

A special meeting of the Board of Aldermen was held Monday, June 20, 2005 at 6:35 p.m. in the Aldermanic Chamber.

President Brian S. McCarthy presided; City Clerk Paul R. Bergeron recorded.

Prayer was offered by Deputy City Clerk Patricia Lucier; Alderman Dion leading in the Pledge to the Flag.

The roll call was taken with 11 members of the Board of Aldermen present; Aldermen Gage, Cardin, Plamondon, and Rootovich were not in attendance.

President McCarthy

Alderman Rootovich is not feeling well, and is unable to attend.

COMMUNICATIONS

-
MOTION BY ALDERMAN SHAW THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY
MOTION CARRIED

From: Bernard A. Streeter, Mayor
Re: Special Board of Aldermen Meeting

MOTION BY ALDERMAN BOLTON TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

-
NEW BUSINESS – RESOLUTIONS

R-05-238

Endorser: Mayor Bernard A. Streeter
**AUTHORIZING LITIGATION TO CHALLENGE THE LEGALITY OF HOUSE BILL 616 AND
TRANSFERRING \$10,000 FROM ACCOUNT 592-85004-9992, “BOND ISSUANCE COST”
INTO ACCOUNT 502-51030 “OUTSIDE COUNSEL SERVICE” TO HIRE COUNSEL TO
COMMENCE SUCH LITIGATION**

Given its first reading;

**MOTION BY ALDERMAN BOLTON THAT THE RULES BE SO FAR SUSPENDED AS TO
ALLOW FOR THE SECOND READING OF R-05-238**
MOTION CARRIED

Resolution R-05-238 given its second reading

Alderman Bolton

I will make the motion to allow for discussion, but I think it deserves some discussion.

MOTION BY ALDERMAN BOLTON FOR FINAL PASSAGE OF R-05-238

ON THE QUESTION

President McCarthy

I would first ask the Mayor if he wishes to address the Board regarding his legislation.

Mayor Streeeter

Thank you Mr. President. I would like to thank all of you for being here on such short notice. I am here this evening to ask for your approval of funds to explore the possibility of a legal challenge against the current Education Funding bill, HB616, that you know was passed last week by the Legislature. I might add that no member of the Nashua delegation voted for HB616, and for this I say thank you, and I hope you will all commend our delegation for standing with our City.

HB616 is being sent to the Governor for action. He told me in no uncertain terms that he will not veto it. It is my understanding that he will allow it to become law without his signature. As some of you may know, there are a number of communities banding together to challenge HB616 in court on several issues. Last Thursday evening I met with the School Superintendent and the School Board President from the Town of Londonderry. Also at the meeting were Alderman McCarthy, Alderman Bolton, Nashua School Board President, Kim Shaw, and School Board Budget Committee Chair, Rick Dowd, members of our Nashua Legislative Delegation leadership, and city staff. The purpose of that meeting was to discuss the possibility of our city joining with upwards of more than 20 other communities in our State in litigation opposing the constitutionality and the rationale behind this Education Funding Bill. The communities involved that we have spoken to have already raised more than \$100,000 to hire an attorney and move forward with the court challenge. The list of communities is growing and you can review their information on www.nhcafe.org.

I have to point out that HB616 that was passed this year is the same legislation that was questioned by then Attorney General Peter Heed last year about its constitutionality. He said he would find it hard to defend the legislation if challenged in court. I think I have submitted copies of his letter on your desks for review, and if we haven't Mark Sousa has them for your review. Tonight I am asking you to act favorably and swiftly on Resolution R-05-238. This will add another \$10,000 into the outside counsel service account, which currently has \$10,000 in it for a total of \$20,000.

As we move forward, a final the decision will be made whether we will formally join with other communities and how far we will go in this court challenge, and if we do, I will present a Resolution

to you for approval. At that time, more information will be available and will be fully discussed with the entire Board of Alderman. I'm not asking you to debate the merits of the Claremont Decision or what the legislature has done in the past. What I am asking you to do is to appropriate \$10,000 for us to begin the process and to show the other communities who have banded together that we intend initially to share in the cost.

