



Delegation Meeting Minutes
February 19, 2013 at 5:00 PM

Chairman Worsman called the Belknap County Delegation meeting to order at 5:10 PM on the above date at 34 County Drive, Laconia, NH and started with the pledge of allegiance. Chair apologized for the delay as she waited for delegates to arrive from Concord.

In Attendance: Reps. Arsenault, Burchell, Comtois, Cormier, DiMartino, Fields, Fink, Flanders, Greemore, Gulick, Holmes, Huot, Raymond, Sylvia, Tilton, Vadney, and Worsman.

Absent: Rep. Luther

Also present: Commissioners Philpot, Nedeau, Thomas, Treasurer Michael Muzzey and County Administrator Shackett.

Approval of Minutes: M/Greemore, S/Sylvia to approve the 01/21/13, 02/04/13 and the 02/04/13 Executive Committee Meetings minutes as presented. **Motion carries** Approved.

Reaffirmation vote of officers: Based on the fact the Delegation was sued for voting via secret ballots for their election of officers at the 12/10/12 meeting, M/Tilton, S/Greemore to take another vote as a re-affirmation of the 12/10/12 vote in open session; Rep. Worsman as the Chair, Robert Greemore as the Vice Chair and Dennis Fields as the Clerk of the Delegation. Rep. Arsenault suggested taking one vote. Rep. Gulick asked if this was appropriate and is questioning the reason of the vote. Rep. Raymond stated that legal counsel should be sought for some issues the delegation has created. Vote for Colette Worsman Chair Worsman called for a roll call vote. 11 – Y (Burchell, Comtois, Cormier, Fink, Flanders, Greemore, Holmes, Sylvia, Tilton, Vadney, Worsman), 2 – N (DiMartino, Huot), 4 abstained (Arsenault, Fields, Gulick, Raymond) and 1 – absent (Luther). **Motion carries** Approved. . M/Greemore, S/Comtois to reaffirm the vote on 12/10/12 for the 4 representatives elected to the Executive Committee; Reps. Flanders, Vadney, Huot and Tilton. 12 – Y (Burchell, Comtois, Cormier, Fields, Fink, Flanders, Greemore, Holmes, Sylvia, Tilton, Vadney, Worsman), 1 – absent (Luther), 5 (Arsenault, DiMartino, Gulick, Huot, Raymond) abstained. **Motion carries** Approved.

Legal Expenses for the Delegation: Due to unanticipated legal action taken against the delegation, M/Greemore to increase the Delegation's budget legal line item 014110-53200 to \$10,000 and reduce the administration legal line item 014130-53200 by \$10,000. S/Sylvia for discussion. Rep. Huot, Vadney and Gulick spoke against this action as it is premature in an unapproved budget. Rep. Huot called for a point of order. Administrator Shackett reminded the delegation that the \$30,000 in the administration budget for legal expenses is there because we need that budgeted amount. Chair called the motion. 8 –Y (Burchell, Comtois, Cormier,

Greemore, Holmes, Sylvia, Tilton, Worsman), 1 – absent (Luther), 9 –N (Arsenault, DiMartino, Fields, Fink, Flanders, Gulick, Huot, Raymond, Vadney). **Motion fails.**

Line items in the budget: M/Burchell, S/Cormier that all line items which are missing account numbers will have those numbers supplied to the delegation specifically to administrative and supervisory positions. That all line items must have account numbers so that they may be incorporated into the final budget for the vote of the delegation. Chair Worsman called for a roll call vote. 10 – Y (Burchell, Comtois, Cormier, Fink, Greemore, Holmes, Sylvia, Tilton, Vadney, Worsman, 1 – absent (Luther), 7 – N (Arsenault, DiMartino, Fields, Flanders, Gulick, Huot, Raymond). **Motion carries** Approved. .

Tax Anticipation Note (TAN): Chair Worsman announced as a result of the lawsuit, the validity of the Executive Committee Vote on 02/04/13 was questioned and it was concluded that it needs to be a vote of the full delegation. Chair Worsman then acknowledged Treasurer, Michael Muzzey. Mr. Muzzey stated that based on the review and approval of the Board of Commissioners, he is requesting that the County Delegation approve of borrowing up to \$10 million in FY 2013 in anticipation of taxes. M/Huot, S/Vadney to authorize the County Treasurer to issue an amount not to exceed \$10 million in TAN's for FY 2013 for Belknap County. Chair Worsman called for a roll call vote. 17 – Y (Arsenault, Burchell, Comtois, Cormier, DiMartino, Fields, Fink, Flanders, Greemore, Gulick, Holmes, Huot, Raymond, Sylvia, Tilton, Vadney, Worsman), 1 – absent (Luther). Approved. **Motion carries.**

Public Input: Chair Worsman acknowledged the Commissioners. Chair Thomas read out loud a letter regarding the budgetary roles for the Commissioners and the Delegation. Copies were distributed. (See attached) Commissioner Thomas also requested a meeting with the delegation to bring forth the cost items for the three union contracts.

Rep. Fields read a statement out loud and also gave a copy to the press regarding the budget processes and his dissatisfaction with the way it is being handled. (See attached)

Robert Kingsbury, Laconia asked for a range of salaries that were over \$65,000 per year. Mr. Kingsbury also asked about the Collective Bargaining Agreements. Mr. Hunter Taylor of Alton commented on the administrative budget.

Rep. Vadney stated that employees, or costs associated with full time employees (between wages, benefits, etc.) are expensive. Salaries alone have risen by 5% per year

Revenue Adjustments: Rep. Tilton discussed the Commissioners' undated list of proposed cuts. Noting that several of the items listed already had been approved by the delegation, the following motions resulted:

M/Tilton, S/Vadney to adjust the following revenue budget adjustments:

014150 – 35091 to \$2,350,000 (Fund balance)

014235 – 34091 to \$11,000 (Fees)

025100 – 34050 to \$1,143,366 (Medicaid)

Chair Worsman called for a roll call vote. 13 – Y (Burchell, Comtois, Cormier, Fields, Fink, Flanders, Greemore, Gulick, Holmes, Sylvia, Tilton, Vadney, Worsman), 2 – absent (Arsenault, Luther), 3 – N (DiMartino, Huot, Raymond). **Motion carries** Approved. .

