

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Cheshire Superior Court  
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Keene NH 03431

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**NOTICE OF DECISION**

**Darryl Perry  
75 Leverett Street  
Keene NH 03431**

Case Name: **Conan Salada, et al v Keene School District**  
Case Number: **213-2014-CV-00031**

Enclosed please find a copy of the court's order of March 28, 2014 relative to:

Court Order

March 28, 2014

**James I. Peale**  
Clerk of Court

(555)

C: Conan Salada; David Crawford; Eric Laroche; John Daniel Wrigley, ESQ

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

CHESHIRE, SS.

No. 213-2014-CV-31

Conan Salada, Darryl W. Perry, David Crawford, and Eric LaRoche

v.

Keene School District

**ORDER**

On February 19, 2014, the Petitioners, Conan Salada, Darryl W. Perry, David Crawford, and Eric LaRoche, filed a Petition for Injunctive Relief with Request for Expedited/Emergency Preliminary Hearing against the Respondent, Keene School District ("School District"). The Petitioners allege that at a deliberative session held on February 8, 2014, a majority of the voters unlawfully amended seven Warrant Articles that they had submitted for the town election to be held on March 11, 2014. For the reasons set out below, the Court **DENIES** the Petitioners' request for injunctive relief and attorney's fees.

The Court held a hearing on February 28, 2014, regarding the Petitioners' motion for preliminary relief. On that same day, the Court issued an order denying the Petitioners' motion for preliminary relief because an adequate remedy of relief was available. As a result, the March 11, 2014 election was permitted to proceed. The Court gave the parties until March 17, 2014 to submit additional legal memoranda addressing whether the Amendments violated RSA 40:13, IV (c). The Court has reviewed the memoranda, pleadings, exhibits, and applicable law, and finds the amendments do not eliminate the subject matter of the Warrant Articles.

The City of Keene has adopted the provisions of RSA 40:13 (2000) (amended 2013), pursuant to which it conducts town meetings in two sessions. As such, Keene is a so-called SB2 municipality. See RSA 40:14, V (2000). The first session is a deliberative session, for discussion and possible amendment of proposed articles. See RSA 40:13, IV. At the second session, voting by official ballot takes place. See RSA 40:13, VI. Pursuant to the requirements of RSA 39:3, at the deliberative session held on February 8, 2014, the Petitioners submitted seven Warrant Articles that were drafted as follows:

**Article 2:** *(Submitted by Petition)* Shall the District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant, or as amended by voted of the first session, for the purposes therein, totaling \$62,333,572, which is equal to the previous year's 2013-2014 school budget. If this article passes, it shall overrule any previous warrant article relating to the next operating budget.

**Article 3:** *(Submitted by Petition)* Shall the District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant, or as amended by vote of the first session, for the purposes therein, totaling \$61,710,236, which is a reduction of 1% from the previous year's 2013-2014 school budget. If this article is approved by the District, the District shall only be allowed to make cuts to non-instructional programs. If this article passes, it shall overrule any previous warrant article relating to the next operating budget.

**Article 4:** *(Submitted by Petition)* Shall the District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant, or as amended by vote of the first session, for the purposes therein, totaling \$59,216,893, which is a reduction of 5% from the previous year's 2013-2014 school budget. If this article is approved by the District, the District shall only be allowed to make cuts to non-instructional programs. If this article passes, it shall overrule any previous warrant article relating to the next operating budget.

**Article 10:** *(Submitted by Petition)* Shall the District remove the authority from the school board to appoint new members to fill empty seats. All new

members to the board shall only be appointed through the official electoral process.

**Article 11:** *(Submitted by Petition)* Shall the District remove the authority from the school board to suggest "yes" or "no" on added warrants; meaning the school board must remain completely unbiased on all ballots, and documents. The right of individual school board members to voice personal opinion shall not be infringed upon.

**Article 12:** *(Submitted by Petition)* Shall the District refund all year-end unassigned general funds (surplus) to the taxpayers as a deduction from the next property tax bill and not be carried forward to the upcoming year's school budget.

**Article 13:** *(Submitted by Petition)* Shall the District repeal the Board of Education's authority in accordance to RSA 198:4-b that allows the Board to retain year-end unassigned general funds in an amount not to exceed 2.5% of the current year's net assessment.

(Pet. ¶ 11) (emphasis included).

After discussion of these seven Warrant Articles, amendments were made and approved by a majority of those citizens attending the Deliberative Session:

**Article 2:** *(Submitted by Petition, as amended at the First Session)* Shall the district recommend, on strictly an advisory basis, that the Board of Education expend \$62,333,572 for items encompassed in the operating budget, regardless of the amount of the operating budget which is authorized by the District under Question 5?

**Article 3:** *(Submitted by Petition, as amended at the First Session)* Shall the district recommend, on strictly an advisory basis, that the Board of Education expend \$61,710,236 for items encompassed in the operating budget, regardless of the amount of the operating budget which is authorized by the District under Question 5?

**Article 4:** *(Submitted by Petition, as amended at the First Session)* Shall the district recommend, on strictly an advisory basis, that the Board of Education expend \$59,216,893 for items encompassed in the operating budget, regardless of the amount of the operating budget which is authorized by the District under Question 5?

**Article 10:** *(Submitted by Petition, as amended at the First Session)* Shall the District ratify the authority of the Board of Education to appoint new members to fill empty seats until the next District election?

**Article 11:** (*Submitted by Petition, as amended at the First Session*) Shall the District ratify the authority set forth in RSA 32:5 to recommend a yes or no vote on all “special” warrant articles involving an appropriation?

**Article 12:** (*Submitted by Petition, as amended at the First Session*) Shall the District ratify all current statutory and other authority with respect to surplus funds at the end of the fiscal year?

