

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

**SUPERIOR COURT
No. 2022-CV-00203**

Town of Hudson and Hudson School District SAU 81

v.

Hudson Budget Committee

ORDER

The petitioners, the Town of Hudson (the “Town”) and the Hudson School District SAU 81 (the “School District”), seek declaratory and injunctive relief against the respondent, the Hudson Budget Committee (the “Committee”), following the Committee’s passage of a bylaw provision that excludes certain Committee members from voting on Committee matters. The Court held a hearing on the petition on June 16, 2022. At this hearing, the Court consolidated the preliminary hearing with the final hearing on the merits. See Super. Ct. R. 48(b)(2). Based on the record, the arguments, and the applicable law, the Court finds and rules as follows.

Background

The Court draws the following facts from the record. The Town has an official budget committee under RSA 32:15. (See h’rg at 2:06.) The Committee consists of 11 members, including nine elected members-at-large (collectively, the “at-large members”). The other two members of the Committee consist of one member appointed by the Hudson Board of Selectmen and one member appointed by the Hudson School Board (collectively, the “ex officio members”).

At its March 16, 2022 meeting, the Committee voted seven-to-one in favor of adding a new provision to the Committee’s bylaws (“Section VII”). Section VII provides

that “[a]ny and all Hudson Municipal Budget Committee votes will be limited to the nine (9) elected or duly appointed members-at-large.” (Ex. 2 at 2.) In essence, Section VII stripped the ex officio members of their voting rights. On April 13, 2022, the petitioners’ legal counsel wrote letters to the Committee advising that Section VII is contrary to the applicable law. The letters also requested that the Committee rescind Section VII and restore the ex officio members’ ability to vote. (See Exs. 4, 5.) The Committee refused to rescind Section VII and has not restored the ex officio members’ voting rights. (See Pet. ¶¶ 17, 18.) This action followed.

Analysis

The petitioners claim that pursuant to RSA 32:15 the ex officio members “are equal members of the budget committee with full voting rights.” (Pet. ¶ 11.) As such, the petitioners maintain that Section VII, by restricting their voting rights, is ultra vires. The respondent replies that RSA 32:15 is ambiguous and does not require the ex officio members be permitted to vote. The respondent also asserts that allowing the ex officio members to simultaneously serve on their respective boards and the Committee violates RSA 669:7.

Deciding this dispute requires the Court to engage in statutory interpretation. “Statutory interpretation is a question of law” McCarthy v. Manchester Police Dep’t, 168 N.H. 202, 207 (2015). The Court “first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” Id. The Court “interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id. In doing so, the Court “construe[s] all parts of a

statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Id. “Moreover, [the Court] do[es] not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Id. “This enables [the Court] to better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Id.

RSA 32:15, entitled “Budget Committee Membership,” provides, in pertinent part:

- I. The budget committee shall consist of:
 - (a) Three to 12 members-at-large, who may be either elected or appointed by the moderator, as the town or district adopting the provisions of this subdivision shall by vote determine, who shall serve staggered terms of 3 years; and
 - (b) One 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 . . . [both] of whom shall be appointed by their respective boards to serve for a term of one year and until their successors are qualified.

RSA 32:15, I. The statute thus makes clear that the members of the committee consist of the at-large members and the ex officio members. The statute, however, does not define “member” nor does it specify that voting is one of the rights inherent in membership. “When statutory terms are undefined, [the Court] ascribe[s] to them their plain and ordinary meanings.” Town of Acworth v. Fall Mountain Reg’l Sch. Dist., 151 N.H. 399, 403 (2004) (citation omitted). A “member” is defined as “[o]ne of the individuals of whom an organization or a deliberative assembly consists, and who enjoys the full rights of participating in the organization – including the rights of making, debating, and voting on motions.” Black’s Law Dictionary 1073 (9th ed. 2009) (emphasis added). Thus, under the plain and ordinary meaning of the term “member,” the ex officio members enjoy full participation rights, including the right to vote on

Committee matters.

