

## Maine Supreme Court Decision to Have Immediate Impact on Functioning of Municipal Boards

Amanda A. Meader, Esq. | April 30, 2007

On April 26, 2007, the Maine Supreme Court (the “Law Court”) decided a case that is of immediate interest to all Maine municipalities. In Stevenson v. Town of Kennebunk (2007 ME 55), the Law Court held that when a municipal board is required by statute or charter to consist of a specific number of members and there is a vacancy on the board, the board is not legally constituted and may not conduct business until the vacancy is filled.

Stevenson involved a tax abatement appeal to the Kennebunk Assessment Board of Review, which is required (by town charter and the Board of Review Rules of Procedure) to consist of three members. Prior to hearing the Stevenson’s abatement request, one of the three Board members resigned, leaving only two members to hear and decide the Stevenson’s abatement appeal. The Stevensons appealed their case all the way to the Law Court, which held that the Board of Review had no authority to act on the appeal in light of the Board vacancy.

In its decision, the Law Court stated that, where a municipal board is required, whether by State statute or by municipal charter, to consist of a given number of members, the appointment of all members is necessary for a functioning board to be constituted. Where a municipal board has vacancies, it lacks the authority to act and thus any actions that it undertakes are a nullity.

Maine municipalities should consider taking prompt action in light of the Law Court’s decision in Stevenson, since any decision made by a municipal board that has one or more vacancies may have no legal effect. The short-term response to Stevenson is to continue (postpone) any matters that are scheduled to be heard by a board with a vacancy, and then strive to fill the vacant seat with a qualified individual as soon as possible. The long-term response is to amend municipal charters or ordinances to adopt procedures regarding vacancies in municipal offices. Possible amendments included provisions that grant boards the legal authority to act despite a vacancy and provisions that designate alternates to sit on a board the event of a vacancy.

We recognize that the Stevenson decision may come as a surprise to many municipalities, and we think it likely that the Legislature may be asked to consider ways to alleviate the impact of this decision on municipal boards across the State. We will continue to monitor this situation and keep you advised of pertinent developments.

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*If you have any questions about the impacts of the Stevenson case, feel free to contact Amanda Meader or any of the other lawyers in the Municipal, Legislative and Regulatory Practice Group at Bernstein Shur by calling us at 207 774-1200 (Portland) or 207 623-1596 (Augusta), or by e-mail at [info@bernsteinshur.com](mailto:info@bernsteinshur.com).*

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#### **ADDENDUM - 4 MAY 2007**

### **Stevenson Decision – Sweeping Impact Should Not Extend to Board of Selectmen**

The Law Court's recent decision in Stevenson v. Town of Kennebunk (2007 ME 55) has generated much discussion among municipal officials and municipal attorneys in recent days. The most pressing issue seems to be the applicability of Stevenson to municipal officers such as selectmen and town councilors.

In municipalities with charters, the first place to look for an answer to this question is the charter itself. Absent a charter, or an applicable charter provision, however, the prevailing view appears to be that Stevenson does not apply to vacancies on Select Boards and Town Councils.

There has been some confusion on this particular point created in part by inaccuracies in a recent newspaper article that indicated that the case did apply to Select Boards. While there is room for debate on this point, on balance the most accurate answer appears to be that Stevenson is not intended to apply to Select Boards. One example of the support for this position in the Maine Revised Statutes is the authorization for Select Boards to call town meetings to fill Board vacancies. Specifically, 30-A M.R.S.A. § 2602(3) implies a legislative intent to authorize the remaining members of a Select Board to continue to conduct business even though a vacancy exists on the Board. In addition, there are other statutory provisions that may be construed as supporting the non-application of Stevenson to Select Boards.