



YEARS OF SERVICE TO OUR CLIENTS AND COMMUNITIES

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Dr. Earl Metzler, Superintendent
Timberlane Regional School District
30 Greenough Road
Plaistow, NH 03865-2762

RE: Permitted Use of the Sandown Central Building

Dear Superintendent Metzler:

This firm has been asked to provide the Timberlane School District with an opinion letter regarding the future use of the Sandown Central building. To briefly summarize the pertinent facts, at the 2015 Timberlane School District Annual ballot session, the voters rejected the following two warrant articles related to the continued operation of Sandown Central Elementary School:

Article 4 – Sandown Central Elementary School and Kitchen Renovation and Operational Costs

Shall the voters of the Timberlane Regional School District raise and appropriate up to **\$1,160,544**, with \$744,299 to be used for the operational costs of Sandown Central Elementary School and \$416,245 to renovate the kitchen at Sandown Central Elementary School and to further authorize the District to withdraw the said **\$416,245** from the existing School Building Construction, Reconstruction, Capital Improvements and Land Purchase Capital Reserve Fund? (*Only \$744,299 shall be raised by taxation.*)

Article 11 – Continue Operation of Sandown Central on Warrant by Petition...

Shall the voters of the Timberlane Regional School District raise and appropriate up to \$602,528 for the continuing operation of Sandown Elementary School as an elementary school? This warrant will be void if warrant article "Sandown Central Elementary School Operational Costs and Kitchen Renovation" passes. (MAJORITY VOTE REQUIRED)

During the February Deliberative session an opinion was offered by School District counsel, Gordon Graham, Esq., that if both articles are defeated, then the School Board cannot expend funds to keep Sandown Central Elementary School open per RSA 32:10. At the time of this vote, the focus of the discussion was on whether the School District would continue to operate an elementary school in the Sandown Central building. It is my understanding that the School Board has recently discussed using the Sandown Central building in the 2015-2016 school-year for a district-wide preschool, special education preschool, and kindergarten program. The Sandown Central building is owned and operated by the Timberlane School District.

The legal question is whether the votes to defeat Articles 4 and 11 prohibit the School Board from expending operating budget funds to run a preschool, special education, and kindergarten program (and any other programs) in the Sandown Central building. The answer is clearly No, and I begin by setting forth the relevant provision of the statute which establishes the "no means no" rule, RSA 32:10, I (e):

(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, **however, that if the meeting . . . does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.**

(emphasis added).

RSA 32:3 provides the following definition:

"Purpose" means a goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant, or form submitted to the department of revenue administration, or an appropriation contained in a special warrant article, shall be considered a single "purpose."

In plain terms, if a warrant article is defeated, then there is no appropriation made for that purpose and money cannot be transferred or spent for that purpose. Based on the plain language of the warrant articles above, the following purposes are clearly proscribed:

- (1) operating Sandown Central Elementary School;
- (2) renovating the kitchen at Sandown Central Elementary School; and
- (3) the continuing operation of Sandown Elementary School as an elementary school.

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Thus, a matter of law no money was appropriated for these three purposes, and no money can be transferred or expended for these three purposes.

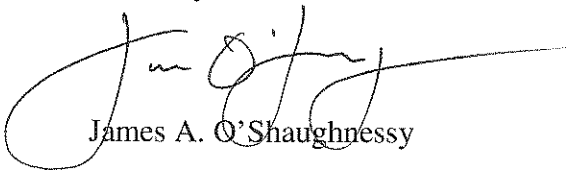
Accordingly, as the School Board is arguable barred by the vote of legislative body from spending or transferring money for the above three purposes, it is neither illegal nor improper for the School Board to spend money for *other* legitimate and necessary programs in the School District, such as preschool, special education preschool, and kindergarten. Moreover, it is the School Board's statutory duty to provide an education to all pupils who reside in the district. RSA 189:1-a. The legislature delegated *to the School Board* and not the legislative body, the authority and responsibility to establish and operate a program of education for students in the district in accordance with state and federal laws. The type of programs offered and where the programs will be provided to students is and must be within the power and discretion of the School Board as it is their statutory responsibility to make available a program of education to all students in the district. As long as the School Board is not attempting to open and operate Sandown Central as an elementary school, the School Board is not prohibited by RSA 32:10 or the "no vote" from transferring or expending funds to operate other programs in the Sandown Central building.

Additionally, it is worth mentioning that as a result of a number of calls from the constituent towns to the New Hampshire Department of Revenue Administration about this alleged violation of RSA 32:10, I spoke with the Director of the Municipal Division, Stephan Hamilton yesterday. While I will leave it to Mr. Hamilton to issue his letter in response to these complaints, I feel confident after that conversation that this interpretation of RSA 32:10 is sound. It is not my place to represent Mr. Hamilton's or the DRA's legal view on such matters, however, I believe we have the DRA's support in moving forward with this project.

Further, although I need not conduct a thorough analysis of a related question, there may be a legal basis for questioning the enforceability of any vote to zero-out a "special warrant" article that pertains to operating budget costs in an SB2 school district.¹ As this question does not impact the School Board's ability to move forward with its proposed use of the Sandown Central building, (and I suspect the DRA will be weighing in on this question) I will defer any further analysis or opinion on this issue.

I hope that you will reach out to me if you have any questions about this letter.

Sincerely,



James A. O'Shaughnessy

JAO/dmf

¹ To the extent it can be argued that these warrant articles relate to operating budget costs, one could interpret RSA 40:13, IX-XI-a to mean that the legislative body cannot vote down an operating cost as there must be a default budget number that corresponds to this operating cost.