

## **CARVER SCHOOL COMMITTEE MEETING**

**Monday, October 19, 2015 – 7:00 p.m.**

**Carver Public Schools District Office, Makepeace Literacy Leadership Center (MLLC)**

### **AGENDA**

Call To Order, Pledge of Allegiance, and Comments from the Public -7:00-7:10 pm.

Discuss response to email from the Town Administrator to the Superintendent (September 21, 2015) questioning the legal authority of the Superintendent to sign contracts. (see copy of email attached in this posting). Review Legal Opinion prepared by Stoneman, Chandler & Miller LLP. Vote about whether to authorize transmission of Legal Opinion to the Town Administrator.

- I. Discuss letter dated October 7, 2015 from Chair of the Board of Selectmen to Chair of School Committee (copy attached) regarding FY17 Operational Budget and BOS plans to consolidate town/school services. Review possible violations of Massachusetts law, including Mass General Laws M.G.L. c.71 §37M. Vote on School Committee response, which may include correspondence and/or initiation of legal action.
- II. Review the agenda of the October 6, 2015 meeting of the Board of Selectmen (see copy agenda attached to this posting) and October 7, 2015 letter in light of potential Open Meeting Law violations. Possible vote on actions to be taken by School Committee, including but limited to filing a formal complaint.

**PLEASE NOTE: School Counsel from Stoneman, Chandler & Miller, will be present for part or all of the meeting of the Carver School Committee on October 19, 2015.**

Attachment I: Email from the Town Administrator to the Superintendent dated September 21, 2015

Attachment II: Letter from Chair of the Carver Board of Selectmen to Chair of the School Committee dated October 7, 2015.

Attachment III. Posted Agenda for the October 6, 2015 meeting of the Board of Selectmen

Adjourn the meeting

STONEMAN, CHANDLER & MILLER LLP

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MIRIAM K. FREEDMAN  
OF COUNSEL

October 5, 2015

Elizabeth Sorrell, Superintendent  
Carver Public Schools  
3 Carver Square Boulevard  
Carver, MA 02330

Dear Superintendent Sorrell:

This responds to your request for a legal opinion regarding whether a superintendent is legally authorized to sign contracts on behalf of the school department. It is my understanding that there has been some suggestion that the school committee chair should instead sign such contracts. As described below, the superintendent generally has authority to enter and sign contracts for the school department, so long as the school committee has allocated funds for the types of goods and services involved.

As an initial matter, it should be noted that neither the chair nor any individual school committee member has authority to act on behalf of the school department. Thus, the question must be whether a quorum of the school committee must vote to enter each contract or whether the superintendent may legally enter and execute such contracts.

Prior to the Education Reform Act of 1993, M.G.L. c. 71, §37 provided school committees with "general charge" of the public schools. The Reform Act altered school governance by eliminating this "general charge" and instead providing enumerated powers and duties to school committees, including review and approval of the budget for public education in the district. Consistent with this change, the Reform Act amended MGL c. 71, §59 to eliminate the school committee's "general direction" of the superintendent and to instead provide that the "Superintendent shall manage the system in a fashion consistent with state law and the policy of the district."

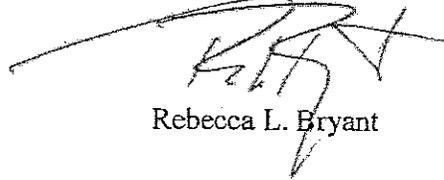
Under these provisions, the school committee remains responsible for developing the budget, including allocating amounts to be expended within various cost centers. Once the school committee has allocated funds for a particular type of service or supply (e.g., classroom teachers, textbooks, or office supplies), superintendents and, in some cases, principals are generally authorized to enter contracts for such services and supplies. See, e.g., M.G.L. c 71, §§48, 59, 59B and DOR Opinion #96-1121 (1/6/97).

STONEMAN, CHANDLER & MILLER LLP

Elizabeth Sorrell, Superintendent  
October 5, 2015  
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Please note that in preparing this opinion I have reviewed the general laws and consulted with representatives of the Massachusetts Department of Revenue, Division of Local Services ("DOR") and the Massachusetts Department of Elementary and Secondary Education ("DESE"). Please contact me if you require additional information regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'RLB', with a long horizontal flourish extending to the left.