**Article 13:** (*Submitted by Petition, as amended at the First Session*) Shall the District ratify the Board of Education’s authority in accordance with RSA 198:4-b, which permits the Board of Education to retain year-end unassigned general funds up to a specified amount for purposes of emergency or to reduce the tax rate.

(Pet. ¶ 11) (emphasis included).

The Petitioners, citing Bailey v. Town of Exeter, Rockingham Superior Court, No. 2011-CV-0203 (May 27, 2011) (Order, McHugh, J.), contend that the amendments violated RSA 40:13, IV (c) because the voters of Keene “will not get a chance to vote on the substance or subject matter of the petitioned warrant articles.” (Pet. ¶ 27.) The Petitioners assert the amendments left voters “with nothing more than a Hobson’s Choice.” (Id.) The Respondent objects and contends that the amendments do not eliminate the subject matter of the Warrant Articles and therefore, by a plain reading of RSA 40:13, IV (c), were lawful. The Court agrees with Respondents.<sup>1</sup>

RSA 40:13, IV (c) states, in pertinent part, “[n]o warrant article shall be amended to eliminate the subject matter of the article.” The New Hampshire Supreme Court has not had the opportunity to interpret RSA 40:13, IV (c)’s prohibition on the elimination of the subject matter of warrant articles. “In matters of statutory interpretation, [the Court

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<sup>1</sup> The Petitioners also argue “the conduct of the School District is clearly violative of the petitioners’ right to franchise, to petition their government, to due process of the law and to equal protection under the law, as guaranteed by Articles 1, 2, 7, 11, 14 and 32 of Part I of the New Hampshire Constitution.” (Pet. ¶ 32.) “Off-hand invocations of the State Constitution . . . supported neither by argument nor by authority . . . warrant[ ] no extended consideration.” Grant v. Town of Barrington, 156 N.H. 807, 812 (2008) (quoting Keenan v. Fearon, 130 N.H. 494, 499 (1988)). Accordingly, the Court need not address the Petitioners’ constitutional claims.

is] the final arbiter[] of the legislature's intent as expressed in the words of the statute considered as a whole." N.H. Health Care Ass'n v. Governor, 161 N.H. 378, 385 (2011). "When examining the language of a statute, [the Court] ascribe[s] the plain and ordinary meaning to the words used." Phaneuf Funeral Home v. Little Giant Pump Co., 163 N.H. 727, 730–31 (2012). When the language of a statute is plain and unambiguous, the Court does not look beyond it for further indications of legislative intent. Id.

Here, while not defined by statute, the ordinary meaning of the word "eliminate" is to "remove," "exclude" or "drop, out." Webster's Third New Int'l Dictionary 736 (2002); see State v. Kelley, 153 N.H. 481, 483 (2006) (court consulted dictionary in determining the plain meaning of statutory terms). The Court finds this language to be unambiguous. Accordingly, RSA 40:13, IV (c) prohibits only the amendment of a warrant article to the extent that such amendment excludes or removes the subject matter therein.

With respect to Articles 2, 3, and 4, the subject matter concerned the amount of the operating budget the School District shall raise. The amendments to Articles 2, 3, and 4 left in place the various operating budget amounts listed in the Articles. While language was added to make the Articles advisory, by the clear meaning of RSA 40:13, IV (c), such change did not eliminate the subject matter and were therefore lawful.

Similarly, Article 10's subject matter involved the authority to fill empty school board seats. The amendment to Article 10 did not remove the specific issue of the authority to fill empty school board seats. As such, Article 10's amendment was lawful. Likewise, Article 11's subject matter concerning whether the District may recommend or suggest a "yes" or "no" vote on warrant articles was not eliminated. Articles 12 and 13's subject matter also remained as the amendments specifically allowed the voter's to vote

on the Board of Education's authority with respect to surpluses and un-assigned general funds.

The Petitioners, citing Bailey, contend that the term "eliminate" in RSA 40:13, IV (c) should be defined to prohibit amendments that create a "nullity." In Bailey, the Exeter deliberative session amended a warrant article seeking to establish a municipal budget committee by inserting the word "not" before the word "establish," thereby making the article meaningless. The Rockingham Superior Court held:

[t]he only way the phrase "no warrant article shall be amended to eliminate the subject matter of the article" can be logically read is to conclude that any amendment that made the subject matter of the article a *nullity* was forbidden. Merely because the majority of the voters at the Deliberative Session were more clever in the way the amendment was worded to create the nullity does not mean that their action was not violative of the new statute.

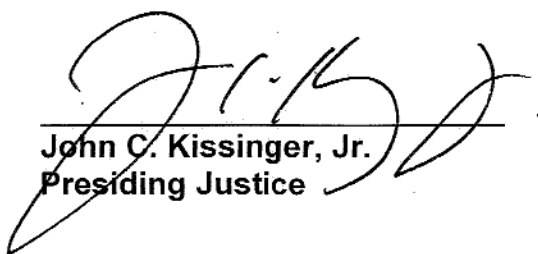
Bailey, No. 2011-CV-0203, at \*5-6 (emphasis added).

As a threshold matter, and as the Petitioners concede, Bailey is not controlling but is instead persuasive authority. Moreover, the facts of this case are distinguishable from Bailey as here the amendments allowed the voters a choice as to the subject matter. The voters were not left with a "Hobson's Choice" as the Petitioners allege. (Pet. ¶ 27.) Furthermore, as explained above, RSA 40:13, IV only requires that amendments not "eliminate" the subject matter. The Court finds the amendments at issue here are lawful. As a result, this matter is dismissed.

**SO ORDERED.**

Date

3/28/14

  
John C. Kissinger, Jr.  
Presiding Justice