

Memorandum

From: Peter Crawford, Clerk, Rye Budget Committee

To: Budget Committee members

Subject: Eligibility of persons other than commissioners to serve as village district representatives to the Budget Committee

Date: November 15, 2017

Background

During the October 24, 2017 meeting of the Budget Committee, I raised the issue of whether a person not a commissioner of a village district, is permitted to serve as the village district's representative to the Budget Committee. I noted that I understood that the Town's Attorney had opined that this was permissible, but that my reading of the statute was to the contrary. Our Chairman agreed to seek permission of the Town for members to examine the attorney's opinion, and it has now been provided to the members. Prior to being elected to the Budget Committee, my numerous attempts to obtain a copy of the opinion had been rebuffed. To avoid any assertion that I am disclosing privileged information, I shall not herein disclose the contents of the opinion.

The Town Attorney's opinion was not obtained at the behest of the Budget Committee, which is independent of the Town, and is responsible for preparing the budgets of the Town, the School District and the three village districts within its purview. N.H. Rev. Stat. Ann. ("RSA") 32:16, I. In the budgetary realm, the Budget Committee is superior to those other bodies and must not be bound by any determination of the attorney for a body over which the Budget Committee has purview, particularly given the attorney's inherent conflict of interest.

At the Board of Selectmen meeting of November 14, 2016, prior to my election to the Budget Committee, I raised the issue with the selectmen as to whether a non-commissioner was eligible to serve as a village district's representative. At the November 28, 2016 meeting, Selectman Musselman stated that "we have a legal opinion from our attorney" indicating that that a person who is not a commissioner may serve. It appears that the opinion is a result of my inquiry as a member of the public, not a request by the Budget Committee itself.

Summary of conclusion

The applicable statute, RSA 32:15, I(b) provides that, in addition to 3-12 members at large, Budget Committee membership shall include:

“[o]ne member of the governing body of the municipality and, if the municipality is a town, one member of the school board of each school district wholly within the town and one member of each village district wholly within the town, all of whom shall be appointed by their respective boards to serve for a term of one year and until their successors are qualified. Each such member may be represented by an alternate member

designated by the respective board, who shall, when sitting, have the same authority as the regular member.”

At our October 24, 2017 meeting, the prospective representative from the Rye Beach Village District argued that he was entitled to serve, notwithstanding the fact that he is not a commissioner of that district, because the statute refers to “one member of each village district,” and, he says, he meets that definition. Using the term “member” to refer to a resident of, or voter in, a village district would be an exceedingly odd way for the legislature to phrase the statute.

The statute specifically requires that representatives from the governing body of the Town (i.e. Board of Selectmen) and the School Board be members of those bodies. The use of the language “appointed by their respective boards” further emphasizes this restriction. While there is no reference to members of the village district boards of commissioners in RSA 32:15, I, the phrase requiring appointment “by their respective boards,” applies to all three types of bodies. A village district board of commissioners is not the “respective board” of a mere voter or resident in the district. The governing bodies of the town and the school, of which he is also a resident and eligible voter, would equally be his “respective board” under that view.

It is plain that the legislature meant the term “member of each village district” to encompass only members of the village district commissioners. This is doubly clear when one considers that the language of RSA Chapter 32, before it was reenacted in 1993, specifically referred to “one member of the board of commissioners of each village district...” The legislature obviously inadvertently failed to include a specific reference to the board of commissioners in the new statute.

The other provisions of RSA 32:15 make it clear that the legislature intended to provide representatives on the Budget Committee from the town as well as each of the independent entities that are wholly contained within the town (i.e. the school district and village districts). RSA 32:15, V prohibits members of the governing bodies of those entities from serving as members-at-large of the Budget Committee. The intent is clear. All voters (other than certain employees) have but a single opportunity to serve on the Budget Committee. Members of the various governing bodies must persuade “their respective boards” to appoint them, rather than the voters to elect them as members-at-large. This serves the legislative purpose of ensuring that each entity that must rely on the Budget Committee to prepare its budget be able to represent its interests, while avoiding the undue influence that might arise if multiple members of any governing body were eligible to serve on the Budget Committee.

