

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-22-7

REGIONAL SCHOOL UNIT 21,

Plaintiff,

v.

TOWN OF KENNEBUNK,

Defendant,

and

TOWN OF ARUNDEL and TOWN OF
KENNEBUNKPORT,

Parties-in-Interest.

**PLAINTIFF'S REPLY
TO THE SUPPLEMENTAL MEMORANDA
FILED BY TOWN OF KENNEBUNK AND
BY TOWN OF KENNEBUNKPORT**

NOW COMES Plaintiff Regional School Unit 21 ("RSU 21"), by and through undersigned counsel, and hereby replies to Defendant Town of Kennebunk's Supplemental Memorandum of Law and Party-in-Interest Town of Kennebunkport's Brief in Opposition. For the following reasons, both Kennebunk and Kennebunkport have failed to demonstrate that RSU 21 Board members are subject to the municipal charter provisions of each member municipality.

ARGUMENT

A. Title 30-A M.R.S. 2505 does not authorize removal or recall of a regional school unit board member.

Kennebunk argues that RSU 21 Board members are "subject to recall under 30-A M.R.S. § 2505." (Kennebunk Memorandum, at 16.) Similarly, Kennebunkport argues that section 2505 "expressly permits, sanctions and authorizes the removal from office of 'municipal officials,'"

including regional school unit directors. (Kennebunkport Brief, at 4-7.) However, section 2505 is inapplicable to regional school units. To the extent that it might be read to be applicable literally, the general language of section 2505 does not act to override the more specific language of the regional school unit statute, Title 20-A, ch. 103-A.

1. Kennebunk’s interpretation of the language in 30-A M.R.S. § 2505 would lead to inconsistent, conflicting results when applied.

a. Standard of Review

When interpreting a statute, a court’s “single goal is to give effect to the Legislature’s intent in enacting the statute.” *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 19, 246 A.3d 586 (quotation marks omitted). To do so, a court must “first determine if the language of the statute . . . is plain and unambiguous.” *Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶ 19, 107 A.3d 621. Thus, a court “look[s] first to the plain meaning in order to discern legislative intent, viewing the relevant provisions in the context of the entire statutory scheme to generate a harmonious result.” *Corinth Pellets, LLC*, 2021 ME 10, ¶ 19, 246 A.3d 586 (quotation marks omitted). When “construing a statute, [a court] may properly consider its practical operation and potential consequences.” *Doe v. Reg’l Sch. Unit 26*, 2014 ME 11, ¶ 15, 86 A.3d 600.

However, “[a] plain language interpretation should not be confused with a literal interpretation.” *Corinth Pellets, LLC*, 2021 ME 10, ¶ 21, 246 A.3d 586 (quotation marks omitted). When “a literal interpretation of the statute’s language would lead to illogical or absurd results,” a court “will instead expand the scope of the inquiry to the context of the whole statutory scheme to divine the Legislature’s intent.” *Id.* (quotation marks omitted); *see Reg’l Sch. Unit 26*, 2014 ME 11, ¶ 15, 86 A.3d 600 (“A court can even ignore the literal meaning of phrases if that meaning thwarts the clear legislative objective.” (quotation marks omitted)). Moreover, “[w]hen statutes

appear to contradict, [a court] seek[s] to harmonize those statutes if possible.” *Estate of Footer*, 2000 ME 69, ¶ 8, 749 A.2d 146.

Finally, where a plain reading of the words in a statute are ambiguous, or “reasonably susceptible to different interpretations,” a court can look beyond the plain language in an ordinance and “examine other indicia of legislative intent, such as legislative history.” *Wuori v. Otis*, 2020 ME 27, ¶ 7, 226 A.3d 771, 774 (quotation marks omitted).

b. 30-A M.R.S. § 2505

Here, the relevant statutory language states that, “[e]xcept as otherwise provided by the municipality’s ordinances or charter, an elected official of a municipality may be recalled from office pursuant to this section.” 30-A M.R.S. § 2505. Additionally, “[f]or purposes of this section [2505], ‘official’ has the same meaning as section 2604, subsection 2.” *Id.* Section 2505 proceeds to outline the process for circulating a petition for recall and for holding a recall election. *Id.* §§ 2505(1)-(8). Finally, a municipal official may be subject to a recall under section 2505 “only if the official is convicted of a crime, the conduct of which occurred during the official’s term of office and the victim of which is the municipality.” *Id.* § 2505(9).

