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AG: County can look at school finances, not performance

■ Opinion fails to address whether Seven Locks audit was within IG's authority

BY SEAN R. SEDAM
STAFF WRITER

Montgomery County's inspector general may look into the school system's finances but needs consent to investigate how the school board makes decisions, the state's attorney general said last week.

The advisory opinion, which lacks the weight of a court ruling, supports the school board, which in recent months has insisted that it should be free from unsolicited scrutiny by the County Council.

Questions about the relationship between the council, which oversees the inspector general's office, and the school system, a state agency that receives funding from the county, came to a head this spring amid the controversy over how to relieve school overcrowding in Potomac.

Dagley

The school board and the County Council sought the opinion after school officials questioned the inspector general's authority to audit the board's decision to build a replacement for Seven Locks Elementary School.

"In our opinion, the county may authorize the inspector general to audit the board of education's financial transactions and accounts, but may not require the board to submit to a performance audit by the inspector general without the board's assent," Assistant Attorney General Robert N. McDonald wrote in a letter to school board President Charles Haughey.

The council may audit the school system's performance with the school board's consent or request a review by the state Department of Education, McDonald wrote.

Inspector General Thomas J. Dagley in a February report questioned the board's 2004 decision to build a replacement for Seven Locks Elementary School about 1.5 miles away on Kendale Road. The council approved the project later that year.

The school system spent $750,000 for planning and design work on the Kendale site before Dagley's report plunged the council, the school board and the community into months of wrangling.

On May 17, council and school officials reached a compromise to modernize Seven Locks at its current home on Seven Locks Road by December 2011.

The plan also seeks to relieve overcrowding at Potomac Elementary by modernizing Bells Mill Elementary by July 2009, a year earlier than planned and on a larger scale than previously envisioned.

The AG's opinion did not specifically address the Seven Locks audit or whether the audit was permissible under state law.

School officials said the opinion makes it clear that Dagley had no authority to conduct the audit.

"The inspector general clearly overstepped his bounds," said board member Patricia B. O'Neill (Dist. 3) of Bethesda.

County Councilman Howard A. Denis (R-Dist. 1) of Chevy Chase said he disagreed with the opinion.

"My opinion is [there is] no doubt that we have the authority to conduct performance audits," he said.

The council's authority to audit the school system would prevail in court, Denis said, adding, "I feel very strongly we should avoid litigation with the school system."

Litigation is a moot point in the case of Seven Locks, said Denis, a former state senator who helped to broker the compromise with school officials.

School officials said the opinion would guide the inspector general and council's future relationship with the board.

"It, I think, reinforces our view that the County Council can look at what we're doing with a critical eye," said Haughey (At large) of Rockville. "If the County Council assigns the IG to investigate the school system, he should work in collaboration with us in deciding what the scope and focus of his study is going to be."

County Council President George L. Leventhal (D-At large) of Takoma Park did not return requests for comment.

The opinion makes it clear that the council and the inspector general "can look at the numbers and they can look at fraud in the numbers," said school board member Stephen N. Abrams (Dist. 2) of Rockville. "But they can't go back and try to second guess the decision making process."

Haughey

Abrams, chairman of the board's Audit Committee, persistently questioned Dagley's authority to conduct the Seven Locks audit.

Dagley has maintained that his audit was within the bounds of the county's inspector general law.

The attorney general's opinion disagreed. "The county may not require the county board of education to submit to a performance audit by the inspector general," it said, because state law pre-empts the county law and "because the county board of education is ... a state agency."

It is unclear what bearing the opinion will have on future work by the inspector general, including a

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planned investigation of whether the board is complying with the state's open meetings laws.

Dagley defended the work of his office in a telephone message.

"From the OIG's perspective, the value of independent auditing of county funded organizations, including public schools has not changed," he said. "Independent audits serve all of the county leaders, as well as the taxpayer. And in that regard our four-year work plan has not been modified at this point and we're moving ahead."

Michael E. Faden, the council's senior legislative attorney, who wrote a 10-page letter arguing the council's position, conceded that the opinion seemed heavily in the board's favor.

"The board, I think it's fair to say, got most of what they wanted," he said.