Obviously we need to engage the best attorney available to assist us in the educational funding challenge, and in fact I met with Andru Volinsky this afternoon to determine his availability should we go forward. As you know Attorney Volinsky was the lead attorney in the Claremont Supreme Court challenge. If you support R-05-238, we will meet with representatives of the other communities and suggest he be considered as our lead attorney.

I realize that time is of the essence this evening and that you have another meeting at 7:00 p.m. Should you have questions; Assistant Corporation Counsel Bennett is here as well as CFO, Carol Anderson. Also with us this evening is Mark Sousa our Legislative Liaison who has done yeoman work for us in Concord.

We will keep you fully informed of our progress and any additional funding or legal strategy will come to you for your approval. With that, thank you Mr. President.

President McCarthy

Mayor Streeter is our course of action necessarily to join with the other communities or are we still considering filing a separate action?

Mayor Streeter

It is attorney Volinsky's and other counsel suggestion that we initially join with the group that is consisting of as I say upwards of 20 communities with the lead community up until we are involved being Londonderry. This is not the coalition group that was formed several years ago. This is a brand new group of communities that were hardest hit.

Alderman Tollner

I have some questions maybe to the Mayor or to Mr. Bennett and probably Carol. Is Nashua contributing an equitable amount to the pot as say Londonderry and some of the other communities?

Mayor Streeter

To the best of our knowledge this is the largest contribution. What the group originally asked is that each community contribute \$4 per student. In our case that would be an extraordinary amount of money, and we felt that we would contribute \$20,000 to get the ball rolling. As I say the other communities have already anteed up slightly over \$100,000, but ours would be the largest contribution.

Alderman Tollner

The other communities have contributed approximately \$100,000 and we would contribute \$20,000 for a total of \$120,000?

Mayor Streeter

That is correct.

Alderman Tollner

Do we have any idea how long we anticipate, if we go forward with the suit, how long it would take? If I am not mistaken I think Manchester last year also had a similar complaint and what was the outcome of that?

Mayor Streeter

Manchester's suit was dismissed by the Superior Court if I am not mistaken.

Stephen Bennett

... **tape inaudible** ...

Mayor Streeter

We are not only questioning the constitutionality Alderman Tollner, but we are also questioning the formula that was used – the figures that the Legislature used from us were 2002 and they used Manchester's 2003. That is a bone of contention as well.

Alderman Tollner

As this proceeds – I guess one of the concerns I think any member of this Board would have if right now we are targeting approximately \$20,000 similar to probably another legal battle that is ongoing that number continues to grow – in your estimate do you have a range of how much money you think the city would spend before this is finished?

Mayor Streeter

I can't give you a definitive number, but I will the minute we determine that. I feel that if we don't challenge it we could face the distinct possibility that we could lose more in each successive year as we go forward. Now is the time for us I think to step forward. Attorney Bennett I don't have any idea what ultimately this would cost us – do you have any ...

Stephen Bennett

My recollection in talking to Attorney Volinsky when we asked him on some rough figures that their costs for experts and experts would be required for a portion of this case is about \$125,000 and attorney fees were up around \$200,000. That is one of the reasons he suggested that a coalition was a more practical way of going forward.

Mayor Streeter

I think attorney fees are ..

Stephen Bennett

If you win – I believe in one of the Claremont cases they were reimbursed for attorney fees not for expert fees or other costs.

Mayor Streeter

I might add that we haven't made the decision nor would we without your approval of how far we go down the path Alderman Tollner because it could end up that we file for an injunction and then see how that makes out. We are in for a fairly long battle, and expensive battle. Whatever we spend beyond this we would come back to you with a pretty good estimate as to what it would ultimately cost us.

I might add that the list of communities is growing daily. It is upwards of 20 now and could be another 10 or 15 in the next couple of weeks. A lot of communities are watching this.

