

Official

TOWN COUNCIL MINUTES Special Meeting Tuesday, March 15, 2011

CALL TO ORDER: Chair Gahara called the meeting to order at 6:30 pm.

PRESENT: David Boutin (excused), James Gorton, Vincent Lembo, James Levesque, George Longfellow, Daniel Paradis, Michael Pischetola, Nancy VanScoy (excused), Carol Granfield (Town Administrator) and Chair Bill Gahara

ALSO PRESENT: Todd Lizotte, David Pearl and Jay Hodes (Town legal Counsel)

PLEDGE OF ALLEGIANCE

DISCUSSION

Town Warrant

Chair Gahara thanked the Councilors for attending this meeting at short notice. He proceeded to give an opening statement.

The main purpose of the meeting is to give the Council an opportunity to ask any additional questions regarding the Police Commission warrant article. The Council also received (2) warrant proposals on March 9th. This will give the Council an opportunity to get clarification regarding those proposals. Chair Gahara added as the Council Chair he has an obligation and duty to provide the Council with a format to ensure all questions and concerns are addressed so the Council is clear on each of the warrants. The Town Counsel is available to answer any questions and provide guidance. The second purpose of the meeting is to bring understanding to a timeline of communication between two citizens that brought forth the warrant proposals, our Town Administrator and the discussions with our Legal Counsel. To get everyone on the same page and understand how the discussions went. Copies of the letters from the Legal Counsel dated 2/22/11, 2/25/11 and 3/3/11 were provided to Councilors. The Chair reiterated that there will be no public input, however, because of the potential impact of the warrant articles being discussed on Hooksett, the Chair asked for everyone to yield and get additional information. Back and forth comments will not be allowed. The discussion will stay amongst the Councilors.

David Pearl: If I had received these two letters in a timely manner we wouldn't be here right now. At your last meeting, marks the 2nd time I've made false assertions. Each time, I had checked with the Town Administrator prior to the meeting. Each time, the information I had received has led me to make statements that are not accurate. Before the February 16th meeting, I contacted the Town Administrator to confirm information that I had received. I was told that a petition with 25 signatures could be placed on the warrant to abolish the Police Commission. I made that statement here and it was not true. After speaking with Mr. Buckley (Town Counsel) on February 24th I learned it was not viable. I decided to approach the Council to request a warrant article. On March 3rd, I contacted Chair Gahara who agreed to put me on the March 9th agenda. I realized this was the last scheduled meeting before the warrants are posted. That same day I sent the Town Administrator the (3) proposals to be presented to the Council. That's the day Mr. Buckley wrote the March 3rd letter. As you know, that letter points out many problems with my proposals. I did not receive that letter. All I received was an e-mail from the Town Administrator, which reads, "*We have added your proposed warrant articles under New Business on March 11th meeting. There are problems with the date you requested to change the warrant article due to recount time period, etc. This could be addressed at the meeting if the Council decides to move forth on your warrant articles. Carol Granfield*". As Todd and I prepared and delivered the presentation, we believed that the only legal issue was the date, which could be fixed. When Ms. VanScoy asked the question after the presentation, it was expected and it was answered. What we did not know was that you were all looking at a whole page of other reasons that our proposals were destined to fail. Had I received Mr. Buckley's March 3rd letter, I would not have given the same presentation. To further complicate the

situation, I read a quote from Mr. Buckley's letter in the Friday, March 11th edition of the Union Leader. I called the reporter, Dan O'Brien and asked him how he obtained the letter. He said it was sent to him by the Town Administrator the day before the meeting. I obtained the letter per request of Evelyn Horn. But later, that was called an error and the letter was refused to Todd claiming lawyer/client privilege. I requested the February 25th letter from Mr. Buckley. I was told the same thing lawyer/client privilege. It was at this point that I contacted Chair Gahara and asked for this meeting. I realize the correspondences from the Town attorney regarding litigations are confidential. The information on the February 25th and March 3rd letters, as you can see, is providing information on the process to bring a warrant forward in Hooksett. The fact that this information was withheld and misinformation was offered concerns me deeply. I am not before you as an adversary. I am here as a citizen of Hooksett trying to bring forth an idea within the complicated rules that we are governed by. It is my opinion this process has been hindered and obstructed by the Town Administrator.

