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Maine school boards are unique: Understanding that uniqueness is important

- By Donald A. Kopp

Background

Of Maine's political bodies, school boards may well be the most complex and least understood.

Maine's Constitution gives the responsibility and authority for public education to the Maine Legislature, mandating that it, through its statutes, require Maine's towns to provide a suitable public education. Acting on that mandate, the Legislature has enacted statutes creating the Maine school board as a political entity (and creating the separate office of superintendent) and defining the duties of school boards.

Maine's Supreme Court has concluded that school boards may exercise only those powers conferred on them by the State's education laws.¹ Towns and town voters did not create school boards, and other than voting for school board members, budgets, and referenda, towns and town voters have no authority over school boards. That is why understanding the following principle set forth by Maine's Supreme Court is so important:

(T)he (school) committee acts as a public board. It in no sense represents the town. Its members are chosen by the voters of the town, but after election they are public officers deriving their authority from the law and responsible to the State for the good faith and rectitude of their acts.²

What this means is that a school board is not a representative body like the State Legislature or Congress. Its members are chosen by the voters, but its primary duty is to oversee public education in the manner prescribed by state law and not solely to carry out the actual or perceived will of the local voters.

Unlike school board members, it *is* the primary job of state legislators and representatives in Congress to represent the interests of their constituents. And given our system of separation of powers and political parties, often our elected representatives are partisan, criticizing fellow representatives with whom they disagree, criticizing the executive branch, be it the governor and his administration or the president and his administration, and advocating for special interests. As legislators they introduce, debate, and vote on the enactment of laws. They are not responsible for enforcing those laws or for governing. That is the role of the executive branch, gubernatorial or presidential.

School boards as governing bodies

The school board, by state statute, is the *governing body* of a school administrative unit.³ Like the governor or the president, a school board's collective responsibility is to fulfill the laws enacted by the Legislature and to govern the organization for which it is responsible. For school boards this means effectuating the State's education laws and being responsible to the school board's students, employees, and residents. (It may be helpful to visualize a school board's responsibility to students, employees, and residents as a three-legged stool; if the board permits one of the legs to become too short or too long, the stool will topple over.)

As discussed above, school boards were not primarily established to respond to what members of the community ask it to do. While an important aspect of locally elected school board members is guiding their school system in ways that reflect broad community values, they are not required to follow the desires of

special interests in their community. This is worth remembering when a large number of residents show up at a school board meeting demanding, for example, that the board reinstate a popular coach that the superintendent did not renew. While daunting, school board members can feel secure in knowing that they are responsible to the State for carrying out state prescribed responsibilities to the school system as a whole and are not constituted to represent the specific desires of the group of voters at a particular meeting. (It may also help to remember that no matter how large a crowd, or how much media coverage the group gets, it is very unlikely that the group represents a significant percentage of the residents of the entire school system, let alone the students or the employees.) As with any governing body, a school board's decisions are not going to always please everyone. Being able to make a decision that does not please the small percentage of the community's voters who are sitting unhappily in front of a board is certainly a challenge, but it also sometimes is the duty of school board members.

Duty of loyalty

Understanding that school boards are governing bodies and not primarily representatives has important ramifications. Unlike elected representatives who are responsible only to the people who elected them, and who have no responsibility to other elected representatives or to the executive branch, school board members do not represent the voters, they do not act on their own, they are part of a governing team, and they have duties toward and are responsible for that team: their students, employees, residents, and fellow board members. Members of an executive/governing branch of government, like the governor's or the president's cabinet, do not publicly attack other cabinet officers or their employees. Similarly, school board members, as members of a governing body, should not publicly attack each other or school employees. As a member of the governing team, school board members owe a duty of loyalty to its students, employees, and fellow school board members even while working hard for change and improvements when necessary. This difference between the responsibilities of school board members and those of our elected representatives is comparable to the difference between being a member of an orchestra and being a solo performer. The role of the piccolo player in the orchestra is to play in public harmoniously with the rest of the orchestra so that the orchestra as a whole is seen and heard to the best possible advantage. The role of the solo performer - let us say Britney Spears - is to perform in the way she thinks her public will find most appealing while at the same time drawing as much attention to herself as possible.

