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May 16, 2018

Belknap County Attorney's Office
64 Court Street
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On May 11, 2018 the Executive Committee of the Belknap County Delegation met to review the county budget. We found that, of \$150,000 appropriated to the contingency fund there stood a balance of \$146,000. The Executive Committee has not approved any transfer from this fund for the current fiscal year. RSA 24:13 II states in part that monies from the contingency fund are **“to be expended only upon approval by the executive committee of the county delegation.”**

The missing \$4,000 was appropriated for a sole purpose, contingency; any other use represents a misappropriation of county funds. RSA 24:15 speaks to exceeding appropriations and brings into the issue RSA 643:1, official oppression.

I believe it to be my duty to report this to you, and as County Attorney I believe it to be your duty to investigate this misappropriation.

Sincerely,

Rep. Mike Sylvia
Chairman Belknap County Executive Committee

Reported in the Laconia Daily Sun:

https://www.laoniadailysun.com/news/local/county-could-run-out-of-cups-for-urine-tests/article_88f3bb40-44db-11e8-850d-ffc45dff90cb.html

Commissioners' meeting April 19:

<https://livestream.com/lrpatv/vod/videos/173613050>

00:22 MacFadzen – Sharp – Shackett recommend transfer from contingency

Taylor 'thinks' they have absolutely no restrictions on transfers.

Delegation has not revised transfer policy.

It has come to my attention that monies have be removed from the contingency fund without the approval of the executive committee.

24:13 Powers. –

I. The power to raise county taxes, to make appropriations for the use of the county and to authorize the purchase of real estate for its use, the sale and conveyance of its real estate, the erection, enlargement or repair of its buildings exceeding an expense of \$5,000, and the issuing of bonds for its debts, shall be vested in the county convention.

II. Notwithstanding any other laws to the contrary, the county convention of any county shall have the power to appropriate a contingency fund to meet the cost of unanticipated expenses that may arise during the year or to provide payment for a performance audit under [RSA 24:26](#), **to be expended only upon approval by the executive committee of the county delegation**, who shall make a detailed report of all expenditures from said fund to be published annually in the county annual report. The amount in said fund shall not exceed one percent of the amount appropriated by the county for county purposes exclusive of capital budget and debt retirement during the preceding year.

24:15 Exceeding Appropriations. –

I. No county commissioner, or elected or appointed county officer, shall pay, or 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.

II. In the case of an emergency, the county commissioners, or an elected or appointed county officer, may apply to the executive committee, which, after a public hearing, may grant to the county commissioners or officer authority in writing to make such emergency payment.

III. 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.

IV. If any county commissioner, or elected or appointed county officer, is found in a prosecution for violation of [RSA 643:1](#) to have paid or incurred any liability for the payment of any sum of money contrary to this section, it shall be prima facie evidence that such county commissioner or officer has knowingly refrained from performing a duty imposed by law.

643:1 Official Oppression. – A public servant, as defined in [RSA 640:2](#), II, is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

RSA 640:2

II. As used in this section and other sections of this chapter, the following definitions apply:

(a) "Public servant" means any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position. A person is a candidate for electoral office upon his public announcement of his candidacy.

(b) "Party official" means any person holding any post in a political party whether by election, appointment or otherwise.

(c) "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.