
FOR YOUR INFORMATION

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News for School Clients

Approvals of Real Estate Transactions, Easements & Leases

Effective facility management and planning require an awareness of when approval from school district electors is necessary to consummate a transaction. This FYI helps foster such an awareness by identifying situations in which elector approval is necessary for real estate transactions, easements and leases.

Of Wisconsin's 426 school districts, 370 are "common school districts." In common school districts, elector approval is necessary before a school district may undertake certain actions. Union high school districts are generally subject to the same requirements regarding elector approval as common school districts. However, in a unified school district, the powers reserved to the electors in a common or union high school district are exercised by the school board, without elector involvement. Note that, regardless of the type of school district, school boards may have independent authority to enter into agreements and transactions with other governmental units without elector approval. Wis. Stat. § 120.13(3).

Electors most typically grant approval through an affirmative vote at an annual or special meeting of electors. It is, therefore, important for administrators and board members to know when elector approval is required, so that elector approval may be factored into the planning process and obtained in a timely manner.

Real estate acquisitions. Perhaps the most obvious event requiring elector approval is the acquisition of real estate. Section 120.10(5m) of the Wisconsin statutes provides that electors may authorize the school board to acquire, by purchase or condemnation, real estate and facilities "necessary for school district purposes." In addition to determining that a purchase is necessary for school district purposes, electors may also designate sites for school district buildings and provide for the erection of suitable buildings on those sites. Wis. Stat. § 120.10(5). Note that when transactions involve borrowing, it may be possible for a school board to obtain elector approval as a part of the borrowing process, rather than through a vote at an annual or special meeting. In any event, the school board retains the discretion to determine the price and other terms of a transaction. Elector approval authorizes but does not compel a school board to complete a transaction.

Real estate sales. As in the case of real estate acquisitions, Wisconsin law requires elector approval of the sale of school district real estate. Under Wis. Stat. § 120.10(12), electors may "authorize the sale of any property belonging to and not needed by the school district." Thus, if a school board wishes to sell real estate belonging to the school district, the electors must determine by affirmative vote that such property is no longer needed by the school district, before the real estate is transferred to a third party.

Easements. Unlike acquisitions and sales, school district officials may not be as familiar with the need for elector approval when granting or acquiring easements. Easements generally involve the transfer of some, but not all, of the rights associated with a particular property. For example, a landowner may grant an easement to a neighbor for travel across a designated roadway, without transferring the underlying ownership of the land. It is advisable to obtain elector approval in connection with the acquisition or transfer of easement rights because easement rights constitute a form of real estate or property interest. That having been said, there appear to be varying legal opinions regarding whether elector approval is necessary for the transfer of easements. Nevertheless, by obtaining elector approval, school officials foreclose debate on this issue.

Lease of school district property. When leasing school district property to others, the question of whether elector approval is needed is usually determined by the length of the lease term. On one hand, Wis. Stat. § 120.13(17) authorizes a school board to grant “temporary use of school grounds, buildings, facilities or equipment” subject to other conditions. The law provides the basis for facility use policies governing weekend and evening use of school facilities by community members and others. No elector approval is required for such temporary use. On the other hand, if a school district intends to enter into a lease of school property on a

long-term basis, the board may lease school sites, buildings and equipment only if approved at an annual or special school district meeting. Wis. Stat. § 120.13(25). Consultation with legal counsel is advisable if a proposed use of school property does not clearly fall within the category of temporary or long-term use.

Lease of third party property. When additional space is needed for instructional or other school-sponsored activities, one option is to lease space from third parties. If a school board considers this option, school officials should be aware that elector approval is, once again, required under Wisconsin law. The statute governing the acquisition of real estate also requires a school board to obtain elector approval for “the lease of suitable buildings for a period not exceeding 20 years with annual rentals fixed by the lease.” Wis. Stat. § 120.10(5). Thus, when considering the lease of facilities from a third party, one of the items on a school official’s checklist should be elector approval at an annual or special meeting. As in the case of purchase contracts, however, the school board retains discretion to determine the terms of a lease agreement authorized under the statute.

As you work to manage school district facilities, and to satisfy pressing space needs, be certain to keep in mind the necessary approvals for the transactions discussed above. By doing so, you will help to promote the professional and effective management of school district resources.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

Michael J. Julka (608) 286-7238
Ronald J. Kotnik (608) 286-7214
William L. Fahey (608) 286-7234

David E. Rohrer (608) 286-7249
Michael J. Lawton (608) 286-7236
Frank C. Sutherland (608) 286-7243
Joanne Harmon Curry (608) 286-7248

Shana R. Lewis (608) 286-7202
Richard F. Versteegen (608) 286-7233
Carrie M. Benedon (608) 286-7208

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