

THE STATE OF NEW HAMPSHIRE

BELKNAP, SS.

SUPERIOR COURT

Belknap County Convention

v.

Belknap County Commissioners

Docket No. 14-CV-141

ORDER

Hearing held (8/6/2014) on the petitioner Belknap County Convention's Request for Injunctive Relief (filed 7/14/14) and the respondent Belknap County Commissioners' Objection to same (filed 8/6/14). Subsequent to review, the Court renders the following determination(s).

By way of brief background, the petitioner, Belknap County Convention ("Convention"), filed a complaint against the respondent, Belknap County Commissioners ("Commissioners"), in reference to the Commissioners' use of funds appropriated by the Convention in the 2014 annual budget for Belknap County ("2014 budget"). The complaint seeks declaratory judgment and both temporary and permanent injunctive relief. The respondent presently objects to the petitioner's request for temporary injunctive relief.

The Court finds the following facts relevant to this case. On October 22, 2013, the Convention authorized its attorney, David Horan, to seek a petition for declaratory judgment against the Commissioners in Belknap County Superior Court due to transfers made by the Commissioners between line-items in the 2013 annual budget for Belknap County ("2013 budget"). On March 4, 2014, the Convention met and approved by majority vote \$25,596,863 for the 2014 budget. During this meeting, the Convention approved \$2,594,925 to be allocated

for health insurance within the 2014 budget. The Convention also passed by majority vote the following language pertaining to transfers between line-items in the 2014 budget:

That all funds appropriated for all line items of the [2014 budget] shall be non-transferrable without prior approval of the Executive Committee in accordance with RSA 24:14. The one exception is that the commissioners are authorized to transfer funds within each department from one line item to another in an amount not to exceed \$300 on any given instance. A report of said transfers submitted to the County Commission monthly.

On March 27, 2014, the Commissioners met in a public session with County Administrator Debra Shackett. Administrator Shackett made recommendations as to how the Commissioners could transfer money in the 2014 budget between line-items within each department, while leaving the totals allocated to each department unchanged. At this meeting, the Commissioners voted unanimously to accept Administrator Shackett's recommendations, resulting in 132 changes to line-items within the 2014 budget. Many of these changes were in excess of \$300, including an increase of the money allocated to health insurance from the \$2,594,925 approved by the Convention to \$2,832,579 (as of July 22, 2014). (Pet'r's Ex. 4.) The Commissioners did not seek written approval from the Executive Committee for any of these alterations.

The petitioner argues that the Court should temporarily enjoin the respondent from making transfers in excess of \$300 between line-items in the 2014 budget without written approval of the Executive Committee, pending a final disposition in this case. The respondent objects to this request and furthers several arguments. First, the respondent avers that the petitioner has no standing to bring the present suit because it is not statutorily authorized to do so. In the alternative, the respondent argues that the present suit is improper because it has not been authorized by a majority vote of members of the Convention. Finally, and also in the

alternative, the respondent argues that the petitioner cannot satisfy the requisite criteria to warrant the issuance of a preliminary injunction.

Petitioner's Standing and Authorization to Bring Suit

Standing

The respondent first objects to the petitioner's request for a preliminary injunction on the ground that the petitioner does not have standing to bring the present suit. The respondent argues that the legislature granted county conventions only limited powers, and that bringing suit is not among these powers. (Resp't's Objection Pet'rs Req. Prelim. Inj. ¶¶ 3-6.)

Upon review, the Court disagrees with the respondent's argument. If county conventions did not have the power to bring legal action, this would in effect render controversies over how county commissioners use budgeted money non-justiciable. The New Hampshire Supreme Court has rejected taxpayer standing in suits seeking declaratory judgments, absent a demonstration that the individual taxpayer who is bringing suit has had his or her rights personally injured or impaired. Baer v. N.H. Dept. of Educ., 160 N.H. 727, 731 (2010). In suits such as this one, where the sole allegation is that county commissioners are unlawfully transferring and expending funds appropriated in the county budget, it would often be impossible to show any injury or impairment to the individual taxpayer. Thus, unless county conventions have standing to sue, no judicial remedy would exist to redress the potential harms caused by such activity. The Court therefore finds that the petitioner has standing to bring the present action.

Additionally, while not dispositive of this issue, the Court notes that the New Hampshire Supreme Court has previously ruled on the merits of a case brought by the Cheshire County Convention. See Cheshire County Convention v. Cheshire County Com'rs, 115 N.H. 585 (1975).

The Court finds the fact that both the trial court and the New Hampshire Supreme Court reached final dispositions on the matter on its merits to lend some credence to the authority of county conventions to bring legal action in New Hampshire courts.

