass a referendum for the financial support of the ASTE Center.

You indicated that a question has arisen regarding the nature of referendum vote that is now required. In particular, in your August 4, 2015, email to Kathy Demsey and Karen Kowalski, you framed your question as follows:

In question is the wording ‘of each (town)’ . . . is this a simple majority needed across Region 12 (similar to budgets passing, etc.) and not an ‘each town majority’ that the Superintendent reports is only needed in matters related to the Region 12 Charter?

(Emphasis in original).

B. Analysis

The first area of inquiry is whether the specific language of Condition 1 – as presented in the Commissioner’s August 4, 2015, report to the SBE – requires (1) a simple majority across

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Region 12, or (2) an “each town majority” within all towns of the region. In light of the plain language of Condition 1, I do not believe it is reasonable to read this language to require a simple majority vote across the region. Rather, although this language is somewhat ambiguous, the most reasonable reading of Condition 1 is that each of the towns in the region must hold a referendum in which each individual town votes in favor of the proposal. As will be discussed in further detail below, however, given the particular circumstances presented here, there is no statutory requirement that an “each town majority” referendum be held in connection with this particular application.

As an initial matter, there is no general statutory requirement that referenda be held before ASTE centers may be opened. The General Statutes do, however, require that referenda be held when regional school districts issue bonds for school building projects. Specifically, the law provides that this referendum requires that the question “be determined by the majority of those persons voting in the regional school district as a whole.” Conn. Gen. Stat. § 10-56(a).¹ Thus, except as specified below, there is no requirement that, in connection with the proposed ASTE application, a referendum be held such that a majority vote is required in each individual town.

Because the proposed ASTE center would be part of a regional district, the laws regarding the amendment of regional school district operating plans are relevant as well. By way of background, the law provides that the “plan” of each regional school district is the report of the temporary regional school study committee that is prepared at the time the interested towns consider the possible formation of a new regional district.² See Regional School District No. 12 v. Town of Bridgewater, 292 Conn. 784, 796 (2009). The law further provides that, when a regional school district plan will be “amended”³ under the law, strict statutory procedures must be followed before the amendment can be implemented. These procedures, which are detailed in Conn. Gen. Stat. § 10-47c, include the preparation of a report on the proposed amendment as well as holding a public meeting and referenda in which a majority vote in each individual town is required.

¹ Specifically, Conn. Gen. Stat. § 10-56(a) provides in relevant part as follows:

A regional school district . . . may issue bonds, notes or other obligations in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. ***Such referendum*** shall be conducted in accordance with the procedure provided in section 10-47c except that any person entitled to vote under section 7-6 may vote and the question ***shall be determined by the majority of those persons voting in the regional school district as a whole.***

(Emphasis added).

² This is a committee formed, pursuant to Conn. Gen. Stat. § 10-39, to study the issue of whether formation of a proposed regional district is advisable. If a regional school district is ultimately formed following adherence to statutory procedures, the report of this committee constitutes the plan for the school district.

³ The Supreme Court in the Region 12 case held that referenda pursuant to Conn. Gen. Stat. § 10-47c are required for changes to an existing plan that are “not incidental.” The court ruled that the determination of whether a change to a plan is “merely incidental” under § 10-47c “must be determined on a case-by-case basis.” Region 12 v. Bridgewater, supra, 292 Conn. 798.

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While the law is clear that a regional plan cannot be “amended” without following the rigorous amendment procedures outlined in the statutes, it is not always clear whether a plan change constitutes an “amendment.” Under the law, however, it is the regional board of education or the legislative body of the town that would request a plan amendment. See Conn. Gen. Stat. § 10-47c. In the present case, to our knowledge, the regional board has not proposed a formal plan amendment, and the town legislative body has not requested one. Moreover, in speaking with the attorney for the Region 12 school district, the regional board has taken the position that the ASTE center proposal does *not* constitute a plan amendment that would require a town-by-town referendum. In light of these circumstances – and in light of the fact that the SBE does not ordinarily make a unilateral determination as to whether a regional school district proposal constitutes a plan amendment pursuant to Conn. Gen. Stat. § 10-47c – it appears that a plan amendment is not being contemplated here. As such, the town-by-town majority vote referenda that are required for regional school district plan amendments are not required here.

In addition, notwithstanding the specific conditions imposed by the SBE in the Commissioner’s August 4 report, it is important to note that certain local conditions may dictate the steps that must be taken with regard to the proposed ASTE center. For instance, local sources of authority – such as town charters or policies of the regional school district – may require that certain procedures be followed when a new ASTE center is established. The Region 12 Board of Education and its constituent towns would need to adhere to these local requirements in determining the specific procedures that may be required at the local level. I have spoken to the legal counsel for the Region 12 Board of Education, however, and he has indicated that no such provisions are relevant here.

C. Conclusion

In summary, for the reasons set forth above, in the present circumstances there is no statutory requirement that a referendum be held requiring an affirmative vote in each town. As such, the SBE is under no obligation to impose this condition. Rather, to the extent a referendum must be held in connection with a local bond issue, this referendum vote is considered within the regional district as a whole. This legal requirement would apply by virtue of Conn. Gen. Stat. § 10-56 and regardless of whether it was imposed in the Commissioner’s August 4 report. Moreover, although a town-by-town referendum would be required if the proposed ASTE application constituted a regional school district plan “amendment” under the law, the regional board of education has taken the position that the proposed plan does not in fact constitute an amendment.

Given that Condition 1 appears to impose a legal requirement that is not contained in the law, it is recommended that the SBE revisit this condition to clarify the circumstances that must be satisfied in connection with the proposed ASTE center.

I hope this information is helpful to you. Please let me know if I can be of further assistance. Thank you.