



# State of New Hampshire

GENERAL COURT

LEGISLATIVE ETHICS COMMITTEE

State House - Room 112  
Concord, NH 03301-4951

May 22, 2023

Mr. David Murphy  
9 Gilford Glen Road  
Gilford N.H. 03249

**Re: Complaint #2023-5**

Dear Mr. Murphy:

Transmitted herewith are correspondence dated May 10, 2023, and May 19, 2023, from Attorney Paul T. Fitzgerald, representing the respondent in Complaint 2023-5. To the best of my knowledge, you have now been provided with all correspondence received by the Committee relating to this matter.

Please contact me if I may provide any further assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Richard M. Lambert".

Richard M. Lambert  
Executive Administrator

Enclosure

cc: Members of the Legislative Ethics Committee  
Honorable Harry T. Bean (w/out enclosure)  
Attorney Paul T. Fitzgerald (w/out enclosure)



WESCOTT LAW P.A. EST. 1927  
Sound Counsel. Practical Solutions.

PAUL T. FITZGERALD  
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LACONIA, NEW HAMPSHIRE 03246-3761  
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May 10, 2023

*(via e-mail only)*

Hon. Edward M. Gordon, Esq.  
Chairman, Legislative Ethics Committee  
New Hampshire State House – Room 112  
Concord, NH 03301-4951

**Re: Complaint #2023 – 5**

Dear Representative Gordon,

Wescott Law represents Representative Harry Bean of Gilford, New Hampshire, in reference to the above matter. Representative Bean is currently serving his third term as a member of the Belknap County Legislative Delegation and is currently serving as the Chair of that body. In addition to its private and business clientele, Wescott Law also provides legal services to a variety of governmental organizations including, upon request, the Belknap County Commission, the County Delegation and the County Administration.

As a preliminary matter, Representative Bean waives all confidentiality privileges associated with this matter which he may hold and further releases, to the extent that he is able, the Committee members, staff, and the complainant from any related confidentiality requirements. He requests that all further proceedings in this matter be open to any interested party.

Turning to the substance of the Complaint dated April 24<sup>th</sup> and received in the Committee office the following day, it may be appropriately divided into two separate subject matters. The first of these has to do with the holding and noticing of a special Delegation meeting for August 1, 2022. To provide some context, Belknap County was within that timeframe faced with what many viewed as a significant financial and legal crisis. The County, as members of the Committee may know, owns the Gunstock Recreational Area which is a large recreational facility located in the Town of Gilford and, in addition to other amenities, includes a large winter skiing facility with multiple trails, slopes and sophisticated infrastructure including several different types of ski lifts, snowmaking facilities and grooming/maintenance equipment. It is a significant operation, the management of which is vested in the Gunstock Area

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(BY APPOINTMENT)

Hon. Edward M, Gordon, Esq.  
Chairman, Legislative Ethics Committee

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Commission and the full-time professional management of the area. During the time referenced, and shortly before, the Gunstock Commission was unfortunately involved in what any impartial observer would agree was a time of significant political turmoil. That situation in turn led directly to the resignation of virtually the entirety of senior management leaving the Area with no political management as early August approached.

In juxtaposition with these events, Gunstock was under a legal contractual obligation to host SoulFest, a large multi-day Christian music festival held at the Area annually for many years. The festival consists of overnight camping for scores of attendees, musical entertainment and other offerings normally associated with such gatherings. The attendance for this event in recent years has traditionally run into many thousands of guests. In addition to the above events, Gunstock was, as I understand it, contractually bound to offer its usual package of summer amenities including lift rides to the summit of Gunstock Mountain, its zip line facility and other similar activities. With the resignation of the senior management team, it became clear that it was highly unlikely, indeed perhaps impossible, for it to meet its contractual requirements to provide the amenities listed above and it was openly questioned as to whether it could host the event safely even if the offerings were somewhat scaled-back. To add to the atmosphere of crisis, Representative Bean relates that insurers for Gunstock were threatening to cancel its liability insurance policy if there was an attempt to go forward with such an event without professional management.

Although Representative Bean does not necessarily agree with the philosophy of County government operating an entity that can be considered to compete with private business, he as well as other members of the Delegation were receiving a veritable barrage of phone calls and other communications, including some widely publicized ones, urging the Delegation to act into the situation. Faced with a clear desire on the part of a majority of the Delegation to attempt to salvage the situation, coupled with the fact that the former Chair of the Delegation refused to hold a special meeting, Representative Bean and nine other members of the Delegation (constituting a majority) noticed and held a special meeting on August 1<sup>st</sup>. Representative Bean and this office recognize the difference in the two statutes raised by Complainant Murphy and understand the distinction that he is correctly drawing. However, Representative Bean did not "ignore" or disregard those issues. Prior to attending the meeting he sought the opinion of the Belknap County Attorney, Andrew Livernois, and then consulted this office as well. Upon consultation