Todd Lizotte: I took the February 22nd letter and looked at the section in which the Town attorney indicated that, "*Hooksett has a Police Commission that was created by act of the Legislature, 1975 NH Laws Chapter 412, and the Hooksett Town Meeting.*" The indication here is that the Hooksett Police Commission has the sole authority to appoint a Police Chief. That authority cannot be abrogated by the proposed petition warrant to make the position elected. We found out early on we couldn't approach it this way. On the February 25th letter, the fact that the Town has adopted a budgetary Town meeting, which has very limited authority as stated by the Town Attorney and can only vote on the Town's operating budget as presented by the Town Council and related budgetary matters. It was one of the key things I looked at in regards to our petition that we're putting forward. Looking at February 25th letter that the Town Attorney provided, it was stated, "*for matters that would clearly require a Charter Amendment*". What I was trying to understand is that what it means and how it is defined with regards to the Town, the Charter and the Statutes. For matters that clearly require Charter Amendments, the Council will have to follow Charter amendment procedures found on RSA 49-b Chapter 5. I found another section on the letter, "*With regards to the suggestion from a member of the public that an attempt might be made to submit a petitioned warrant article to make the Police Chief an elected rather than appointed position, we have concluded that such change should only be carried out through a Charter Amendment.*" The indication was and reiterated on the letter, the view is the manner of appointment or election of a public official is something that is governed by the Charter. The theme through all these was back to the Charter and specifically the manner of appointment or election. Looking at the March 3rd letter, Mr. Buckley reiterated that the Town meeting is only a budgetary Town Meeting and in our opinion the manner of appointment or election of a public official once again states, is only governed by the Charter. I tried to understand what potential conflicts there in regards to our Charter. One of things I found on the February 25th letter is, "*there clearly is a conflict between the language of the Hooksett Charter in light of the application of the official ballot law and the necessity for two sessions in a Town Meeting.*" What if this warrant to abolish the Police Commission goes through? Under Section 11.6 of the Charter, "*Police Commissioners and Cemetery Commissioners shall continue to perform their duties as prescribed by law.*" If that's embedded in the Charter and you take away 412, does that mean we fall under 105? Even if it goes through, does that mean the commissioners could operate under 105? If the Charter doesn't reflect the changes made with regards to 412, are we in direct violation of the Charter? Why does the charter appear to be by passed in the decision making? I came across 49-b Chapter 9 talking about private, general and special laws. It specifically says, "*private and special laws applying to a specific municipality and general law, which a municipality has the option to either adopt or rescind... force unless specifically repealed by a Charter adoption, revision or amendment under this chapter.*" The definition special and such is legislation that benefits an individual Town or municipality also called a special legislation/legislative or private act. The letter also states that Hooksett falls under a special Law Chapter 412. After careful analysis and review of the Charter, Town Attorney's statements and the affirmations made by the Town attorney and state law, both myself and Mr. Pearl concluded that our warrants would knowingly and willfully violate the Charter and the State Law. So we withdrew our request to place this forward. In the same token, we believe that the warrant placed forward by the Council to abolish the commission must have a Charter Amendment in order to pull the language out in regards to the Police Commission. In terms of liabilities on the part of the Town Council, in Section 10.10 of violations and penalties, all willful violations of the provisions of this Charter, unless otherwise provided are declared to be misdemeanors. We need to follow the law and the Charter. I think the Council will have to remove the warrant article to abolish the Police Commission until the appropriate Charter Amendments are made.