Public participation

Another important result of not being solely representatives is that school boards are not required to let members of the public speak at its meetings. The Freedom of Access Act ⁴ merely requires that school boards conduct the public session of their meetings in public. (In only a few instances do the education laws require that a school board seek any public input at all.⁵) Stated simply, the rights of voters in a school unit are (1) to watch the school board meet when it is in public session (2) to vote for school board members, and (3) to vote on the school budget and referenda. (In charter towns or cities, the town or city council votes on the budget.)

That residents have no right to speak at school board meetings is often difficult for school board members and members of the public to accept. The town meeting tradition in Maine is so well established that many assume that members of the public have a right to express their views and ask questions at school board meetings. (Now that many board meetings are televised, some even think that the meetings are a forum for community members to get on camera and address the community as a whole.) It is important to focus, however, on the difference between a town meeting and a school board meeting. At a town meeting, the residents of the town, the audience, actually *are* the legislative body of the town. Like legislators everywhere,

they need to ask questions of their executives, the selectmen, and to argue and debate warrant articles placed before the meeting, so that the audience can make a decision on each warrant article by voting it up or down. Contrast that with a school board meeting where the members of the audience have no responsibilities and only the right to be there and watch.

Some school boards have created agenda segments for members of the public to comment on matters on the agenda, or on matters the public is permitted to place on the agenda, or on anything at all. Perhaps boards do this in part to encourage people to come to their meetings. It would be hard to imagine, however, the governor's or the president's busy cabinet members saying, "Hey, here's a good idea. Let's invite members of the public to our cabinet meetings and see what's on their minds." Pretty clearly, an elected executive's cabinet members, with their departmentalized and specialized areas of responsibility and expertise, would find more efficient ways of obtaining broad and representative input from the public at large if they wanted it. The difference for school boards is that school boards are required to conduct the public portion of their meetings in public. But unless public comment is likely to be helpful to the board, as it might when considering the adoption of controversial policies or holding budget workshops, one has to ask why a governing body such as a school board, whose members possess an understanding and knowledge about school matters not available to the public as a whole, would make their meetings longer and less predictable than necessary by providing for open-ended public comment and questions from the very small percentage of its voters who might attend a meeting. Many school boards have found that policies which allow for public comment on agenda items dealing with policy or the expenditure of funds but that do not permit comments about personnel or matters not on the agenda strike a happy balance. Such policies also give the board control over what resident-initiated issues it will place on its agenda.

It is very important to remember that a loosely defined public comment policy that works all right when only a few people are in attendance, one day may be used by an organized special-interest group (with enthusiastic media coverage) to monopolize school board meetings and put board members under extreme and inappropriate pressure.

Conclusion

Meetings that run too long, that subject administrators to unanticipated questions and sometimes abuse, and that permit unpredictable audience participation are not the hallmark of well-run, efficient governing boards, do not present school board governance in the best possible light, and may be one of the reasons why many talented, young administrators are not choosing to become superintendents and why many qualified community members do not choose to serve on school boards. Thinking as a member of a governing board and not a representative, an argument can be made that the happiness level of each board member ought to be inversely related to the number of people at its meetings. If few to none are there, the message can be seen as the majority of the community being content with the informed decisions board members are making. And when a large number of people do show up, a board member, thinking as a member of a governing board, will recognize that the crowd probably does not reflect a sudden upswing in appreciation for the hard work that the school board members are doing; it more likely reflects a group with a single interest that may well be asking the board to do something contrary to its duties under state law and its responsibilities to the school community as a whole.

I am hopeful that understanding the unique statutory role of school boards as governing bodies will make school board members more comfortable and confident in fulfilling their important and complex responsibilities to each other and to their school systems as a whole. ✓

Endnotes

1. *Churchill v. S.A.D. #49 Teachers Association*, 380 A.2d 186, 192 (Me. 1977); *see generally*, Pringle & Tchao, *Maine School Law* 13 (2nd ed. 2001).
2. *Shaw v. Small*, 124 Me. 36, 41 (1924).
3. 20-A M.R.S.A. § 1 (28)
4. 1 M.R.S.A. §§ 401 *et. seq.*
5. In a few areas, school boards are required by law to seek public input or hold a public hearing before making a policy or decision. Examples include budget meetings, adoption of the system wide student code of conduct and Title 1 parent participation policies.