Hon. Edward M. Gordon, Esq.  
Chairman, Legislative Ethics Committee

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with Attorney Livernois he learned that the County Attorney had issued an opinion to the then Delegation Chair indicating that the holding of such a meeting would, in all likelihood, pass judicial scrutiny. A copy of that opinion dated August 1, 2022 is included. The opinion issued by this office is consistent with that of Attorney Livernois. Notably, Representative Bean insisted on paying for the "second opinion" personally to ensure that it did not become an additional expense to the County. I will not include all of the arguments and legal citations that were provided to Representative Bean in that timeframe as they are succinctly stated in the accompanying Livernois correspondence. Suffice it to say that is my clear view that there was no violation of notice, particularly given the on-point decisions cited within that correspondence arising from other counties.

The second portion of Mr. Murphy's detailed Complaint deals primarily with issues of notice and record keeping with regard to County budget proceedings. This section of the Complaint is somewhat more compact and easier to respond to. It is accurate that there were irregularities with regard to the budget process. However, Representative Bean is not responsible in the actual sense for posting the notice of such meetings, taking minutes himself or other ministerial tasks. His role is to chair and oversee certain meetings and, to the best of his ability, see that legal requirements are followed. However, the actual discharge of the ministerial tasks such as notice posting, record keeping, etc., are routinely assigned to others including the professional administration of the County, and these duties are usually carried out in a completely appropriate manner. In the instances cited by Mr. Murphy, that was not completely true and those responsible have acknowledged that fact. However, upon becoming aware of these issues, both Representative Bean and County Administrator Debra Shackett again consulted legal counsel and were advised of appropriate remedial action which included holding meetings to revisit the budget process, ensure such meetings were properly noticed and that all legal formalities were followed. Again, I have very little doubt but that a reviewing court would find that upon being made aware of the error, the appropriate subcommittee members and Delegation members took prompt remedial action which resulted in no harm or prejudice to any member of the public, similar to the above matter.

In addition to the legal references enclosed, it is extremely important to note that much of what is raised in the instant Complaint has been litigated and disposed of before the Belknap County Superior Court. Please see the enclosed civil actions filed by Dr. David Strang and Stephen Peterson. As well

Hon. Edward M, Gordon, Esq.  
Chairman, Legislative Ethics Committee

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as the Complaints, I am enclosing the dispositional orders for your consideration.

On behalf of Representative Bean, we thank you and the Committee for your time and attention and requests that this Complaint be dismissed for the reasons stated above. Should you have questions or desire further information or details, please feel free to contact me at the address or phone number listed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul T. Fitzgerald", with a long horizontal flourish extending to the right.

Paul T. Fitzgerald

PTF/src

Enclosures

cc: Representative Harry Bean  
Richard Lambert, Executive Administrator  
(via e-mail only w/enclosures)



ANDREW B. LIVERNOIS  
BELKNAP COUNTY ATTORNEY

OFFICE OF BELKNAP COUNTY ATTORNEY

COUNTY COURTHOUSE  
64 COURT STREET  
LACONIA, NEW HAMPSHIRE 03246

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SELDON NASON  
ASST. COUNTY ATTORNEY

ELIZABETH PIPER  
OFFICE MANAGER

August 1, 2022

Hon. Michael Sylvia  
Chair, Belknap County Delegation  
107 North Main Street  
Concord, NH 03301

Dear Representative Sylvia:

I have been asked by a number of the members of the Belknap County Delegation to provide my legal opinion regarding whether a majority of the members of the Delegation can convene an emergency meeting of the Delegation to deal with the pressing situation at Gunstock Ski Area. Specifically, I was asked whether an emergency meeting to consider the appointment of a replacement member of the Gunstock Area Commission (to replace former Commissioner Ness and/or Kiedaisch) would be legally valid.

Let me begin by noting that this is not an area where there is any clear legal authority, either in statutes or in caselaw. Thus, this is a bit of a "grey area." However, I nonetheless believe that there is a strong argument to be made that such a meeting would be legal and binding. And furthermore, I do not think that any legal challenge to such a meeting, if brought, would succeed in overturning it. Let me explain my reasoning:

As you are no doubt aware, there are two competing and contradictory statutes which are at work in this area. First, there is the Right to Know Law, N.H. RSA 91-A. That statute provides that notice of public meeting must normally be posted in two appropriate places, and then printed in a newspaper of general circulation at least 24 hours prior to the meeting, excluding Sundays and legal holidays. RSA 91-A:2,II. However, the statute then provides that government boards and commissions are allowed to call for emergency meetings when there is "a situation where immediate undelayed action is deemed to be imperative." RSA 91-A:2,II. In those situations, notice must be made "as soon as practicable", using "whatever further means are reasonably available to inform the public that a meeting is to be held." *Id.*

However, there is different statute, RSA 24:9, which deals specifically with meetings of the County Convention. That statute provides that notice of a specially called meeting of the Convention must be mailed to each member of the delegation at least seven days in advance of the meeting and must be posted in a newspaper of general circulation at least seven days prior to the meeting. RSA 24:9-d. This statute is silent about whether any different process could be utilized in situations where there is a pressing emergency and time is of the essence.

