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March 17, 2014

James I. Peale, Clerk
Cheshire County Superior Court
33 Winter Street
Keene, New Hampshire 03431-0444

re: Salada, et al v. Keene School District (No. 213-2014-CV-00031)

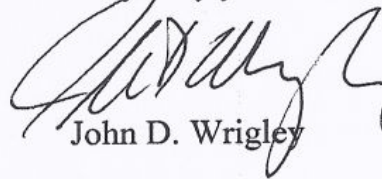
Dear Mr. Peale:

Please find enclosed "Respondent's Memorandum" and "Respondent's Requests for Findings and Rulings" with regard to the above-captioned matter.

Copies have been mailed to each of the four Petitioners listed on the Orders of Notice at the addresses listed on the Orders.

If you have any questions, please feel free to contact me.

Very truly yours,



John D. Wrigley

JDW/sjk
encs.

pc: Keene School District
Conan Salada
Darryl W. Perry ✓
David Crawford
Eric LaRoche

State of New Hampshire

Superior Court

Cheshire, SS.
213-2014-CV-00031Conan Salada
Darryl W. Perry
David Crawford
and Eric LaRoche

v.

Keene School District

Respondent's Memorandum

The Respondent Keene School District is a "Senate Bill 2," so called, municipality with its annual meeting held on two separate days. See, in general RSA 40:13. The first session is the deliberative session which is run in the fashion of a traditional New England town meeting. A warrant is prepared by the school board, and the "first session shall consist of explanation, discussion, and debate of each warrant article." RSA 40:13(IV). The final vote upon the warrant articles takes place by official ballot at the second session. RSA 40:13(VII).

At issue are seven warrant articles that were filed by petition (see RSA 197:6) for the 2014 annual meeting of the Respondent. Each of the seven petition articles was amended at the Respondent's first session held on February 8, 2014. The original and the amended articles are quoted accurately by Petitioners and will not be re-quoted here. The applicable statute should be re-quoted here. It is RSA 40:13(IV)(c):

Warrant articles may be amended at the first session, subject to the following limitations: (a) Warrant articles whose wording is prescribed by law shall not be amended. (b) **Warrant articles that are amended shall be placed on the official ballot for a final vote on the main motion, as amended.** (c) **No warrant article shall be amended to eliminate the subject matter of the article.** An amendment that changes the dollar amount of an appropriation in a warrant article shall not be deemed to violate this subparagraph (emphasis added).

The petitioners challenge the legality of the amendments and propose that the petition articles bypass the first session amendment process and proceed to the official ballot. Petition, Prayer B.

At a hearing upon the Petitioner's request for a temporary injunction, both parties addressed a 2011 Superior Court case referenced in the Petition and Answer, namely *Bailey v. Exeter* (Rockingham Superior Court, Case No. 218-2011-CV-00203). The Court clearly understood both sides of the discussion, and the arguments will not be repeated at length here.

- The *Bailey* Court determined that amendments to two warrant articles at the 2011 Exeter Town Meeting first session were illegal. "Nullity" is the standard employed by Judge McHugh in the *Bailey* case. That word is not in the statute. The statute says "eliminate the subject matter." The statute says absolutely nothing about how meaningful a yes or

no vote should be on the amended article. "Courts can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include. The legislative intent is to be found not in what the legislature might have said, but rather in the meaning of what it did say." *Appeal of Astro Spectacular, Inc.*, 138 NH 298, 300 (1994). Likewise, "It is too well established to require elaboration that where a purely statutory remedy ... is concerned, courts can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include." *Brown v. Brown*, 133 NH 442, 445 (1990).

