

January 13, 2016

Members of the Hampstead School Board  
c/o Dr. Earl Metzler  
SAU #55  
30 Greenough Road  
Plaistow, NH 03865-2762

RE: Hampstead Town Budget Committee

Dear Members of the Hampstead School Board:

This firm has been asked to provide a legal opinion regarding the Town of Hampstead's standing in the Hampstead School District as a result of the District's vote on Article 6 on the 2009 warrant pursuant to RSA 32:15, V-a and RSA 40:13, V-a. The School District acts through its legislative body, the voters. The School District legislative has not adopted a *statutory budget committee* pursuant to RSA 32:14. The School District has not established an *advisory budget committee* pursuant to RSA 32:24. The School District has taken no action whatsoever to establish, create, or adopt a budget committee of any kind to oversee, recommend, or assist in the preparation of the School District's budget. Thus, as a matter of fact and law, there is no budget committee nor has there ever been a budget committee in the Hampstead School District.

In 2009 the voters elected to require the recommendations of the Town of Hampstead Budget Committee to be placed on the School District warrant. At the time of the vote, there was no School District budget committee because the School District never established a budget committee. Contrary to a common misunderstanding, New Hampshire is a home rule state. It is a matter of well established law that municipalities, including school districts, have "only such powers as are expressly granted to them by the legislature and such as are necessarily implied or incident thereto." See *Girard v. Allenstown*, 121 NH 268 (1981). An action taken by a municipality, absent legislative authority, is an *ultra vires* act and is invalid because it lacked legislative authority.

Both RSA 32:5, V-a and 40:13, V-a provide identical language with respect to the presentation of tallies on a warrant article:

The legislative body of any town, school district, or village district may vote to require that all votes by an advisory budget committee, a town, school district, or village district budget committee, and the governing body **or, in towns, school districts, or village districts without a budget committee, all votes of the governing body relative to budget items or any warrant articles shall be recorded votes and the numerical tally of any such vote shall**