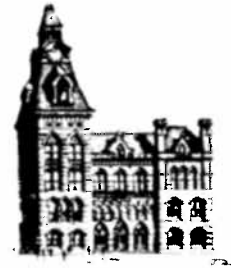


# OFFICE OF THE CORPORATION COUNSEL



## MEMORANDUM

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**TO:** Mayor Toni N. Harp  
Tyisha Walker, President Board of Alders

**FROM:** John Rose, Jr.  
Acting Corporation Counsel

*John Rose, Jr.*  
12/21/2015

**DATE:** December 21, 2015

**Issue: May the Board of Alders Rescind or Terminate Early the  
Appointment of a Board of Education Member**

The New Haven Board of Alders (BOA) proposes to seek to reopen and act to amend its order of October 20, 2014 approving the reappointment of Daisy Y. Gonzalez to the Board of Education BOE allegedly to comply with the dictate of the City charter that the BOE shall consist of seven (7) member effective January 1, 2016. The make-up of the BOE was approved by an ordinance approved on November 17, 2014.

Ms. Gonzalez is a Hispanic woman; the mother of children in the New Haven school system. She is the only BOE member who is a city-wide PTO representative. She was nominated to the BOE by the Mayor and has served on the BOE since her nomination was approved by the BOA. That approval was unanimous.

The BOA proposal is that Ms. Gonzalez' approved appointment be rescinded and that her term come to an end on December 31, 2015.

On Monday December 14, 2015, the BOE voted unanimously to approve a resolution that would allow the Board of Education to function with eight (8) members, including a super-majority vote (5-3) on issues where all the members were present and tabling of matters where all eight were present and the vote split four-to-four.

The long-standing law concerning boards of education is instructive here, especially as the BOE relates to the City and the Board of Alders.

A town board of education is an agency of the state in charge of education in the town, and broad powers are granted it by the legislature to that end. In the exercise of those powers or in the incurring of expense necessitated thereby to be paid by the town,

the board of education is beyond control by the town or any of its officers except as limitation are found in statutory provisions...

Waterbury Teacher Assn. v. Furling, 162 Conn. 390 397 (1972); see Board of Education v. Ellington, 151 Conn. 1.

The case law which has abridged the language concerning boards of education is limited to matters affecting the municipality's authority to deal with funding boards of education. See State ex rel. Board of Education v. D'Aulisa, 133 Conn. 414 and Board of Education v. Ellington, Supra.

Clearly, then, town boards of education...in matters not involving strictly budgetary concerns, acts as agents of the state under the authority of our state constitution and the enactments of our legislature...

Murphy v. Berlin Board of Education, 167 Conn. 368, 373(1974)

It has long been held in Connecticut that town and city boards of education are subject to local control only as to budgetary matters. Murphy, supra at 372; Bridgeport v. Agostinelli, 163 Conn 537, 551...In all other respects, the local boards "serve as agents of the state in their communities." West Hartford Education Ass'n, Inc. v. DeCorey 162 Conn. 566.

Murphy, supra at 372.

This is true because the furnishing of education for the general public, required by article eight, §1, of the Connecticut constitution, is by its very nature a state function and duty...The local boards have of necessity been delegated this responsibility...our statutes have conferred on the local board broad power and discretion over educational policy...Murphy, supra at 372 (and cases cited).

## B. The Charter Provisions

The Charter for the City of New Haven is the "constitution" for the City; the fundamental or "organic law" upon which the government is established. A municipal corporation created by charter derives all of its powers from the charter under which it acts as a body corporate and politic. Charters have been called bills of rights. McQuilling, Muncipal Corporations, Sec. 9.3.

By its terms, the 2013 revision of New Haven's Revised Charter makes provision for the make-up of Appointive Boards and Commissions, including the Board of Education. At Article VII, Sec. 3 the Charter provides concerning the Composition of the Board of Education, effective on January 1, 2016:

Effective on January 1, 2016, the Board of Education shall consist of seven (7) members...