This conclusion is further supported by pages 55 and 56 of the publication “The Basic Law of Budgeting, A Guide for Towns, Village Districts and School Districts 2015-2016,” which states that “[the Budget] committee must also include one member of the governing body of the municipality, one member of the school board of each school district wholly within the municipality (if any), and one commissioner of each village district wholly within the town (if any).” (emphasis supplied). The New Hampshire Municipal Association, which prepared this document, clearly agrees with my conclusion.

The 1993 reenactment of Chapter 32 inadvertently omitted the reference to commissioners

Chapter 32 of the RSAs was reenacted by 1993 N.H. Laws 332:1. Prior to that, RSA 32:2 (as reflected in N.H. Rev. Stat. Ann. 1988) read:

“The budget committee shall consist of 3, 6, 9 or 12 members-at-large as the meeting adopting the provisions hereof shall by vote determine, and one member chosen by the school board of each school district wholly within said town, and one member of the board of commissioners of each village district wholly within said town to be designated by said board, and one member of the board of selectmen to be designated by said board. In the case of the member chosen by the school board, board of commissioners, or board of selectmen, the member may be represented at meetings by an alternate school board member, board of commissioners member, or board of selectmen member designated by the appropriate board, who shall have the same authority as the chosen member...”
(emphasis supplied)

Notably, this statute does not include a specific requirement that the regular (i.e. chosen) (as opposed to alternate) member designated by the school board also be a school board member, although this restriction is clearly stated in the reenacted statute. There is not the slightest indication that the legislature intended to expand the universe of persons eligible to serve on behalf of village districts but contract the universe of persons eligible to serve as school board representatives. In both the new and old versions of the statute, the language is imprecise, but the intention is clear.

RSA 32:1 states that the purpose of the re-enacted Chapter 32 is “to clarify the law as it existed under former RSA 32.” (emphasis supplied). The synopsis of 1993 N.H. Laws 332:1 states that it is “AN ACT recodifying the municipal budget law” The text states that “RSA 32 is repealed and reenacted to read as follows:...” Journal of the House (1993 session), pages 276-277 reflects that Rep. Thomas B. Salatiello for the Municipal and County Government Committee made no mention of any alteration of Budget Committee membership provisions. Rather, he states only that the bill (1993 NH HB 615) recodifies Chapter 32, provides guidelines, defines many of the terms commonly used in the budget process and makes basic rules such as “no spending without an appropriation.”

Basic principles of statutory construction support the conclusion

In State Employees Association of New Hampshire v. New Hampshire Division of Personnel, 158 N.H. 338, 343 (2009) the New Hampshire Supreme Court summarized the applicable principles. In construing statutes

“[w]e are guided by a number of well-settled principles of statutory construction. ‘Our goal is to apply statutes in light of the legislature’s intent in enacting them, and in light of the policy sought to be advanced by

the entire statutory scheme.’ ‘When construing the meaning of a statute, we first examine the language found in the statute, and where possible, we ascribe the plain and ordinary meanings to words used.’ ‘We interpret statutes not in isolation, but in the context of the overall statutory scheme.’ ‘When interpreting two statutes that deal with a similar subject matter, we construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes.’ ‘[W]e will not consider what the legislature might have said or add language that the legislature did not see fit to include.’” (citations omitted)

In this case, construing RSA 32:15, I(b) to mean “one commissioner of each village district wholly within the town” rather than “one member of each village district wholly within the town” would arguably be considering what the legislature might have said or add language that it did not include. This single factor, however, is not determinative when the legislative intent and the requirement that statutes be viewed in the context of the overall statutory scheme are considered.

In this case, RSA 32:15, V provides that:

“No selectman, town manager, member of the school board, village district commissioner, full-time employee, or part-time department head of the town, school district or village district or other associated agency shall serve as a member-at-large. Every member-at-large shall be domiciled in the town or district adopting this subdivision and shall cease to hold office immediately upon ceasing to be so domiciled.”

This provision restricts only who may serve on the Budget Committee as a member-at-large. No restriction is made in this subsection as to who may serve as a representative of any of the various entities. If RSA 32:15, I(b) were construed to permit any resident or voter in a village district to serve, a loophole enabling an end run around the clear legislative intent would be created by permitting ineligible employees to serve on the Budget Committee as designees of village districts. However, if RSA 32:15, I(b) is read to permit only members of the various governing bodies to serve as appointed representatives to the Budget Committee, the reason for the reference only to members-at-large in RSA 32:15, V becomes apparent. In that case, referring to the appointed members is unnecessary because the RSAs provide their own restrictions as to who may serve as selectmen, school board members and commissioners.

