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Jeffrey Maguire
First Selectman
Town of Andover
17 School Road
Andover, CT 06235

Re: Legal Opinion: Board of Finance Authority to Act Upon the Board of Education Budget

Dear Jeff Maguire:

Less than two months shy of **five years ago**, I received an email from our then Town Administrator Eric Anderson as follows:

"On behalf of the Board of Finance, I would like a legal opinion on the BOF's ability to adjust the budget of the Board of Education. . . . specifically on Charter provisions 802B and 802C. Are they limited to **suggestions only** or do they have the ability to modify the bottom line of the BOF budget? When in the budget process can an adjustment occur?"

I responded to Eric Anderson in a carefully researched and fully considered four page letter dated April 1, 2021, which I assumed, given Eric's request "on behalf of the Board of Finance," was shared by Eric with the Board of Finance (BOF), and maybe also with the then members of both the Board of Education (BOE) and the Board of Selectmen (BOS), though I am not really sure that members of those two other Town boards actually received copies.

In the final paragraph on page four of my April 1, 2021 opinion letter to Eric, I concluded that the short answer to his basic question as set forth above was. . . "YES, the Andover Board of Finance surely has the ability to modify the bottom line of the BOE budget, and any such adjustment must be voted by the BOF before the combined budget is sent to the voters for the Annual Town Budget Meeting, now tentatively scheduled for Thursday, May 6, 2021 . . ."

I assumed that the Board of Finance would agree with my legal opinion and follow it in their subsequent approach to the Board of Education budget. I received no questions or positive or negative feedback from anyone on the merits of what I thought was an important legal opinion, so I assumed it would be followed by the Board of Finance, but what I heard at a town meeting I attended in 2025, and recently read in a memo from the newly elected chair of the BOF made me wonder what was really happening in that regard.

I decided to take the time to review pertinent minutes of Board of Finance meetings beginning right after I wrote that 2021 opinion and follow through on that painstaking task until now.

Long story short, I am pleased to report that the relevant BOF minutes of 2021 through 2024, inclusive, show sufficient compliance by the BOF with my above stated 2021 opinion that “YES, the Andover Board of Finance surely has the ability to modify the bottom line of the BOE budget, and any such adjustment must be voted by the BOF before the combined budget is sent to the voters for the Annual Town Budget Meeting . . .”

Nevertheless, actions and statements of some key members of the BOF and the AES and BOE at least implied their commitment to the contrary notion that the BOF should simply send whatever BOE/AES budget proposal is made to the BOF directly to the Annual Town Budget Meeting without fully considering or adjusting the proposal. Nevertheless, from 2021 to 2024, the BOF sufficiently did comply with my 2021 legal opinion and the law of this State regarding BOE budget proposals.

Nevertheless, however, during a town meeting I personally attended in 2025, I was surprised to hear a presentation made by the then BOF chair to the assembly that there was no **legal requirement** for the BOF to even consider modifying the BOE budget proposal before sending it to the Annual Budget Town Meeting.

If all the speaker meant was that the BOF was legally free to vote to send whatever budget proposal the BOE had submitted to the BOF to the Annual Budget Town Meeting, I was okay with that. But the clear impression I got from the speech was that the BOF could not vote to reduce the BOE budget before sending it to the voters, and that, as I have previously written and continue to believe is inconsistent with the legal responsibility of the BOF.

In a BOF budget meeting held on 2/26/25, it was noted that the Superintendent of Schools (SOS) had emailed to the BOF a budget proposed by the BOE including an 8 per cent or so increase. The Superintendent appeared at the 03/05/25 BOF meeting to explain and advocate for that Fiscal Year 2025/26 BOE budget.

Town Administrator Eric Anderson also appeared at the 03/05/25 BOF meeting. He expressly reminded the BOF of their authority over the BOE budget. At the 03/26/25 BOF meeting there was extensive discussion of the BOE budget, but no BOF member moved to adjust it in any way. Finally, at a special BOF meeting on 04/02/25, a member did legally move to accept the BOE budget as originally presented by the BOE.

Also on 04/02/25, in an apparent response to the motion, Eric Anderson again reminded the BOF of my 2021 legal opinion noting that the BOF is legally authorized to reduce the bottom line of the BOE budget. The motion to approve the BOE budget as submitted did pass by a vote of 4 to 2 with one abstention.

