

June 5, 2018

Mark R. Reich
mreich@k-plaw.com

Ms. Jennifer M. Callahan
Town Administrator
Millville Town Hall
290 Main Street
Millville, MA 01529

Re: Proposition 2½ Override Question

Dear Ms. Callahan:

You have requested an opinion regarding whether the language of the Proposition 2½ override ballot question appearing on the warrant for the June 19, 2018 Special Town Election is consistent with law and whether the appropriation authorized under Article 10 of warrant for the May 14, 2018 Annual Town Meeting is sufficient to implement the proposed override. As I understand the circumstances, the override question was prepared in accordance with the statutory provisions seeking a general override in the amount of \$1,000,000, with the intent to phase in the impact of that override over the course of a number of years. In my opinion, based upon my review of the ballot question, the action taken at the May Annual Town Meeting, and the plans developed for implementation of the proposed override, the Town has acted lawfully pursuant to applicable law and regulations.

I am advised that the ballot question at issue appears on the warrant for the June 19, 2018 Special Town Election in the following form:

Shall the Town of Millville be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purpose of funding the operating expenses of the schools and other Town departments, for the fiscal year beginning July First, 2018?

Based on the information provided, the Board of Selectmen voted to place this question on the ballot and the warrant for the election was posted on May 15, 2018. According to the minutes provided, Town Meeting, acting under Article 10 of the May 14, 2018 Annual Town Meeting Warrant, voted to raise and appropriate the sum of \$6,589,038 to fund the Fiscal Year 2019 Operating budget, with the amount of \$405,817 contingent upon the approval by the voters of the Proposition 2 ½ override ballot question.

In my opinion, the form of the Proposition 2 ½ override ballot question, as it appears on the warrant, is in proper statutory form and complies with G.L. c.59, §21C(g) and if approved by a majority of the voters at the Special Election, will result in a permanent increase of \$1,000,000 in the Town's levy limit. In my further opinion, the law requires that for the levy limit increase of \$1,000,000 to take effect, Town Meeting must appropriate from the levy \$1,000,000 for the same

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purpose as stated in the ballot question. In my opinion, the appropriation of \$6,589,038 to fund the Fiscal Year 2019 Operating Budget satisfies this requirement as this amount exceeds that included in the override question and is for the same general purpose as stated in the ballot question.

As you are aware, the provisions of G.L. c.59, §21C, Proposition 2 ½, establish a limit on the amount a Town can raise by taxation in any fiscal year. The statute provides mechanisms to allow a municipality to raise additional funds, including a process to override the limitation on taxation. This process is addressed by the provisions of G.L. c. 59, §21C(g) which states as follows:

The local appropriating authority of any city or town which is subject to the provisions of paragraph (f) may, by majority vote, seek voter approval to assess taxes in excess of amount allowed pursuant to said paragraph (f) by a specified amount.

Any question submitted to the voters shall be worded as follows:

“Shall the (city/town) of _____ be allowed to assess an additional \$ _____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, nineteen hundred and _____?”

YES ____ NO ____.”

The form of the ballot question for an override must comply with the wording specified in the statute. The language of the question which appears on the June 19, 2018 Special Town Election warrant, in my opinion, complies with the required statutory language. Note that the adequacy of the ballot question language was also confirmed by the Division of Local Services of the Department of Revenue via e-mail from Tax Counsel to the Town dated June 4, 2018.

If a town votes to approve an override, thereby increasing the amount it can raise by taxation in excess of the 2 ½ percent limitation, and appropriates in that fiscal year an amount equal to the amount of the override, the town has permanently overridden its levy limit by the amount authorized. Stated differently, once an override is passed, the Town is able to raise the additional funds authorized by the override every year, unless a subsequent underride voted by the town reduces the Town’s levy limit. Additionally, although the funds raised in the first fiscal year are limited to the purposes of the override, in future fiscal years no such restriction is applicable.

As noted, the levy limit is increased so long as all appropriations made for the stated spending purpose in the fiscal year equal or exceed the amount of the override. The Department of Revenue has advised, as reiterated in the June 4, 2018 e-mail from the Tax Counsel in the Division of Local Services, that the first dollars spent for the purpose of the override are the “override

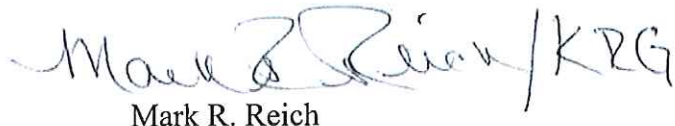
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dollars”. See “Proposition 2½ Ballot Questions, Requirements and Procedures,” Division of Local Services, August 2017.

In the instant case, Town Meeting voted to fund the Fiscal Year 2019 Operating Budget in the amount of \$6,589,038 with a certain amount contingent upon the approval by the voters of the Proposition 2 ½ override ballot question. The Town has appropriated an amount that exceeds the \$1,000,000 specified in the override for the purpose of funding the operating expenses of the schools and other Town departments. The first \$1,000,000 of the appropriation will be viewed as the “override dollars”. Therefore, if the voters approve the question at the Special Election, the result, in my opinion, will be a permanent increase in the levy limit by the amount authorized. Notwithstanding certain communications received by the Town, there is no obligation for the Town to appropriate \$1,000,000 above and beyond the \$6,589,038 and impose a tax increase on that amount to comply with the statutory process. The Town may, in my opinion, phase in its use of the available additional \$1,000,000 in the levy as appropriated each year by Town Meeting.

Please contact me with any further questions regarding this matter.

Very truly yours,



Handwritten signature of Mark R. Reich, with the initials 'KRG' written to the right of the signature.

Mark R. Reich

MRR/KRG/bp

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