Expenditure adjustments: M/Tilton, S/Sylvia the following Nursing Home budget adjustments:

025110 – 57600 reduce to \$0
025140 – 51400 reduce to \$100,000
025140 – 52200 reduce to \$284,931
025193 – 51100 reduce to \$231,784
025193 – 52200 reduce to \$17,939

Chair Worsman called for a roll call vote. 10 – Y (Burchell, Comtois, Cormier, Fink, Greemore, Holmes, Sylvia, Tilton, Vadney, Worsman), 2 – Absent (Arsenault Luther), 6 – N DiMartino, Fields, Flanders, Gulick, Huot, Raymond). **Motion carries** Approved. .

Budget details: M/Worsman requesting Commissioners present to the convention a budget reflecting votes that the Convention approved tonight and that line items are assigned account numbers for supervisor's wages also to include the amount to be raised by taxes. S/Vadney. Chair Worsman called for a roll call vote. 12 – Y (Burchell, Comtois, Cormier, Fields, Fink, Flanders, Greemore, Holmes, Sylvia, Tilton, Vadney, Worsman), 2 – Absent (Arsenault, Luther), 4 – N (DiMartino, Gulick, Huot, Raymond). **Motion carries** Approved. .

Clarification requested from Commissioners: Administrator Shackett, speaking for the Commissioners, said that all information has been provided to the Convention. Administrator Shackett said that they have not changed the county's general ledger, but the information is all there and has been provided every time it was asked for. Administrator Shackett said that the Commissioners are still seeking clarification on the submitted changes that they made at the 02/04/13 meeting. Administrator Shackett said that the Commissioners are unclear if the \$1.3 million reductions that they proposed are acceptable or if the convention insists on taking it out of employees' wages and benefits. Administrator Shackett said that the Commissioners have had no feedback on the proposed reduction plan and wondered when the full delegation will discuss?

Rep. Tilton responded that the Commissioners' list was discussed by him item by item prior to the two motions (shown above in the paragraph titled Revenue Adjustments). The motions were seconded, opened to the full delegation for discussion, and voted upon. Rep. Tilton then said that he had failed to discuss item 4 on the list and then explained why he did not recommend deleting that from the proposed budget, therefore not including it in his two motions. No other member suggested including it. He also pointed out that the Commissioners' list of proposed cuts totaled \$1.219, 500 million reductions, not \$1.3 million. Chair Worsman stated that the convention would like a budget that they could vote on at the 02/25/13 meeting.

Adjourn: M/Comtois, S/Burchell to adjourn at 8:00 PM. **Motion carries** Unanimous. .

Delegation had a non-meeting per RSA 91-A: 2 (b) to consult with legal counsel.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jane Cormier", written over a horizontal line.

Jane Cormier, Clerk of the County Convention

Belknap County Delegation

Motion: _____

Second: _____

Motion to: _____

Attendance for 2/19/13 5:00 pm Meeting

Representative:

YES

NO

Beth Arsenault

Richard Burchell

Guy Comtois

Jane Cormier

Lisa DiMartino

Dennis Fields

Charles Fink

Don Flanders

Robert Greemore

Ruth Gulick

Stephen Holmes

David Hout

Robert Luther

Ian Raymond

Michael Sylvia

Franklin Tilton

Herb Vadney

Colette Worsman

TOTAL:

Yes:

No:

DATE:

2/19/13

Signature:

J. A. Bovell

Belknap County Delegation

D

Motion: FRANKLIN TILTON

Second: REP GREENMORE

Motion to: ACCT BE ACCEPTED OF 2/19/2013

REPFRAN OFFICER, Rep. Worsman chair, Rep. Greenmore, Mr. Fields chair.

Representative:	YES	NO
Beth Arsenault		<u>ABSTAIN</u>
Richard Burchell	<u>1</u>	
Guy Comtois	<u>1</u>	
Jane Cormier	<u>1</u>	
Lisa DiMartino		<u>1</u>
Dennis Fields		<u>ABSTAIN</u>
Charles Fink	<u>1</u>	
Don Flanders	<u>1</u>	
Robert Greemore	<u>1</u>	
Ruth Gulick		<u>ABSTAIN</u>
Stephen Holmes	<u>1</u>	
David Hout		<u>1</u>
Robert Luther		<u>1 ABSENT</u>
Ian Raymond		<u>ABSTAIN</u>
Michael Sylvia	<u>1</u>	
Franklin Tilton	<u>1</u>	
Herb Vadney	<u>1</u>	
Colette Worsman	<u>1</u>	<u>1 ABSENT</u>
TOTAL:	Yes: <u>11</u>	No: <u>2</u>

4 ABSTAIN

DATE: 2/19/2013

Signature: Dennis R. Fields

Belknap County Delegation

②

Motion: App. CROZIER MIA R.

Second: App. GUY COMTOIS.

Motion to: TO ACCEPT THE EXECUTIVE COMMITTEE
VOTE BY

Representative:	YES	NO
Beth Arsenaull	_____	_____ ABSTAIN
Richard Burchell	_____ 1	_____
Guy Comtois	_____ 1	_____
Jane Cormier	_____ 1	_____
Lisa DiMartino	_____	_____ ABSTAIN
Dennis Fields	_____ 1	_____
Charles Fink	_____ 1	_____
Don Flanders	_____ 1	_____
Robert Greemore	_____ 1	_____
Ruth Gulick	_____	_____ ABSTAIN
Stephen Holmes	_____ 1	_____
David Hout	_____	_____ ABSTAIN
Robert Luther	_____	_____ ABSENT
Ian Raymond	_____	_____ ABSTAIN
Michael Sylvia	_____ 1	_____
Franklin Tilton	_____ 1	_____
Herb Vadney	_____ 1	_____
Colette Worsman	_____ 1	_____ 1 ABSENT
TOTAL:	Yes: <u>12</u>	No: _____ 5 ABSTAIN