The charter also provides at Article VII, Sec. 3 for the Mayor to appoint Board of Education members. And the Charter provides the term for Mayor appointees to the Board of Education "...said appointed members shall remain in office subject to their term of four (4) years."

The Charter also prescribes the "General Duties and Power of the Board of Education," including to:

- (a) have the entire charge, control and management of all the public schools in the City ... and to
- (b) annually choose a President and Vice President from among its members, make its own by laws, keep a journal of its proceedings...and prescribe such.

Rules and regulations for the proper operation of the public schools of the City as are not inconsistent with the General Statutes...

The revised City Charter language concerning the evolution or transition from an eight (8) member BOE to the required seven (7) member Board, to be effective on January 1, 2016, is problematic, in that the term for there to continue to be eight (8) members (Article VII, Sec. 3. A(3)(c)(i)) should say December 31, 2015.

As a result, on January 1, 2016, the Board of Education will consist of eight (8) members, including Daisy Y. Gonzalez, whose re-appointment was unanimously approved by the Board of Alders on October 20, 2014. Again, recall the Alders voted to approve the revised Charter, with the problematic transition language only after Ms. Gonzalez appointment was approved.

The Charter prescribes at Article IV, Sec 4.B. that the Alders "shall have the power to make, alter and repeal Resolutions or Orders by a majority vote of the members of the Board of Alders present..." The Charter at this point (pages 27 to 30) prescribes some twenty-five types of "Ordinances, Orders or Resolutions" subject to repeal. None of those in any way relates to the Board of Education, its make-up or its doings. And that is because the Board of Alders cannot dictate or control the actions or doings of the BOE. The Board of Education is a creature of the State..." in matters not involving strictly budgeting concerns [the BOE] act as agent of the State under the authority of our state constitution and the enactments of our legislature. *Murphy v. Berlin Board of Education*, 167 Conn. 368, 373 (1974):

West Hartford Education Assn., Inc. v. DeCourcy, 162 Conn. 566, 573-74. The local board of education serves:...as agents of the state in their communities..." armed with statutes that have conferred on it "broad power and discretion over educational policy."

Even if the Board of Alders does revoke or repeal its order approving the Mayor's appointment (reappointment actually) of Daisy Y. Gonzalez to serve a four year term on the Board of Education, the Alders are powerless to remove her. Nor do the Alders have any power to limit her term to one year or to cause that term to come to an end as of December 31, 2015.

It is to be noted that the State law specifically provides, concerning elected board of education members:

- (b) No person serving an elected term to a board of education on the effective date of any such ordinance or charter provision shall have his term shortened or terminated by virtue of such ordinance or charter provisions.

See Conn. Gen. Stat. Sec. 9-206a(b)

The City Charter likewise speaks of appointed BOE members "to serve for four (4) years..." "...said appointed members shall remain in office subject to their term of four (4) years. Art. VII. Sec.3.A (3)(a)(i).

In short, the board of Alders which:

- a) ratified/approved the nomination by the Mayor of Daisy Y. Gonzalez;
- b) ratified/approved thereafter a flawed revision of the Charter; for which action the Board itself must take responsibility;
- c) now seeks, after the fact, to undo that ratification/approval.

But Ms. Gonzalez is a member of the Board of Education, over whom the Board of Alders has no control – beyond approval of their budget. The Alders cannot remove her –whether else they may do.

The quandary thus becomes: What is the point of acting to undo the approval if no action may be taken to undo Ms. Gonzalez' position as a BOE member?

In fact, the Board of Education has acted to ensure that its operations – over which the BOA has no control – will go forward. There is no question of there being too few members. That would be a problem. But such case law as there is concerning the operations of boards (especially of corporate boards) provides that the actions of a board with excessive numbers of members are valid, based on the de facto officer doctrine. Watch Hill Condos, Inc. v. Van Eck, 4861, 1996 Conn. Super LEXIS 1544 (Conn. Super 1996); Fishman v. Vantage Point Ass'n, 2009 Conn. Super. LEXIS 328 (Conn. Super. CT Feb 11, 2009).