



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Deborah A. Gist
Commissioner

December 11, 2012

Lynn S. Krizic
School Superintendent
Portsmouth School District
29 Middle Road
Portsmouth, Rhode Island 02871

RE: Portsmouth Advisory Voluntary Transfer to Community

Dear Superintendent Krizik:

Please be advised that I am in receipt of your letter dated December 6, 2012, wherein you request an advisory opinion that, in summary, is prefaced by information relative to the transfer of unexpended funds from the Portsmouth School Department to the account of the Town of Portsmouth. Specifically, you have requested guidance relative to the validity of this transfer of funds in light of the provisions of RIGL 16-7-23(b), which provides:

All state and local funds unexpended by the end of fiscal year of appropriation shall remain a surplus of the school committee and shall not revert to the municipality. Any surplus of state or local funds appropriated for educational purposes shall not in any respect affect the requirement that each community contribute local funds in an amount not less than its local contribution for schools in the previous fiscal year, subject to subsection (a) of this section, and shall not in any event be deducted from the amount of the local appropriation required to meet the maintenance of effort provision in any given year.

The Portsmouth School Committee action to voluntarily direct the transfer of surplus funds to the community is contrary to the clear language of the statute. Deputy Commissioner Abbott has corresponded with your attorney, Stephen M. Robinson, concerning whether the School Committee's transfer of funds could be considered a "loan." Notwithstanding the fact that the School Committee's motion does not appear to contemplate a temporary transfer to accommodate for cash flow difficulties or other valid reason, that concept could be clarified in a subsequent motion. Of course, that would require that terms of repayment be made clear in an agreement with the municipality. The entire amount of the "loan" would need to be repaid on mutually agreed-upon terms. Moreover, the municipality would still be required to maintain the mandated maintenance of effort level in spite of such a surplus and/or "loan." Maintenance of effort for the current school year would therefore include an amount equal to the amount equal to or greater than the amount appropriated in

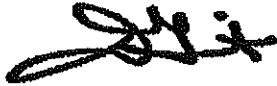
December 11, 2012
Superintendent Lynn S. Krizic
Page 2

the preceding fiscal year, regardless of the amount actually expended by the School Committee.

With respect to your request for guidance regarding the impact of a decrease of students in FY13 for purposes of computing a maintenance of effort level on a per-pupil level, please be advised that a review of Portsmouth's data submissions for FY13 will need to be undertaken before an opinion may be rendered.

Finally, please understand that the contents of this letter are for advisory purposes only and are based on the facts presented in your request for a legal advisory opinion. As such, the advisory opinion contained herein is subject to review in a formal hearing should one be requested by an interested party.

Very truly yours,



Deborah A. Gist
Commissioner of Education

DAG/crb