Later, after the FY 2025/26 budget had apparently failed, on 05/07/25, a BOF member's motion by to cut the BOE budget from an increase of 8% to 5% was passed by 6 to 1.

From April 1, 2021, when I wrote my original town attorney's opinion on this matter, through the end of CY 2025, although there was apparently concern from some Town leaders that my opinion was wrong, as a practical matter the BOF had not strayed from the opinion or the law. Following the election of November 2025, the BOF chair apparently decided to step down as chair and was replaced in that position by another long-time member

In a memo to the BOF members not long after becoming the new BOF chair, his intention was noted "to go back and re-read the charter regarding the exact role & powers of the BOF with respect to the school budget." The chair then to quoted Town Charter Section 802E, and apparently concluded that the BOF need not do any more but comment and make recommendations on the budget requests of the Board of Education.

I have been asked by you, Mr. Maguire, to update my April 1, 2021 opinion. For the benefit of all who may read this, I will begin at the beginning.

Based on a follow up phone conversation about this issue that I had with Eric Anderson on April 1, 2021, I soon noted that, the concern seems to be focused on two sentences in Town Charter Section 802 covering "**Duties on the Budget**," one in subsection 802B, and the other in 802C.

On April 1, 2021, Subsection 802B provided in part that "In preparing the proposed budget, the Board of Finance may add to, delete from, or eliminate requests made by the various departments, offices, and agencies except that **the Board may only comment and make recommendations on the budget requests of the local Board of Education.**" (Emphasis added).

One reason that you, Mr. Maguire, have asked me to update my 2021 opinion letter is that the relevant Town Charter sections regarding the Town budget have been amended twice since my opinion was written. it is important to recognize that any reference I make herein to the pertinent Section 802B language must now be made as the new BOF chair has correctly done, to Charter Section 802E.

On April 1, 2021, Subsection 802C of the Town Charter provided that "The Board of Finance may review the budget requests with the head of each department, board, agency, and commission **including the local Board of Education**. Subsequent to such hearing and review, the Board of Finance shall prepare **a final budget that incorporates any recommended changes to be presented to the Annual Town Budget meeting.**" (Emphasis added).

The pertinent language of Subsection 802C as it appeared in the Charter on April 1, 2021, now appears verbatim in Town Charter Subsection 802F. Just as the 2021 Subsection 802B is now Subsection 802E verbatim, 2021 Subsection 802c is now Subsection 802F, also verbatim.

In my opinion, this 802B (now 802E) and 802C (now 802F) Charter language still leave something to be desired in the way of clarity. Nevertheless, upon thorough review and consideration, I find that the subject language does in fact accurately reflect the law of the State and Town of Andover regarding the extent of local Board of Finance authority to act upon the Board of Education budget.

It seems to me very likely that it is the Charter's use of the words '**recommendations**,' and "**recommended changes**" and also even "**comment**" that may have generated some doubt about the extent of the authority of the Board of Finance to act upon the Board of Education budget in the Town of Andover. I say not to worry based on my understanding of the law.

The Connecticut General Statutes provide the basic framework for the functioning of boards of education and boards of finance. General Statutes section 10-222 governs "**Appropriations and budget**" of any board of education. See also, General Statutes sections 7-344 regarding "**Town Boards of Finance. Appropriations . . .**" and 7-388 on "**Annual budget meetings.**"

Because Connecticut is a "**Home Rule state**" with a set of "**Charters and Special Acts**" enabling laws in Chapter 99 of the General Statutes, towns have autonomy to some extent to determine the details of the processes by which they adopt their budgets as the Town of Andover has chosen to do in Chapter VIII of the Town Charter regarding "**Finance and Taxation.**"

A few towns with charters, mostly the larger more urban ones, have opted to authorize their local policy making board (usually a town council) or board of finance to make the final decision on the town budget with no town meeting or referendum vote.

Per General Statutes section 7-344, towns with no "**Home Rule**" charter are statutorily required to adopt a budget by town meeting vote after **recommendations** are made by the board of finance. Andover of course has a Town Charter requiring Board of Finance **recommendations** followed by town meeting, and then if the budget is passed by the town meeting, a referendum approval by the voters. See generally, Town Charter section 803.