New Hampshire Supreme Court decisions frequently cite Sutherland’s Statutory Construction, the authoritative multi-volume treatise on the subject, now known as Singer & Singer, Statutes and Statutory Construction (7th ed. 2010) (hereinafter “Singer & Singer”).

“...[P]robably no single canon of interpretation can absolutely provide an answer to the question about what a legislature intended.” Singer & Singer 45:5. “...[W]hen one of several possible interpretations of an ambiguous statute produces an unreasonable result, that interpretation should be rejected in favor of another which produces a reasonable result.” Singer & Singer 45:12. “...[W]e do not consider words and phrases

in isolation, but within the context of the statute as a whole,’ so that we may ‘better discern the legislature’s intent and... interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme’” Collden Corp. v. Town of Wolfeboro, 159 N.H. 747, 750 (2010) (citations omitted). “...[E]ach part or section should be construed in connection with every other part or section to produce a harmonious whole.” Singer & Singer 46:5. See also Petition of the State of New Hampshire (State v. Milner), 159 N.H. 456, 457 (2009). “[I]f the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction.” Singer & Singer 46:5. A literal construction of a statute will be rejected if it does violence to the apparent policy of the Legislature. State v. Chrisicos, 159 N.H. 405, 408 (2009).

Here, the use of the word “member,” if given an expansive construction, would have an uncertain meaning. Would it mean registered voters? Residents domiciled in the village district? Persons who are temporary residents of the village district? Such uncertainty contrasts with RSA 670:3 which provides that “[a]ny person having his or her domicile within the village district and qualified to vote as provided in RSA 654:1 through 654:6 and whose name is on the village district checklist shall be entitled to vote in any village district election.” If the legislature had intended that an expanded set of persons be eligible to serve as village district representatives, it surely would have used a more definitive term, such as “voter,” or “resident” (see RSA 21:6). That is all the more clear when considering the precise language that the legislature uses elsewhere in RSA 32:15 when restricting eligibility to serve on the Budget Committee.

Furthermore, “[i]dential words used in different parts of the same, or a similar, statute usually have the same meaning.” Singer & Singer 46:6. Here, the provision in RSA 32:15, I(b) that “[e]ach such member may be represented by an alternate member designated by the respective board...” uses the word “member” twice. Plainly, the first use of the word “member” refers back to the preceding sentence which refers to members of the various entities, including the Board of Selectmen and the School Board. While it might be argued that the words “alternate member” refers to an alternate member of the Budget Committee, that would require giving the same word two different meanings in the same sentence. Plainly, the words “alternate member” refer to members of the various governing bodies.

The statutory construction principle of *noscitur a sociis* (latin for “it is known by its associates”) provides further support. See Singer & Singer 47:16. Here, the reference to “member of each village district” is surrounded by references to the members of the governing bodies of the Town and the School. The word “member,” in this context, must be construed in like manner, i.e. to mean a “member of the board of commissioners.”

Similarly, the statutory construction principle of *ejusdem generis* (latin for “of the same kind or class”) supports the same conclusion. Where general words follow a specific enumeration describing a statute’s legal subject, the general words are construed to embrace only objects enumerated by the preceding specific words. Singer & Singer 47:17. See also State v. Meaney, 134 N.H. 741, 744 (1991), Davis v. W.T. Grant, 88 N.H. 204, 209 (1936) (the reference to “shop, mill, factory or other place” did not encompass a salesman’s office), Honnon v. Kerr, 85 N.H. 386 (1932). Here, the term “member of each village district” must be understood to be of the same kind and class as the members of the Board of Selectmen and the School Board, and the word “member,”

in that context, understood to mean members of the village district board of commissioners.

“Most courts permit the substitution of one word for another if necessary to carry out legislative intent or express a clearly manifested meaning.” Singer & Singer 47:36. That includes cases where the word is the obvious result of a clerical error or mistake. Id. See Levitt v. Attorney General, 104 N.H. 100 (1962) (drafting error corrected).

Conclusion

The intent of the New Hampshire Legislature when it reenacted Chapter 32 of the RSAs is clear. It did not intend to expand the universe of persons eligible to serve as representatives of village districts to the Budget Committee, but rather intended that these representatives be members of the governing body, just as is the case with the Board of Selectmen and the School Board.