Authorization

The respondent next objects to the petitioner's request for a preliminary injunction on the ground that, even if the petitioner did have standing to bring suit, it has failed to duly authorize the present action by a majority vote. The respondent notes that the petitioner authorized suit by majority vote in regards to line-item transfers made by the respondent under the 2013 budget, but did not reauthorize such action in regards to the 2014 budget. (Resp't's Objection ¶ 7.) The Court interprets the crux of this argument to be that county conventions are statutorily obligated to authorize the commencement of legal action by majority vote, and that the petitioner's failure to do so in regards to the 2014 budget bars this suit from continuing. The respondent cites RSA 24:14 and RSA 24:17 in support of this contention. (Resp't's Objection ¶ 9.)

Upon review, Court finds no support for the respondent's argument that a majority vote by the convention is necessary to authorize it to bring legal action. Chapter 24 of the New Hampshire code, which governs county conventions, makes no mention of such a broad requirement anywhere in the statutory language. While the provisions cited by the respondent do require majority votes for some convention actions—namely, appropriating money in county budgets under RSA 24:14 and entering into investigations of county affairs under RSA 24:17—these provisions contemplate only specific, identified convention actions and do not purport to create a general majority vote requirement. Indeed, other provisions within Chapter 24 reveal that majority votes are by no means the only way in which a county convention may act. Conventions retain broad discretion as to the requisite procedures for a range of actions,

including filling vacancies on the Executive Committee under RSA 24:2-b, and setting the time and place of convention and committee meetings under RSA 24:9-a, RSA 24:9-c, and RSA 24:9-f. A majority vote may well be one way in which a county convention can authorize legal action, but the Court declines to read this into the statute as a strict requirement. Thus, the lack of a majority vote by members of the convention authorizing the present action does not bar it from proceeding.¹

Petitioner's Request for a Preliminary Injunction

The petitioner requests that the Court issue a preliminary injunction, pending the final disposition in this case, enjoining the respondent from making transfers in excess of \$300 between line-items in the 2014 budget without first receiving written authorization from the Executive Committee. The respondent objects to this request, arguing that the petitioner is unlikely to succeed on the merits of this case, that there is no likelihood of immediate and irreparable harm if the injunction is not granted, and that the public interest would be adversely affected if the injunction is granted.

Under applicable New Hampshire law, the injunctive relief sought by the petitioner is an extraordinary remedy. N.H. Dep't of Envtl. Servs. v. Mottolo, 154 N.H. 57, 63 (2007) (citing Murphy v. McQuade Realty, Inc., 122 N.H. 314, 316 (1982)). Courts will only grant temporary injunctive relief if the petitioner can prove the following five factors: (1) that it has no adequate remedy at law; (2) that it will suffer immediate irreparable harm if the injunctive relief is not granted; (3) that there will be no hardship to the respondents if the injunctive relief is granted, or the hardship to petitioner, if the injunctive relief is not granted, is greater; (4) that the petitioner

¹ The Court also declines to extrapolate a majority vote requirement from the fact that the petitioner used this procedure when authorizing suit in regards to transfers made by the respondent under 2013 budget. The Court can find no authority to suggest that once a county convention acts in particular way on one occasion, it is limited to only acting in that way on similar subsequent occasions.

is likely to succeed on the merits; and (5) that the public interest will not be adversely affected if the injunction is granted. Mottolo, 154 N.H. at 63; UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987); Murphy, 122 N.H. at 316. The Court will consider each of these factors in turn.

Adequate Remedy at Law

Neither party has presented arguments pertaining to this factor. The Court turns, then, to the substantive request of the petitioner to determine whether a legal remedy is available. The petitioner argues that the respondent is transferring funds between line-items in the 2014 budget outside of the scope of its authority to do so under RSA 24:14 and RSA 24:15. The petitioner requests that the Court enjoin the respondent from said transfers in excess of \$300 without first gaining the written approval of the Executive Committee. The petitioner is not seeking monetary redress for a past harm, but rather the curtailment of future behavior. There are therefore no monetary damages that the petitioner could receive that would adequately remedy this alleged harm. Indeed, if the Court were to award damages in this case, doing so would in no way prevent the respondent from continuing the behavior to which the petitioner objects. Such a result would require the petitioner to bring suit each time the respondent transferred funds in excess of \$300 without approval. In contrast, the remedy that the petitioner seeks—the enjoinder of future transfers—wholly addresses the harm alleged. **The Court therefore finds that an injunction is the only practicable remedy that the petitioner could receive should it prevail in this suit on the merits.**

Immediate Irreparable Harm

The petitioner argues that the failure to grant preliminary injunctive relief in this case would immediately and irreparably harm the taxpayers of Belknap County should the Court

ultimately find for the petitioner on the merits of this case. The respondent objects to this argument.