DATE: 2/19/2013

Signature: Dennis H. Fields

Belknap County Delegation

3

Motion: By GREENMORE

Second: Rep SYLVIA

Motion to: Move account 014130 — 53200 TO acct no
014110 TO 53200,

Representative:	YES	NO
Beth Arsenault	<u> </u>	<u> 1 </u>
Richard Burchell	<u> 1 </u>	<u> </u>
Guy Comtois	<u> 1 </u>	<u> </u>
Jane Cormier	<u> 1 </u>	<u> </u>
Lisa DiMartino	<u> </u>	<u> 1 </u>
Dennis Fields	<u> </u>	<u> 1 </u>
Charles Fink	<u> </u>	<u> 1 </u>
Don Flanders	<u> </u>	<u> 1 </u>
Robert Greemore	<u> 1 </u>	<u> </u>
Ruth Gulick	<u> </u>	<u> 1 </u>
Stephen Holmes	<u> 1 </u>	<u> </u>
David Hout	<u> </u>	<u> 1 </u>
Robert Luther	<u> </u>	<u> </u> <i>ROBERT</i>
Ian Raymond	<u> </u>	<u> 1 </u>
Michael Sylvia	<u> 1 </u>	<u> </u>
Franklin Tilton	<u> 1 </u>	<u> </u>
Herb Vadney	<u> </u>	<u> 1 </u>
Colette Worsman	<u> 1 </u>	<u> </u>
TOTAL:	Yes: <u> 8 </u>	No: <u> 9 </u> <i>1 Absent</i>

DATE: 2/19/2013

Signature: Dennis H. Fields

Belknap County Delegation

④

Motion: Rep Burchell

Second: Rep Cormier

Motion to: PAY ACCOUNT No's TO ANY LIVE TEAM

NOT House RECT No. Live Team TO
SUBSCRIBING, POSTMAN'S

Representative:	YES	NO
Beth Arsenaull	_____	/
Richard Burchell	/	_____
Guy Comtois	/	_____
Jane Cormier	/	_____
Lisa DiMartino	_____	/
Dennis Fields	_____	/
Charles Fink	/	_____
Don Flanders	_____	/
Robert Greemore	/	_____
Ruth Gulick	_____	/
Stephen Holmes	/	_____
David Hout	_____	/
Robert Luther	_____	ABSENT
Ian Raymond	_____	/
Michael Sylvia	/	_____
Franklin Tilton	/	_____
Herb Vadney	/	_____
Colette Worsman	/	_____
TOTAL:	Yes: <u>10</u>	No: <u>7</u> ABSENT

DATE: 2/19/2013

Signature: Danni H. Fink

Rep Burchell (copy for the record)
2/19/13 Meeting

Motion: All line items which are missing account numbers will have those numbers supplied to the delegation. Specific reference is made to administrative and supervisory positions but all line items must have account numbers so that they may be incorporated into the final budget for the vote of the delegation.

Belknap County Delegation

(5)

Motion: Rep: Hout

Second: Rep: Vadney

Motion to: TO AUTHORIZED NOT TO EXCEED 10M,
FUR BNT HOSPITALION TAXES,

Representative:	YES	NO
Beth Arsenault	<u>1</u>	<u> </u>
Richard Burchell	<u>1</u>	<u> </u>
Guy Comtois	<u>1</u>	<u> </u>
Jane Cormier	<u>1</u>	<u> </u>
Lisa DiMartino	<u>1</u>	<u> </u>
Dennis Fields	<u>1</u>	<u> </u>
Charles Fink	<u>1</u>	<u> </u>
Don Flanders	<u>1</u>	<u> </u>
Robert Greemore	<u>1</u>	<u> </u>
Ruth Gulick	<u>1</u>	<u> </u>
Stephen Holmes	<u>1</u>	<u> </u>
David Hout	<u>1</u>	<u> </u>
Robert Luther	<u> </u>	<u> </u>
Ian Raymond	<u>1</u>	<u> </u>
Michael Sylvia	<u>1</u>	<u> </u>
Franklin Tilton	<u>1</u>	<u> </u>
Herb Vadney	<u>1</u>	<u> </u>
Colette Worsman	<u>1</u>	<u> </u>
TOTAL:	Yes: <u>17</u>	No: <u>0</u>

20 SENT

1 ABSENT

DATE: 2/19/2013

Signature: Dennis H. Hout

Belknap County Delegation

6

Motion: Rep: TILTON

Second: Rep: VADNEY

Motion to: Revenue, 014150 = 35091 2,600,000 change 2,350,000

014235 = 34091 comm 2,500 14,000 MOTION TO

14000 MEDICARE LINE 025100 = 34050 993366 1,243,366

INCREASE/REVENUE 1. \$ 600,500 403,500 TOTAL

Representative: YES NO

Beth Arsenault _____ _____ ABSENT.

Richard Burchell 1 _____

Guy Comtois 1 _____

Jane Cormier 1 _____

Lisa DiMartino _____ 1

Dennis Fields 1 _____

Charles Fink 1 _____

Don Flanders 1 _____

Robert Greemore 1 _____

Ruth Gulick 1 _____

Stephen Holmes 1 _____

David Hout _____ 1

Robert Luther _____ _____ ABSENT.

Ian Raymond _____ 1

Michael Sylvia 1 _____

Franklin Tilton 1 _____

Herb Vadney 1 _____

Colette Worsman 1 _____

TOTAL: Yes: 13 No: 3 2 ABSENT.