The question is thus whether the provisions in RSA 91-A which allow for emergency meetings to be called on shorter notice would apply in a situation where the County Convention is faced with an emergency. I believe that the answer to that question is "yes." I believe that a reviewing court faced with this question would most likely rule that in circumstances where there is a pressing need where immediate action is required to avoid some serious harm, that an emergency meeting would be allowed by the Convention under RSA 91-A, even though RSA 24:9-d is silent on that question.

I have several reasons for that conclusion. First as a general policy matter, I think that it is important for government bodies to have the flexibility to deal with genuine emergency situations in a timely fashion, and that the public's right to be informed of upcoming meetings and have an opportunity to be present and participate must yield to the broader interests of the community in handling an emergency.

Second, there is a general principle of statutory interpretation that holds that competing statutes should be read in a way that avoids conflicts when possible. A reading which allows the notice provision of RSA 91-A to apply to emergency meetings called by the County Convention allows the two statutes to remain in harmony.

Third, there are also principles of statutory construction that provides that when two statutes conflict, the most recent statute controls over the older statute, and the more specific statute controls over the general. I think both of those principles support my opinion, since RSA 91-A is both newer than 24:9-d and is more specific.

Fourth, on two prior occasions, the New Hampshire Supreme Court has dealt with situations where a claim was made that the County Convention held an improperly noticed meeting, and a challenger then tried to invalidate the decision of the Convention made at that meeting. In both of those cases, the Supreme Court held that they would *not* invalidate an action of the Convention taken at a meeting, even if there was inadequate notice under RSA 24:9-d, unless the defendant was able to show that someone was actually "prejudiced by a failure of the clerk to give notice." See Hull v. Grafton County, 160 N.H. 818, 823 (2010), *see also* County of Cheshire v. Keene, 114 N.H. 56 (1974).

My understanding is that the purpose of the emergency meeting scheduled for this evening is to (i) accept the resignations of Commissioners Ness and Kiedaisch, and (ii) to consider appointing one or more replacement Commissioners to take their place. I do not see how any person challenging the sufficiency of the notice could claim that they were actually prejudiced by the lack of seven days' notice for such a meeting. And for that reason, I do not think a court would invalidate any action that was taken at the meeting tonight.

This is especially true, since my understanding is that the County Administrator has taken meaningful steps to try to insure that, even with the short notice, the public is aware of the meeting scheduled for this evening. I understand that notice has been placed on the County's website, was placed on various Facebook pages, and that notice was provided to several media

outlets including the Laconia Daily Sun, which has printed the information on the front page of its electronic newspaper as a breaking story.

I also believe that the County Convention has a strong argument to support its contention that the current situation constitutes an emergency requiring prompt action. Because of the impasse between the outgoing management team of Gunstock Ski Area and certain members of the Gunstock Area Commission, the ski area is at risk of not being able to open for the upcoming ski season, or to host upcoming events that they are contractually obligated to host. With two of the five members of the GAC having resigned, the GAC is having difficulty managing to convene a quorum to hold meetings. Without the ability to hold public and non-public meetings, the GAC is incapable of taking any steps to get Gunstock back open.

It is therefore imperative that the Delegation seek an immediate end to this crisis by getting additional GAC commissioners appointed as soon as possible.

I should also point out that the Supreme Court has made clear that in situations where the County Convention mistakenly holds a meeting that was improperly noticed, the defect can later be cured by simply posting another meeting within the statutory deadlines, and then having the members ratify their prior decision. See Hull v. Grafton County, 160 N.H. at 827-828. So, if it were to turn out that my analysis is incorrect, or if someone were to file an action seeking to invalidate the decisions of the Delegation at the emergency meeting, the matter could be corrected by the simple expedient of posting another meeting following the seven-day rule of 24:9-d and then having the members ratify their prior vote.

In conclusion, while the law is not clear and unambiguous in this situation, I am comfortable in advising the members of the County Convention that (a) there is a defensible legal authority for the conclusion that the emergency meeting scheduled for tonight is legally valid, (b) that any legal suit designed to try to overturn the decisions of that meeting based upon the lack of notice under RSA 24:9 would not likely succeed, and (c) that any insufficiency with regard to the notice of tonight's meeting can be subsequently cured at a future meeting.