Alderman Tollner

How much does Londonderry on the books right now for contributing to this?

Mayor Streeter

They made two contributions ... I will let Mark ... the School Committee has contributed some and the towns.

Mark Sousa

The Town Council of Londonderry contributed money and so did the School District. There were two different contributions from Londonderry. Merrimack is voting tonight to do the same. I would say that as of this evening I spoke with Londonderry School District and they were up to about 20-22 communities that have committed and a considerable amount of them have already put money in, some have just committed the money and are doing the same thing that we are currently doing. There are about 22 communities is what I was told. They are continuing to go around – I know Concord tonight is looking to come on board; Dover is on board – some of the bigger communities.

Alderman Tollner

But how much specifically has Londonderry committee to this whether it be the School District or the Town?

Mark Sousa

I can get you that figure. I don't have it with me right now, but I can definitely get the breakdowns if you want it.

Alderman Tollner

Do you have any idea whether it is \$3,000, \$5,000, \$10,000, \$20,000?

Mark Sousa

I would say that it would probably be right around what we are contributing now, maybe a little less.

Alderman Tollner

In the ballpark of \$20,000?

Mark Sousa

Correct.

President McCarthy

Mrs. Shaw is indicating that it is about \$20,000.

Alderman Tollner

My last question – there was a meeting last Thursday. I would have liked to have participated in that meeting myself. How was it communicated to those people that attended? I can understand that Alderman Bolton attended because he is the Chairman of the Budget Review Committee, but the Budget Chairman of the Board of Education wasn't at the meeting. How were those meetings communicated?

Mayor Streeter

It was a meeting that was hastily put together upon request of the Superintendent of Schools of Londonderry. I asked the President of the Board of Aldermen, I also invited the Chairman of the Budget Committee, the Chair of the Board of Education, and the Budget Chair were there as well as members of the Legislative leadership who I will admit were quite exercised over the action of the Legislature. It was really just to hear what Londonderry was doing relative to this, and to

determine whether we should even approach the Board of Aldermen with the Resolution that we have this evening. The upshot of that meeting was that we should and that is why we are here.

Alderman Dion

Thank you Mr. Chairman. My comments are along the same lines as Alderman Tollner's. My question is how long of a legal battle is this going to be – is this going to be a year, two years... what is the cost going to be – we are starting with \$10,000 – what is it going to end up at? The longer the legal battle goes of course the more it is going to cost in attorney fees – we all know that. Maybe Attorney Bennett can answer that or is that too hard of a question to answer?

Stephen Bennett

At this juncture I don't think there has been any ... **tape inaudible**... the communities that are going to be involved haven't met, they haven't decided what issues they want to raise before the trial court. It would start at the trial court level though, the Superior Court. I suspect regardless of what the decision said that would be appealed to the Supreme Court. I believe the Supreme Court does move on these cases pretty quickly and gives them priority on the docket, but still you are talking probably – it is not something that would affect this year's allocation on education. We are not looking at necessarily recouping any money that was lost because of the new funding. Overall this has been going on since the late 1980s this whole battle over funding. It is hard to say. I wouldn't think it is going to be a quick ... **tape inaudible** ...

Alderman Dion

I am just looking back to what happened in Manchester. Now Manchester got short changed in the last session on the school aide, and apparently it takes a Senator from that city to get their money back plus. We don't have that luxury here in Nashua I guess. It certainly looks like politics. I am surprised that the Governor is going to sign the bill. I am surprised at that. He had promised the Mayor like \$28 to \$29 million in his plan. There are too many ifs and doubts, and the city is in financial problems with the budget, and here we are wanting to spend unknown more money. It is too iffy for me. Thank you.

