

March 4, 2021

VIA ELECTRONIC MAIL – csafford@stowevt.gov

Charles Safford, Town Manager
Town of Stowe
P.O. Box 730
Stowe, VT 05672

Re: Vote to Withdraw from Lamoille South Unified Union School District

Dear Charles:

You have asked whether the creation of the Lamoille South Unified Union School District by State Board of Education action rather than a vote of the qualified voters of the Town of Stowe limits the ability of the voters of the Town of Stowe to vote on the question of withdrawal from the Unified Union School District. You have specifically called out the language in 16 V.S.A. § 724(a) (“A town or city corresponding to a preexisting school district *that voted* to form a unified union school district may vote to withdraw from the district ...”) and have asked whether that language precludes a withdrawal vote because the merger of Stowe School District into Lamoille South was compelled by the State Board of Education rather than by vote.

It is our opinion that the use of the language “that voted” in Section 724(a) does not clearly preclude a vote by the voters of Stowe on the question of withdrawal from the Unified Union School District.

In June of 2018, the Secretary of Education submitted to the State Board of Education his proposed statewide plan to address the failure of some school districts in Vermont to move forward with mergers. In November of 2018, after holding five public meetings, the State Board of Education issued its Final Report of Decisions and Orders which merged forty-two school districts into eleven new union school districts, among them the former Stowe School District and the Elmore-Morristown Unified Union School District. The State Board issued “Articles of Agreement” with an effective date of November 30, 2018 for the newly created Lamoille South Unified Union School District. The effective date for the new Unified Union School District was July 1, 2019. Under the Vermont Supreme Court opinion in *Athens School District, et al. v. Vermont State Board of Education, et al.* 2020 VT 52, 237 A.3d 671, such compelled mergers are valid and effective.

Lamoille South Unified Union District is subject to the statutory provisions of Title 16 which apply to Union and Unified School Districts and the Articles of Agreement. The Articles of Agreement of the Unified Union District permit one of the forming districts to seek withdrawal in year two or after of the merger. See Article 14, A. ii. a. A change in the constituents of the Lamoille South UUSD may occur only by vote of the voters of the “New Union District present and voting at an annual or special meeting of the District warned to address” the question. For such a vote to occur, the proposed amendment to the constituent districts “must proceed pursuant to 16 V.S.A. § 721 (addition of new member town) or § 724 (withdrawal by member town in year two or after).” And, that vote can be “called” through a voter petition. A voter petition must have the requisite number of signatures of legal voters in the Town.

While the Articles of Agreement, which were approved by the State Board of Education, contain reference to 16 V.S.A. §724, the question of whether the language of § 724(a) clearly permits a vote to withdraw in situations such as “forced” merger is not clear. In discussions with the Agency of Education legal counsel regarding this question, we were informed that AOE has not taken a formal position. However, they noted that the language in section 724(a) may serve as basis for a legal challenge by a voter who is not in agreement with a proposed withdrawal. The potential for disparate treatment between similarly situated towns – i.e., towns that voluntarily merged may withdraw by vote while those mandated or “forced” to merge may not withdraw – supports the conclusion that a voter-approved withdrawal in a forced merger district should be legally valid.

We note that 2021 Town Meeting Day saw several towns vote to withdraw from merged districts. Apart from the Windham Northeast Union Elementary District, the districts which voted to withdraw were voluntarily merged districts and not forced merger districts. Additionally, the one approved withdrawal/dissolution by the State Board to date, Southern Valley Union District (Halifax and Readsboro) was of a voluntarily created union district. So, although there were local votes in favor of withdrawal, all were in voluntarily merged districts where there is no question about the efficacy of 16 V.S.A. § 724.

How the State Board of Education responds to the voted dissolution of Windham Northeast’s Union Elementary District will be instructive on whether the Board agrees that disparate treatment between voluntary and “forced” mergers is not a reasonable or viable legal position. Regardless of the decision of the State Board, it is our opinion that limiting the ability to withdraw by vote to only those towns which voluntarily merged (and prohibiting towns in forced mergers to remain merged) is discriminatory.¹

¹ We would note that the provisions of Title 16 surrounding union school districts have not been reviewed or modified in any substantial manner to account for the significant merger activity and resulting questions of governance and application of Act 46. We understand that AOE sees need for review of Chapter 11 of Title 16 of the Vermont Statutes, however, the legislature has not moved forward on any revisions.

Charles Safford, Town Manager

March 4, 2021

Page 3

The process for withdrawal of a town from a merged district is vested in the voters of the town. The selectboard does not have statutory authority to unilaterally force a withdrawal. If the voters of Stowe submit a valid petition, the Selectboard will need to warn and notice a vote on the dissolution question. If the dissolution article passes, the towns of Elmore and Morrystown will need to warn a vote on whether to approve the withdrawal. Those “approval votes” must be held on the same day in both towns. For withdrawal to be effective, voter majorities in each of Elmore and Morrystown must affirmatively vote to permit withdrawal.

If the local voters approve of withdrawal, the withdrawal goes before the State Board of Education. The State Board has taken the position thus far that it does not have any authority to force a town that has voted to withdraw to stay in the merged district. But the State Board does have authority to require the remaining towns (in this case Elmore and Morrystown) to remain together. 16 V.S.A. §724(c). If withdrawal is approved, Stowe would be removed from the union unified school district effective July 1st of the year in which the dissolution vote approval (Elmore and Morrystown) occurs.

Finally, a valid voter petition must have wet (actual) signatures. Although there have been some legislative changes to aspects of the voting laws to address the impact of the COVID 19 pandemic, the legislature has not removed the requirement for a voter petition to contain actual signatures. Thus, without actual “wet” signatures, the petition would be invalid or, to the extent that any petition contains some electronic signatures, those electronic signatures would not count towards any signature tally amounts.

We trust this is responsive to your inquiry. If there are further questions, please contact us and we will endeavor to answer them.

STITZEL, PAGE & FLETCHER, P.C.



Dina L. Atwood, Esq.
Robert E. Fletcher, Esq.
FOR THE FIRM

REF/DLA/gc