As noted, section 2505 cross-references the definitions section of the “conflicts of interest” statute, 30-A M.R.S. § 2604. Under section 2604(2), the term “official” is defined as “any elected or appointed member of a municipal or county government or of a quasi-municipal corporation.” In turn, a “quasi-municipal corporation” is defined as “any governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public services but which is not a general purpose governmental unit.” 30-A M.R.S. 2604(3).

When a recall occurs pursuant to section 2505, the removal of the recalled official creates a vacancy in office. *See* 30-A M.R.S. § 2602(1)(H) (stating that a vacancy occurs as a result of “[r]ecall pursuant to section 2505.”)

c. Interpretation of section 2505

To begin, the terms of section 2505 do not apply to either Kennebunk or Kennebunkport, because both Towns have charters. *See* 30-A M.R.S. § 2505 (“Except as otherwise provided by the municipality's ordinances or charter . . .”). For all of the reasons identified in RSU 21’s February 18 Motion, the terms of Kennebunk’s Charter do not demonstrate that its recall provision applies to RSU 21 Directors. (*See* Motion, at 14-17.)

However, Kennebunk does rely on the language of section 2505 to support the scope of its own Charter recall provision. (*See* Kennebunk Memorandum, at 15-16.) Kennebunk suggests that the language of section 2505, on its face, permits the recall of any “official” as defined by the statute. However, Kennebunk’s interpretation, when applied, “would lead to illogical or absurd results.” *Corinth Pellets, LLC*, 2021 ME 10, ¶ 21, 246 A.3d 586.

Section 2505 limits the recall provision to “an elected official of a municipality,” and relies on section 2604 to expand the definition of municipal “official” to include a “member of a municipal or county government or of a quasi-municipal corporation.” 30-A M.R.S. §§ 2505, 2604(2) (emphasis added). Kennebunk argues that this definition permits Kennebunk, as a municipality, to recall municipal, county, and quasi-municipal officials. As noted above, section 2604 provides definitions in relation to the municipal “conflicts of interest” statute, 30-A M.R.S. § 2605. Thus, it makes sense to include these three different governmental entities under that statute’s scope. Indeed, the Legislature has made clear, in Title 20-A, that school boards are required to comply with the requirements of section 2605. *See* 20-A M.R.S. § 1004. However,

when the expansive definition in section 2604 is read literally, and applied to recall elections in those entities beyond just municipalities, inconsistencies arise that warrant a reading of sections 2505 and 2604 in the context of the whole statutory scheme of Title 30-A.

For instance, section 2505 purports to apply to officials elected to serve a “county government” or quasi-municipal utility district. However, any attempted recall of the officials serving these entities would not be practical if the terms of section 2505 is applied. As noted, a municipal recall pursuant to section 2505 results in a vacancy. *See* 30-A M.R.S. § 2602. For a “county commissioner,” however, any vacancy in office requires the Governor to “appoint a person to fill the vacancy.” 30-A M.R.S. § 63. The same is true for an elected “county treasurer” and a county’s district attorney. *See* 30-A M.R.S. §§ 151(3), 252(2). Similarly, although section 2505 purports to permit recall of officials elected to serve on the governing board of quasi-municipal sanitary districts, such as the Kennebunk Sewer District, these districts are already subject to their own recall provisions. *See* 38 M.R.S. § 1104(2).

In short, although section 2505 appears to permit the recall of certain officials, the application of such a broad reading of the terms of section 2505 makes clear that its terms only apply to a “municipal official,” as that term is repeatedly used and defined in Title 30-A. *See, e.g.,* 30-A M.R.S. § 2001(10); *see also* 1 M.R.S. § 72(12).

d. Legislative History

Given the ambiguity in applying the provisions of section 2505 and the difficulty in determining the Legislature’s intent in enacting the statute, examining “other indicia of legislative intent,” *Wuori*, 2020 ME 27, ¶ 7, 226 A.3d 771, such as section 2505’s legislative history, provides a more complete picture of the statute’s reach and which officials are subject to recall.

The enactment of 30-A M.R.S. § 2505 was preceded by the Legislature’s amendment and passage of LD 1533. *See* P.L. 2011 ch. 324, § 1 (attached). In the “Emergency preamble” to that

enacted legislation, the Legislature provided its basis for enactment, which included that “municipalities conduct official business that must be attended to on a daily basis, mostly by a small group of municipal officials,” and that “many small municipalities do not have sufficient charters or ordinances to respond timely to misconduct or malfeasance by their municipal officials.” *See* P.L. 2011 ch. 324, Emergency Preamble. This focus on *municipal* officials was echoed by the bill’s sponsoring legislator, who testified that “[w]ith LD 1533, I hope to add into statute a recall provision for municipalities” and recalled that the legislator’s own town was previously unable to recall an elected town official. An Act to Provide for a Method to Remove an Elected Municipal Official: Hearing on LD 1533 Before the State and Local Government Committee, 125th Legis. (2011) (testimony of Rep. Sanderson of Chelsea) (attached). Additionally, a representative of Maine Municipal Association opposed passage of LD 1533 because, in part, “LD 1533 omits from the recall provisions elected school, county, and state officials.” *Id.* (testimony of Kate Dufour on behalf of Maine Municipal Association).