- Even employing the "nullity" standard, the vote upon the seven amendments at issue in this case will provide voter input on the budget and upon the four statutory issues raised in the petition articles. It is not at all unusual that municipalities have "sense of the meeting" articles. See, e.g., *Stamper v. Hanover*, 118 NH 241 (1978).
- Three of the petition articles at issue here were submitted with three different budget numbers. One was equal to the prior fiscal year's budget. The second was a 1% cut from the prior fiscal year's budget. The third was a 5% cut from the prior fiscal year's budget. There obviously could have been more petitions. A \$63 million dollar budget for school programs invites plenty of room for proposals at smaller and larger numbers. At the first session, the voters spent hours debating the budget. In addition to the discussions on Articles 2, 3, and 4, there were 5 proposed amendments to the School Board's proposed budget. A budget number prevailed at the first session and was sent to the second session for official ballot vote. That is precisely the way the system is supposed to work. If the Petitioners prevail, who has determined that only three different budget numbers somehow bypass the first session and get to be voted upon at the second session? Why not the amendments which were made and which did not prevail at the first session? Why not twenty-three next year? "In brief, to construe this statute as the plaintiffs urge would be to enable a minority of voters to block all action by the town by repeated petitions. It is not to be presumed that the Legislature intended such a result." *Preston v. Gillam*, 104 NH 279, 282 (1962).
- The three budget petition articles accomplished nothing to place the alternative budget figures before the voters. The budget was on the agenda anyway, available for an amendment to any alternative number moved by any voter at the meeting. See *Grant v. Barrington*, 156 NH 807 (2008, overruled in part by RSA 40:13(IV)(c), but on point to the effect that petitioned articles 2, 3, and 4 served no purpose). It is submitted that the Board could have refused to place these three budget petition articles on the warrant because the statutorily required budget article already was there.
- Three of the petition articles are an effort to change statutory law that the Keene School District voters have no authority to change. Original petition article 10 would be contrary to RSA 671:33. Original petition article 11 would be contrary to RSA 32:5(V)(a). Original petition article 12 would be contrary to RSA 32.7. Accordingly, as submitted, these three petition articles were advisory. As amended, these three petition articles are

advisory and, more important, advisory in a fashion that was approved by the voters present for the First Session.

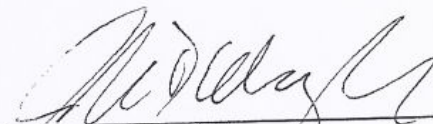
RSA 39:3 [the town equivalent to RSA 197:6] permits ten or more voters to present to the selectmen an article to be inserted in the warrant of any annual or biennial meeting on "any subject specified in such application." This statute is of ancient lineage and has been with us since Revised Statutes in 1842. R.S. 32.3. It is of general but not of all inclusive application and **is not applicable where the legislature has treated the "subject specified in such application" in a special, exclusive and different manner. If [the statutes authorizing petition articles] were applied literally to include any subject it would allow the voters to supersede the legislative will in special situations requiring special treatment. No such motive can be attributed to the legislature.** *Seabrook v. Perkins*, 112 NH 37, 39 (1972) (emphasis added). See also *Stamper v. Hanover*, 118 NH 241 (1978), to the same effect.

Here, again, it is submitted that the Board could have refused to place Articles 10, 11, and 12 on the warrant – as the Court advised Seabrook and Windham to do in *Seabrook v. Perkins*, supra - because the subject matter is controlled by statute.

- To be sure, alone among the seven petition articles at issue here, Article 13, if passed in its original form, would have revoked the RSA 198:4-b authority granted to the Board just one year earlier. The voters however determined that the authority should remain in place, and amended the article to get a sense of the meeting rather than a revocation. The Petitioners are trying to disenfranchise the voters who disagreed with the notion of a revocation. The political argument as to whether the New England Town Meeting or an official ballot vote is a better and more democratic indicator of voter preference is one the legislature has addressed with a hybrid of both. The Petitioners argue we ought to skip the Town Meeting, but that is not the law. If the vote on Article 13 is (incorrectly, it is submitted) deemed a "nullity" by this Court; and if "nullity" is (incorrectly, it is again submitted) deemed the applicable law, then the remedy should be that the School Board cannot use its RSA 198:4-b authority pending a second session vote on the original petition article 13 or the original petition article 13 as it may be amended without creating a "nullity."

For reasons above, Respondent submits that the Petition should be dismissed with prejudice. If the Court concurs with the "nullity" argument or otherwise determines that a remedy is in order that involves a new meeting of the voters - especially as it would affect the budget or collective bargaining agreement approved at the Second Session - Respondent respectfully suggests a further hearing to address the complicated mechanics of a remedy that is fair and just to the many thousands of people whose lives are intertwined with the Keene school system.

