

Memorandum

To: David Martin, President
Board of Representatives
CC: Anthony Mazzullo, Superintendent of Schools

From: Thomas M. Cassone, Director of Legal Affairs

Date: April 24, 2003

Re: Fiscal Committee Budget Actions

You have asked whether or not this office has rendered an opinion concerning the ability of the Board of Representatives to make contingent appropriations in the Budget Process. Similar questions have been addressed in the past but in the limited time allotted prior to your vote, I could not locate an exact fit. However, the answer is still very clear. The Board of Representatives budget power in this regard is unambiguously prescribed by the Charter. "[W]here the town charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful." Miller v. Eighth Utilities District, 179 Conn. 589, 594, 427 A.2d 425 (1980). McQuillan Municipal Corporations §12.40. As discussed below, I believe that no "contingent appropriation" authority exists for either the City or Board of Education Budgets.

Specifically, the Charter provides that the Board of Representatives may only "approve, reject or reduce any item in the budget for the next ensuing fiscal year approved by the Board of Finance" C8-30-7. If it is not "reduced or rejected" by the Board "it shall be deemed to have been approved by that Board." C8-30-7 With reference to the Board of Education Budget, the Charter provides that the Board "shall have the power to approve, reject or lower any item in the budget

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which is not for a purpose within the statutory provisions imposing a duty upon the Board of Education or within the provisions which vest the Board of Education with a discretion to be independently exercised. It may not reject, but may only approve, any item for a purpose to effectuate or which vests in the Board of Education a discretion to be independently exercised by it, but it may reduce such item if it exceeds the amount reasonably necessary for the accomplishment of the purpose. . .”C8-30-8. No where in the Charter either in the City’s or Board of Education’s budget does a “contingent” appropriation, that is, an appropriation where the Board retains some ability to revoke the appropriation if certain conditions are not met, exist.

With reference to a Board of Education, this concept has been addressed by the Connecticut Supreme Court. In *Ellington Board of Education v. Board of Finance of the Town of Ellington* 151 Conn. 1 (1963) a Board of Finance sought to make an appropriation for a teaching position conditioned on the Board of Educations agreement to repair a roof that the Board of Finance felt was a higher priority. Under the circumstances in Ellington, the Court rejected the attempt.

In summary, the Board of Representatives may only approve, reduce or reject a budget item. The “contingent appropriation”, as you have described it, is not permitted by the Charter.