Alderman Johnson

Thank you Mr. President. I am concerned – I have the same concerns as Alderman Tollner and Alderman Dion. The question is how long is this battle going to go on and where are we going to keep finding money for next year. I think I really would like to see where exactly this money – if we have to put down another \$10,000 on top of this or it goes even further out of the '06 budget right now. I am glad to hear that there are 20-22 communities jumping on board, Concord being the next largest community out there, but I have some reservations on this \$10,000 and where it is going to be. Right now we are in the middle of a legal battle to take over Pennichuck. What happens – I guess the question is what happens – the answer to the question is always if in fact we win we will recoup our legal costs except for the expert witnesses. The flip side is if we lose we recoup zero,

and then we have nothing left. The question becomes that every year, and I said in the full Board meeting, we keep banking on this money to balance our budgets so we have the money, and we expect this money year in and year out. We always knew at the beginning that there were challenges when this Claremont decision was handed down and there was never a guarantee. We never had a guarantee in this State for education funding because at the State level it is down to the local communities that really govern education.

I really have some concerns with the \$10,000 now and \$10,000 and if the legal costs grow. I would like to get some more information. Right now we have been told that we have \$10,000 in their budget right now for outside legal costs. Why are we talking about putting more money in there at this point in time when we already have \$10,000 in that account? I think the Board really needs to get some more information and to sit here and vote on this money tonight given the fact that we already have \$10,000 in that account. Thank you.

Alderman Bolton

Just in clarification the Chairman of the Board of Education Budget Committee was not at that meeting on Thursday. That would be Mr. Cote and he just plain wasn't there. I don't think he was invited or asked to be there. Aside from that for somewhat different reasons I agree that more information probably is necessary. The Resolution by its wording authorizes litigation so contrary to what the Mayor says it is not just to explore the wisdom of litigation and it authorizes it to occur. The other before we commit more than a small amount of money, more than a few thousand dollars to get someone to explore what might our options be, I think we have to have some idea of how this collection of communities is going to make decisions and to allocate costs. I think we need to have some kind of agreement that everyone signs on and allocates the cost on some reasonable formula. There are a lot of ways you could devise that, but at least we would know what it is. Also how you make decisions as to which avenue of which issues to pursue, when to settle/not to settle. For example I understand the sort of a minor issue that may solve a lot of Nashua's particular problem is which year they use to actually apply the new formula to. Apparently they are going back to a prior year when they have figures for a more recent year, and if they use the more recent year figures Nashua does reasonably well, and going forward Nashua may continue to do reasonably well at least as compared to where we are now.

I suppose the big bonanza if you can call it that is if there is a challenge to the constitutionality of the entire scheme and the court comes back eventually and says we meant what we said when we said the State has an obligation to fund the full costs of an adequate education, and an adequate education has got to be reasonably defined not just an adequate education is whatever small amount of money the State decides to put forth. In that case, Nashua and a lot of other communities would get a lot more in State Education Funding, but that kind big solution would certainly change the whole operation of State Government and the whole funding of State and local government in New Hampshire. I don't know if that court is willing to go that far or if any of us want to go that far.

We could end up in a situation where we are happy to win the small battle over which year's statistics to use and other communities want to push for the big constitutional issue. Maybe we like

that and maybe we don't. We have to know if we have a right to opt out or are we still on the hook for a good portion of the expenditure or not. I think to a large extent you go through former Attorney General Heed's opinion letter, and that is in fact addressed to the constitutionality of the funding scheme that has now been made part of this – the current plan. If we attack on that basis it is going to be a long and expensive battle as I say may have an outcome that is favorable funding wise. If we decide to go on a smaller issue that may get resolved quicker maybe to our satisfaction and not to other communities' satisfaction. I think it is somewhat different from what happened with Manchester and other communities last year because their challenge was particularly addressed to some of the procedural ways that the Legislature dealt with the Bill as it finally got put together whether it violated certain procedural rules; Right To Know Law – those sorts of things at the Superior Court and the Supreme Court was able to deal with that fairly quickly and really did not want to get involved in the way the Legislature actually functions from a procedural way. This might be different, which is not to say it might not be more successful, but it also might be longer and more expensive.