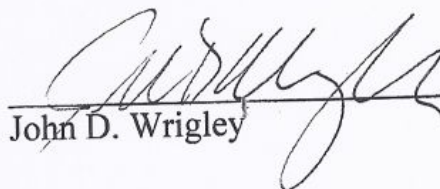
Respectfully Submitted by the
Keene School District, by its attorney



John D. Wrigley
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NH Bar #2798

Certification

I hereby certify that on March 17, 2014, a copy of "Respondent's Memorandum" was forwarded by first class mail to Petitioners, Darryl W. Perry, at 75 Leverett Street; Conan Salada, at 132 Kennedy Drive; David Crawford, at 36 Marlboro Street #7; and Eric Laroche, at 15 West Surry Road, all of Keene, New Hampshire, 03431.



John D. Wrigley

Cheshire, ss
213-2014-CV-00031

Conan Salada
Darryl W. Perry
David Crawford
and Eric LaRoche

v.

Keene School District

Respondent's Requests for Findings and Rulings

Now comes the Respondent Keene School District and requests that the Honorable Court make the following findings and rulings numbered 1 through 22:

1. The subject matter of Article 2 as petitioned was the 2014 - 15 Keene School District Budget.
2. The subject matter of Article 2 as amended is the 2014 - 15 Keene School District Budget.
3. The subject matter of Article 3 as petitioned was the 2014 - 15 Keene School District Budget.
4. The subject matter of Article 3 as amended is the 2014 - 15 Keene School District Budget.
5. The subject matter of Article 4 as petitioned was the 2014 - 15 Keene School District Budget.
6. The subject matter of Article 4 as amended is the 2014 - 15 Keene School District Budget.
7. The subject matter of Article 10 as petitioned was the appointment of new members to fill vacant seats on the Keene School Board.
8. The subject matter of Article 10 as amended is the appointment of new members to fill vacant seats on the Keene School Board.
9. The subject matter of Article 11 as petitioned was the Keene School Board's authority to suggest "yes" or "no" on certain ballot items.
10. The subject matter of Article 11 as amended is the School Board's authority to suggest "yes" or "no" on certain ballot items.
11. The subject matter of Article 12 as petitioned was year-end surplus funds.
12. The subject matter of Article 12 as amended is year-end surplus funds.
13. The subject matter of Article 13 as petitioned was the School Board's authority to retain year-end funds under RSA 198:4-b.
14. The subject matter of Article 13 as amended is the School Board's authority to retain year-end funds under RSA 198:4-b.

Respondent's Requests for Findings and Rulings

Salada, et al v. Keene

213-2014-CV-00031

page 2 of 2

15. A petition article was not required at the First Session to propose a Keene School District budget of \$62,333,572. *Grant v. Barrington*, 156 NH 807 (2008, overruled in part by RSA 40:13(IV)(c), but on point to the effect that petitioned articles 2, 3, and 4 served no purpose).

16. A petition article was not required at the First Session to propose a Keene School District budget of \$61,710,236. *Id.*

17. A petition article was not required at the First Session to propose a Keene School District budget of \$59,216,893. *Id.*

18. The annual meeting of the Keene School District has no authority to overturn RSA 671:33, and therefore Petition Article 10 as submitted was advisory only. *Seabrook v. Perkins*, 112 NH 37, 39 (1972).

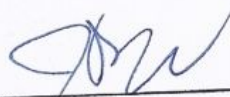
19. The annual meeting of the Keene School District has no authority to overturn RSA 32:5(V)(a), and therefore Petition Article 11 as submitted was advisory only. *Id.*

20. The annual meeting of the Keene School District has no authority to overturn RSA 32:7, and therefore Petition Article 12 as submitted was advisory only. *Id.*

21. None of the petition articles contain wording prescribed by law.

22. Each of the petition articles as amended will provide an advisory vote upon the subject matter of the article.

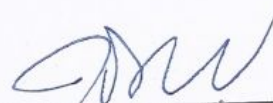
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