Chair Gahara: Based on the information in front of you and I've asked the Town Counsel to help us interpret, I think there are 3 issues, the biggest, I think is the timeline of the discussion that went on with the Town Administrator, our Legal Counsel, Mr. Lizotte and Mr. Pearl. I recognize Attorney Buckley isn't here. Attorney Jay Hodes is here to answer any questions. Maybe the Town Administrator could put together a time line. Was there any intent for anybody to hide any information or nor provide a guidance for a citizen to work with government by proposing a warrant.

C. Granfield: Initially, the question was with petition warrant article. The petition warrant article that was being looked at was an initiative petition. In the past, Councilors accepted petitions with 25 signatures. Upon looking at it further, and discussion with Attorney Buckley, he then was analyzing further and he explained what initiative was in the Charter and what it had to be. I relayed some of that information back to Mr. Pearl and it still was confusing. When I spoke with Attorney Buckley, he said he will explain it to him. I believe he spoke to him directly. The following letter pertained to having a warrant article proposed again with Mr. Buckley. It came that you could not change it by petition. It would have to be a Charter Amendment. That was relayed to Mr. Pearl. Letters were provided to me reiterating that based on the information and any letter from an attorney, it does not have to be strictly on litigation is attorney/client privilege. So you can relay information but the letters are not automatically given to whoever is asking the question. Mr. Pearl and Lizotte wanted to propose these warrant articles and we tried to provide them with guidance. You don't want a petition warrant article come forth that is not legal, was put on and passed, etc. He provided me with the three proposals. I provided those to Attorney Buckley. He reviewed it and came back with a March 3rd letter again reiterating it will have to be a Charter Amendment. I didn't relay again that a Charter Amendment was needed because he already knew that. I did indicate there was a problem with the date. There was a time period for recount. If that go forth, the date will have to change. As far as the letter being provided, it should not have been provided. I did not provide it. It was provided by our office in error. We typically provide a package to the Union Leader ahead of time except for confidential and non-public information. I was not aware that letter went out. The March 3rd letter was then requested subsequent to that meeting. I was working from home that day and I was contacted that the February 25th letter was requested. I advised my assistant that it was attorney/client privilege. I didn't realize the letter being requested had already been given out to someone. When I learned that, I indicated it was done in error. Any other letters were attorney/client privilege so they shouldn't be provided. And they wouldn't be provided in the future. I subsequently provided the letters to alleviate some of the confusion.

Chair Gahara: Any letters coming from the attorney is attorney/client privilege, correct?

Attorney Jay Hodes: Yes, we assume any communication is going to be kept confidential. You are the client. If you choose to release a letter, you certainly can. If you know it's going to be released, you can ask us to write the letter in a fashion that would be appropriate to release.

Chair Gahara: If a letter is referred to during a Council discussion, does that automatically becomes necessary to be released to the public?

Atty. Hodes: No, if you're referring to it that does not necessarily become public. If you read from it, you may be asked how you can read portions of it and not release the entire thing. You have to use your discretion. You can say, "we received advise from counsel, or the opinion of the counsel is contrary to that" but if you start taking excerpts that could lead questions from the public why can't they see the whole thing.

G. Longfellow: When we were discussing the original warrant article, if it passes, can we change the Charter after to agree with it?

Atty. Hodes: The legislature recently passed authorization allowing the Town to rescind the Police Commission. If that happens, the language in the Charter that references the Police Commission will become a nullity. It wouldn't have force and effect because the Town voted to rescind the commission. In a later date I would suggest, as a housekeeping measure that any language related to the Police be stricken. The fact that it exists now makes it illegal or would change anything because the Police Commission will be abolished.

Chair Gahara: The current warrant as it stands now for the Police Commission will not be in violation of the existing Charter.

