

TOWN OF NEWTOWN
Board of Finance:
Joint Board of Education, Board of Finance & Legislative Council Work Group

MINUTES

Monday, May 3, 2021 Special Virtual Meeting

These minutes are subject to approval by the Joint Non-Lapsing Work Group

Present: Dan Delia, Chris Eide, Cathy Reiss, Ned Simpson, Deborra Zukowski, Debbie Leidlein and John Madzula II

Also Present: David Grogins, Esq Town Attorney, Matt Ritter, Esq School District Attorney, one member of the press and an anonymous caller

Ned Simpson called the meeting to order at 7:31 p.m. Attendees saluted the American Flag.

VOTER COMMENTS - None

APPROVAL OF MINUTES

Chris Eide moved approval of April 26, 2021 Minutes Cathy Reiss seconded. All in favor and motion passed with John Madzula and Debbie Leidlein abstaining as they were not at the meeting.

COMMUNICATIONS - None

NEW BUSINESS: - None

OLD BUSINESS:

- Discussion: Policy related to a Newtown Non-Lapsing Educational Fund
 - Mr. Grogins started with a review of his October 20, 2020 opinion that, for Newtown, the Legislative Council (LC) should be the body authorizing town actions regarding the Non-Lapsing Fund. In explaining this he provided the history Newtown's Board of Finance (BoF) from the 2000 Charter Review Commission. That Commission proposed creating a BoF. However, LC did not approve that charter change. The Commission chair successfully petitioned having the charter change creating a BoF on referendum. Voters approved the creation of a BoF but the authority and powers of the BoF were not passed.
Mr. Grogins went on to say that he reviewed Mr. Ritter's letter to the Work Group (Attachment A) and was in 99% agreement. He stated concern over whether the idea of a policy agreement between three or four board is possible and it might violate the CT Home Rule act.
 - Mr. Ritter provided legislative history of the Non-Lapsing statute dating back to 2010. At that time unspent appropriations resorted to the town. This produced an incentive for school districts to spend down their appropriations before year-end. At the same time school districts did not have mechanism to save for known future expenses. The ability for towns to create Non-Lapsing accounts (Sec. 10-248a) took effect in 2011. In 2019 the legislature amended the statute to increase the amount that could be added to a Non-Lapsing account each year and added language specifying that funds must be used for "educational purposes" with the BOE as the authorizing body. Under the current statute the town fiscal authority approves deposits in the Non-Lapsing Fund and the BOE can unilaterally spend funds in the account. The checks and balances are that 1) if the town does not like how the BOE spends from non-lapsing, they can refuse to add new funds to the non-lapsing account and 2) if the town is not supportive of district needs, then the district could decide to spend down funds prior to the end of the fiscal year, something that the statute was trying to make unnecessary.. Mutually agreed to policy can avoid this kind of conflict.

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- Question: Would the school district's regulation on processes for the Non-Lapsing account (R3171.1) be considered a valid policy? Mr. Ritter, who was involved in the drafting of this regulation, responded "Yes" it is legal, but more than legal there needs to be cooperation and approval from the involved boards. Mr. Grogins concurred adding that a strong BoF recommendation could be part of the process.
- Question: A follow-up to Mr. Ritter's April 21 negative response to question 3.a as to whether funds other than "unexpended funds from the prior fiscal year from the budgeted appropriation for education" can be deposited into non-lapsing. Mr. Ritter affirmed the single path for funding referencing Sec 10.222 as the broader statute. He suggested that town mechanisms were available for the BOE to accumulate funds for a specific project. Mr. Grogins concurred
- Question: Can a non-lapsing account have sub-accounts? Mr. Ritter asked what would a sub-account be for? An example, the BOE request in 2019 that \$63,000 of the funds going into Non-Lapsing be considered for Special Education contingency was given as an example. Mr. Ritter thought it would be OK. Mr. Grogins highlighted benefits of not splitting funds into smaller accounts as it limits flexibility. For perspective, Mr. Grogins pointed to the municipal operations budget noting that the town cannot just keep money around and has to ask permission to spend.
- Question: Whether policy or Memorandum of Understanding (MOU) would be the best vehicle. Mr. Ritter indicated that he has seen towns use both options, but believes policy is the better alternative. Any party to a MOU can simply not comply, but town bodies have processes for changing policies.
- Question: What body would own such a policy? Initial response was that LC would be the owner. Subsequent discussion tempered that with the concept that some sections would be owned by LC and other sections owned by BOE. Both attorneys cautioned that as a policy is drafted, legal review should occur
- Clarification: Parallel policies, identically worded policies should be approved by each body, and included in their respective set of policies. Participating bodies would include LC and BOE with the possibility that BoF and Board of Selectmen (BOS) would also be included. It was asked whether the CIP Policy (Section 310) which defines the roles and responsibilities of the four mentioned boards as well as the Finance Director could be a model for Non-Lapsing policy. No immediate thoughts from the attorneys. Repeated need to legal review as something take shape.
- Discussion: How would such policy be updated and what if one body chooses to not follow the policy? The attorneys response acknowledged that it can happen, it is not preventable and if it does happen, governance resorts to 10-248a, 10-222 and other the statute. Where we are today.

