



KENAI PENINSULA BOROUGH

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MEMORANDUM

JOHN J. WILLIAMS
MAYOR

TO: Donna Peterson, Superintendent
Members, Kenai Peninsula Borough School Board

FROM: *CGC* Colette Thompson, Borough Attorney
Holly B. Montague, Deputy Borough Attorney

CC: Sherry Biggs, Borough Clerk

DATE: October 8, 2007

SUBJECT: Recommendation to seat incumbents reelected to the school board in Districts 1 and 9

At the October 2, 2007, election, Proposition 3 passed 53.06% to 46.94%.¹ This proposition amends the borough code to prohibits anyone from serving more than two terms on the Kenai Peninsula Borough School Board, including those members who have already served two terms who were elected again on October 2nd. Two members of the borough school board were reelected on October 2nd. The borough attorney's office recommends seating these candidates because the borough assembly, and thus the electorate, has no authority to change state law governing school board terms. The basis for this recommendation is discussed below.²

The Alaska Constitution requires the state to maintain a school system, which has vested the legislature with pervasive control over public education.³ As a result, a municipality is precluded from exercising power over education unless, and to the extent, delegated by the legislature.⁴ A municipality cannot enact an ordinance that conflicts with a state education statute.⁵

¹ These figures are only for the votes cast on October 2 and do not include absentee and questioned ballots.

² Preliminarily, it should be noted that Proposition 3 was approved for the ballot as the courts require a proposition to directly conflict with Article XI of the constitution,² a statutory provision, or case law in order to be rejected prior to being placed on the ballot.² As there is no direct prohibition on the assembly establishing school board term limits the application for Proposition 3 was not rejected.

³ "The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions." Alaska Const. art. VII, § 1, *Macaulay v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

⁴ *Id.*

⁵ *Municipality of Anchorage v. Repasky*, 34 P.3d 302, 311, 324 (Alaska 2001).

Alaska Statutes specify qualifications and tenure in office for school board members. AS 14.12.080 provides that to be eligible to be a member of a school board, a person must have the same qualifications as are necessary to be a municipal voter in the school district. These qualifications are that a person be qualified to vote in state elections, has been a resident of the municipality for 30 days immediately preceding the election, is registered to vote at a residence address within a municipality at least 30 days before the municipal election at which the person seeks to vote, and is not disqualified under Article V of the state constitution.⁶ AS 29.20.300(a) and AS 14.12.050(a) both provide that a municipal school board member is elected for three-year terms and until a successor takes office. In addition, AS 14.12.050(c) provides, "Nothing in this section prevents school board members from succeeding themselves."

The statutes governing the qualifications and tenure of school board members do not authorize term limits for school board members. In analogous circumstances, the Alaska Supreme Court held that the qualifications for state legislators in the state constitution were exclusive, precluding the imposition of term limits for state legislators by initiative.⁷

The only rule regarding vacancies on the school board in state statute provides that a board "may" declare a position vacant if a member misses three consecutive regular meetings. The local school board has expanded the list of reasons for declaring a position vacant in Board Bylaw 9223. Only one situation, imposed by the school board, not the legislature, provides the school board "shall" declare a vacancy on the board for any actions which disqualify a member from service in accordance with state law and local ordinances.⁸ For two reasons this provision does not support declaring a vacancy due to the favorable vote on term limits. First, as discussed above, local ordinances cannot establish term limits. Second, it appears the section is addressing conduct of a member, not conduct of the assembly in certifying the election.

There are other legal concerns with the proposition; however, because we conclude that the assembly, and thus the electorate, cannot adopt or affect term limits for the school board, those are not discussed here.

RECOMMENDATION

It is recommended that all school board members elected to office in the October 2, 2007, election be seated once the assembly has certified the election. The term limit provisions should not be recognized now or in future school board elections unless the state delegates authority to impose such limits to local government.

⁶ AS 29.26.050

⁷ *Alaskans for Legislative Reform v. State*, 887 P.2d 960, 962 (Alaska 1994), overruled in part on other grounds in *State v. Trust the People*, 113 P.3d 613, 627 (Alaska 2005).

⁸ The bylaw also provides that three consecutive missed regular meetings "shall" be sufficient cause for a vacancy.