I hope that this advice proves helpful. Please do not hesitate to contact me if I can be of further assistance.

Yours truly,



Andrew B. Livernois



Digitally signed by Andrew B.  
Livernois  
Date: 2022.08.01 14:55:30 -04'00'

Cc: Members of the Belknap County Delegation  
Members of the Belknap County Board of Commissioners



THE STATE OF NEW HAMPSHIRE

Clerk's Notice of Decision  
Document Sent to Parties  
on 08/16/2022

BELKNAP, SS

BELKNAP SUPERIOR COURT

DAVID STRANG

211-2022-CV-00152

V.

Denied on an  
ex parte basis.

DOUGLAS LAMBERT



Honorable Elizabeth M. Leonard

August 15, 2022

EX-PARTE PLAINTIFF'S EMERGENCY COMPLAINT/MOTION FOR  
PRELIMINARY INJUNCTION & PERMANENT INJUNCTION

Now comes Plaintiff and pursuant to Rule 48 of the Rules of Superior Court, moves for an emergency injunction prohibiting the meeting scheduled on August 15, 2022 at 11 am to take place and for the court to declare plaintiff Chairman Pro-Tem of the Gunstock Area Commission.

**PARTIES**

1. Plaintiff resides at 14 Copp Road, Gilmanon, NH 03237.
2. Defendant resides at 42 Farmer Drive, Gilford, NH 03249.

**JURISDICTION AND VENUE**

5. The court has jurisdiction under N.H. RSA 141-C; N.H. RSA 491:7 and jurisdiction to grant declaratory relief RSA 491:22.
6. The court has personal jurisdiction over defendant as it involves the county of Belknap.
7. The court has venue under N.H. RSA 507:9. Venue is proper as defendant is located in Belknap County.

## STANDING

8. Plaintiff is a resident of Belknap County, New Hampshire and the illegal meeting and denying Plaintiff his role as Chairman pro-tem will impact operations of Plaintiff, Gunstock Mountain Resort, the Gunstock Area Commission and Belknap County.

9. Plaintiff also has standing under Part I Art. 8 of the New Hampshire Constitution which was approved as a constitutional amendment by the voters in 2018.

## STATEMENT OF FACTS

10. The August 1 emergency meeting of just 10 members of the Belknap County Delegation announced the resignation of Commissioner David Strang from the Gunstock Commission (GAC). The legality of this meeting is currently being disputed in this court. This alleged resignation was a lie as Commissioner Strang has not resigned and no signed resignation letter exists. He is still a Commissioner and also the Vice-Chairman of the Gunstock Area Commission<sup>1</sup>.

11. Since the former Chairman (Commissioner Peter Ness) resigned on July 29<sup>th</sup>, Vice-Chairman Strang is now also the Chairman pro-tem of the Commission. Presently there are four members on the GAC (assuming the election from the August 1, meeting was valid).

12. Per Laws of 1959 Chapter 399:3, "**Membership of the Commission.** The commission shall consist of five members who shall be resident property owners in the county of Belknap, and shall be invested with all the duties hereinafter granted to and imposed upon said commission. " Accordingly, GAC is still short 1 (or 2), members.

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<sup>1</sup> [https://www.gunstock.com/upload/photos/page\\_223\\_gac-meeting-minutes-032322-approved.pdf](https://www.gunstock.com/upload/photos/page_223_gac-meeting-minutes-032322-approved.pdf)

13. Since this misrepresentation of Cmr. Strang's resignation at the August 1 meeting of the Belknap County Delegation, one of the Gunstock Commissioners (Secretary Douglas Lambert) has instituted a coup d'etat by announcing that he is now the Chairman pro-tem. There is no mechanism in the Gunstock Bylaws to do this when the Vice-Chairman (Cmr. Strang) is still on the Commission and the acting Chairman pro-tem.

14. Secretary Lambert has now called a Special Meeting of the Gunstock Commission for Monday, August 15 at 11 a.m., under the authority of his being Chairman pro-tem. As he does not hold this title, this is a violation of the Gunstock Bylaws, Article III, 1(e)<sup>2</sup>, that portion of the Gunstock Bylaws that he is citing as his authority to call this meeting. Additionally, Commissioner Strang has not been called to this meeting and has not received any of the documents intended for discussion. This too is a violation of the Gunstock Bylaws, Article II, section 2(b) which requires the Vice-Chairman (Cmr. Strang) to be present at all meetings in the absence of the Chair. Plaintiff has also had the access to his Gunstock email account disabled, has been prevented from communicating with the auditor despite being Chair of the Gunstock Audit Committee and has had access to the attorney conducting an internal legal investigation also cut off.

