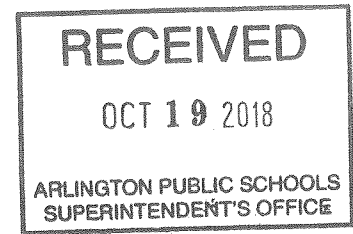


LEGAL ALERT



To: All School Committee Members and Superintendents
From: Stephen J. Finnegan Esq., MASC General Counsel
Re: **Legality of Certain School Committee Expenditures/Role of SRO's**
Date: October 15, 2018

THE LEGALITY OF SCHOOL COMMITTEE EXPENDITURES TO DEFRAY THE EXPENSES OF A LAWSUIT TO COMPEL ADEQUATE FUNDING FOR K-12 EDUCATION

During the course of my research on the above captioned matter I contacted the agency which oversees municipal finance, the Massachusetts Department of Revenue, Division of Local Services (DLS). Massachusetts Courts generally give deference to the opinion of the agency invested with such oversight. The Bureau of Municipal Finance Law of (DLS), in 1994 issued an opinion to the Town Accountant of Greenfield File No. 94-1050, which determined that a Greenfield School Committee donation to the Council of Fair School Finance was not permitted under the Massachusetts Constitution, Article 46, the "Anti-aid" amendment. The Council of Fair School Finance was the entity that directed the *McDuffy* case, 415 Mass. 545 (1993) and received funds to help pay for the cost of the litigation. The Greenfield School Committee may pay for general legal services under G.L. Ch. 71, S. 37F. The DLS concluded that S.37F provides authority for a school committee to pay for litigation counsel, which it employs itself for a case in which it is a party, but that the school committee cannot pay for legal counsel of another school committee or for private parties. The DLS appears to carve out an exception for the filing of an amicus brief on a matter that could have a direct affect on the school committee. The Greenfield opinion concludes that if such authority to challenge the school funding mechanism exists at all for a city or town, it is a general town responsibility and would seem to require a specific appropriation for that purpose by the city or town. I recommend that you share this DLS opinion with the school committee legal counsel and the town counsel or city solicitor. I have been informed recently by DLS that they have not issued a superseding opinion, and that the Greenfield opinion remains its view on this matter. The complete Greenfield opinion may be found on the MASC website.

THE ATTORNEY GENERAL'S OFFICE, THE EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY AND DESE RECENTLY HAS RELEASED A MODEL MEMORANDUM OF UNDERSTANDING GOVERNING THE ROLE OF SCHOOL RESOURCE OFFICERS.

As part of the criminal justice reform law (C. 69 of the Acts and Resolves of 2018, S.27) enacted in April, MOU'S between school districts and police departments must provide new details about school resource officers' roles and responsibilities, ensuring that school resource officers do not take the place of appointed school disciplinarians, enforcers of school regulations, or school based mental health providers. The new law ensures that school resource officers do not use police powers to address traditional school discipline issues and restricts law enforcement action in response to certain school-based offences.

The MOU is drafted in contract form (12 pages) and should be reviewed by school counsel. It is important to note that this document may serve as a guide to school districts and municipalities and is not required to be adopted. I have been informed that the revisions to C. 71, S.37P or other relevant provisions of law are found in bold type in the proposed draft and should be addressed. It is my view that while the MOU requires the signatures of the superintendent of schools and the chief of police, the final document should be subject to school committee review and approval. The MOU addresses school policy, budget matters and designation of office space for the SRO among other matters that impact school committee powers and duties. The following link will allow access to the MOU, <https://www.mass.gov/doc/sro-mou-final-9-5-18>

LEGAL UPDATE

Learn more about these and other important school-related legal issues at the MASC/MASS Joint Conference, November 7-10.
Register now: www.masc.org