Rebecca L. Bryant

RB:th

cc: Gina Hanlon-Cavicchi, Chair of Carver School Committee

## Sorrell, Liz

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**From:** Milanoski, Michael <michael.milanoski@carverma.org>  
**Sent:** Monday, September 21, 2015 11:36 AM  
**To:** Sorrell, Liz  
**Cc:** ronaldclarke@comcast.net  
**Subject:** RE: LAB-AIDS documentation.docx

Liz,

This is a simple question, it appears you do not have the legal authority under MGL, nor can school committee delegate that to you to sign contracts as you say you have been doing for 10 years. I may be wrong and if so I have no problem admitting that. I'm just requesting legal opinion confirmation you have that authority, if you do you should be able to get a legal opinion to say so. If not, then going forward we will just need the chair to sign off rather than you. This should not be a big deal – so let's not make it one.

Further, everything regarding the school operations has to do with building a new school building, so that people learn to trust government by example as that was one of the reasons it was voted down last year and given per my position, I'm am and will require all t's to be crossed and l's dotted.

Michael

Michael R. Milanoski  
Town Administrator  
Town of Carver  
108 Main Street  
Carver, MA 02330  
[www.carverma.org](http://www.carverma.org)  
508.866.3401

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**From:** Sorrell, Liz [mailto:Sorrell@carver.org]  
**Sent:** Monday, September 21, 2015 11:26 AM  
**To:** Milanoski, Michael <michael.milanoski@carverma.org>  
**Cc:** ronaldclarke@comcast.net  
**Subject:** RE: LAB-AIDS documentation.docx

I have been signing all contracts for 10 years in Carver and our audits show no reflection of that being illegal. I plan to continue until June 30. Then Scott will be signing all contracts.

This is ridiculous and has nothing to do with a school building.

Liz Sorrell

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**From:** Milanoski, Michael [mailto:michael.milanoski@carverma.org]  
**Sent:** Monday, September 21, 2015 11:17 AM  
**To:** Sorrell, Liz  
**Cc:** Gina Marie Hanlon  
**Subject:** RE: LAB-AIDS documentation.docx

I have no problem with that as long as it is legal. Can you check with your attorney and get a legal opinion you can legally bind the School Committee. Once you do I'm fine with it but it appears under state law they have to sign and cannot delegate. Given the school building vote – we just need to cross our t's and dot our l's.

Michael R. Milanoski  
Town Administrator  
Town of Carver  
108 Main Street  
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508.866.3401

**From:** Sorrell, Liz [<mailto:Sorrell@carver.org>]  
**Sent:** Monday, September 21, 2015 10:51 AM  
**To:** Milanoski, Michael <[michael.milanoski@carverma.org](mailto:michael.milanoski@carverma.org)>  
**Cc:** Gina Marie Hanlon <[ginamariehanlon@verizon.net](mailto:ginamariehanlon@verizon.net)>  
**Subject:** RE: LAB-AIDS documentation.docx

The school committee assigns the superintendent to sign all contracts. The Superintendent will be signing all contracts per school committee policy.

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**From:** Milanoski, Michael [<mailto:michael.milanoski@carverma.org>]  
**Sent:** Monday, September 21, 2015 10:45 AM  
**To:** Sorrell, Liz  
**Cc:** LaMay, Meg; Gray, Peter  
**Subject:** FW: LAB-AIDS documentation.docx

Liz,

I have reviewed the package you sent to Meg requesting approval for sole source.

As the Town CPO, I am making a determination that this is a sole source procurement and Lab Aids is the only retail option given that all three steps in the town procurement process has now been followed after the fact. The release of payment in the amount of \$42,300.95 has now been authorized. As you are aware under state law, the procurement responsibility is solely the responsibility of the Town CPO which is the Town Administrator. As a department of the Town of Carver, the School Department must follow the town procedure for purchasing of goods and services. I'm sure your attorney has told you this and has shared with you're the appropriate case law that requires schools to follow state and town procurement policy and final decision rest with town CPO.

The school has the authority to purchase anything it wants within its budget PROVIDED it follow the town procurement policy. In addition the School Committee can assign any title it wants to you but that title under MGL has no legal authority as the School Committee does not have that authority to give you powers that have not been promulgated under MGL. However, I encourage the school committee to have additional checks and balances internally if that was the intent.

That being said as the Town of Carver CPO, I did assign responsibilities to both the Assistant Superintendent and you, the Superintendent that were filed and recorded with the state inspector general in August under MGL 30B section 19 as I am legally authorized to do, following our last meeting – see attached. However, as the Town CPO I'm the only one authorized to sign off on "sole source" in the Town of Carver per mass general laws and that authority has not been delegated.

