



Montgomery County Government

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July 14, 1994

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Dear Mr. Schwartz: *Jack*

Senator Laurence Levitan has relayed a request to you from Montgomery County Councilmember Michael Subin asking whether Section 16-402 of the Education Article, Annotated Code of Maryland, permits the County Council to place any restrictions on the establishment of tuition and fees by the Board of Trustees of Montgomery College (Board) under Section 16-203 of the Education Article.

For the reasons stated below, we conclude that there is no conflict between Section 16-203 and Sections 16-401 and 16-402 of the Education Article and Section 305 of the County Charter in the review and approval of the budgets, the appropriation of funds, and the levying of taxes by the County Council.

I

Background

This inquiry arises out of a proposed amendment to Section 305 of the County Charter supported by Councilmember Subin which would expressly exclude tuition and fees set by the Board from the aggregate operating budget. Councilmember Subin believes that the inclusion of tuition and fees in the aggregate operating budget restricts the authority of the Board to set tuition and fees. Therefore, Councilmember Subin believes that State law requires this change to the County Charter.

II

Statutory Provisions

A. STATE LAW

Section 16-201 of the Education Article authorizes the establishment of a Board in each county. 75 Op. Atty'y Gen. _____

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(Oct. 25, 1990) Section 16-203(j) empowers the Board to set "tuition and fees".

Section 16-401(a) requires the Board to submit an operating budget, capital budget, and long-term capital improvements program to the "county governing body" (county). Section 16-401(b) requires that the operating budget show "All revenues... and sources of income, including: (i) Any funds from federal, State and local sources...". Section 16-401(d) provides that capital and operating budgets must be "prepared and considered in accordance with county fiscal procedures not inconsistent with State law." Section 16-401(e) provides that the county "shall review and approve the budget of the community college and may reduce it."

Section 16-402(a) provides that a county "may appropriate money to pay the cost of establishing and operating a community college...". Section 16-402(b) requires the county to make appropriations by major functions. Section 16-402(c) states that a college may not spend more on any major function than the amount appropriated for it by the county. Sections 16-403 and 16-406 require the county to provide a certain amount of money for operating funds known as the "county share".

B. COUNTY CHARTER

Section 305 of the County Charter requires that the County Council adopt spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and operating budgets. Section 305 requires that any aggregate capital or aggregate operating budget that exceeds the guidelines in effect requires the affirmative vote of seven Councilmembers.

Section 303 of the County Charter requires the County Executive to submit an annual capital budget and operating budget, which includes all revenue sources and expenditures, to the County Council, not later than January 15 and March 15 respectively. Section 305 provides that the Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget.

Under Section 305 an aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage greater than the Consumer Price Index for the twelve months preceding December first of each year must have the affirmative votes of six Councilmembers. Section 305 provides that the aggregate operating budget excludes the

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operating budgets for enterprise funds, the Washington Suburban Sanitary Commission, the bi-county portion of the Maryland-National Capital Park and Planning Commission and the Washington Suburban Transit Commission.

Section 305 requires that the Council approve each budget, as amended, and appropriate the funds no later than June 1. Section 305 requires the Council to make the tax levies deemed necessary to finance the budgets by June 30.

III

Analysis

The General Assembly has established a statutory system under which the Board has been granted the powers necessary to govern the operation of the College. These powers include the setting of tuition and fees. However, in fiscal matters the Board is subject to the review and approval of the County. The Board must submit an operating and capital budget to the County, which must be prepared and considered in accordance with County fiscal procedures, not inconsistent with State law. The budgets must show all revenues, which includes tuition and fees. The County must review and approve the budgets and may reduce them. The County makes the appropriations and levies the taxes necessary to fund the appropriations. The County has the final authority to determine the amount of expenditures and the amount of County revenues that will support those expenditures subject to providing the "county share".

The Board and County are expected to work together in the budget process. However, in the case of a disagreement the Board cannot through the setting of tuition and fees mandate that the County provide a level of funding above that which the County deems appropriate. The Board could not set tuition and fees at one dollar and thereby require the County and the taxpayers of the County to involuntarily fund the entire budget from County revenues. If that were the case, the Board, which is appointed, would have authority over an elected County Council and County Executive. This is clearly not the statutory scheme established in the Education Article. Such a procedure would disenfranchise the taxpayers of the County.

The County in its approval of expenditures and revenues is empowered by the Maryland Education Article to determine the amount of County resources which will fund those expenditures. The Board has the power to increase tuition and fees if it wishes to fund those expenditures unfunded by County revenues.

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The Board can determine whether those expenditures are of sufficient importance so as to require an increase in tuition and fees. However, the County Council must still approve the expenditure of any increase in either tuition or fees. This is the statutory scheme created by the General Assembly. It sets up a tension between the political bodies which serves as a check and balance of funding levels.

Councilmember Subin focuses on the provision of Section 305 which requires that an aggregate operating budget exceeding the aggregate budget by the CPI must receive the affirmative vote of six councilmembers. This provision was added to the Charter on November 7, 1978 in response to the "TRIM" initiatives. It excluded the budgets of the Washington Suburban Sanitary Commission, the bi-county portion of the Maryland-National Capital Park and Planning Commission and the Washington Suburban Transit Commission because State law requires the mandatory levy of certain taxes by the County for these agencies. 64 Op. Att'y Gen. 35 (March 6, 1979). Section 305 was amended in 1984 to add to the list of exclusions fully self supporting enterprise funds. Section 305 was next amended in 1990 by Question F to require the County Council to establish spending affordability guidelines. An aggregate budget that exceeded the guidelines is required to receive the affirmative vote of seven councilmembers.

The citizens and taxpayers of the County through these amendments to Section 305 have sought to limit the amount of County revenues that are spent for services, including college education. The TRIM amendment deals with the expenditure side of the budget, while Question F deals with the revenue side. These provisions provide a process for approval of revenues and expenditures. These provisions are completely consistent with the provisions of Sections 16-401 and 16-402.

Councilmember Subin suggests a conflict between Section 16-203 and Sections 16-401 and 16-402 of the Maryland Education Article and County Charter Section 305. The general rule of statutory construction is that where two provisions appear to be inconsistent or contradictory, every effort must be made to reconcile the provisions so as to effectuate the legislative purpose. Md. Indus. Devel. v. Meadow-Croft, 243 Md. 515, 521 (1966). If reasonably possible the parts of a statute are to be reconciled and harmonized, the intention as to any one part being found by reading all the parts together, and none of its words, clauses, phrases, or sentences shall be rendered surplusage or meaningless. Schweitzer v. Brewer, 280 Md. 430, 438 (1977).

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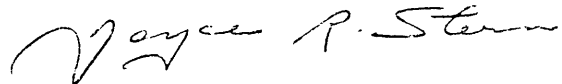
In reading the provisions of the Education Article it is clear that the County Council in its review and approval of the budgets, the appropriation of funds and the levying of taxes under Charter Section 305 is performing its duties precisely as authorized and envisioned by the General Assembly in Sections 16-401 and 16-402. Section 305 is consistent with those Sections. Sections 16-401 and 16-402 are consistent with Section 16-203 in that the Board is authorized to set tuition and fees subject to the review and approval of the budgets and the appropriation of funds by the County Council.

IV

Conclusion

It is my opinion that there is no conflict between Section 16-203 and Sections 16-401 and 16-402 of the Education Article and Section 305 of the County Charter in the review and approval of the budgets, the appropriation of funds, and the levying of taxes by the County Council.

Very truly yours,



Joyce R. Stern
County Attorney

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