



**MEMORANDUM
ATTORNEY-CLIENT PRIVILEGE**

TO: Board of Education
Tom Boasberg, Superintendent

FROM: John Kechriotis, General Counsel

DATE: December 1, 2009

SUBJECT: Legal Opinion – BoE Authority at November 30, 2009 Special Meeting

I am in receipt of a letter dated November 30, 2009 from Mark G. Grueskin to Ms. Andrea Merida in which Mr. Grueskin asserts that the “old board” of education may not act on a series of policy matters on November 30, 2009 before all newly elected members are sworn in. As support for his position, Mr. Grueskin cites *Achenbach v. School District No. RE-2*, 491 P.2d 57 (Colo. 1971). That case is simply not on point, and Mr. Grueskin has failed to cite the applicable statutes dealing with term of service of School District Director.

Colorado Constitution XX, Section 7, specifies that the “conduct, affairs and business (of District No. 1 in the City and County of Denver) shall be in the hands of a board of education consisting of such members, elected in such manner as the general school laws of the state shall provide. The said board of education shall perform all acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said “District No. 1.””

§ 22-31-104(3), C.R.S. states “School district directors elected shall serve until their successors are elected and qualified.” That means that those members of the board of education whose seats were up for election on November 3, 2009, in accordance with the statute, “shall serve until their successors are elected and qualified.” One of the conditions for qualification following election, as Mr. Grueskin himself admits in his letter, is the requirement that the newly elected board member shall take the oath of office. “Each director shall, no later than ten days after he or she receives the certificate of election pursuant to section 1-11-103, C.R.S., or appointment pursuant to section 22-31-129(2) appear before some officer authorized to administer oaths or before the president of the board of education and take an oath that the director will faithfully perform the duties of the office as required by law, and will support the constitution of the United States, the constitution of the State of Colorado and the laws made pursuant thereto.” § 22-31-125, C.R.S. Newly elected board members are not “qualified” and do

not replace the sitting board member until the new board member has taken the oath of office.

The *Achenbach* case deals, not with the election of some new members of the Board of Education, as is present here, but with the complete elimination of a school district, and its board of education, under *The School District Organization Act of 1957*. That school district literally ceased to exist as of June 30, 1965 and it is within that context that the Court references the “lame duck” period of time. “The old district’s authority to enter into employment agreements for operation of its schools was limited to the “lame duck” period of time until the closing of the school year, June 30, 1965.” 491 P.2d at 58. The Court then goes on to cite the specific statutory authority for that position. That same authority can now be found in the current statutes in *The School District Organization Act of 1992*, which deals with the reorganization, consolidation and annexation of school districts, none of which has any applicability here.

Similarly, the other case cited by Mr. Grueskin, *Uzzell v. Anderson*, 89 P. 785, 786 (Colo. 1906) dealt with the elimination of a county. Here there is no elimination of a school district, such as there was in *Achenbach* or *Uzzell*. The corporate entity, the District No. 1 in the City and County of Denver continues in existence, § 22-32-101, and its “board of education . . . shall perform all duties required by law” § 22-32-103(1), C.R.S.

Mr. Grueskin’s letter simply relies on cases that are completely inapplicable, and completely ignore the mandates of Article XX of the Colorado Constitution and the applicable general school laws of the state. My only reasonable conclusion is that Mr. Grueskin’s letter, dated the same day as the November 30, 2009 Board meeting, was not intended as a true legal opinion to Ms. Merida. Rather, such misinterpretation and misrepresentation of the *Achenbach* and *Uzzell* case holdings without reference to the controlling Colorado law on this issue, was intended as a political prop. The drafting of a legal memorandum in response to such a transparent political ploy has been a complete waste of time and taxpayer money – time and money which should have been utilized toward advancing student achievement.

In conclusion, the actions taken by the Board of Education at its meeting on November 30, 2009 prior to two newly elected board members taking the oath of office, was, without question, in accordance with the responsibility and authority of those board members serving until their successors were qualified by taking the oath of office.