

Board Member Term Limits: Are They Legal?

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Some cities and towns in Connecticut limit the terms of office for board of education members and other elected officials. This may come in the form of limiting a board member to two consecutive terms. At least one town in Connecticut limits board of education membership to one four-year term.

For boards of education, term limits can be particularly troublesome. It can take the majority of a board member's first term to become fully fluent in the various content areas needed to participate effectively on a board of education. Ultimately, term limits can impair a board's ability to cultivate strong leadership and develop expertise among the membership, two qualities that are vital for effective boards.

Defenders of term limits claim that they ensure the presence of new candidates with fresh ideas and less stagnation, entrenchment or possible abuse of power. Meanwhile, opponents of term limits point out that the electoral process can accomplish the same goals because voters are always free to elect a candidate who represents a new perspective or vote any incumbent board member out of office.

People may assume that because the President of the United States is limited to two terms, such term limits could be applied to any elected position, including municipal officials. However, the presidential term limit was established by the Twenty-Second Amendment to the U.S. Constitution and only applies to the President. By contrast, any board of education term limits are created by municipal ordinance or charter provisions. The validity of such municipal laws rests upon the authority of the city or town to create them. The fact that such authority is limited provides a means through which board of education term limits can be legally challenged.

Municipalities are creatures of the state and have no inherent legislative powers. Their powers are limited to those that are expressly granted by state statute or necessary to fulfill municipal duties. The state legislature has not explicitly given municipalities the authority to establish term limits. The relevant statutes pertaining to the election of board of education members only give municipalities the power to choose a different length of the term of office and the method of rotation of members as well as some options regarding the number of board members. There is also statutory language that permits municipalities to determine the method of election and mode by which officers are voted for, but neither of these laws provides a basis for establishing term limits.

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Fundamentally, term limits establish *qualifications* for board of education candidates. While there have been no cases in Connecticut that directly analyze a town's ability to set term limits for its municipal officers, there are a number of cases that reject a town's attempt to establish qualifications for candidates for town office. For example, in *Buonocore v. Town of Branford*, the Connecticut Supreme Court invalidated a charter provision prohibiting unclassified state employees from holding elective office. In doing so, the Court concluded that although the Town was empowered by statute to establish the "method of election," this related to procedural matters (date, place, voting districts) and did not extend to candidate qualifications. With regard to the general power to promote good government, the Court stated that although towns "obviously have a strong interest in the qualifications of candidates for local office, 'good government' cannot be read so broadly as to necessitate the grant of power to municipalities to determine candidate qualifications." This case, and others like it, establishes a strong precedent for invalidating any municipality's attempt to establish qualifications for candidates, including qualifications such as term limits.

Term limits might also be challenged on the basis of the unique nature of school districts – that they are agents of the state as well as the municipality. Under the right circumstances, it may be possible to show that term limits have such a negative impact that they impair the efficient and proper operation of the educational system.

The bottom line is this: if boards of education, candidates for municipal office or political parties have a strong desire to abolish term limits, they are not limited solely to the legislative process. Rather, such opponents can appeal to the Connecticut courts to challenge the validity of terms limits.

Susan L. Scott is an attorney in the law firm of Pullman & Comley, LLC, which represents numerous Connecticut boards of education. More articles about issues pertaining to school districts can be found on the firm's blog, Education Law Notes, at: schoollaw.pullcomblog.com. Reposted with permission from the December 2014 Connecticut Association of Boards of Education Journal.

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