Upon review, the Court agrees with the petitioner's argument. The legislature has created a comprehensive scheme of checks and balances for the creation and implementation of county budgets. Voters elect state representatives, who make up the county conventions of the counties from which they are elected. Voters also elect a board of commissioners for each respective county. The commissioners draft proposals for the county budget, which they present to the county convention. The county convention then votes on a finalized budget, taking the commissioners' proposals into account. Once passed, the effective budget for the following year is returned to the county commissioners so that they may execute it.

Should the petitioner prevail on its merits, then this would necessarily mean that that respondent has been transferring and spending taxpayer money outside of the scope of its authority under law. If the Court were to deny this request for temporary relief, then this would allow the respondent to continue this practice until a final disposition in this suit was rendered. The possibility of the continued unauthorized transfer and expenditure of taxpayer money, especially in the wake of the likelihood that the petitioner will succeed in this case on the merits as discussed below, creates the prospect of immediate and irreparable harm to the taxpayers of Belknap County. This factor therefore also militates in favor of the Court granting the petitioner's request for temporary injunctive relief.

Hardship to the Respondent and the Petitioner

Neither party has presented arguments pertaining to this factor. Upon review, the Court finds that the respondent would face minimal hardship if the injunction were granted in this matter, whereas the hardship to the petitioner would be greater if the injunction were not granted.

The primary hardship to the respondent if the injunction were granted would be the requirement that it seek written approval from the Executive Committee for all line-item transfers in excess of \$300. Conversely, if preliminary relief were not granted, the petitioner would be compelled to stand by until the Court rendered a final disposition in this matter, while the respondent retained the ability to transfer funds between line-items at its discretion. This places a substantial hardship on the petitioner, as it could severely diminish the relief to which it would be entitled if it prevailed on the merits of this suit. The petitioner only seeks a declaratory judgment and prospective injunctive relief. If the respondent continues to transfer and expend funds during the pendency of this case, there is the very real possibility that the vast majority of the 2014 budget will be expended by the time the Court issues a final disposition. The Court finds that this outweighs the modest potential hardship to the respondent that would be caused by issuing a preliminary injunction in this matter. This factor therefore also weighs in favor of the Court granting the requested relief.

Likelihood of Success on the Merits

The respondent argues that the petitioner is unlikely to prevail in this case on the merits because the petitioner has no authority under RSA 24:14, I, to require the respondent to obtain written authorization from the Executive Committee before making transfers between line-items in excess of \$300. In support of this argument, the respondent contends that the legislature intended only for allocations of money to the general departments within county budgets to constitute "appropriations" for the purposes of RSA 24:14 *et seq.* The respondent argues that line-items within each department are therefore not "appropriations," and that the respondent need not seek written authorization for transfers between them so long as the total money appropriated to each department remains unchanged. Thus, in order to determine the petitioner's

likelihood of success on the merits of this case, the Court needs to establish the scope of the term "appropriations" as it applies to county budgets.

To resolve this matter, the Court must engage in statutory interpretation. When interpreting a statute, 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." State Employees' Assoc. of N.H. v. State of N.H., 161 N.H. 730, 738 (2011). 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.* It "construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." *Id.* "Moreover, [courts] do not consider words and phrases in isolation, but rather within the context of the statute as a whole." *Id.*

Applying the above standard, the Court finds that under the plain meaning of RSA 24:14, line-items in the 2014 budget constitute "appropriations." RSA 24:14, II defines an "appropriation" as "an amount of money authorized *for a specified purpose* by the legislative body." [emphasis added.] In this definition, the legislature made no distinction between money allocated to departments generally and to specific line-items within each department. Instead it defined "appropriations" broadly. The definition on its face suggests that line-items fall under this provision.

Additionally, RSA 24:14, I, states that "[a]ppropriations by the county convention *shall* be itemized in detail." [emphasis added.] The legislature's use of the word "shall" in RSA 24:14, I, not only suggest that conventions are permitted to itemize their budgets, but appears on its face to expressly require them to do so. See Appeal of Rowan, 142 N.H. 67, 71 (1997) (citations omitted) ("It is the general rule that in statutes the word . . . 'shall' is mandatory."). It

therefore follows that line-items in county budgets are “appropriations” as contemplated by RSA 24:14.²

This reading of the definition of “appropriations” is also supported by the way in which RSA 24:14 functions in conjunction with RSA 24:15. RSA 24:14, I, grants conventions the power to “require that the county commissioners obtain written authority from the Executive Committee before transferring any appropriation or part thereof under RSA 24:15.” RSA 24:15, III reads:

Unless otherwise ordered by the county convention, under RSA 24:14, whenever it appears that the amount appropriated for a specific purpose will not be used in whole or in part for such purpose, the county commissioners may use such sum to augment other appropriations, if necessary, provided the total payments for all purposes do not exceed the total sum of appropriations in any year made by the county convention.

