



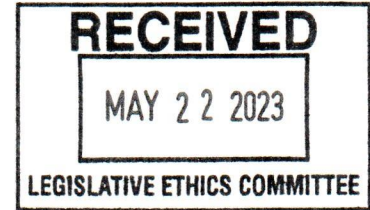
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May 19, 2023

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



**RE: Complaint #2023-6**

Dear Representative Gordon,

Wescott Law represents Representative Travis O'Hara of Belmont, New Hampshire, in reference to the above matter. Representative O'Hara is currently serving his second term as a member of the Belknap County Legislative Delegation, and as Clerk of the Belknap County Delegation. In addition to its private and business clientele, Wescott 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 O'Hara waives all confidentiality privileges associated with this matter which he may hold and further releases, to the extent that he is able, the Committees members, staff in 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 May 2 and received in the Committee office the following day, we find the crux of the complaint to surround three Budget Subcommittee meetings occurring in January, 2023. Mr. Murphy's detailed complaint deals primarily with issues of notice and record keeping with regard to County budget proceedings.

Attached is an opinion by Belknap County Attorney Andrew Livernois that was originally made to advise Representative Harry Bean, current Chair of the Belknap County Delegation, on his actions in August 2022 regarding meetings over Gunstock. While his opinion primarily addresses the circumstances of the "Gunstock Incident", portions of his opinion resonate with the current matter concerning Representative O'Hara. In his opinion, Attorney Livernois notes that on two prior occasions, claims have been made against the

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Hon. Edward M. Gordon, Esq.  
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for meetings that were improperly noticed, with the complainant seeking to invalidate decisions made at these meetings. Attorney Livernois goes on to assert that in the wake of both prior notice complaints, “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.’” (Emphasis included); see Hull v. Grafton County, 160 N.H. 818, 823 (2010); see also County of Cheshire v. Keene, 114 N.H. 56 (1974). Further, Attorney Livernois notes “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 that was within the statutory deadlines, and then having the members ratify their prior decision.” See Hull v. Grafton County, 160 N.H. at 827-828.

It is accurate that there were irregularities with regard to the budget process. Mr. Murphy references RSA 91-A, a statute which generally describes notice and information release required for Meetings run by government officials. Mr. Murphy additionally references RSA 24:9-d in his complaint, which puts responsibility of notice for committee meetings on the clerk of the convention or his or her designee. 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 in 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 Deborah Shackett 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. 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.

The issues raised in Mr. Murphy’s current complaint against Representative O’Hara are substantially similar to Complaint #2023-5 filed against Representative Bean and can be appropriately addressed as part of that matter. On behalf of Representative O’Hara, we would like to request this matter be consolidated with Complaint #2023-5.

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Chairman, Legislative Ethics Committee

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Again, on behalf of Representative O'Hara, we thank you and the Committee for your time and attention and request 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 black ink, appearing to read "Paul T. Fitzgerald". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul T. Fitzgerald

PTF/bpm

Enclosure

cc: Representative Travis O'Hara





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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