15. Therefore, Cmr. Strang asks that the court immediately issue a temporary restraining order and declare the meeting on Monday August 15 at 11 am to be illegal as the call to meeting purposely excluded a sitting Commissioner who is also the Chairman pro-tem. To allow this meeting to occur without his participation and prior knowledge and review of the agenda items will irreparably harm not only him, but the Gunstock Commission and the citizens of Belknap County.

16. This request could not be submitted before this morning as the August 15<sup>th</sup> meeting of the Gunstock Commission was publicly noticed late Friday August 12<sup>th</sup> after the courts had closed and was not discovered by plaintiff until Saturday August 13<sup>th</sup>.

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<sup>2</sup> See [https://www.gunstock.com/upload/photos/page\\_193\\_811\\_by-laws\\_gac\\_signed\\_082118.pdf](https://www.gunstock.com/upload/photos/page_193_811_by-laws_gac_signed_082118.pdf)

17. There is an immediate danger of irreparable harm to the plaintiff if the meeting occurs as scheduled on August 15. There is an immediate danger of irreparable harm to the plaintiff if he is not properly recognized as Chairman pro-tem of the Gunstock Commission.

18. Chairman Strang also asks that the court demand his access and that of the Audit Committee that he appointed, to be immediately restored to the auditor (Vachon Clukay, Manchester, NH). He also asks that the court demand his access as the sole member of the Legal Services Committee to the attorney conducting the internal legal investigation (Atty. Peter Callaghan of Preti-Flaherty, Concord, NH) be immediately restored.

19. Plaintiff will likely succeed on the merits at a full hearing.

20. This complaint is being filed ex-parte as it is an emergency motion. A copy of the motion is being delivered to defendant via email at:  
dlambert@gunstockcommissioners.org

21. Attorney Dan Hynes is filing the complaint via a limited appearance so that it may promptly be filed through the e-file system.

WHEREFORE, Plaintiffs requests that this Court:

- A) Issue an emergency injunction prohibiting the of meeting the Gunstock Area Commission (GAC) scheduled for August 15, 2022 to commence at 11 am;
- B) Issue an order both on an emergency temporary basis and final order after a hearing on the merits declaring plaintiff as Chairman Pro-Tem of the Gunstock Commission;
- C) Issue an order both on an emergency temporary basis and final order after a hearing on the merits Ordering defendant to recognize him as Chairman Pro-Tem including to restore his GAC email access;
- D) Invalidate any actions including votes, taken in violation of unilaterally removing plaintiff as Chair pro-tem of the GAC;

E) Costs to plaintiff as allowed.

/s/ Dan Hynes  
Dan Hynes  
212 Coolidge Ave  
Manchester NH 03102  
603-674-5183  
Bar #17708

**AFFIDAVIT**

I, David Strang, state the facts alleged in this motion are true and accurate to the best of my belief under the pains and penalties of perjury.

/s/David Strang

THE STATE OF NEW HAMPSHIRE

BELKNAP, SS.

SUPERIOR COURT

David Strang

v.

Douglas Lambert, et al.

211-2022-CV-00152

**ORDER ON MOTION TO DISMISS**

The plaintiff, David Strang, brought this petition against the defendant, Douglas Lambert, seeking ex-parte injunctive relief. See Court Index #1 (Pet.). The petition concerns Strang's dispute with the Belknap County Delegation's ("BCD" or "Delegation")<sup>1</sup> acceptance of his resignation, which he contends he did not tender. Id. The Court denied Strang's petition on an ex-parte basis. On September 7, 2022, the Court granted Strang's motion to amend his petition to allow him to add the Gunstock Area Commission ("GAC") as a defendant. On September 14, 2022, Lambert moved to dismiss, arguing that only the BCD has the power to reinstate Strang as a commissioner. See Court Index #28 (Mot. Dis.). Strang objects, arguing that he does not seek reappointment, but rather a declaration from the Court that he is presently a validly appointed member of the GAC. See Court Index #31 (Obj.). On October 26, 2022, the Court held a hearing on this motion. For the following reasons and for the reasons stated from the bench at the hearing, the Court GRANTS the defendant's motion to dismiss.

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<sup>1</sup> The BCD is not a party to this action.

After considering the parties' written pleadings and oral arguments at the hearing, the Court determines that the BCD is a necessary party to this action and therefore the matter must be dismissed. The Court now provides the following to further analyze the subject case and set forth the basis for its decision in writing.

"Generally, in ruling upon a motion to dismiss, the trial court must determine whether the allegations contained in the plaintiff[s]' pleading sufficiently establish a basis upon which relief may be granted." Avery v. Comm'r, N.H. Dep't of Corr., 173 N.H. 726, 736 (2020). "When a motion to dismiss challenges the plaintiff[s]' standing to sue, the trial court must look beyond the plaintiff[s]' unsubstantiated allegations and determine, based upon the facts, whether the plaintiff[s] ha[ve] sufficiently demonstrated [their] right to claim relief." Id. at 736–37.