Going forward for purchases over \$10,000 you will need to use the new contract form and have the Chairman of the School Committee sign off on the contract as it is my understanding that the chair is the only one legally authorized to sign off on contracts and that authority cannot be delegated within the school department.

Kindly note that if proper procurement including sole source approval is not signed off prior to ordering goods and services, including following all applicable laws and regulations the town is not responsible for illegal actions. Again, anything over \$10,000 (annually if known or anticipated) must follow this process as has been stated for the last few months and will be strictly enforced in FY2016.

Feel free to contact me with any questions.

Michael

Michael R. Milanoski  
Town Administrator  
Town of Carver  
108 Main Street  
Carver, MA 02330  
[www.carverma.org](http://www.carverma.org)  
508.866.3401

**From:** LaMay, Meg  
**Sent:** Thursday, September 17, 2015 11:50 AM  
**To:** Milanoski, Michael <[michael.milanoski@carverma.org](mailto:michael.milanoski@carverma.org)>  
**Subject:** FW: LAB-AIDS documentation.docx

Here's Liz's e-mail....

Meg LaMay  
Town Accountant  
Town of Carver  
108 Main Street  
Carver, MA 02330  
(508) 866-3446

**From:** Sorrell, Liz [<mailto:Sorrell@carver.org>]  
**Sent:** Wednesday, September 09, 2015 12:32 PM  
**To:** LaMay, Meg <[meg.lamay@carverma.org](mailto:meg.lamay@carverma.org)>  
**Subject:** LAB-AIDS documentation.docx

Hi Meg,

I hope you are keeping cool during this heat wave!

I have attached the documentation you requested regarding the LAB-AIDS purchase order 151008.

I have also requested a sole source letter from Barbara Nagle, Director of SEPUP at the Lawrence Hall of Science at the University of California at Berkeley. She will be sending it to me in a bit (California time difference).

See you soon, Liz

Elizabeth A. Sorrell  
Superintendent  
Carver Public Schools  
508-866-6150



Michael Milanoski  
Town Administrator

## BOARD OF SELECTMEN

Elaine M. Weston  
Ass't. to the Town Administrator

108 Main Street  
Carver, MA 02330  
Telephone: 508-866-3401/Fax: 508-866-4213

TO: CHAIRMAN GINA M. HANLON-CAVICCHI  
MEMBERS OF THE SCHOOL COMMITTEE

FROM: RONALD E. CLARKE, CHAIRMAN

DATE: OCTOBER 7, 2015

RE: FY 17 OPERATIONAL BUDGET

The Board of Selectmen, at their October 6, 2015 meeting, voted unanimously that the available revenue for FY 17 is \$31,674,705. In accordance with the Financial Management Policies that were approved at the Annual Town Meeting, the General Government will receive 29.7% or \$9,407,387 and the School Department will receive 70.3% or \$22,267,318 to fund operations. In addition, the FY 17 Board of Selectmen Goals and Objectives were voted on as follows:

1. Motion by Dunham to change Goal #1 to: Continue to follow the Town of Carver's Financial Policies as voted at the 2014 Annual Town Meeting, applied uniformly through ALL town departments. Doing so should optimize costs of borrowing and bonding, second by Marrone. Vote 5-0. (The Financial Policies were approved by Article 4 of the 2014 ATM)
2. Motion by Dunham to: Continue to fund the OPEB trust fund, annually reviewing the size of the contribution with the intent of increasing it annually. Consider developing an annual formula that would determine the size of the contribution, second by Marrone. Vote 4-0 (Hewins recused herself from the vote as a retiree)
3. Motion by Dunham to revise #3 to: Develop a town-wide shared budget account where appropriate as part of the overall town budget, second by Marrone. Vote 5-0.
4. Motion by Dunham to revise #4 to: Establish, in coordination with the School Department, a town-wide IT department. Funding for the department to be under the town-wide shared budget account, second by Marrone. Vote 4-1
5. Motion by Dunham to revise #5 to: Establish a town-wide Health Benefits line item in the town-wide shared budget account to fund health benefits for all town employees; both municipal and school employees. The School Department will be consulted to get a full accounting of the number of employees eligible for health benefits. Health benefits for current employees and retirees will be funded by this line item. (the FY 14 Audit review under comments...line 7 at the Board of Selectmen meeting on 3/3/15 made this recommendation), second by Marrone. Vote 4-0 (Hewins recused herself from the vote as a retiree)