In "**A Practical Guide to Connecticut School Law**," Tenth Edition, 2023, pages 87-88, esteemed education law attorney Thomas Mooney of Shipman and Goodwin, LLP has written:

"Connecticut General Stat. section 10-222 sets out the procedure for adopting a budget for local boards of education. . . Each year, the local board of education must prepare an itemized estimate of the expenses for operating the schools in the coming year. . . 'Budget submission date' means the date on which a school district is to submit its itemized estimate of the cost of maintenance of public schools for the next following year to the board of finance in each town having a board of finance. . . **The municipal financial authority must then consider the request in light of the other municipal needs.** The municipality then sets the budget in accordance with its local procedures, i.e., through action of the legislative body, the town meeting or referendum." (Emphasis added).

Note that the basic procedure Attorney Mooney has set forth in his 10th edition, and also in his 7th edition published in 2013, similarly quoted in my prior 2021 legal opinion on this same matter, is still in place, and acting for “**the municipal finance authority**” as Attorney Mooney has put it, in the Town of Andover, and in most towns in our state, is the local board of finance.

So, the Board of Finance is the key player for “**the municipality**” of Andover in preparing and possibly adjusting the Board of Education budget, and also the Town budget for submission **in combination** to and for consideration by the voters. Per Charter Section 803 (**The Annual Town Budget Meeting and Referendum**) Andover voters get two opportunities to have very substantial input on the budgets, first in the Annual Budget Town Meeting, and then **finally** and decisively in a referendum, if the budget has been approved by the Town Meeting.

Referring back to the key terms “**recommendations**” and “**recommended**” as they appear in Charter subsections 802E (formerly 802B) and 802F (formerly 802C), they set forth **exactly** what it is that the Andover Board of Finance is authorized to do with the budget of the Board of Education alone and with the Town of Andover budget before they are sent in combination to the Annual Town Budget Meeting.

It makes perfect sense that whoever drafted these two Charter subsections used those terms because “**recommend**” or derivatives of it appear in key and relevant places in **all** of the state laws cited above that directly pertain to the duties of a board of finance regarding budgets, including the education budget, namely General Statutes sections 10-222, 7-344 and 7-388.

Now, in and of themselves, “**recommend**” and its derivatives imply or connote a relative limitation of power of the entity authorized to take such action, but not in this instance, not in the situation where the “**recommended**” amount voted by the Board of Finance on the budget that it sends to the town meeting can be diminished, **but not increased** by the participants in the Annual Town Budget Meeting. In that context, a Board of Finance “**recommendation**” carries great weight and is **formidable**, and not to be taken lightly by anyone including the Board of Education and Board of Selectmen.

In essence, as also noted by Attorney Mooney, in relation to a town budget, the authority of a board of finance differs from its control over a board of education budget in only one significant way that you are already well aware of. As noted above, General Statutes section 10-222 governs “**Appropriations and budget**” of any board of education. It provides in pertinent part that: “The money appropriated by any municipality for the maintenance of public schools shall be expended by and in the discretion of the board of education.” Thus, a board of finance has no control over the line items of a BOE budget, only over the bottom line.

The weakness of the above quoted language from subsection 802B (now 802E) of the Town Charter, including that “**the Board** [of Finance] **may only comment**,” may in some part be a failed and somewhat erroneous attempt to incorporate the General Statutes section 10-222 legal requirement noted in the immediately foregoing paragraph that the BOF has no line item control over the BOE budget, which is of course true. In any event, as noted above, the

authority of the Board of Finance of the Town of Andover to **recommend** a budget to the town meeting consisting of the combined Town and BOE budget is firm and formidable when one considers that the **recommended** budget cannot be increased without the approval of the BOF if and only if the budget is rejected by the town meeting and returned to the BOF.