DATE: 2/19/2013

Signature: Dennis H. Fields

Belknap County Delegation

②

Motion: Agree TILTON

Second: Rep: SYLVIA

Motion to: PA 26 NURSING Home 025110-57600

WILCHES 145,000 ^{CUMMIS} 15,000 LINDA O
PA 29 NURSING 025140-51400 CHANGE 150,000 - TO 100,000 20000
025146 52200 PAYROLL TAX 284,984 88,240
WALCOS - OVERTIME 0 25193 - 51100 250 284 10 231,784

Representative:	YES	NO	
Beth Arsenault	_____	_____	0 25193 = 5200 ABSENT, 17,939.00 4,850.00
Richard Burchell		_____	
Guy Comtois		_____	
Jane Cormier		_____	
Lisa DiMartino	_____		
Dennis Fields	_____		
Charles Fink		_____	
Don Flanders	_____		
Robert Greemore		_____	
Ruth Gulick	_____		
Stephen Holmes		_____	
David Hout	_____		
Robert Luther	_____	_____	ABSENT.
Ian Raymond	_____		
Michael Sylvia		_____	
Franklin Tilton		_____	
Herb Vadney		_____	
Colette Worsman		_____	
TOTAL:	Yes: 10	No: 6	2 ABSENT

DATE: 2/19/2012

Signature: Dennis Fields

Belknap County Delegation

Motion: Rep. Worsman

Second: Rep. Vadney

Motion to: REQUIRE ADMINISTRATION OF COMMISSIONERS
PRESENT COUNTY CONVENTION REPORT REPORTS
OF ACCOUNTS, WE VOTED FUR

Representative:	YES	NO
Beth Arsenault	_____	_____ <i>ABSENT</i>
Richard Burchell	<u>1</u>	_____
Guy Comtois	<u>1</u>	_____
Jane Cormier	<u>1</u>	_____
Lisa DiMartino	_____	<u>1</u>
Dennis Fields	<u>1</u>	_____
Charles Fink	<u>1</u>	_____
Don Flanders	<u>1</u>	_____
Robert Greemore	<u>1</u>	_____
Ruth Gulick	_____	<u>1</u>
Stephen Holmes	<u>1</u>	_____
David Hout	_____	<u>1</u>
Robert Luther	_____	_____ <i>ABSENT</i>
Ian Raymond	_____	<u>1</u>
Michael Sylvia	<u>1</u>	_____
Franklin Tilton	<u>1</u>	_____
Herb Vadney	<u>1</u>	_____
Colette Worsman	<u>1</u>	_____
TOTAL:	Yes: <u>12</u>	No: <u>4</u> <i>2 ABSENT</i>

DATE: 2/19/2013

Signature: Dennis W. O'Leary

As you know I've had some concerns about this new process for developing the budget.

I have served 14 terms in the NH State Legislature, and have never seen a county budget prepared in this manner.

I don't understand why there is a need for political caucuses to discuss the county budget. I understand that this is not illegal, but it is definitely not transparent to the public.

I have been to 2 Republican Caucuses which were convened to discuss the county budget and asked to keep everything in the meeting secret. How can that be doing the people's business in a transparent way???

How will the Commissioners, staff, and agencies of the county know what our intentions are if we continue to formulate the budget when they cannot be present?

How will the taxpayers who elected us know what we're doing if we meet in small groups, between public meetings to discuss our plans?

I heard the Chairman of this Delegation say that she wanted this to be a very transparent process. If there are secret meetings held to discuss how to prepare the county budget, how will that be transparent?

If there are questions about the budget that require additional meetings on weekends or in Concord, who is there to answer the questions? Where is the information coming from?

It's my understanding that the creation of the budget is required to be a very public process, why aren't we openly discussing the issues here, in front of everyone? I think that's what I was elected to do. If I have questions, there are people here right now who can answer them.

I would like to get back to doing the county's business in a respectful, public manner. We already have one pending lawsuit against us.

Clarification of Budgetary Roles

As you may have heard, we sought clarification of the differences in our roles regarding the implementation & management of the budget. We became concerned when the discussion became directed at particular general ledger accounts within the county budget. This led to questions about how the Commission would continue to manage the day to day affairs of the organization if it did not have the ability to decide which bills to pay and expenses to incur.

We have now received the clarification we sought and want to share it with you. It is our hope that this will be received as good news, and will spare all of us many more hours of unnecessary debate, morale concerns, and potential legal issues.

The opinion we have received relies on both statutory and case law to establish the limits of each body's authority regarding the county budget process.

By statute, the Commissioners have broad responsibility & authority for managing the day to day operational & financial affairs of the county. However, they must do this within the confines of appropriations made by the Convention.

The Convention has more clearly defined authority and responsibility, including; to raise & appropriate funding for use of the county, to approve borrowing, to set salaries for elected officials, and other important functions as set forth in the statutes. They may require the Commission to seek permission before transferring appropriations.

Three Supreme Court cases were reviewed; O'Brian v. Rockingham County, Linehan v. Rockingham County, and Daniels v. Hanson (Merrimack County). These cases seek to clarify the Commissioner's responsibility for implementing the budget. They all support the following conclusion:

Ultimately, the Delegation must itemize appropriations in accordance with the procedures of the Secretary of State and the administrative rules of DRA (see Rev 2200). DRA has specified a form to "certify the appropriations of the Convention" (MS-42). This is the authorized itemization of the Convention's appropriations. Any further level of detail is for use by the Commissioners in managing the day to day operations of the organization as well as backup information to be used during the formulation of the Delegation's appropriations.

It is the intent of the Commission to follow this counsel and we look forward to working together to fulfill our respective responsibilities.

We understand that if we find there is a reason to transfer appropriations from one line on the MS-42 to another line, we will seek your permission to do so. Likewise, we will accommodate as many meetings as you would like (at least 2 per year are required) to review the current year expenditures with you, in addition to the monthly updates on our website.

We encourage and welcome your attendance at all of our meetings.

Belknap County Commissioners
2/19/2013



DONAHUE, TUCKER & CIANDELLA, PLLC
DEDICATED TO CLIENTS - DEDICATED TO COMMUNITY

Please Respond to the Exeter Office

Attorney/Client Privileged and Confidential

February 4, 2013

Via Electronic Mail and U.S. Mail

Debra Shackett
Belknap County Administrator
34 County Drive
Laconia, NH 03237
dshackett@belknapcounty.org

Re: Authority of County Commissioners and County Delegation

Dear County Commissioners,

This letter is in response to your request for clarification and guidance regarding the relationship between the Belknap County Commissioners (hereinafter "the Commissioners") and the Belknap County Delegation (hereinafter "the Delegation"). This letter will highlight the statutory origins of these entities' respective powers and authority as well as the Delegation's exercise of that authority at the county convention. We will also discuss relevant New Hampshire case law to add context to our statutory analysis.