6. Motion by Dunham to revise #6 to: Using funding provided by the recently received State Grant, commission a study to determine cost savings and efficiencies in moving to a town-wide facilities department. At the completion of the study, and a review and approval of the recommendations of the study by the Board of Selectmen, implement the findings/recommendations of said study. The implementation of any findings/recommendations shall be done in coordination, as needed with the School Department, second by Marrone. Vote 5-0
7. Review the reorganization that took place in FY15 in the five land use departments – Board of Health, Conservation, Inspections, Planning and Zoning Board of Appeals – to ensure that all services needed by the residents are being met, and make adjustments as necessary. Motion to approve by Marrone, second by Dunham. Vote 5-0.
8. Investigate opportunities for regionalization. These efforts must prove to be a cost savings and/or result in a more efficient delivery of services. Motion to approve by Ward, second by Dunham. Vote 5-0.
9. Receive quarterly updates on the town's efforts and progress with ongoing drug problems. Review and consider any actions the Board of Selectmen can take to alleviate the issue. Motion to approve by Marrone, second by Dunham. Vote 5-0.
10. Work with the Capital Outlay Committee and other parties of interest to look forward to future capital building projects. The Board should work immediately to prioritize the establishment of a Police Station Study Committee. Motion to approve by Ward, second by Marrone. Vote 5-0. Evaluate the possibilities of using a portion/percentage of "one time funding" each year to help fund a new Elementary School if said school is approved by the town. Motion to approve by Ward, second by Marrone. Vote 5-0.

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Ronald E. Clarke, Chairman

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## **Statutory Overview: Respective roles of school committees and towns in overseeing the maintenance of school buildings**

This provides a brief overview of respective roles of school committees and towns in overseeing the maintenance of school buildings and circumstances in which maintenance services may be consolidated between a town and the school committee. It particularly addresses statutes of general applicability that may serve to prevent the town from unilaterally assuming jurisdiction and control over maintenance of school buildings previously exercised by the school committee. Note that additional statutes applicable to specific towns as well as town by-laws may also need to be reviewed for a full analysis of the respective rights and responsibilities of a particular town and school committee.

**M.G.L. c. 71, §37M** (entitled “Consolidating Administrative Functions of School Committee with Those of the Municipality”)

M.G.L. c. 71, §37M (“Section 37M”), specifically sets forth the respective roles of school committees and towns in the control of maintenance of school properties, as follows:

- (a) Notwithstanding the provisions of chapter forty-one or chapter seventy-one or any other special or general law to the contrary, any city or town which accepts the provisions of this section **may consolidate administrative functions, including** but not limited to financial, personnel and **maintenance functions**, of the school committee with those of the city or town; provided, however that such consolidations may occur **only upon a majority vote of both the school committee and ... in a town, the annual town meeting** or in a town with no town meeting, the town council.
- (b) Notwithstanding any general or special law to the contrary, a **decision** to consolidate functions pursuant to paragraph (a) of this section **may be revoked by a majority vote of either the school committee** of the city or town, or the city or town, or both as such vote is described in said paragraph (a).

As such, Section 37M on its face prohibits a town from unilaterally taking control of the maintenance of school property. Rather, the school committee’s vote is also required. Indeed, at any time after consolidation, the school committee can unilaterally revoke its consent.

**M.G.L. c. 71, §68** (entitled "Duty of Towns to Maintain Schools. . .")

A town may argue that M.G.L. c. 71, §68 (Section 68) supersedes the provisions of Section 37M to act unilaterally in assuming control of school property maintenance. Section 68 states, in part:

...The school committee, unless the town otherwise directs, shall have general charge and the superintendence of the school houses, [and] shall keep them in good order.

