

**Office of the County Attorney  
Montgomery County, Maryland**

COUNTY ATTORNEY OPINION

February 5, 1996

TO: Douglas M. Duncan  
County Executive

VIA: Charles W. Thompson, Jr.  
County Attorney

FROM: H. Christopher Malone  
Senior Assistant County Attorney

SUBJECT: Action Required by law of the County Executive on the Budget of the Board of Education

You have requested our advice on the action that is required by law by the County Executive on the budget of the Board of Education (BOE). In the Recommended FY96 Operating Budget submitted to the County Council on March 15, 1995, the County Executive recommended a proportional reduction in all major categories of the BOE budget in order maintain average property tax rates at the FY95 level. The Executive stated that he intended "for the Board of Education to determine the most appropriate manner in which to deliver educational services with the recommended allocation." In a memorandum to the Council dated April 25, 1995 the Executive explained:

I have made these reductions because of fiscal constraints that must be observed if we are to hold the line on taxes. It is my intention in doing so to limit the tax burden on our citizens and businesses as much as possible while still providing the Board of Education a significant increase in funding.

Sections 302 and 303 of the Charter require that the County Executive submit an operating budget and public services program to the Council not later than March 15. Section 303 provides that the budget must include recommended expenditures and revenue sources for the ensuing fiscal year and any other information in such form and detail as the County Executive shall determine and as may be prescribed by law for the County and all tax supported agencies including the BOE.

The specific action required of the County Executive for the BOE is prescribed in Section 5-102(c)(2) of in the Education Article of the Annotated Code of Maryland. Section 5-102(c)(2) provides:

Name Duncan  
Re: BOE Budget  
Date February 5, 1996  
Page 2

The county executive shall indicate in writing which major categories of the annual budget of the county board have been denied in whole or reduced in part and the reason for the denial or reduction.

The Maryland Court of Appeals in Bd. of Ed. v. Montgomery County, 237 Md. 191 (1964) construed an earlier version of Section 5-102(c)(2) when it was Section 68 of Article 77 of the Annotated Code of Maryland. Section 68 at that time provided:

... the county commissioners shall indicate in writing what item or items of the annual budget of the county board of education have been denied in whole or in part, and the reason for the denial in whole or in part of the respective items.

The Court in Bd. of Ed. v. Montgomery County, held that Section 68 required identification by the County Council of the items being denied and the reasons for the denial in writing. 237 Md. at 201-202.

Section 68 has been amended a number of times in the last 30 years and is now Section 5-102. Section 5-102(c)(2) differs from Section 68, in requiring only identification of major categories which have been denied or reduced and the reason for the denial or reduction. Section 5-102(c)(2) does not require identification of particular items and does not require the reason for denial or reduction of an item. It only requires identification of major categories that are affected and the reason for action on that category.

In the FY96 Recommended Operating Budget the Executive recommended that all fourteen major categories be reduced by 2.4% of the amount requested by the BOE, which results in funding of 97.6% of the amount requested by BOE. This recommendation reduced the tax supported portion of the budget from \$835,381,549. to \$815,274,377. The Executive stated his reason was to limit the tax burden on the citizens and businesses as much as possible. The Executive indicated the categories which were recommended to be reduced and the reason for recommended reductions. We believe that the method used by the Executive to reduce the BOE budget and the reasons he gave for doing so complied with the Education Article and was in accordance with law.

cc: Robert Kendal, OMB  
96.00291  
I:\KQ\MALONH\00599HCM.WPD