

August 27, 2024

OPINION
OF
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Attorney General

Opinion No. 2024-11

To: Senator Antoinette Sedillo-Lopez, New Mexico State Senate

Re: Opinion Request – The Role of a School Board Member in Approving Checks

Questions

1. What is the role of a school board member in approving the allocation of funds in the form of check when a board member has concerns about the spending?
2. May a school board member question, address, or vote against these items in an open meeting?

Answers

1. A school board is the policymaking body of its local school district and has the responsibility under state law of formally approving expenditures. A school board member may raise concerns regarding the allocation of funds in the form of a check; however, only the board—and not an individual board member—may take official action.
2. Yes. A school board member may question and address the allocation of public school funds in the form of a check, and may do so regardless of whether payment has already been completed by an authorized subordinate.

Background

Several statutes, regulations, and case law inform our opinion. These sources generally support a school board's ability to review the actions of subordinates and to vote on disbursement of public school funds.

First, the Public School Finance Act (the Act), NMSA 1978, §§ 22-8-1 to -49 (1967, as amended through 2024), addresses the role of local school boards with respect to disbursements. In relevant part, the Act states as follows:

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. *Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board.*

Section 22-8-37 (emphasis added). The plain language of this provision makes clear that each school board oversees disbursements made from the fund dedicated to that particular school district—whether by voucher, warrants, or “checks of the local school board.”

Second, each school board’s oversight role over its respective school district’s funds is further reflected in the New Mexico Public Education Department’s administrative rules, which state that a school board, through a formal board resolution, may authorize the school district’s superintendent to approve vouchers for payment prior to a board meeting. *See* 6.20.2.14(H) NMAC. Notably, however, these rules also provide that “[a] summary listing of the vouchers and any additional information prescribed by the local board shall be presented at the next regular board meeting *for formal approval* and entry in the minutes.” *Id.* (emphasis added). The regulations additionally state that “school districts shall account for financial transactions and develop and maintain their budgets in accordance with the Public School Code, GAAP, and department procedures . . .” 6.20.2.8(A) NMAC. Further, “[s]chool districts shall develop, establish and maintain an effective organizational structure . . .” 6.20.2.12 NMAC. This organizational structure is intended to create a “system of checks and balances which separates incompatible activities to preclude absolute control by any individual or unit and provides for supervision by higher levels of management and for the monitoring of overall school district activities.” *Id.*

Third, the Public Education Department’s Manual of Procedures for Cash Controls further explains that, although vouchers should be presented to the school board prior to the issuance of checks, a school board may authorize a superintendent to approve pending vouchers for several reasons, including the timely payment of vendor invoices. *See* Manual of Procedures, PSAB Supplement 7, Cash Controls.¹ This regulatory scheme enables necessary operational expenditures to occur in a timely and flexible manner considering that school boards generally only meet once per month. However, the school board is still the ultimate authority for expenditures of public school funds. The superintendent exercises the delegated authority of the school board when deciding to pay vouchers prior to a school board meeting.

Fourth, looking more broadly at the Public School Code (the Code), NMSA 1978, §§ 22-2-1 to -35-5 (except Article 5A) (1967, as amended through 2024), we note that school boards are specifically authorized to “review and approve the annual school district budget,” as well as “adopt rules pertaining to the administration of all powers or duties of the local school board.” Section 22-5-4(C), (K) (2005). The Code does not further define a school board’s power to “review and approve” to include individual budgetary items.

¹ Available at: https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/SBFAB_Manual-of-Procedures-PSAB_PSAB7__Cash-Controls.pdf (last accessed June 5, 2024).

Fifth, the New Mexico Court of Appeals has recognized that school boards are defined by the Code as the “policy-setting body” of the school district. *Alarcon v. Albuquerque Pub. Sch. Bd. of Educ.*, 2018-NMCA-021, ¶¶ 62-68 (generally explaining that amendments to the Code allocating certain responsibilities to a superintendent should not be interpreted as an abrogation of the school board’s authority as the policy-setting body of the school district); *see also Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, ¶¶ 16-19, 120 N.M. 97 (describing the “significant political and financial autonomy” of local school boards but decided under prior law).

Lastly, Section 22-5-13, requires mandatory training of school board members to explain their roles in relation to policies, procedures, finance, and budget, as well as the statutory duties of each elected official. The school board handbook is maintained by the Public Education Department and states that “[a]s trustees, school board members are charged with seeing that the schools are well managed, tax dollars are wisely spent, and the investment and interests of the public are protected.” *See* New Mexico School Boards Association, *School Board Member Handbook* (Handbook), Ch. II, Sec. E (2012).²

Analysis

1. School boards are authorized and obligated under New Mexico law to formally approve expenditures, whether in the form of a check or otherwise.

We first address the role of a school board member in approving the allocation of funds in the form of a check when a board member has concerns about the spending. At the outset, we note that a school board member has no authority individually; rather, the law vests authority in the school board as a whole. “[W]here a duty is intrusted to a board composed of different individuals, the board can act officially only as such, in convened session, with all the members or a quorum thereof present. The informal, separate and individual action of a majority of the board, . . . will not suffice to bind it.” *Landers v. Bd. of Educ. of Town of Hot Springs*, 1941-NMSC-039, ¶ 5, 45 N.M. 446.