ANNOUNCEMENTS

Thursday May 6, 2021 Regular Meeting is canceled. Next meeting May 26 at which the purpose of a Non-Lapsing Fund will be discussed. Meeting with Bob Tait and Tanja Vadas has been moved to the June 3 regular meeting.

ADJOURNMENT

John Madzula made a motion to adjourn. Chris Eide seconded. All members were in favor and the meeting was adjourned at 8:23 pm.

Respectfully submitted,

Ned Simpson, Chair

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Attachment A

MEMORANDUM

TO: Ned Simpson, Chair, Joint Nonlapsing Work Group
FROM: Matt Ritter, Shipman & Goodwin LLP
DATE: April 21, 2021
RE: Responses to Questions from Joint Nonlapsing Work Group

1. What is your interpretation of Sec. 10-248a and do you think a mutually agreed to policy can restrict BOE use of funds and compel town board action(s)?

Answer: A Town board or boards and a local board of education can mutually agree in a policy to modify or expand upon statutory definitions, rights or obligations specified in Section 10-248a. For example, a mutual policy could define the term “educational purposes” or require that the local board of education provide an annual report on any expenditures made from the nonlapsing account. Any policy that compelled Town actions(s) would need to be consistent with the Town Charter and it would be important to review any such proposed language before opining on its legality.

2. Regarding 10-248a, we plan to develop a policy or suite of policies where the following items are defined. Please provide your interpretation of any legal guidelines we need to be aware of regarding:

a. Roles and responsibilities of the BOE and town fiscal authority relative to the Non-Lapsing account.

Answer: Pursuant to Section 10-248a, the Town (which Town board is discussed further herein) must authorize the deposit of funds into the nonlapsing account on an annual basis. In addition, once funds are deposited into the nonlapsing account they may be expended by the Board in their sole discretion provided that each expenditure from the account shall be made only for educational purposes, and each such expenditure shall be authorized by the Board. However, a policy adopted by the Town and the Board could further define or expand the roles and responsibilities of various town boards and the Board of Education.

b. Purpose of Newtown’s Non-Lapsing Educational Account under the umbrella of “educational purposes.”

Answer: Nonlapsing accounts were first established by the General Assembly in 2010 to primarily address two issues. First, there was a concern that local boards of education were appropriating surplus funds at the end of the fiscal year to avoid those funds automatically reverting back to the Town and in some instances the funds were appropriated for projects or expenses that the Town did not think were necessary. Second, the funds were created to help a local board of education save for various capital projects or help offset the costs of unforeseen expenditures.

Educational purposes is a broad term and includes both operating and capital expenditures. For example, special education costs or computers can both be considered educational purposes and thus, eligible to be funded by funds from the nonlapsing account.

c. Why and how funds go into the Non-Lapsing Account.

Answer: Any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the Town may be deposited into the nonlapsing account, provided such deposited

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amount does not exceed two per cent of the total budgeted appropriation for education for such prior fiscal year.

Funds may only be deposited into the nonlapsing account upon approval of the authority making appropriations for the school district (see further discussion on that question in Question #6).

d. When, why and how funds come out of the Account.

Answer: Funds may only be expended from the account if they are authorized by the Board. The Board is authorized to make expenditures from the fund at any time and the expenditures must be for educational purposes.

e. The maximum amount of Non-Lapsing Educational Fund Balance (if any),

Answer: There is no maximum fund balance set forth in 10-248a and unexpended funds in the nonlapsing account may accumulate year over year.

f. Annual reporting regarding the Non-Lapsing Educational Fund.

Answer: There is no annual reporting requirement set forth in 10-248a.

3. Some specific questions regarding the above:

a. Are there statutory or other considerations for funds - other than "unexpended funds from the prior fiscal year from the budgeted appropriation for education" - being deposited in a Non-Lapsing Fund?

Answer: No other funds may be deposited into a nonlapsing account established pursuant to Section 10-248a except for "unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town."

b. What is your interpretation of designating the use of funds when deposited for a particular purpose thus avoiding the need for an additional approval to take funds out for that designated purpose?