I think we ought to hire our own lawyer to advise us on what the best course of action is, while still pursuing the possibility of joining this group of other communities, but only when we have in writing what authority and responsibility each community will have with regard to the direction of the litigation. Then based upon what the council that we retain advises, what that deal that can be worked out is, then we are in a position to decide whether to go forward.

Alderman LaRose

I find it odd that all of a sudden they have 22 and growing numbers of communities that are upset and they want to challenge. Where were they when the vote was taken? Only 96 people voted against the bill – 27 of them were from Nashua. Now if we are going to pursue whether this is constitutional or not Attorney Heed last year I guess it was a similar bill and his take on it was that it may be unconstitutional – I am just wondering, and I don't know if this can happen, but my recollection is when I was in the Legislature that there were times where the Legislature wanted not pass a Bill and they asked the Supreme Court if it was constitutional or not. Now I am wondering if all of these communities if their representatives to the General Court can ban together and ask the Supreme Court if it is constitutional or not. I would have to get an opinion from the city Attorney.

Stephen Bennett

...The House of Representatives and the Senate ... **tape inaudible – speaker away from microphone** ...I suspect though that is again probably a majority vote and if they voted ... **tape inaudible**... we have heard nothing of any ...**tape inaudible** ... to the Supreme Court with this. In fact, ... **tape inaudible**... probably before now if they had an issue on the constitutionality. We have heard nothing along those lines to date. Mr. Sousa might know of something.

Mark Sousa

There was never that I know that was on the table to send the Bill over to be looked at – any bill this year. There was never a vote or anything like that by both parties.

Alderman LaRose

I was just wondering if there was a mechanism where they could do it now.

Mark Sousa

I believe at this point it is in front of the Governor's Office and whatever he decides to do I think goes into law.

Alderman LaRose

In today's Telegraph there was a cartoon that certainly was appropriate to what we are discussing tonight. I don't know how many of you have seen it, but it says "How to avoid school funding lawsuits" and then they have the 2005 plan and there is a gentleman saying "We're taking this to the Supreme Court." And then the next gentleman is kind of laughing and he says "Don't bother it is mute we have already replaced it with this 2006." And then the next gentleman says "Which will soon be replaced with this 2007". And then there is another guy "Then this 2008, then this 2009, then 2010." It appears that this is exactly what is going to happen. Until the Legislators, until somebody gets serious about solving our funding of education and not only education – there are a lot of other things that are getting short changed in Concord – until we have tax reform in this State this is what is going to keep happening. I was there on the Finance Committee for two terms, and I was there when we started to try to figure out how to get funding, and I will tell you it is not easy because everybody has their own agenda in that they are trying to protect their area.

We talked about having a sales tax on cars and boats and then you get well you have to take out the boats and then the cars and then it comes down to 50/50 – we got nowhere. That is what is going to keep happening until someone in authority gets behind real tax reform and really how are we going to finance the education in this State that the State should be contributing towards. Thank you Mr. President.

Alderman Lozeau

My first reaction to this last week was somewhat like suing your Mother. Since then I have made dozens and dozens of phone calls to the people that took the time to talk to me on both sides of the political fence in our delegation and outside of our delegation – I have been on the phone since last Saturday. The consensus that I got from people that know more about this than I do is that we should go forward. I have so many questions, I still have so many questions, and I just wish we had time and I would like to fully understand if there really is a rush to do this now – do we have to do it so that we are trying to get an injunction on the check before it goes through – it might be a good idea that we get a couple of our senior statesmen from Concord up here to maybe answer some of our questions – I don't know how you feel about that Mr. Chairman.

President McCarthy

We can do that. My understanding from the discussions last week was that one of the previous challenges was basically overturned for the year in which it happened based on the fact that the checks had gone out, which was the motivation behind trying to get an injunction against sending the checks out this year.