However, based upon basic rules of statutory construction, it appears unlikely that this statute could be read to authorize a town to unilaterally assume control of the maintenance of school property. Courts are generally bound to construe two potentially competing statutes in a way that will give effect to both statutes. See generally Sullivan v. Chief Justice for Admin. and Management of the Trial Court, 448 Mass. 15, 27 (2006) (in determining whether or not there is a conflict between statutes, the court will give preference to a harmonious reading of the statutes). Further, where a general statute conflicts irreconcilably with a specific one, it is understood that the general statute must yield to the specific one (Saccone v. State Ethics Comm., 395 Mass. 326, 332 (1985)). Likewise, in the event there is a conflict between two statutes, the courts find that there is implied repeal of an older statute if it is repugnant to and inconsistent with a later statute. Boston v. Board of Education, 392 Mass. 788, 792 (1984) (competing statutes will be construed in a manner that gives reasonable effect to both, and implied repeal will be found when the prior statute is repugnant to and inconsistent with a later statute so that both cannot stand.)

A harmonious reading of the two statutes at issue can be made by interpreting Section 37M as establishing the means by which a town can "otherwise direct" and take control of the maintenance of school property as contemplated by Section 68, i.e., by seeking and obtaining the consent of the school committee. However, absent such a harmonious reading, Section 68 must yield to Section 37M since it is more specific in nature. Further, Section 37M was enacted in 1992 and amended in 1996. In stark contrast, Section 68 was enacted in 1934, with no amendments since that date affecting the portion of the statute quoted above.

Given the rules of statutory construction, it is unlikely that a court could hold Section 68 to permit a town to unilaterally strip the school committee of its authority to control maintenance of school properties.

In the event of litigation relating to the matters described above, this analysis is not intended to restrict the causes of action and arguments to be presented on behalf of a school committee in reserving its rights and authority under law to control the maintenance of school property.



## BOARD OF SELECTMEN AGENDA

October 6, 2015

6:30PM Town Hall – Meeting Room #1

Posted in accordance with the provisions of M.G.L. Chapter 30A, §20b

**Announcements:** This meeting is being cablecast by Area 58-Community Access Media, Channel 15. There are openings on several Committees - please contact the Selectmen's Office for a listing and application. Donations to the Food Pantry can be made at the Council on Aging or the Public Library.

**The Board chairman reasonably anticipates the following matters will be discussed and/or voted on at this meeting:**

- 6:30PM Executive Session – (Exemption #2, 3, 6) Motion: Move to go into Executive Session to discuss strategy with respect to collective bargaining negotiations with unions (Clerical, DPW, Dispatchers, PEC/IAC-Health Care, Police) and for non-union negotiations and with all non-union personnel not under contract, and strategy for litigation, and for purchase, exchange, sale, lease or value of real estate that may have a detrimental effect on the bargaining position of the town if held in open session, and to reconvene in open session.
- 7:00PM Pledge of Allegiance, Community Prayer & Public Comment Period
- 7:10PM LEPC Presentation
- 7:30PM Vote on BoS FY 17 Goals and Objectives
- 7:45PM Vote 10 year Pro-forma for FY17 – final budget numbers for school and town  
Discuss financial concerns for FY17 and beyond
- 8:30PM Town Administrator Update
- Update on CPA meeting and School Funding
  - Update on Fire Station
- 9:20PM Board of Selectmen Comment Period
- Update on Elementary School Project
  - Update on Tax Relief Study Committee
  - Discussion on vote for school ballot question on debt exclusion
  - Selectmen Appointment to SRPEDD: Marlene McCollum (Replacement for previous Director of Planning)
- 9:40PM Minutes/Licenses/ Topics not reasonably anticipated by the Chairman 48 hours in advance of meeting
- Minutes of 9/15/15 9:00am, 9/15/15 6:30pm, 9/17/15 7:30am
  - Special Town Meeting December 1<sup>st</sup>, Annual Town Meeting April 11<sup>th</sup>
  - Application for Fishing Derby at Sampson's Pond: Southcoast Bass Anglers 8/14/16 (Saturday) 6am-3pm
  - Request for use of Shurtleff Park: Church of the Vine Oct. 31 5pm-8:30pm

### Adjournment

*Discussion during Board meetings should always be courteous and respectful, and should be confined to the subject under consideration. Sarcasm is generally not respectful, and the subject under consideration does not include the individuals involved in the debate. During each topic, there will be no questions from the audience. Even if the public raises their hands, they may not be recognized during topic discussion. All statements and questions should be directed to the Chairman during the public comment period, who will ask the appropriate person to respond, comments should be kept to three minutes or less. This is to try to keep the meeting on schedule and not run behind. This meeting will be recorded as an official record. If you wish to record the meeting in any manner you must advise the chair prior to the start of the meeting. A copy of documents used in a presentation or comments must be provided to be kept as part of the official record.*