Executive Summary

The authority of county commissioners and the county delegation is rooted strongly in statutory, not constitutional, law. County commissioners are endowed with the broad powers and inherent discretion to manage and control the day-to-day financial affairs of the county and the delegation has specifically stated statutory authorities which include the power to tax and appropriate. New Hampshire case law supports the notion that county commissioners have broad authority to oversee daily financial affairs of the county, and that the Delegation does not have authority to exercise oversight for administrative decisions. Further, while RSA 24:14 requires that appropriations be itemized in detail, this requirement must be performed in a manner consistent with the intent of RSA 24:24. The statute does not provide authority for the

MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
JESSICA L. ECKER
KERIANN ROMAN
OF COUNSEL
JOY V. RIDDELL
NICHOLAS R. AESCHLIMAN
RETIRED
ROBERT B. DONOVAN
ROBERT A. BATTLES
(1951-2010)

Delegations to utilize their own created forms each of which may differ widely from county to county. Instead, the Delegation should use the MS-42 form provided by the Department of Revenue Administration.

Statutory Authority of County Commissioners

The statutory authority delegated to county commissioners can be found in Chapter 28 of New Hampshire's Revised Statutes Annotated ("RSA"). County commissioners have broad authority to run the day-to-day financial affairs of the county and this authority includes, among other things, the authority to employ such number of employees they deem necessary. RSA 28:10.

County commissioners also two have express duties pursuant to statute. The first is to care for county assisted persons under RSA 28:9. The second is to propose a budget by making itemized recommendations to the county convention of the sums necessary to be raised for the county in the next fiscal year, stating therein in detail the objects for which the money is required, together with a statement of actual expenditures and income for at least 9 months of the preceding calendar year. RSA 24:21-a.

County commissioners have broad statutory authority to manage the everyday affairs of the county. ~~It is not infinite, however. County commissioners cannot pay, agree to pay, or incur any liability for the payment of, any sum of money for which the county convention has made no appropriation, or in excess of any appropriation so made (except for the payment of judgments rendered against the county). RSA 24:15, I. They do have the authority, however, whenever it appears that the amount appropriated by the county convention for a specific purpose will not be used in whole or in part for such purpose, to augment other appropriations provided the total payments for all purposes does not exceed the total sum of appropriations in any year made by the county convention. RSA 24:15, III. Note that "appropriation" is defined as an amount of money authorized for a specified purpose by the legislative body, which in this case is the delegation.~~

Statutory Authority of County Delegation

The authority of the county delegation through the county convention is codified in Chapter 24 of the RSA. County delegations have a more defined statutory authority than county commissioners do. Chapter 24 has a section titled "Powers" which delineates the specific powers of the county delegation at the convention whereas Chapter 28 does not. These powers include the power to raise county taxes, and to make appropriations for the use of the county. Appropriations by the county convention shall be itemized in detail and a record thereof shall be kept by the clerk of the convention. RSA 24:14, I. The convention may require the county commissioners to report once each quarter to the convention or to the executive committee the

expenditures of the county as compared to the budget as voted, in such detail as determined by the convention. Id. Furthermore, the county convention may require that the county commissioners obtain written authority from the executive committee before transferring any appropriation or part thereof under RSA 24:15. Id.

It is the responsibility of the county convention to adopt the annual budget within 90 days after the beginning of the county's fiscal year, RSA 24:14, II, but if they do not, the budget as recommended by the commissioners will take effect. Id. The commissioners may apply to the county convention for an appropriation to be made after the adoption of the annual budget, or the convention, on its own initiative, has the authority to consider and act upon a proposed supplement appropriation. RSA 24:14-a.

Case Law: Distinctions in Authority of County Commissioners and County Delegation

O'Brien v. County of Rockingham & a.

The case of O'Brien v. County of Rockingham & a. offers a foundational opinion of the authority of county commissioners in relation to the delegation. In O'Brien, the Supreme Court of New Hampshire stated:

In 1855 the office of county commissioner was created and 'all the power and authority in relation to the financial affairs and the management and control of the property of the county and disposal and support of county paupers, which the court of common pleas' then had, was granted these officers. Laws 1855, c. 1659, s. 37. So far as the present question is concerned the powers of the counties are confided to these two bodies: the county convention and the county commissioners. The former have power to 'raise county taxes, while the commissioners have the general management and control of the financial affairs of the county and the management and control of its property except as limited by the powers conferred on the county convention.

O'Brien v. County of Rockingham & a., 80 N.H. 522, 524 (1923) (citations omitted)

Linehan v. Rockingham County Commissioners and Daniels v. Hanson

These cases both pertain to the administrative powers of a Sheriff; but the cases are instructive as to the general restrictions imposed on the Delegation and as to the differences between an administrative office and an appropriations office. In Linehan v. Rockingham County Commissioners 151 N.H. 276 (2004), the Rockingham County Sheriff filed a petition for declaratory judgment and other equitable relief questioning among other things, whether the commissioners have the authority to make line-item transfers within the sheriff's budget and from the sheriff's budget into the budget of another county department, and whether the

commissioners have the authority to institute a county-wide spending freeze, which freezes expenditures from the sheriff's budget. Id. at 278.

Reaffirming the broad authority of county commissioners as originally held in O'Brien, Supreme Court adopted the following ruling of the trial court:

The Commissioners have responsibility for overall day-to-day county financial management and control of county assets and liabilities, except as may be limited by the powers granted to the County Convention. The Commissioners, therefore, have authority to implement administrative policies and procedures to safeguard the County's assets and monitor the County's financial liabilities . . .

Id.

In addressing whether the commissioners had the authority to make line-item transfers within the sheriff's department and from the sheriff's budget into the budget of another county department, the court once again cited O'Brien for the commissioners general authority to manage and control the county's financial affairs and held that "[t]his includes requiring the county to maintain a line-item budget, and authorizing the commissioners to transfer appropriations between line items, so long as the request does not exceed the total sum of appropriations, RSA 24:15, III." Id. at 282.

