

# MEMORANDUM

June 30, 2021

TO: Kevin McGowan, Ed.D  
Brighton Central School District

FROM: Kevin L. Overton, Esq.  
Harris Beach PLLC

RE: Petition for Sale of School District Property

## OVERVIEW

This memorandum has been prepared in response to your inquiry regarding clarification on determining the number of signatures required on a petition requesting the sale of real property subject to a permissive referendum and applicability of Brighton Central School District Policy 1650 to a petition for the sale of real property.

## DISCUSSION

New York State Education Law § 1804(6)(c) states in pertinent part: “[n]otwithstanding the provisions of paragraph a of this subdivision, the board of education of a central school district may, by resolution, after a period of at least seven years of centralization, sell any piece of real property which such board shall deem to be of no use or value therefor. The sale of such property shall be without the approval of the qualified voters of the school district, unless a petition requiring that the question as to the sale of such property be submitted to a vote by the qualified voters of such district. **Such petition shall be subscribed and acknowledged by at least ten per centum of the qualified voters of such district, and filed with the clerk of the board of education within thirty days of the adoption of such resolution.**” **Emphasis added.**

Determining the ten percent requires examining the phrase “qualified voter of such district.” That phrase is not further defined or clarified under the Education Law. There is scant guidance in case law or legal opinions. A decision from the Commissioner of Education held:

*“Education Law §1804(6)(c) specifically authorizes a board of education of a central school district to sell any piece of real property, after at least seven years of centralization, without voter approval, unless a petition requesting a vote is signed by 10 percent of the qualified voters of the district and filed with the district clerk. This applies to any piece of real property owned by a central school district (see Botwin v. Bd. of Educ., Half Hollow Hills Cent. School Dist., et al., 114 Misc 2d 291; Appeal of White, 28 Ed Dept Rep 560, Decision No. 12,197). Here, petitioner submitted a petition to the board with 988 signatures requesting a public vote on the sale of Hillcrest. However, the board asserts, and petitioner does not dispute, that there are over 49,000 qualified voters in the*

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*district. Consequently, the petition calling for a vote did not contain the signatures of 10 percent of the qualified voters, as required by Education Law §1804(6)(c). A public vote, therefore, was not required.”*

While instructive, the decision does not provide succinct guidance or clarity on what constitutes a “qualified voter of the district”. Since Brighton does not maintain a voter registry, the most accurate determination of the number of qualified District voters would be based on Monroe County Board of Election records.

Under Education Law § 5-612(3) “[t]he county board of elections is required to provide a list of registered voters to the school district at least 30 days prior to any regularly scheduled election, and a supplemental list of voters who registered after delivery of the first registration list at least 10 days before any regular or special election.” It seems likely then that the record of the last regularly scheduled election is the most current, reliable information to establish the number of qualified District voters.

In regard to District 1650 relates to submission of questions and/or propositions at the District’s annual meeting and special district meetings. The policy language is consistent with Education Law § 2008(2)(3). It is not applicable to the petition required related to the sale of real property. Again, that is governed by Education Law § 1804(6)(c).

Finally, New York State Comptroller Opinion No. 82-170, explained: “it has long been the position of this Office that referenda which are not required by statute are illegal and without effect (Opns St Comp, 1981, No. 81-344; 34 Opns St Comp, 1978, p 179; Opns St Comp, 1976, No. 76-974, unreported). The governing board of a school district or municipality may not submit a proposition to a referendum in the absence of express statutory authority (McCabe v. Voorhis, 243 NY 401, 153 NE 849 [1926]; Meredith v. Connally, 68 Misc 2d 956, 328 NYS2d 719, aff’d 38 AD2d 385, 330 NYS2d 188 [1972]). Education Law §1804(6)(c) states that the sale shall be without the approval of the qualified voters of the school district, unless a petition requiring that the question as to the sale of such property be submitted to a vote by the qualified voters of such district. Based on a reading of Education Law, § 1804(6)(c), it is apparent that no proposal may be submitted to the voters of a central school district unless a petition is submitted requiring such a vote.” 1982 N.Y. St. Comp. 219.

We hope you find the above helpful. Feel free to reach out with any additional questions.