Furthermore, interpreting RSA 32:15 as permitting Section VII would be inconsistent with other parts of the statute. The statute places two explicit limitations on ex officio members: (1) that they may not serve as at-large members, see RSA 32:15, V; and (2) that they may not serve as chair of the Committee, see RSA 32:15, VI. The inclusion of these explicit restrictions indicates that the legislature considered limits to ex officio members' roles, and allowing for limitations on their ability to vote was not among them. Had the legislature intended for such a limitation, the legislature could have included such language in the statute. See McCarthy, 168 N.H. at 207. In fact, as the statute does not explicitly state which members may vote, allowing the Committee to restrict voting to certain members through its bylaws could lead to an absurd result in which a budget committee could limit voting to a single member. Such a result would undercut the purpose of having multiple committee members. See id. (“[The Court] construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.”).

To the extent the respondent contends that allowing the ex officio members to vote violates RSA 669:7, the Court disagrees. That statute merely states that “[n]o selectman [or] . . . school board member. . . shall at the same time serve as a budget committee member-at-large under RSA 32.” RSA 669:7, I. This language closely parallels RSA 32:15, V, which provides that “[n]o selectman [or] . . . member of the school board . . . shall serve as a member-at-large.” RSA 32:15, V. In other words, both statutes prohibit selectmen and school board members from serving as members-at-large on the Committee, but neither prohibits them from serving as ex officio

members of the Committee. To the contrary, RSA 32:15 requires the Committee to have a member of the governing body of the municipality and a member of the school board. See RSA 32:15, I (providing that budget committees “shall consist” of the at-large, governing body, and school board members).

In sum, there is simply no language in RSA 32:15 supporting the respondent’s position that it may strip ex officio members of the right to vote on budget committee matters. Rather, the statute establishes that the ex officio members are members, and the plain and ordinary meaning of the term “members” includes voting privileges. Thus, it follows that Section VII violates RSA 32:15 and is therefore ultra vires. Having made that finding, the Court hereby GRANTS the petitioners’ request for declaratory relief. Specifically, the Court declares that Section VII is void. The Court also finds that the ex officio members must be permitted to vote on any and all Committee matters, and participate in the same manner as at-large members, unless explicitly proscribed by RSA 32:15. Finally, the Court rules that any Committee actions that were taken without permitting the ex officio members to vote are null and void.

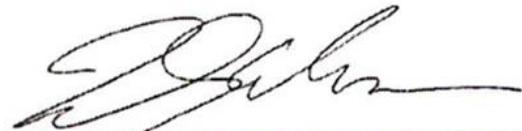
The Court lastly addresses the petitioners’ request for an injunction enjoining the respondent from excluding the ex officio members from voting or otherwise participating in Committee matters. “The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy.” N.H. Dep’t of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007). “A permanent injunction is only issued after the applicant[s] ha[ve] carried [their] burden of showing the need for and appropriateness of such an order at the final hearing on the merits.” 4 MacDonald, Wiebusch on New Hampshire Civil Practice and Procedure § 19.16 (2010).

As described above, the Court has declared that: (1) Section VII is invalid; (2) the ex officio members must be permitted to vote on Committee matters; and (3) any Committee votes taken without the ex officio members' votes are null and void. In light of these rulings, the Court finds that an injunction is unwarranted as "[t]he law presumes that a [respondent] will recognize and respect the rights declared by a declaratory judgment and will abide by the judgment in carrying out [its] duties." Sohani v. Sunesara, 608 S.W.3d 532, 538–39 (Tex. Ct. App. 2020) (cleaned up). In other words, there is no ongoing threat of harm as the Court assumes that the respondent will abide by the Court's order. See Burnham v. Kempton, 44 N.H. 78, 95 (1862) ("The only threat proved or pretended in this case, is to assert what the defendants claim as a right. If the question of right were settled against them, there is no reason to believe the injury would ever be repeated."). If, however, the respondent continues to prevent the ex officio members from voting or otherwise participating in the Committee to the extent permitted by RSA 32:15, "the [petitioners] can swiftly return to court and seek appropriate relief, which could include an injunction." Freedom from Religion Found. v. Concord Cmty. Sch., 240 F. Supp. 3d 914, 925 (N.D. Ind. 2017). Accordingly, the petitioners' request for injunctive relief is DENIED WITHOUT PREJUDICE.

So ordered.

Date: August 15, 2022

Clerk's Notice of Decision
Document Sent to Parties
on 08/15/2022



Hon. Jacalyn A. Colburn,
Presiding Justice