Therefore, the legislative history of section 2505 demonstrates that it was the intent of the Legislature to only apply the recall provision to municipalities and their appointed or elected officials.

2. The specific language of Title 20-A must govern over the general language of Title 30-A.

Even if section 2505 could be interpreted to apply to regional school unit boards, the specific language of Title 20-A must govern over the more general language of Title 30-A and section 2505.

It is “a fundamental principle of statutory construction that a statute dealing with a subject specifically prevails over another statute dealing with the same subject generally.” *Beaudry v. Harding*, 2014 ME 126, ¶ 6, 104 A.3d 134 (quotation marks omitted); *see Houlton Water Co. v.*

Pub. Utilities Comm'n, 2016 ME 168, ¶ 21, 150 A.3d 1284 (“As a familiar principle of statutory construction, specific statutes prevail over general ones when the two are inconsistent.”). Thus, “to the extent that the two [statutes] cover the same subject-matter, those facets of either statute which treat the common subject-matter in the more direct, special and minute manner will usually be held to prevail.” *Opinion of the Justs.*, 311 A.2d 103, 108 (Me. 1973). See *MSAD 6 Board of Directors v. Town of Frye Island*, 2020 ME 45, ¶ 29, 229 A.3d 514 (citing *Houlton Water Co.*, *supra*).

Here, for example, both Title 20-A and Title 30-A address the issue of vacancies. Title 30-A provides that a vacancy in a municipal office may arise from a variety of reasons. See 30-A M.R.S. § 2602(1).¹ In particular, a vacancy may occur as a result of a “[r]ecall pursuant to section 2505.” *Id.* § 2602(1)(H). Title 20-A, on the other hand, provides its own bases for when vacancies arise on a regional school unit board and does not include recall. See 20-A M.R.S. § 1474(1). Moreover, the Legislature required that all vacancies on a regional school unit board are to be filled in a certain manner. *Id.* § 1474(3). Kennebunk argues that the Legislature’s decision not to include “recall” as a cause of vacancy was “simply a result of when” sections 2505 and 1474 were enacted. However, in the same bill that enacted section 2505, the Legislature also amended section 2602 to include “recall” as a basis for a vacancy. See P.L. 2011, ch. 324, § 4. Clearly, had the Legislature intended for the language to also be amended and codified in section 1474 of Title 20-A, the Legislature could have done so. However, it did not. Therefore, the more specific language in 20-A M.R.S. § 1474, which directly addresses when a vacancy occurs on a regional school unit

¹ Section 2602 also provides for the process to be followed for a vacancy on a municipal “school committee,” which is distinct from a regional school unit. 30-A M.R.S. § 2602(4); see 20-A M.R.S. § 1(29) (defining school committee).

board, should govern. Because this language does not include “recall” as a basis for vacancy, the general language taken from Title 30-A should not be applied to regional school units.

To further illustrate, the Court need only take Kennebunk’s argument to its logical conclusion. Kennebunk relies on the language of section 2505 to supports its position that a recall of a regional school unit board member is permitted. As such, this would then result in a vacancy on the RSU 21 Board, pursuant to 30-A M.R.S. § 2602(1)(H). In turn, 20-A M.R.S. § 1474(3) mandates the process that must be followed by a regional school unit board when a vacancy occurs, which requires that “municipal officers of the municipality in which the director resided shall select an interim director for the municipality or subdistrict to serve until the next annual municipal election.” In other words, although Title 20-A does not consider permitting municipal recall as a basis for causing a vacancy on a regional school unit board, Kennebunk’s interpretation of section 2505 and the resulting vacancy pursuant to section 2604 would allow for such authority to be created.

Moreover, Kennebunk’s reasoning would also force it to comply with the mandate of 20-A M.R.S. § 1474(3). Kennebunk seeks to avoid this result by asserting that its Charter provides a separate process for filling a vacancy that “does not actually result in a vacancy in office.” (Kennebunk Memorandum, at 13.) However, Kennebunk cannot have it both ways; that is, it cannot rely on section 2505 and 2602 in Title 30-A in support of its basis for recall, but then ignore the Legislature’s clear requirements for what process the regional school unit board and the municipal officers must follow when filling a vacancy.