Atty. Hodes: No. You have a unique form of government. You have a Town Council and Town Administrator form of government and the Town Council exercise a lot of authority. The Statutes talk about what towns and town meeting can do. That really falls into your lap under your Charter. The exception is budgetary issues. You have a Budgetary Town meeting. That means the voters do have a say on budgetary issues. They approve your operating budget, contracts, leases and expenditures and capital reserve funds, all financial issues. In terms of passing ordinances, adopting policies, the voters do not have a say. It's up to the Town Council. That is generally true with regards to abolishing the Police Commission however, the legislature last year adopted this revision that basically says, "*specifically, the Town of Hooksett may vote to rescind an action creating the Police Commission by submission of an article to the Town Warrant as provided in RSA 39:3*". The legislature specifically authorized you to submit this through the Town Meeting process. It's an exception to the rule. Generally, the townspeople don't vote on things like this anymore. But here they made it specific.

C. Granfield: I did ask Atty. Buckley seeing there was a possibility of having the Police Commission article on there, seeing we have been going through Charter Amendments. My question was, should we put something, if this passes, a Charter Amendment. He indicated the same as Atty. Hodes did, no, it will be nullified and should be addressed as a housekeeping measure the following year.

J. Gorton: Having recently served on the Charter Review Committee, one item that was brought up was Section 11.6. That was the part of the transition of the adoption of the original Charter. It was setting up the way things were going to happen if the Charter was adopted. Seeing as how the Charter came along after Chapter 412 by some 12 years, the only reference I can recall with regards to Police Commission in our existing Charter is in this section covered by the transition from Selectmen to a Town Charter form of government. It had to be done that way because of the Special Legislative Action and for the Cemetery Commission that's also controlled by a Special Legislative Action.

Atty. Hodes: I know it appears in 11.6. It might appear in another place in the Charter. I can't remember for sure. That's what I meant. That language will have no force and effect if the Warrant Article were to pass.

J. Gorton: During the Charter review, there was an attempt made for clarity purposes because if you look at Section 11 and Section 12 they deal with the transition from Selectmen to the Charter. Seeing as it all occurred about 12 years ago, some of us on the Review Committee felt that it's confusing. Why don't we just eliminate it? It came back from Legal Counsel to keep it because it was part of the original Charter.

V. Lembo: Is it a good first step to include the original Warrant Article asking the voters if they would like to abolish the Police Commission?

Atty. Hodes: I don't have an opinion on that. If you put this on the warrant, and it reads to rescind the Police Commission, that is more than a first step. That will eliminate the Police Commission. If it's approved by the Town's voters. That's not advisory in this case. Whereas the other Warrant Articles previously discussed, should you form a new commission, should you go to an elected Police Chief, that's not within the realm of the voters' authority any longer. So that would be advisory. But this, to abolish it, that would be a binding act and it will abolish the Police Commission.

M. Pischetola: If the Warrant Article fails, where back to where we are now.

Atty. Hodes: If it fails, nothing changes.

Chair Gahara: The Warrant Article as it is written right now will not be in violation of the Charter?

Atty. Hodes: The legislature specifically authorized the Town to act in this capacity on this one question. The warrant article as written is appropriate and not in violation of the Charter because Legislation Chapter 412 supersedes the Charter. The warrant article should have come to you as a petitioned warrant article in accordance with the State Law that was passed.

Chair Gahara: The only remaining issue is during the process in which there was communication going back and forth, we could have been more clear in helping the folks that put the proposals together. This is the last opportunity for any type of discussion and to make changes.

T. Lizotte: For a point of clarity. The warrant could have been brought by petition. Originally, we were told that was not possible.

Atty. Hodes: Yes, the act to abolish the existing commission, to revoke the 1975 law should be brought by petition. The way the legislation (Senate Bill 11) was written, it seems to me, it has to be brought to the Council per RSA 39:3, which is by petition warrant article. It may be that you received another opinion even from my office. I look at it as petition warrant article.

Note: Senate Bill 11 - "412:3-a Option to Rescind. The town of Hooksett may vote to rescind an action creating a police commission by submission of an article in the town warrant as provided in RSA 39:3."

Chair Gahara: It does change a lot of what we're saying then. That's the reason why I asked the question upfront, which is, if we were given permission by the state legislature to move forward with a warrant to abolish the Police Commission.