RSA 491:22, I, provides, in relevant part, that "[a]ny person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive." Carlson v. Latvian Lutheran Exile Church of Bos. & Vicinity Patrons, Inc., 170 N.H. 299, 302–03 (2017). To establish standing to bring a declaratory judgment proceeding [] under RSA 491:22, I, a party must show that some right of the party has been impaired or prejudiced. See Duncan v. State, 166 N.H. 630, 645, 102 A.3d 913 (2014). "To meet this requirement, a party seeking declaratory relief must show that the facts are sufficiently complete, mature, proximate and ripe to place the party in gear with the party's adversary, and thus to warrant the grant of judicial relief." Id. (quotation and brackets omitted). "The claims raised must be definite and concrete touching the legal

relation of parties having adverse interests, and must not be based upon a hypothetical set of facts.” Id.

Consistent with the above, the Court determines that judicial relief is not warranted as Strang is not “in gear with [his] adversary” and his claims do not “touch[] the legal relation of parties having adverse interests.” Carlson 170 N.H. at 303. In his petition, Strang asks the Court to declare that he is a validly appointed member of the GAC and is the Vice-Chair thereof. However, his petition is clear that the action with which Strang takes issue is the BCD's accepting his alleged resignation at its August 1, 2022 emergency meeting. In so doing, the Delegation removed him as a commissioner. Although Strang's petition contends that Lambert instituted what he dubbed a “coup d'etat” by announcing himself to be the Chairman *pro tem*, he simultaneously notes this occurred after the BCD's announcement of his resignation. Nowhere does the petition allege that Lambert or the GAC took actions to accept Strang's resignation or otherwise remove him as a commissioner.

Indeed, the legal framework behind the establishment of the GAC reinforces the Court's determination. Pursuant to the Enabling Statute, the Delegation is the “appointive agency” with the authority to appoint members to the GAC and to remove them for cause. Court Index #28, Ex. 3 at 399-4. The Court agrees with the defendants' assessment that there is “no legal mechanism for the GAC to determine its own members, terminate its own members, or even accept the resignation of its own members.” Court Index #28 at 3 (citing GAC Bylaw Article II-1(d): “Each member shall be sworn in...following the Member's appointment...by the Belknap Delegation” and Article II-2(a): “[officers]...shall be elected at the first...meeting [of members] ... duly



appointed by the Belknap Delegation.”) Therefore, it is evident that the Delegation, not the GAC, is the sole entity that can grant the relief requested by Strang. Regardless of the merits of his legal claims, Strang has not demonstrated standing for the relief requested. The Court finds that he has failed to state a claim and therefore dismisses Strang's petition. See Avery, 173 N.H. at 736–37.

#### CONCLUSION

For the reasons noted above, the defendants' motion to dismiss is GRANTED.

**SO ORDERED.**

October 26, 2022



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Elizabeth M. Leonard  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 10/26/2022

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
<http://www.courts.state.nh.us>

Court Name: Belknap - Superior Court  
Case Name: Stephen Peterson v. Belknap County Convention et ano., et al.  
Case Number: 211-2022-CV-00144  
(if known)

**COMPLAINT**

Requested:  Jury Trial (as allowed by law)  Bench Trial

1. Plaintiff's Name Stephen Peterson  
Residence Address 33 Gunstock Hill Rd, Gilford, NH 03249  
Mailing Address (if different) \_\_\_\_\_  
Telephone Number (Home) \_\_\_\_\_ (Mobile) (860) 677-1686

2. Defendant's Name Belknap County Convention et ano.  
Residence Address 34 County Dr, Laconia, NH 03246  
Mailing Address (if different) \_\_\_\_\_  
[See Attachment(s), item 'Additional Defendants(s)']

3. First thing that happened (in one sentence):  
Insufficiuent notice provided for a meeting of the Belknap Conty Conbvention-  
vuolatinof RSA24.9-c  
\_\_\_\_\_  
\_\_\_\_\_

4. Second thing that happened (in one sentence):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Third thing that happened (in one sentence):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Continue on using separately numbered paragraphs (attach additional sheets if necessary).

Case Name: Stephen Peterson v. Belknap County Convention et ano., et al.

Case Number: \_\_\_\_\_

**COMPLAINT**

For the reasons stated in this Complaint, I request that the Court issue the following orders:

A. Describe the orders you want the Court to make:

TRO, preliminary and final injunctions.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. All other relief the Court deems fair and just.