In sum, the specific language of section 1474 must control over the general language in Title 30-A. As shown above, relying on Kennebunk’s reasoning and applying the language of sections 2505 and 2602 in Title 30-A to a regional school unit board governed under Title 20-A

would create a new basis for causing a vacancy on a regional school unit board where the Legislature has already chosen not to do so.

B. Winslow is still good law in context of regional school units or other multi-municipality school districts.

Kennebunk continues to maintain that *Sch. Comm. of Town of Winslow v. Inhabitants of Town of Winslow*, 404 A.2d 988 (Me. 1979) “is not a controlling authority in this case” and that its holding “is no longer good law.” However, as evident by more recent decisions of the Law Court, the underlying principles of *Winslow* and the cases it relied upon remain good law.

To support its argument, Kennebunk relies on *Sch. Comm. of Town of York v. Town of York*, 626 A.2d 935 (Me. 1993) and *Biddeford Bd. of Educ. v. Biddeford Teachers. Ass’n*, 1997 ME 17, 688 A.2d 922. However, these two cases are inapplicable here because they involved municipal school districts, not regional or other multi-municipality school units. See 20-A M.R.S. § 1(19), (29) (defining a “municipal school unit” as “a state-approved unit of school administration composed of a single municipality” and a “school committee” as “the governing body with statutory powers and duties for a municipal school unit.”) In *Sch. Comm. of Town of York*, the analysis focused on the municipal budget authority over the municipal schools, as outlined in the Town’s Charter. See 626 A.2d at 937 & n.3-4. Similarly, *Biddeford Bd. of Educ.*, which centered on a school committee’s negotiations with a teachers’ association, also involved a municipal school unit and its school committee, on which committee the Town’s mayor served as “*ex officio*” chairman. 1997 ME 17, ¶¶ 2-3 & n.3, 688 A.2d 922. Thus, the Law Court’s analysis of home rule authority in each case only addressed the issue of how each town’s home rule authority governed their own *municipal* schools. Both at the time these two cases were decided and today, municipal schools are subject to different state statutes regarding their governance, and the Legislature has

made clear that these municipal schools need not comply with certain state laws when a municipal charter states otherwise. *See, e.g.*, 20-A M.R.S. § 2301.

Indeed, the Law Court has continued to rely on the principles expressed in *Winslow*, as well as the cases cited therein, when deciding issues related to regional or other multi-municipality school districts. As recently as 2020, the Law Court made it clear that, in the context of regional school units, “[e]ducation is a state matter.” *MSAD 6 Bd. of Directors v. Town of Frye Island*, 2020 ME 45, ¶ 24, 229 A.3d 514 (quoting *City of Lewiston v. Lewiston Educ. Dirs.*, 503 A.2d 210, 213 (Me. 1985); *cf. Town of Winslow*, 404 A.2d at 993 (recognizing that school board term of office “is clearly a state matter”). There, the Law Court recognized that “the Legislature is granted broad authority to legislate in the area of public education,” *id.* (quoting *Town of Frye Island v. State*, 2008 ME 27, ¶ 15, 940 A.2d 1065), and “recognized ‘the plenary authority of the Legislature in the control of the public school system of this state,’” *id.* (quoting *City of Lewiston*, 503 A.2d at 213.) In this context, the Law Court’s reliance on the quoted language from *City of Lewiston* is particularly telling because the “plenary authority” language is quoted directly from *Winslow*. *See City of Lewiston*, 503 A.2d at 213. Moreover, the Law Court continued to rely on *Winslow* when discussing “union schools”² in *Pickering v. Town of Sedgwick*, 628 A.2d 149, 150 (Me. 1993), which was decided one month after *Sch. Comm. of Town of York*.

In short, Kennebunk’s contention that *Winslow* is “not a controlling authority in this case” ignores the recent holdings of the Law Court. Although *Winslow* may have been statutorily overruled in the context of municipal school units, the principles asserted and the cases relied on in *Winslow* remain good law in the context of regional school units. *See Town of Frye Island*, 2020 ME 45, ¶¶ 23-24, 229 A.3d 514.

² In *Pickering*, as here, the “union school” district was a school unit composed of more than one municipality. *See Pickering*, 628 A.2d at 150.

CONCLUSION

For all of the foregoing reasons, and for the reasons stated in its February 18, 2022, Motion, RSU 21 respectfully requests that this Court enter the declaratory relief requested in RSU 21's Complaint and declare that RSU 21 Directors are not subject to the terms of Kennebunk's municipal Charter.

Dated at Portland, Maine, this 25th day of February, 2022.



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