In Daniels v. Hanson 115 N.H. 445 (1975), the sheriff of Merrimack County (and others) sought a temporary and permanent injunction enjoining the defendants, including chairman of the county delegation) from "any action which would change the status of the staff of the county sheriff" as well as declaratory judgment of the rights of the parties in relation to the county budget. Id. at 447. The Court framed the basic issue well stating "[t]his litigation concerns the conflict which naturally arises between the appropriating body and the administrative officials who have to perform their mandated functions with the funds made available to them." Id. In Daniels, the core dispute revolved around a reduced appropriation to the sheriff's budget as well as two footnotes inserted therein which provided for the abolishment of two deputy sheriff positions over the course of five weeks. Id.

Reaffirming the statutory authority of the delegates, the Court found that the county convention has "powers to raise taxes and appropriate moneys for county expenses;" that "[t]hese appropriations 'shall be itemized in detail' and the convention may require the county commissioners to report once each quarter the expenditures of the county has compared to the budget voted;" and that "the convention is empowered to compel the application of county funds to the purposes for which they were appropriated, unless a transfer is authorized, and to limit expenditures to those necessary for legitimate county purposes." Id. (citations and quotations omitted).

Moreover, the Court found that “in budgeting funds for the operation of the office of sheriff, the convention could properly consider and decide that the county’s interest would be better served by decreasing the law enforcement support previously given by the sheriff’s department to the towns in the county.” *Id.* at 451. The convention, however, had no other authority over the actual operation of the sheriff’s department. *Id.* “That his operations will be affected by the amount of money appropriated by the convention is a necessary consequence of the allocation of county powers to its different branches.” *Id.* The Court did not find that the appropriation in this case made by the county convention was illegal or invalid noting that unless the amount appropriated will, for all practical purposes, prevent the Sheriff from performing legally mandated duties, it cannot be declared illegal. It did, however, state that “[t]he county convention does not possess the general legislative powers which our constitution in part II, article 5 has vested in the State legislature.” *Id.* at 452.

The holding in *Daniels* is evidence that courts in New Hampshire will grant the county delegation only that authority which is specifically delegated to it by statute and will prohibit it from exercising general legislative powers.

Illustration of Principles of Authority

The broad outline of Delegation and Commission authority is reflected through statutory and case law as described above. The application of these concepts is illustrated by looking at one item from the MS 42 form used by the Delegation and comparing it to the correlating item on the 2013 master budget, compiled by the Commissioners.

Account #4150 under the General Government line item is listed as financial administration. (See attached p. 1 of MS-42) By contrast, the Commission master budget contains an account #4150, financial office, but also contains on a separate sheet, explanatory information outlining how the stated figure in #4150 master budget was determined. (See attached excerpt from Commission master budget). The explanatory information is consistent with the Commission’s authority to administer the County in that they have the most detailed and accurate information on the various items that go into the financial administration line item. The Delegation may examine the explanatory information provided by the Commissions and agree or disagree with same when they determine the total appropriation for financial administration. However, my opinion is that the Delegation appropriation is only for the specified purpose of “financial administration” set forth on the MS-42 and not for any of the explanatory items on the Commission master budget. The spirit of RSA 24:24,14-a and 24:24 suggest that the Delegation must itemize appropriations and must do so in accordance with DRA and the Secretary of State procedures. DRA has provided a form for appropriations to the Delegation, and thus the MS-42 form as presented should be the only form used listing the appropriation for line item #4150, financial administration.

Conclusion

We appreciate the opportunity to address your questions. Please do not hesitate to contact me if you have any questions or comments at all.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC


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SCS/pc
Enclosure

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**BELKNAP COUNTY
2013 BUDGET - EXPENDITURES**

