



April 13, 2022

Budget Committee
Town of Hudson
12 School Street
Hudson, NH 03051

RE: March 16, 2022, Amendment to Budget Committee Bylaws

Dear Chairman Cole and Members of the Budget Committee:

Please accept this letter on behalf of both the Hudson Board of Selectmen and the Hudson School Board. On March 16, 2022, the Budget Committee voted to amend its Bylaws, Article XII, Section F, Subparagraph 3, to add a new section which limits voting rights to elected members of the Budget Committee, thereby excluding the appointed ex officio members of the Selectmen and School Board as voting members of the Budget Committee. The Selectmen and the School Board are asking the Budget Committee to rescind this bylaw change immediately.

This action by the Budget Committee is unsupported by any law and is *ultra vires*. RSA § 32:15, I (b), is very clear that the membership of the Budget Committee "shall" include "one member of the governing body" and "one member of the school board." Although these members are appointed, they are nonetheless full members with full voting rights. The Budget Committee's attempt to exclude its ex officio members from voting is directly contrary to RSA § 32:15, I (b).

I have attached a page from the New Hampshire Municipal Association's publication, *The Basic Law of Budgeting*, which speaks directly to this very issue. As explained by the Municipal Association, the Budget Committee consists of both elected and appointed ex-officio members, and "the ex-officio members are voting members." *Id.*

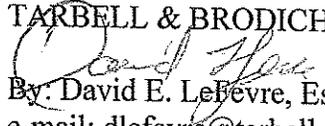
I will further add that legislative efforts in past years to change the law through the proper channels have not been successful.

To be perfectly candid, should the Budget Committee choose not to restore its appointed members' voting status, the Town and School District will have no other alternative than to petition the superior court for an order compelling the Budget Committee to do so. Both the Town and the School District would greatly prefer to avoid the unnecessary litigation at the expense of the taxpayers, and with that in mind, request that the Budget Committee rescind this bylaw.

I strongly urge the Budget Committee to get a proper legal opinion on this issue, and I would suggest contacting Attorney Stephen Buckley with the New Hampshire Municipal Association as someone who is unbiased and is very well versed in this area of the law.

Sincerely,

TARBELL & BRODICH, P.A.


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Board of Selectmen (via e-mail)
School Board (via e-mail)
Attorney Diane Gorrow (via e-mail)

the inception of a cooperative school district, or even informally through “past practice,” (i.e., nothing in writing, but it’s always been done this way). In these situations, confusion may arise regarding the extent of authority and the roles of the budget committee. Ultimately, if the cooperative school district budget committee was not adopted under RSA 195:12-a, then it is not an official budget committee with the powers and duties set forth in Chapter 32, and its role is purely advisory.

C. Membership

1. MEMBERS-AT-LARGE

The composition of the budget committee is determined by town meeting within the limits set by RSA 32:15. A budget committee must include three to twelve members-at-large who are residents of the municipality and who may be elected or appointed by the moderator, as the town meeting decides. The members at large must be domiciled in the town, and any member that ceases to have domicile will immediately lose his or her seat. Members-at-large serve staggered three-year terms. The town meeting may vote at a subsequent meeting to change the number or manner of selection of its members-at-large. One of the members-at-large must be elected by the other committee members as chair, and the committee can elect other officers as it sees fit.

2. EX OFFICIO MEMBERS

The 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). These ex-officio members are appointed by their respective boards to sit on the budget committee and serve terms of one year, along with an alternate ex-officio member to serve in their absence. The ex-officio members are voting members of the committee but may not serve as chair.

Under RSA 195:12-a, a cooperative school district budget committee has the “same number of members as the cooperative school board plus one additional member from the school board as provided in this paragraph.” Furthermore, other than this additional “ex officio” school board member, a cooperative school board member cannot serve as an appointed or elected budget committee member.

3. INCOMPATIBILITY WITH OTHER OFFICES

RSA 32:15, V states that “[n]o 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.”

Therefore, department heads cannot serve as members-at-large on the budget committee, even if they are part-time employees. RSA 32:15, V. “Department head” is not defined in the law and is, therefore, a gray area. To avoid problems related to conflicts of interest, any employee responsible for submitting some portion of a budget should be treated as a department head.

A related issue is that of the ex-officio members voting upon the budget presented by their respective boards. In other words, should the selectperson on the budget committee vote on the budget that the select board has recommended to the budget committee? Yes. The statute clearly contemplates this by requiring an ex-officio member and prohibiting any other member of that board from serving as a member-at-large. The system is set up so that there is a representative from each governing body of all affected political subdivisions, and those ex-officio members are expected to vote.

4. FAILURE TO ATTEND MEETINGS

A member-at-large ceases to hold office immediately upon missing four consecutive scheduled or