Alderman Lozeau

I look back to what Manchester did last year, and they kind of at first they were upset then they kind of sat back, and they seemed to have prevailed this year. I am just afraid that if we jump on board and full speed ahead and sue the State that we may get hurt worse next year. I would like that question answered if anybody has the answer to that question. I really feel uncomfortable with this. Thank you.

President McCarthy

When we finish with comments from the Board I will invite perhaps the Senators to come up.

Alderman Lozeau

Thank you very much.

Alderman Vitale

I would agree with that. I would like to know how crucial it is that we make the decision this evening. I think we have another special meeting coming up on the 23rd and wondered if any of the questions being raised this evening can be answered by that evening, and come back with the information. In the meantime, I wondered if the \$10,000 that is already in the account would get us a spot at the table or if they need that other \$10,000 that we were supposed to vote on tonight. I would be curious to know how the delegations from the communities that are coming together at this point – I would be interested in knowing how their delegations voted.

Alderman MacLaughlin

Whenever I have hired an attorney to represent me for certain matters I have always had a pretty clear idea before committing to that representation what some of the strategies would be. In this case, I am hearing that is in the process of being defined. We don't as we sit here know exactly the way we would conceivably proceed. Alderman Bolton made a very key point about the city possibly having its own representative separate from the league of towns that is forming with the option of possibly joining them at a later time when those goals are more clearly defined. I think that is a sound thing to think about. Secondly, I was with some of the members of the Legislature and the Mayor back on February 17 when the Governor came to Nashua and held a press conference on the city steps of this building, and he indicated that \$28 million was the favored amount for this city. I thought at that point well that is a great ally to have in this battle. For him not to exercise the veto power that he has at this moment when he himself was under the impression that he had two more

votes than he ended up getting in the Senate at the last minute to me it is the same thing – he would then do to the City of Nashua and our delegation who I think did a great job representing our city's interests on this matter the same type of thing that those two Senators did to his administration when they changed their votes at the last minute. I call upon the Governor and I urge my colleagues to express their support for also calling upon the Governor to exercise his veto. Then we can revisit this question. Thank you.

President McCarthy

Senator Gottesman or Senator Foster would you like to address the committee on some of the questions that have been raised?

Alderman Tollner

I guess while you are answering that if there was a successful outcome what would either of you think a successful outcome would be? What would both of you think if we were to have a lawsuit what would a successful outcome be in your mind?

Senator Foster

It is a two step process, and I think to answer one of the questions that was asked before is there urgency I think the President had it right – the checks go out I think September 1st I believe to the communities. If you don't take action promptly then the money that has been allocated will go out and you will be looking at the next session. There is some urgency to make a decision on some basis be it hire your own council to decide whether to move forward or not. I think that is something to consider. Otherwise what you are getting into is a much longer contracted I think legal battle on constitutionality and it could be a long hall. I think to answer the question what would the result be I think you are either looking at something where the courts say you used the wrong numbers you have to use the right numbers – that would be a small battle, but if you get into constitutionality they are throwing the system out and they are going to tell the Legislature to go back to the drawing board. I think to look into a crystal ball and know what would happen from there I think is very difficult.

Alderman LaRose talked about funding issues up at the State House that is a big issue whether people would look to amend the Constitution that could happen. I think a lot of things could happen. I don't think you can know what is going to happen when you go down this road, but I think the 20 communities are saying there is not enough support from the State and we need to change that.

Senator Gottesman

I guess I would react by saying that when we thought this was all going to happen consistent with what the Governor thought was going to happen, I think we were all pleased that things were going to come out just fine. But for the fact that two people who gave their word changed their vote and went back on their word and voted for another plan, we wouldn't be here talking about this. The