Atty. Hodes: If I'm looking at the correct enactment. I don't know if I am for certain. I think I am. It says, "...by submission of an article in the town warrant as provided in RSA 39:3". RSA 39:3 allows for petition warrant articles. So it seems to me that it has to be brought to you to be placed on the warrant by virtue of petition warrant article. The legislature authorized it but by petition warrant article.

C. Granfield: The advised we were given originally was this was valid for the Council to put on.

Atty. Hodes: I didn't see that in the letter from Steve (Buckley). I just noticed this notation tonight. That's why I'm bringing it to your attention.

It was determined Senate Bill 11 was the correct document. Copies were provided to Councilors.

Chair Gahara: If I heard you right before, it would have to come to us as a petitioned warrant article with at least 25 signatures or 2% of registered voters?

Atty. Hodes: Yes. RSA 39:3 specifically authorizes petitioned warrant articles signed by 25 or more voters. I understand you may have received another opinion even from my office saying you could do it under a different section but when I look at it, I would be more comfortable if it comes to you through a petitioned warrant article.

J. Gorton: I'm still really confused because in the letter, there's a statement that says, "*any such petitioned warrant article must address budgetary issues only*". It doesn't say anything about a special legislative act or anything else. I'm not an expert on RSA 39 but the times I've read it, the only things I find that it refers to are budgetary items.

Atty. Hodes: That's correct, in general. As I said earlier, you're a budgetary Town Meeting. The voters have the right to voice their concerns about budgetary issues, operating budget, financial matters, etc. and they can petition on those issues. If they petition on something else, it's going to be a non-binding effect. The exception is with the Legislative Act that specifically addresses the Police Commission.

Chair Gahara: That's why you are here tonight to make sure we're doing the right thing for the Town of Hooksett.

M. Pischetola: To be on the safe side, would it be better to remove this warrant article and have a petitioned warrant article brought to us?

Atty. Hodes: Absolutely.

M. Pischetola: If there is motion tonight for the article to be removed, can it be made by any Councilor?

Atty. Hodes: At your February 16th meeting, you took two actions. You approved the article to be included on your warrant and later on there was a motion for reconsideration, which passed. That means the prior vote is null and void. However, when you read the minutes, it says, “*An affirmative vote means the matter could be brought up again in the future. A negative vote means it cannot be brought up again.*” That is not exactly a motion to reconsider but a motion to restrict reconsideration. I don’t know what you intended that night when you voted.

M. Pischetola: Then I could bring up a motion for the warrant article to be removed.

Atty. Hodes: Anyone can.

Chair Gahara: Before we get ahead of ourselves, I want to make sure everyone understands what we voted on that night.

Atty. Hodes: If you voted to reconsider and that passed, no it’s not on the warrant right now. Again the minutes does not read that way.

M. Pischetola moved to remove Article 22 from the Warrant Articles until a petitioned warrant article is submitted to the Town Council. Motion seconded by G. Longfellow.

J. Levesque: We received an opinion from Atty. Buckley that this was all okay. We have two conflicting legal opinions. I think we should just leave it alone, leave it on the ballot.

Chair Gahara: I just want to make sure that what I’m doing is correct. Personally, I feel very uncomfortable to move forward with the warrant article with conflicting legal opinion. I see no reason to put the Town of Hooksett in any type of position other than moving forward and doing the right thing.

Roll Call Vote

J. Gorton	Yes	D. Paradis	Yes		
V. Lembo	No	M. Pischetola	Yes		
J. Levesque	No	Chair Gahara	Yes	5-2	<u>Motion carried</u>
G. Longfellow	Yes				

Chair Gahara Resignation

Chair Gahara read his letter of resignation effective March 15, 2011.

J. Gorton moved to appoint Chair Gahara to the Council until June30, 2011. Motion seconded by J. Levesque. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 8:10 pm.

Respectfully submitted by,

Evelyn F. Horn
Administrative Assistant

Vincent F. Lembo, Jr.
Town Council Secretary