Mester Budget

Account Number	2011 ACTUAL	2012 BUDGET	2012 ACTUAL 9/30/12	2013 DEPARTMENT	2013 ADMINISTRATION	2013 COMMISSIONERS	NOTES
4110 Dept Subtotal: County Convention	14,004.47	6,500.00	7,314.23	7,550.00	7,550.00	7,550.00	CONFIRMED
4123 Dept Subtotal: County Attorney	613,003.11	742,659.00	505,476.45	786,683.00	783,660.00	777,876.00	CONFIRMED
4130 Dept Subtotal: Administration	633,364.74	516,308.16	341,937.97	511,052.00	511,052.00	508,073.00	CONFIRMED
4135 Dept Subtotal: Information Technology (IT)	96,217.89	91,181.23	85,148.48	107,112.00	107,112.00	107,112.00	CONFIRMED
4150 Dept Subtotal: Finance Office	103,020.46	302,870.00	205,390.16	320,070.00	319,870.00	305,261.00	CONFIRMED
4193 Dept Subtotal: Registry Of Deeds	499,937.61	451,391.00	311,760.09	457,458.00	455,958.00	452,073.00	CONFIRMED
4194 Dept Subtotal: Maintenance	2,504,654.11	1,499,300.20	926,401.84	676,527.00	674,727.00	666,604.00	CONFIRMED
4194 Dept Subtotal: Capital Projects / Improvements	-	-	-	60,000.00	-	60,000.00	CONFIRMED
4211 Dept Subtotal: Sheriff's Department	2,010,468.48	2,072,893.00	1,510,624.69	2,205,966.00	2,177,366.00	2,157,496.00	CONFIRMED
4230 Dept Subtotal: Dept Of Corrections	2,965,992.53	3,069,472.08	2,246,328.10	3,367,059.00	3,332,828.00	3,276,882.00	CONFIRMED
4235 Dept Subtotal: Probation & Diversion Services	161,106.57	192,011.00	126,159.86	225,422.00	225,072.00	224,945.00	CONFIRMED
4441 Dept Subtotal: Human Services	5,389,948.00	5,571,064.00	3,647,037.00	5,667,488.00	5,667,488.00	5,667,488.00	CONFIRMED
4610-4660 Dept Subtotal: Outside Agencies	1,025,212.00	1,018,690.00	1,018,690.00	1,057,808.00	955,504.00	995,264.00	CONFIRMED
4198 Dept Subtotal: Contingency	-	100,000.00	-	100,000.00	100,000.00	100,000.00	CONFIRMED
4700 Dept Subtotal: Debt & Interest	215,109.50	253,473.00	156,844.42	223,949.15	223,949.15	223,950.00	CONFIRMED
4910 Dept Subtotal: Departmental Transfers	2,922,834.90	3,900,552.96	1,051,021.98	3,886,515.85	3,597,558.85	3,491,771.00	CONFIRMED
Total - General Fund - 01	19,154,874.37	19,788,365.63	12,140,135.27	19,460,660.00	19,139,695.00	19,022,347.00	
5100 Dept Subtotal: Nursing Home Administration	1,082,263.48	1,124,524.00	692,782.54	1,174,256.00	1,168,117.00	1,162,353.00	CONFIRMED
5110 Dept Subtotal: Nursing Home Maintenance	694,617.88	749,821.00	446,316.97	742,237.00	742,739.00	741,086.00	CONFIRMED
5120 Dept Subtotal: Rehabilitation Services	174,166.45	189,235.00	132,785.48	185,567.00	185,871.00	183,114.00	CONFIRMED
5130 Dept Subtotal: Dietary Department	1,271,855.21	1,269,950.00	952,365.10	1,334,461.00	1,340,769.00	1,328,503.00	CONFIRMED
5140 Dept Subtotal: Nursing Department	5,568,286.17	5,726,974.00	4,096,368.60	5,905,545.00	5,901,205.00	5,829,876.00	CONFIRMED
5160 Dept Subtotal: Laundry Department	152,843.79	158,059.00	103,494.64	148,202.00	148,659.00	146,430.00	CONFIRMED
5170 Dept Subtotal: Housekeeping Department	421,029.42	436,294.15	289,359.37	427,401.00	429,036.00	423,209.00	CONFIRMED
5180 Dept Subtotal: Physicians, Pharmacy & Gen Ser	532,491.56	473,240.00	386,824.85	509,061.00	477,230.00	477,230.00	CONFIRMED
5190 Dept Subtotal: Special Services	6,644.28	6,858.00	1,079.55	4,320.00	4,320.00	4,320.00	CONFIRMED
5193 Dept Subtotal: Activities Department	342,950.69	376,836.00	261,592.34	385,918.00	386,121.00	382,190.00	CONFIRMED
5194 Dept Subtotal: Hairdressing Department	45,938.65	36,228.00	23,001.45	35,105.00	35,222.00	35,190.00	CONFIRMED
4700 Dept Subtotal: Debt & Interest - Nursing Home	576,360.49	555,616.00	535,771.83	535,050.85	535,050.85	535,051.00	CONFIRMED
Total - Nursing Home - 02	10,869,458.07	11,103,635.15	7,923,745.72	11,387,123.85	11,354,339.85	11,248,552.00	
Grand Total - All Activities	30,024,332.44	30,892,000.78	20,063,878.99	30,847,783.85	30,494,034.85	30,270,899.00	
				(44,216.93) \$	(397,965.93) \$	(621,101.78)	

EXPENDITURES	2011		2012		2013		2013		2013		COMMISSIONERS NOTES	ADMIN NOTES	NOTES
	ACTUAL	BUDGET	ACTUAL - 9/30/12	DEPARTMENT	ADMINISTRATION	COMMISSIONERS	COMMISSIONERS NOTES	ADMIN NOTES	NOTES				
014150	51100	FINANCE OFFICE											
014150	51200	WAGES - FULL TIME	-	186,299.00	134,735.66	190,215.00	190,215.00	190,215.00	60.00		Dep Treasurer	DEPUTY TREASURER	
014150	51300	WAGES - ELECTED OFFICIALS	4,011.00	4,061.00	15.00	60.00	60.00	60.00	3,961.00				
014150	51400	WAGES - OVERTIME	305.29	500.00	2,970.72	500.00	300.00	300.00	300.00				
014150	51500	COMP OTHER-HEALTH INCENT	1,298.40	1,500.00	1,096.30	750.00	750.00	750.00	750.00				
014150	51510	COMP OTHER-SICK PAY INCENT	1,118.88	2,117.00	1,155.36	2,210.00	2,210.00	2,210.00	2,210.00				
014150	51520	COMP OTHER-LONGEVITY	550.00	650.00	-	650.00	650.00	650.00	650.00				
014150	51600	ABSENTEE COMPENSATION	(1,205.44)	-	-	-	-	-	-				
014150	52100	GROUP INSURANCE-HEALTH	33,292.62	37,865.00	27,311.52	55,425.00	55,425.00	40,915.00	7.3 % RATE INCREASE				
014150	52200	PAYROLL TAX	12,738.94	14,927.00	10,332.74	15,234.00	15,234.00	15,234.00	15,234.00				
014150	52230	RETIREMENT	15,339.79	16,682.00	11,961.03	18,941.00	18,941.00	18,941.00	18,941.00				
014150	52250	UNEMPLOYMENT INSURANCE	378.00	497.00	497.00	650.00	650.00	551.00					
014150	52260	WORKERS COMPENSATION	169.00	330.00	317.64	345.00	345.00	345.00	345.00				
014150	53400	BANK SERVICES	11,861.07	10,000.00	3,752.89	5,000.00	5,000.00	5,000.00	5,000.00				
014150	53425	SOFTWARE SUPPORT	10,058.30	16,000.00	4,856.90	17,339.00	17,339.00	17,339.00	17,339.00				
014150	54352	ELEC EQUIP-REPAIRS & MAINT	-	-	200.05	300.00	300.00	300.00					
014150	54405	ELECTRONICS-RENTALS	-	-	-	-	-	-					
014150	54800	PROPERTY & LIABILITIES	2,835.00	2,842.00	2,842.00	3,040.00	3,040.00	3,040.00	3,040.00				
014150	56130	TRAINING	2,310.00	4,100.00	900.00	2,500.00	2,500.00	2,500.00	2,500.00				
014150	56130	TRAVEL	824.10	500.00	345.78	450.00	450.00	450.00	450.00				
014150	56200	OFFICE SUPPLIES	3,011.50	2,500.00	918.90	1,000.00	1,000.00	1,000.00	1,000.00				
014150	56250	POSTAGE	669.82	1,000.00	898.75	1,000.00	1,000.00	1,000.00	1,000.00				
014150	56670	BOOKS/JOURNALS/PERIODICALS	354.19	500.00	242.00	500.00	500.00	500.00	500.00				
014150	56680	NEW EQUIPMENT	3,000.00	-	-	-	-	-	-				
014150		FINANCE OFFICE	103,020.46	302,870.00	205,390.16	320,070.00	319,870.00	305,261.00					