Stephen Peterson

Name of Filer

/s/ Stephen Peterson 8/1/22

Signature of Filer Date

(860) 677-1686

Telephone

Law Firm, if applicable Bar ID # of attorney

33 Gunstock Hill Rd

Address

cspeter8@gmail.com

E-mail

Gilford, NH 03249

City State Zip code

To Complaint

**Additional Defendants(s)**

Defendant #1

Officer or Authorized Agent: Debra Shackett

Defendant #2

Name: Debra Shackett

Business Address: 34 County Dr, Laconia, NH 03246

Officer or Authorized Agent: Debra Shackett

THE STATE OF NEW HAMPSHIRE

BELKNAP, SS.

SUPERIOR COURT

Stephen Peterson

v.

Debra Shackett, et al

Docket No.: 211-2022-CV-00144

**ORDER ON PENDING MOTIONS**

The plaintiff, Stephen Peterson, brought this action against the defendants, Debra Shackett and the Belknap County Convention ("the Delegation"), seeking a temporary restraining order, preliminary injunction, and permanent injunction. The matter stems from an August 1, 2022 meeting of the Delegation, which the plaintiff contends was called without proper notice. On August 2, 2022, the Court ruled Peterson's motion for ex parte relief was moot.<sup>1</sup> Thereafter, two motions to dismiss were filed: one from Shackett individually, see Court Index #9 (Mot. Dismiss 1), and the other from the defendants collectively, see Court Index #10 (Mot. Dismiss 2). In addition, Dr. David Strang has moved to intervene in the matter, see Court Index #11 (Mot. Int.), to which the defendants object, see Court Index #14 (Obj.). On September 20, 2022, the Court held a hearing on these motions. For the following reasons, the Court GRANTS the defendants' motions to dismiss and DENIES Strang's motion to intervene as MOOT.

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<sup>1</sup> The Court notes that Peterson filed his ex parte motion to prohibit the Delegation from holding the August 1 meeting on August 1 at 3:57 PM, approximately three hours before the meeting was to occur and at the Court's close of business. The Court (Ignatius, J.) was not presented the motion until August 2 and thus ruled that the motion was moot. See Court Index #3.

## FACTUAL BACKGROUND

The following facts are drawn from the complaint, see Court Index #1, and are assumed true for the purposes of this Order. See Lamb v. Shaker Reg. Sch. Dist., 168 N.H. 47, 49 (2015).

The plaintiff is a resident of Belknap County. On July 31, 2022 at 3:30 PM, the Delegation sent out notice via email to call for what it described as an emergency meeting for August 1, 2022 at 7:00 PM. The email described the purpose of the meeting was to: (1) remove Gunstock Commissioner Strang for cause; (2) make a temporary appointment of a Commissioner; (3) accept the resignations of Commissioners Ness and Keidaisch; and (4) any other urgent business needed to reopen Gunstock Mountain Resort. At the time, the Commission had already scheduled a meeting for August 8, 2022.

Peterson filed this petition on August 1, 2022, contending that the meeting to be held later that day was improperly noticed under RSA 24:9-d. His petition seeks (1) an ex parte restraining order prohibiting the August 1 meeting, (2) an ex parte injunction prohibiting the Delegation from meeting prior to a Court hearing or any properly noticed county convention, and (3) to invalidate any actions taken in violation of the required notice. The defendants move to dismiss Debra Shackett as a party and to dismiss the petition in its entirety for mootness.<sup>2</sup>

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<sup>2</sup> Peterson did not file a written objection within the required ten (10) day objection period, but was given the opportunity to be heard on his position regarding the motions to dismiss at the September 22, 2022 hearing. The Court notes that he did not submit a written objection or otherwise request leave to submit any responsive pleading after the deadline or after the hearing.

## LEGAL STANDARD

In ruling on a motion to dismiss, the Court determines “whether the allegations contained in the pleadings are reasonably susceptible of a construction that would permit recovery.” Pesaturo v. Kinne, 161 N.H. 550, 552 (2011). The Court rigorously scrutinizes the facts contained on the face of the Complaint to determine whether a cause of action has been asserted. In re Guardianship of Madelyn B., 166 N.H. 453, 457 (2014). The Court “assume[s] the truth of the facts alleged by the plaintiff and construe[s] all reasonable inferences in the light most favorable to the plaintiff.” Lamb, 168 N.H. at 49. The Court “need not, however, assume the truth of statements in the pleadings that are merely conclusions of law.” Id. “If the facts do not constitute a basis for legal relief, [the Court will grant] the motion to dismiss.” Graves v. Estabrook, 149 N.H. 202, 203 (2003).

## ANALYSIS

The defendants move to dismiss Debra Shackett as a defendant. The defendants argue that her actions with respect to the August 1 meeting were merely ministerial as the duly appointed County Administrator for Belknap County and that no relief is being sought against her in the petition. The Court agrees and, for these reasons, dismisses the petition as it relates to Shackett.