governor is very unhappy about this, and for whatever reason he decides to do what he does I think he feels that some of the things that he set out to accomplish have been accomplished and yet there is still going to be a statewide property tax, which makes him very unhappy. Nashua is the big loser. Manchester seems to be the big winner. I think that Senator Foster and I and the Nashua delegation, those who voted, stood by the City of Nashua. My focus and my goal was to try to make sure that as soon as possible the city could secure appropriate council to discuss this issue with you and the Mayor so that you could make a decision and decide which way you would go. I don't know how you can even consider what decision you are going to make until you hire appropriate council and you get a decision from that person based upon the facts that are at hand. That is the way I do it when I consult with people and I would expect that is the way this would be done. Contact was made, Mark Sousa, who has been in touch with me on a daily basis many times a day letting me know what is going on in Concord is a terrific asset for the city because he lets us know where the problems are. When this all came down he was right on top of it, and we were trying to fix it and it didn't get fixed. It just didn't happen the way we thought it was going to come out.

Senator Foster and I are very disappointed about the outcome, but this is your decision. We don't want you to think this is us telling you what to do we just want you to have good council to make the decision that you can make. It is costing us \$2.1 million a year – that is a lot of money and it just vanished. That is your decision whether you want to go after it.

Senator Foster

I just want to comment on one other thing. Alderman LaRose said why there were only 96 people that voted against it, and I think there was grave concern among some of the House members that a Committee of Conference would come up with a worse product. Last year the Committee on Conference came out with a product that actually benefited our city, but Manchester as you know went to court and was very unhappy about it. I think they were worried about losing control of the process again. I don't think that the fact that only ¼ of the House voted against the plan means that only ¼ likes the plan. I think a lot more people are unhappy with it than that. I think they just felt they knew what they were going to get, and at least could move forward.

Senator Gottesman

I just want to comment on one thing – what could happen I think someone asked, this could be found to be inappropriate or unconstitutional for whatever reason, this could go away, we could still be functioning under 302, which is the existing law, which allocates more money to the City of Nashua, but the funds do not appear to be there. That issue would have to be dealt with when it came about, and I don't know how that would come out. In terms of the length of a lawsuit we have all seen how these lawsuits go. They take time. They take money. It is up to you to decide whether you want to make the commitment.

MOTION BY ALDERMAN BOLTON TO AMEND R-05-238 SO THAT THE TITLE WILL READ “AUTHORIZING THE RETAINING OF LEGAL COUNSEL TO OPINE ON THE ADVISABILITY OF LITIGATION TO CHALLENGE THE LEGALITY OF HOUSE BILL 616” AND SO THAT THE

BODY WILL READ “RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NASHUA THAT LEGAL COUNSEL BE RETAINED TO OPINE ON THE ADVISABILITY OF LITIGATION TO CHALLENGE THE LEGALITY OF HOUSE BILL 616”

ON THE QUESTION

Alderman Bolton

We heard we have \$10,000 available so I think that should be adequate, probably more than adequate to at least get a lawyer familiar with this area of the law to give us some advice. I have deleted all of the transfer and appropriation language, and I have also basically gotten us out of authorizing the litigation, but authorizing basically the getting of advice as to where we stand, what we might be able to do. There is no reason why this has to be a drawn out process. We get a lawyer on board, ask him how long it will take to be able to tell us what his or her best judgment is as to what we are facing, what is within the realm of possibility, and what is pie in the sky. Then we may be set to go. As I say we may be set to go it alone or we may be set to go with a group of other communities if we can do that on a basis that we understand and we think adequately protects us.

Alderman Tollner

Based upon some comments that we just heard from the Senators I agree with Alderman Bolton's comments. I think that it is probably appropriate for us to remove the word litigation because ... **tape flipped** ... if there is \$10,000 left in the account for outside council that money is available and between now and the next scheduled Board of Aldermen meeting or the scheduled Board of Aldermen meeting after that if we move forward and the Board gets an update I don't think the Board of Aldermen would have a problem releasing more money. I think we would like to get an idea of what role we are going to take and a little clearer snapshot of the position we are in vis a vis some of the other communities. I just don't want to be in the position where if some other communities' concerns are addressed somehow somehow and we are left out there swinging in the breeze by ourselves that is a problem for Nashua. Where I hope – it has been mentioned tonight the data used in one community was 2003 and another community 2002 that in itself might allow us to find a pretty quick solution. I would agree with Alderman Bolton's comments.