Thus, while commissioners are generally afforded limited authority to transfer funds between appropriations, county conventions are explicitly reserved the power to regulate these transfers by requiring the written consent of the Executive Committee. If line items were not “appropriations” under RSA 24:14, then this would severely hamper the ability of a county convention to utilize this power. The respondent’s reading of RSA 24:14, I, would give commissioners virtually unfettered ability to transfer funds under RSA 24:15, III without regard to convention restrictions under RSA 24:14, I, as long as transfers were made between line-items within the same budgetary department. County conventions would either have to substantially alter the way by which they formulate budgets in order to ensure that fewer items were outside of the scope of these provisions, or resign themselves to the fact that they have limited oversight over how commissioners expend appropriated funds. This would encompass an unwarranted erosion of the power expressly afforded to the county conventions on the face of RSA 24:14, I,

² The New Hampshire Supreme Court has seemingly reached the same conclusion, referring to line-items such as salaries for sheriffs, deputies, dispatchers, and clerks as “appropriations” in *Daniels v. Hanson*, 115 N.H. 445, 447 (1975).

and RSA 24:15, III. The Court therefore finds the respondent's reading of these provisions to be inconsistent with the overall statutory scheme governing county convention authority, and that it is likely the petitioner will prevail in this matter on the merits.

Effect on the Public Interest

The respondent argues that the public interest will be adversely affected if an injunction is granted in this case. The respondent makes two arguments to this effect. First, the respondent argues that "[t]he grant of an injunction would foreclose the [Commissioners] from being able to fund health insurance plans for [State Employees' Association of New Hampshire ("SEA")] employees, thereby subjecting the [Commissioners] to renegotiations of collective bargaining agreements with the SEA . . . or resulting in layoffs." (Resp.'s Objection ¶ 24.) The respondent further argues that "the grant of injunctive relief will adversely affect the public's best interest because it essentially requires the court to become involved in a political dispute between two branches of government." (Resp.'s Objection ¶ 25.)

Upon review, the Court finds both of these arguments unpersuasive. While the Court recognizes that the funding of health insurance plans for SEA employees is arguably a matter of public interest, this interest will not be adversely affected by the issuance of a preliminary injunction in the present case. The primary interest the public has in how SEA health benefits are funded is how tax revenues are being expended toward that end. As the present request seeks to enjoin the expenditure of more tax money than was appropriated by the Convention for SEA health insurance coverage, the Court finds that granting the petitioner's request for temporary injunctive relief would be at very most neutral toward the public's interest in this matter.

Additionally, there are alternative avenues that the respondent could take other than renegotiating the collective bargaining agreement with the SEA or terminating SEA employees.

The petitioner appropriated a significant amount of money toward health benefits for Belknap County employees in the 2014 budget. The respondent has not demonstrated that the amount originally appropriated is insufficient to cover SEA health insurance costs. Even if the appropriated funds prove to be insufficient, the respondent would not be summarily barred from making the requisite transfers. The petitioner only seeks to require that the respondent gain written approval from the Executive Committee for transfers in excess of \$300. The respondent could therefore seek approval from the Executive Committee in order to make transfers as necessary to cover health benefits in excess of that for which the Convention originally appropriated funds. There is no reason to believe that the Executive Committee would not entertain such requests in good faith. Thus, for the above-stated reasons, the Court finds that the respondent's first public interest argument against issuing a preliminary injunction in this matter unpersuasive.

The Court reaches the same conclusion in regards to the respondent's second argument that injunctive relief for the petitioner in this case would adversely affect the public interest. The respondent argues that granting injunctive relief "requires the court to become involved in a political dispute between two branches of government." (Resp't's Objection ¶ 25.) The Court interprets this argument to be, in its essence, that the present controversy is a non-justiciable political question in which the judiciary should not become embroiled. The Court disagrees. As noted above, the essential dispute in this case is over the definition of the word "appropriations" for the purposes of RSA 24:1 *et seq.* This issue can be resolved through statutory interpretation. Courts are frequently asked to interpret statutes in order to resolve controversies between parties, and it is something that they are well-versed at doing. The Court therefore finds that it is well

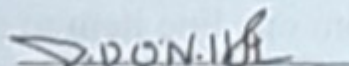
within the bounds of its judicial authority to reach a final disposition in this matter, and that doing so would not adversely affect the public interest.

Conclusion

In sum, the Court finds that the petitioner has standing to bring this suit and is authorized to do so. The Court further finds that the requisite factors supporting the issuance of a preliminary injunction are present in this case. Accordingly, the petitioner's Request for Preliminary Injunction as reviewed in its underlying pleading(s) is GRANTED, consistent with the above.

SO ORDERED.

Date 8/29/19


James D. O'Neill, III
Presiding Justice