One more point is well worthy of note. Going back to Attorney Mooney's book again, on pages 90-91, he has written that:

"There will often be tension between the board of education and the municipal body making appropriations, because these two agents of local government may have different priorities and responsibilities. From time to time, local boards of education have claimed that the local finance authority has not appropriated funds sufficient for the operation of the schools. However, it is very difficult for a board of education to challenge such decisions. The courts have recognized that the local fiscal authority has a job to do, and the courts will not often overrule decisions made by **the local fiscal authority, which must consider not only the requests by the board of education, but also the other financial demands on a municipality.** See, e.g., **Fowler v. Enfield**, 138 Conn. 521 (1952). **Generally, and except for the minimum budget requirement . . . a school board must make do with the appropriation it receives from the municipality.**" (Emphasis added).

In conclusion, my answers to your specific questions continue to be, YES, the Andover Board of Finance surely has the ability to modify the bottom line of the BOE budget, and any such adjustment must be voted by the BOF before the combined budget is sent to the voters for the Annual Town Budget Meeting, now tentatively scheduled for Thursday, May 6, 2021, at the Andover Elementary School gymnasium.

Now, getting fully back into February of 2026 again, I have some additional points to make. Perhaps most important, I believe 2024, the State amended Connecticut General Statutes section 10-222, the main provision covering education appropriations and budget in State law.

In the Town of Andover, that amendment requires the BOE to submit its initial budget proposal "two months preceding the annual meeting at which appropriations are to be made." Then, if the BOF has recommendations to make to the BOE in response to the BOE budget proposal they should be made to the BOE within ten days of the BOE budget submission. Doing this will obviously require the BOF to pay immediate intensive attention to the BOE submission.

I urge the BOF chair and members to read section 10-222 in its entirety and to submit any questions they have on the relevant new provision or anything else in that statute or regarding the budget process in general to me asap and I will do my best to answer.

Next, as strongly suggested in my above quotations from Attorney Mooney's "**A Practical Guide to Connecticut School Law**," and as we all should know, the BOE/AES and the Town, like it or not, are in competition for very limited local funds to support their respective budgets. In that competitive context, it makes little or no sense to treat the two differently.

As some see it, whatever amount the BOE asks for in the way of local funding with no adjustments of any kind made by the BOF, especially downward, can by state and local law be the ceiling for whatever the Annual Town Budget Meeting town chooses to provide to the BOE.

But, on the other hand, the Town budget, always much lower already than the BOE budget albeit for some good reason, can suffer having its budget nitpicked and ceiling reduced by the BOF. That is not a level playing field, makes no good sense, and is not fair. It is also not the law, as it should not be, as former Town Administrator Eric Anderson suggested to the BOF.

Another point worth noting is that the BOF has as far as I can tell, never acted in a manner that is contrary to my April 1, 2021 legal opinion. That is all well and good, but I remain concerned about the messages given by BOF chairs in 2025 and 2026 to other BOF members essentially that a pre-Annual Town Meeting motion by any of them to reduce the BOE budget would basically be out of order as that is not authorized in the Town of Andover by prevailing law.

I of course respectfully disagree. I believe that the BOF has the legal authority to reduce the BOE budget before it goes to the Annual Town Budget Meeting. Having read a lot of BOF meeting minutes from 2021 to 2026, it seems to me that no such motion to reduce the BOE budget before it goes to the Annual Town Budget Meeting has ever been made in recent memory, and that may be because most of the members somehow may believe it cannot be done. Again, I respectfully disagree.

There are apparently those who continue to believe that the determination I made in my 2021 legal opinion, and maybe also in this updated version, are erroneous. If so, it seems to me with all due respect to everyone that we should wait and see what happens if the BOF someday does in fact vote to reduce the BOE budget prior to the Annual Town Budget Meeting.

I repeat that I sincerely and professionally believe that the Board of Finance members should be able to lower or raise the amount proposed by the Board of Education to be their budget as a majority of the members of the Board of Finance see fit. The BOF members voted to reduce the BOE budget by a 6 to 1 margin after the budgets failed. Why can the BOF not do the same if they see fit . . . before the budgets go to the Annual Town Budget meeting?

Please circulate this letter to members of the BOF, BOS and BOE. Let me know if you need any more from me on this. I plan to attend the joint meeting of the BOE and BOS set for 7 pm this Wednesday, February 18, and will be happy to discuss and answer any questions anyone might have about this matter.

Very truly yours,

/s/Dennis O'Brien
Dennis O'Brien
Town Attorney