Answer: I would recommend that each expenditure from the account be authorized by the Board in accordance with Section 10-248a. However, a policy can require that funds deposited into the nonlapsing account be used for specific purposes.

c. Is your interpretation regarding funds coming out influenced by different uses of funds coming out?

Answer: No. The funds may be used for educational purposes and each expenditure from the account shall be authorized by the Board.

d. Is there any limit to how narrowly our policy defines educational purposes?

Answer: The policy can narrowly define the term "educational purposes" but all expenditures must relate in some way to education.

4. Regarding structuring and establishing a joint agreement between multiple town bodies:

a. In 2018 and early 2019, Dr. Rodrigue reported that some other school districts have a Memorandum of Understanding (MOU) between their board of education and town (board of finance/board of selectman/ fiscal authority). What are the pros and cons of utilizing an MOU vs policy?

Answer: I would recommend that the Town and Board adopt a policy since a policy is a common approach for such funds and the policy can be incorporated into existing policies of both boards. An MOU is legally sufficient but will not be codified with existing policies.

b. Are there state statutes related to establishing a policy or MOU that crosses multiple town bodies?

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Answer: Not to my knowledge.

c. Are there legal considerations regarding one policy approved by all bodies versus each body having and approving their own policy which has been reviewed and agreed to as consistent by the other bodies?

Answer: Either approach would be legally sufficient but it is critical that all of the relevant bodies adopt the same policy.

5. Regarding the October 20, 2020 Cohen and Wolf description that “The statute referred to above (C.G.S. 10-248a) provides a method of dealing with excess funds of the BOE which, given Newtown’s Charter, treats the funds similar to a ‘special appropriation’” (Charter Section 6-35), would funds added to the Non-Lapsing account be counted as part of the limit on the LC’s power to appropriate funds (Charter 6-35(e))?

Answer: I have not reviewed that legal opinion but 10-248a specifically overrides municipal charters and the intent of the statute is to treat funds that are eligible for deposit or that are deposited into a nonlapsing account as separate and distinct from other Town or Board funds.

6. Regarding the Sec. 10-248a clause: “the board of finance in each town having a board of finance, the board of selectmen in each town having no board of finance or the authority making appropriations for the school district for each town.”

a. Why would not the Newtown Board of Finance be considered “the board of finance”?

Answer: I will defer to the Town Attorney on which board is appropriate but the statute appears to indicate that the goal is to have the “authority making appropriations for the school district” be the entity that makes the final decision about whether to deposit funds into the nonlapsing account. In many towns, the board of finance is the authority making appropriations for the school district but for towns that have a board of finance that is not the authority making appropriations for the school district, the statute grants the authority to the “authority making appropriations for the school district.” If the intent of the statute was to simply give the authority to the local board of finance, the language regarding “or the authority making appropriations for the school district” would not be necessary.

Pursuant to Section 6-15 of the Newtown Town Charter, the Board of Finance submits its “recommended budget” to the Legislative Council and it is the Legislative Council that approves the town budget to be submitted to the Annual Town Budget Referendum.

b. If not the “board of finance”, why doesn’t the responsibility go to the next on the list, i.e., the “board of selectmen”?

Answer: See my response to Question 6a. above.

c. If there is agreement between BOE, BOS, BOF and LC, could Newtown choose to have the:

i. Board of Finance serve the role relative to Sec. 10-248a?

Answer: Yes. See my response to Question 1. However, I think the Legislative Council should vote to affirmatively delegate its authority to the Board of Finance.

ii. Board of Selectmen serve the role relative to Sec. 10-248a?

Answer: Yes. See my response to Question 1. However, I think the Legislative Council should vote to affirmatively delegate its authority to the Board of Selectmen.

d. If a town body (e.g. BOE, BOF or BOS) does not agree that the LC should serve the town role relative to Sec. 10-248a, what recourse do they have to challenge that interpretation?

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Answer: The Town Charter could be amended to more clearly define which is the appropriate board, a lawsuit could be filed challenging such determination or the statute could be amended to address the issue in some manner.

e. How should the decision of BOF, BOS or LC Sec. 10-248a roles be formally made binding on all groups, implemented and memorialized?

Answer: I would recommend that all the boards adopt the same policy which formally lays out the rights of each board with respect to the nonlapsing account.

f. How will the choice of BOF, BOS or LC for Sec. 10-248a impact Newtown voters? Public education?

Answer: I am not sure I can answer this question as it is likely more of a political question than a legal one.