

TOWN OF MILFORD, MASSACHUSETTS  
LEGAL DEPARTMENT  
TOWN HALL  
52 MAIN STREET  
MILFORD, MASSACHUSETTS 01757-2622

(508) 634-2302  
FAX (508) 634-2324

GERALD M. MOODY  
TOWN COUNSEL

October 20, 2009

William Kinkade, Chairman  
Milford School Committee  
50 Woodridge Road  
Milford, MA 01757

Dear Mr. Kinkade:

I am in receipt of your email request that I provide my opinion to the School Committee as to what School Committee members may "... discuss with the Superintendent and the general public regarding the situation at hand of the non-renewal of a High School Principal."

It would appear that the question is directed to the extent that the School Committee may inquire of the Superintendent, and be informed by the Superintendent, of his reason or reasons for non-renewal of the Principal. The question also seems directed, once obtaining reasons and background from the Superintendent, or the lack thereof as the case may be, to what extent may School Committee members reveal such to the public.

At the outset it would appear self-evident that the School Committee, which is the body empowered and responsible for appointing and thus supervising the Superintendent, has the right to ask the Superintendent for his reasoning as to such a significant decision. There is no question that the decision to renew or not renew a Principal rests solely with the Superintendent (See G.L. c. 71, Section 59B). However, the decision whether or not to renew or award a contract to a Superintendent rests with the School Committee (See G.L. c. 71, Section 59). The School Committee has the right to seek out the Superintendent's reasoning as to such an important decision and to evaluate that reasoning in relation to its own determinative processes on the Superintendent's performance.

The Superintendent, depending on the circumstances, could be limited in what detail he should provide publically to the School Committee. It may be that documents relied upon by the Superintendent may not be public, for instance. However, a Superintendent can, and certainly should, provide the broad rationale for such an important decision. It would seem that such rationale can be provided without reference to any personnel records or documents which may

not be subject to disclosure under the laws relating to personnel information and/or public records access.

Much of the questioning and provision of response in relation to the Superintendent's reasons for non-renewal can, and perhaps should, be done in open session. To the extent the decision not to renew the Principal is being made because of questions of the "professional competence" of the Principal, such a discussion, as a matter of law, would be required to take place in open session.

If the reasons for the Superintendent's decision making process relate to matters which may otherwise be privileged or protected from public disclosure then it may be possible to undertake such discussions in executive session.

As you know, the Open Meeting Law, G.L. c. 39, Section 23B, has within it a strong preference for meetings involving discussions of public business to take place in open session. Notwithstanding the preference for open sessions there are a limited number of situations in which executive sessions may be undertaken. The first two exceptions to the Open Meeting Law preference for open discussion, which would allow executive sessions, are as follows:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved request that the meeting be open. If an executive session is held, such individual shall have the following rights:

- (a) to be present at such executive session during discussions or considerations which involve that individual.
- (b) to be present at such executive session during discussions or considerations which involve that individual.
- (c) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.
- (d) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or Individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) To be present at such executive session during discussions or considerations which involve that individual.

(b) To have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) To speak in his own behalf.

If the Superintendent, or the School Committee, feels that matters to be discussed in relation to the reasons of the Superintendent for the non-renewal of the Principal go beyond questions of "professional competence" and go into the realm of "reputation, character" or the hearing of "... complaints or charges..." in relation to the Principal, the School Committee may be able to go into executive session *so long as* the process as set forth in both subsection (1) and (2) are followed. As you see it is simply a matter of notifying the subject individual 48 hours prior to the anticipated executive session; informing him of the right to be present at such session and to have his counsel present and to speak on his own behalf.

If you, or any of the members of your Committee have any further questions in relation to this matter please don't hesitate to advise.

Very truly yours,



Gerald M. Moody  
Town Counsel

GMM/jlg

cc: School Committee Members  
Superintendent of Schools