School boards are authorized to approve school district budget and disbursements of school district funds. *See* §§ 22-5-4(C), 22-8-37. Although a school board may delegate its power to approve payment of vouchers to the superintendent, the local school board is still the policymaking body of the local school district and retains the responsibility of formally approving expenditures during a subsequent open meeting, including the allocation of funds in the form of a check. The phrase “review and approve the annual school district budget” in Section 22-5-4(C) can reasonably be interpreted to demonstrate the Legislature’s intent to task school boards—and by extension, school board members—with review and discussion of all financial items brought before them in an open meeting, including the approval of the allocation of funds. *See also* 6.20.2.14(H) NMAC (providing that “[a] summary listing of the vouchers and any additional information prescribed by the local board shall be presented at the next regular board meeting for formal approval and entry in the minutes”). We find no indication in any of the governing authority that, where an expenditure is made in the form of a check, our analysis would be any different. *See* § 22-8-37 (providing that disbursements may be made with “checks of the local school board”).

² Available at: <https://www.nmsba.org/handbooks> (last accessed June 5, 2024).

2. A school board member may question, address, or vote against expenditures made in any form in an open meeting.

Although authority is vested in the board, individual school board members may discuss and vote to disapprove expenditures, made in any form, during school board meetings and to question, address, or vote against these items in an open meeting. The Act states that “[i]n no event shall any money be expended or debts incurred except as authorized by the . . . Act.” Section 22-8-37. This provision requires a school board, acting through its members, to use its discretion to ensure compliance with both the Act and other legal restrictions on spending. The Legislature plainly intended for school boards to formally approve district expenditures.

Indeed, the discussion and formal approval of expenditures is an essential oversight duty of a school board. *See, e.g.*, § 22-8-37; 6.20.2.14(H) NMAC. Moreover, school board members operate as trustees in their respective districts and are responsible for ensuring the schools are properly managed, tax dollars properly allocated, and the public interest is protected. Handbook, Ch. II, Sec. E. A trustee “is bound to perform all acts which are necessary for the proper execution of his trust.” *Trustee*, BLACK’S LAW DICTIONARY (11th ed. 2019). A school board member’s fiduciary duties thus require the analysis and consideration of financial matters before the board. Therefore, an individual member of a school board is entitled to discuss and raise any concerns they might have regarding an expenditure of public school funds. *See generally* Handbook, Ch. II, Sec. H (discussing qualities of an effective board member). A school board member may vote in that member’s best judgment to approve or disapprove of an expenditure.

3. School boards should consult with their counsel before attempting to disapprove or rescind any payment already completed by an agent with actual authority.

We briefly acknowledge the practical interplay between our conclusions herein and 6.20.2.14 NMAC, which, as addressed above, allows superintendents to approve payments so long as the superintendent has authorization to do so through a prior formal resolution of the school board. Although the school board holds authority over a school district’s expenditure of public school funds, the Public Education Department’s promulgation of 6.20.2.14 NMAC recognizes that it may not always be practicable for a school board to approve each and every line item expenditure or otherwise manage every administrative detail of a school district’s financial operations. *See also* § 22-5-14 (describing powers and duties of local superintendent); *Alarcon*, 2018-NMCA-021, ¶ 10 (describing the local superintendent as the “chief executive officer” of the local school district responsible for “day-to-day” operations).

Reconciling 6.20.2.14 NMAC and the statutes above, a disbursement made by an authorized superintendent is an exercise of the school board’s authority, albeit through a subordinate agent. Thus, we caution that a school board should consult with its legal counsel about potential risks before voting to disapprove or rescind any payments that have already been completed through a properly authorized superintendent by the time of the subsequent school board meeting. For example, where a contractor’s invoice has already been approved and paid by a superintendent acting with the actual authority of the school board under 6.20.2.14(H) NMAC, but the school

board later wishes to rescind or reject that payment at the subsequent school board meeting, there could be risks associated with rescission of such payment. *See Barron v. Evangelical Lutheran Good Samaritan Soc.*, 2011-NMCA-094, ¶ 16, 150 N.M. 669 (agents with actual or apparent authority may bind a principal). This cautionary note does not disturb our general conclusions set forth above.

Conclusion

Although a school board may delegate its power to approve payment of vouchers to the superintendent, the school board remains the policymaking body of the local school district and retains the responsibility under state law of formally approving expenditures during a subsequent open meeting. Accordingly, a school board member may question and address the allocation of public school funds in the form of a check, and may do so regardless of whether payment has already been completed by an authorized subordinate. If payment has not yet been completed by the authorized subordinate at the time of the subsequent school board meeting, then the school board may vote against making such payment. However, for payments that have already been completed by a properly authorized subordinate acting with the actual authority of the school board at the time of the subsequent school board meeting, best practices are that a school board consult with their counsel before attempting to disapprove or rescind any payments that may have already been completed by an agent with actual authority.

Please note that this opinion is a public document and is not protected by the attorney-client privilege. It will be published on our website and made available to the general public.

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