NH Department of Revenue Administration
Municipal Services Division
P. O. Box 487, Concord, NH 03302-0487
(603) 230-5090

STATEMENT OF COUNTY APPROPRIATIONS AND REVENUE AS VOTED

For County of: _____

DATE OF CONVENTION: _____ Fiscal Year Ending: _____

Mailing Address: _____

Phone #: _____ Fax #: _____ E-Mail: _____

Prepared by: _____

This form is used to report the voted appropriations, as required under RSA 24:24, to the Secretary of State and to the Commissioner of the Dept. of Revenue Admin. It is due by September 1 per RSA 21-J:34.

CERTIFICATE OF VOTE

This is to certify that the appropriations entered on this form are those voted by the county convention.

Under penalties of perjury, I declare that I have examined the information contained in this form and to the best of my belief it is true, correct and complete.

Chairperson

Clerk of County Convention

FOR DRA USE ONLY

1	2	3	4
Acct.#	APPROPRIATIONS	Appropriations as Voted	DRA USE
GENERAL GOVERNMENT			
4110	County Convention Costs		
4120	Judicial		
4122	Jury Costs		
4123	County Attorney's Office		
4124	Victim Witness Advocacy Program		
4130	Executive		
4150	Financial Administration		
4151	Treasurer		
4153	Other Legal Costs		
4155	Personnel Administration		
4191	Planning and Zoning for Uninc.Places		
4192	Medical Examiner		
4193	Register of Deeds		
4194	Maintenance of Government Bldg.		
4196	Insurance, Not Otherwise Allocated		
4198	Contingency		
4199	Other (specify)		
PUBLIC SAFETY			
4211	Sheriff's Department		
4212	Custody of Prisoners		
4214	Sheriff's Support Services		
4219	Other Public Safety		
CORRECTIONS			
4230	Corrections		
4235	Adult Probation and Parole		
COUNTY FARM			
4301	Administration		
4302	Operating Expenditures		
4309	Other County Farm Expenditures		
COUNTY NURSING HOME			
4411	Administration		
4412	Operating Expense		
4439	Other Health		
HUMAN SERVICES			
4441	Administration		
4442	Direct Assistance		

1	2	3	4
Acct.#	APPROPRIATIONS	Appropriations as Voted	DRA USE
HUMAN SERVICES (continued)			
4443	Board and Care of Children		
4446	Diversion Program		
4447	Special Outside Services		
	Other (Specify)		
COOPERATIVE EXTENSION			
4611	Administration		
4619	Other Conservation		
ECONOMIC DEVELOPMENT			
4651	Administration		
4652	Economic Development		
4659	Other Economic Development		
DEBT SERVICE			
4711	Principal Long-Term Bonds/Notes		
4721	Interest Long-Term Bonds/Notes		
	Other (Specify)		
INTERGOVERNMENTAL TRANSFERS			
4800	Intergovernmental Transfers		
CAPITAL OUTLAY			
4901	Land and Improvements		
4902	Machinery		
4903	Buildings		
4904	Improvements Other than Bldg.		
INTERFUND OPERATING TRANSFERS			
4912	To Special Revenue Fund		
4913	To Capital Projects Fund		
4914	To Proprietary Funds		
4915	To Capital Reserve Funds		
4916	To Trust and Fiduciary Funds		
TOTAL APPROPRIATIONS			

1	2	3
Acct.#	SOURCES OF REVENUES	Estimated Revenue Ensuing Fiscal Year
ASSESSMENTS/TAXES		
3110	Property Taxes Levied for Unincorporated Places	
3120	Land Use Change Taxes for Unincorporated Places	
3180	Resident Taxes for Unincorporated Places	
3185	Yield Taxes for Unincorporated Places	
3186	Payments in Lieu of Taxes for Unincorporated Places	
3187	Payments in Lieu of Taxes	
3189	Other Taxes	
3191	Penalties on Delinquent Municipal Assessments	
3200	Licenses, Permits, and Fees	
REVENUE FROM THE FEDERAL GOVERNMENT		
REVENUE FROM THE STATE OF NH		
3351	Shared Revenue for Unincorporated Places	
3352	Incentive Funds	
3354	Water Pollution Grants	
3355	Housing and Community Development	
3356	State & Fed. Forest Land Reim. in Unincorporated Places	
3359	Other (Specify)	
3379	INTERGOVERNMENTAL REVENUES	
REVENUES FROM CHARGES FOR SERVICES		
3401	Sheriff's Department	
3402	Register of Deeds	
3403	County Corrections	
3404	County Nursing Homes	
3405	County Farm	
3406	Cooperative Extension Service	
3407	Maintenance Department	
3409	Other (Specify)	
REVENUE FROM MISCELLANEOUS SOURCES		
3501	Sale of County Property	
3502	Interest on Investments	
3503	Rents of Property	
3508	Contributions and Donations	
350	Other (Specify)	
350	Other (Specify)	

Budget - County of _____ FY _____

1	2	3
Acct.#	SOURCES OF REVENUES	Estimated Revenue Ensuing Fiscal Year
OTHER FINANCIAL SOURCES		
3912	Transfer from Special Revenue Funds	
3913	Transfer from Capital Projects Funds	
3914	Transfer from Proprietary Funds	
3915	Transfer from Capital Reserve Funds	
3916	Transfer from Trust and Agency Funds	
3934	Proceeds from Long-Term Notes/Bonds	
ESTIMATED REVENUE SUBTOTAL		
FUND BALANCE TO REDUCE TAX RATE		
TOTAL ESTIMATED REVENUES		

BUDGET SUMMARY

Total Voted Appropriations	
Total Revenues	
Amount Certified to be Raised by Taxes	