The defendants further move to dismiss the petition for mootness, arguing Peterson had notice and opportunity to attend the August 1 meeting and therefore is without standing to bring this action as he has suffered no injury. They further contend that Peterson’s request for the Court to invalidate actions taken at the meeting is not a remedy that RSA 24:9-d provides. Finally, they submit that even if the notice for the

August 1 meeting was improper, the Commission cured that deficiency when it ratified the actions taken on August 1 at a subsequent meeting on September 1 2022.<sup>3</sup>

The Delegation is required to adhere to the notice requirements articulated in RSA 24:9-d. Specifically,

the clerk of the convention, or his or her designee, shall mail to each member of the convention a notice stating the time, place and purpose of further meetings at least 7 days before the day of the meeting and shall cause to be published a like notice at least 7 days before the day of the meeting in a newspaper of general circulation in the county.

Id.

As an initial matter, it is clear that the petition sufficiently articulates that the Delegation did not meet its notice requirements as laid out above. Based on the facts stated in the petition, the Delegation provided only 30 hours of notice for the August 1 meeting, sent via email. In addition, as Peterson correctly points out, nothing within RSA 24:9 provides for an emergency mechanism that would reduce the required notice period. See generally RSA 24:9. Therefore, the petition sufficiently states that the Delegation did not properly abide by the RSA 24:9-d requirements in providing notice for its August 1 meeting.

However, this lack of proper statutory notice does not provide for the relief Peterson has requested: to render the actions taken at that August 1 meeting null and void. Indeed, the statute "is also silent with regard to the consequences for a violation of its provisions regarding notice." Hull v. Grafton Cnty., 160 N.H. 818, 823–24 (2010). In fact, the New Hampshire Supreme Court has declined to invalidate the action of a

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<sup>3</sup> The Court notes that Peterson has limited his complaint and arguments at hearing to RSA 24:9-d, rather than RSA 91-A ("Right to Know Law"). Without addressing the issue of whether the August 1, 2022 meeting met the requirements of RSA 91-A, the Court notes that there appears to be no dispute that the September 1 meetings met all the requirements.



county convention that failed to comply with the notice requirements of RSA 24:9-d, “[s]ince the defendant ha[d] not shown that anyone was prejudiced by a failure of the clerk [of the convention] to give notice.” Id. (citing Cheshire v. Keene, 114 N.H. 56, 59 (1974); see also Birch Broad., Inc. v. Capitol Broad. Corp., 161 N.H. 192, 199 (2010) (“In evaluating whether a party has standing to sue, we focus on whether the party suffered a legal injury against which the law was designed to protect.”). Much like the petitioners in Hull, Peterson has not argued or alleged any facts to suggest that he or anyone else was in any way prejudiced by the Delegation’s deficiency in notice. In fact, it’s clear from the fact that Peterson filed this petition in advance of the meeting that he did have actual notice and therefore had an opportunity to attend. Accordingly, in absence of articulated prejudice to Peterson, his petition is not “reasonably susceptible of a construction that would permit recovery.” Pesaturo, 161 N.H. at 552.

Finally, the Court notes that even if Peterson had articulated prejudice (which he did not), the subsequent actions of the Delegation have cured this defect. In Hull, the Supreme Court clarified that in the event a meeting is improperly noticed under RSA 24:9-d, the defect can be cured by ratifying the results of that meeting at a subsequent and properly noticed meeting. 160 N.H. at 827. Here, the Delegation did just that, ratifying the results of their August 1 hearing the following month on September 1. See Court Index #10 at 6–9.<sup>4</sup> Therefore, to the extent the improper notice of the August 1

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<sup>4</sup> As the meeting minutes are official public record and Peterson has not challenged the authenticity of this document, the Court properly considers these facts in the subject order. See Automated Transactions, LLC v. American Bankers Association, 172 N.H. 528, 532 (2019) (in ruling on motion to dismiss, court “may also consider documents attached to the plaintiffs’ pleadings, documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint”).

hearing had prejudiced Peterson or anyone else, the subsequent September 1 hearing cured the defect and rendered his claims moot.


With respect to the Motion to Intervene, Strang requests intervention in this matter because he claims the legality of the Delegation's actions affect his interests. Under Super Ct. Civ. R. 15, "any person shown to be interested may become a party to any civil action ... ." While the Court acknowledges Strang's interest in this matter under Rule 15, given that the Court has dismissed the petition in its entirety for the reasons stated above and there is no remaining case or controversy to litigate, the request to intervene is moot.

#### CONCLUSION

For the reasons noted above, the Court GRANTS Shackett's motion to dismiss her as a party and defendants' motion to dismiss the petition. As the Court finds the issues presented in the motions to be dispositive, Strang's motion to intervene is DENIED AS MOOT.

SO ORDERED.

October 11, 2022



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Elizabeth M. Leonard  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 10/11/2022