Alderman Deane

I too. I pretty much agree with what Alderman Bolton had to say. We are here to represent our city and our best interests, and I just have this nightmare that if you get in with a group and once we get this information back from this attorney we may hire, if you get into a group and all of a sudden what is best for us is not best for them it will be a childhood game where they will all take one step backwards and we will be standing there. I think you will see that scenario with everybody banding together as one will slowly dissipate and we will be left holding the bag. I would just assume see what our chances are as Alderman Bolton had said and get that information back. If it was in our best interest with an opinion that will be rendered to us to go it alone then we should be looking into doing that. I think it is important for us to know and understand what our options are, and right now

we really don't. Banding together with 20-22 other communities that are upset strictly over money – I am sure when you look at the constitutionality issues associated with this those are probably in the backs of people's minds, but it is the dollar signs that are standing out front. Thank you.

Alderman Shaw

I feel much better with the amended version. I think the sentiment of the previous speakers is consistent with where I am at in terms of I think we need to do what is in our best interests. What I had heard from conversations after last week's meeting was pretty much along that line where I thought that Nashua was pretty much going our own path because it wasn't clear that the interest of the other towns and what actions that they might be pursuing were consistent with Nashua. I think it is important that we understand that and we get the advice to realize if we are best to follow up on these items ourselves especially the calculation and using the 2002 data when there is 2003 data available. It clearly seems like a much more straightforward issue. The history of constitutional challenges and what has gone on there is no doubt that is a long lengthy battle, and it is not clear that even if whatever happened there would still ultimately even come out in a nature that would favor Nashua. I think we need to understand where we are positioned, whether or not it does make sense ultimately for us to join forces with other communities or to go it alone. I think by pursuing the action that the amended legislation would provide I think will make it much clearer for us and allow us to have the ability to make the decision that I think many people were feeling very uncomfortable with and kind of struggling with the fact that we have got in one of these cases where many more questions and not at that many answers. I think this is the right way to go. Thank you.

Alderman Gage

I just want to say that I will certainly support the amendment. First I want to apologize for coming in late, but I was certainly very glad to hear from the two Senators. I think they have done a fine job throughout this process. One of the Senators said we had 13 people that said we were going to do it one way and they walked in the door and two of them turned around and went in the other direction after looking you in the eye and saying this is how I am going to do it. I certainly think that we need to talk to legal council and find out what the best route is to take. I think that is always if you can get an expert in any field that you have a question in and are going to dive in and put money into you should get the expert opinion before you jump in. Thank you.

Alderman LaRose

Thank you Mr. President. I am not sure that we should be doing this. I think what has to happen is I think our delegation, the members of the House and our two Senators, have to get together and come up with a formula that is fair to Nashua and is fair to the other communities throughout the State. It appears to me that every year somebody comes up and they have a new formula and especially certain people from Manchester they are always coming up with a new formula that tries to benefit Manchester and everybody else they can go where they want to go. This is a tough situation there is no doubt about it. I think the cartoon that I read said it all. This is going to continue happening every year. We can go out and litigate what we think should have been the

figures that they should have used to come up with the funding for everybody. That wasn't used. What will happen is someone will come up next year and come up with some new figures and this is going to keep happening year after year after year. I would certainly request that members of our delegation – and I know that you are asking them to do something during the summer and in the fall, but I think the delegation in Nashua has to work on a formula that is certainly beneficial to the City of Nashua and to the other communities.

I think one of the things that probably happened that is in the minds of some of the legislators in Concord is some of the things that were said up in Concord well boy Nashua we are in trouble our budget – we are in trouble budget wise, and the feeling up there is hey that is your problem not ours. What we are talking about is funding for education. Let's face it this lawsuit from Claremont in my opinion has never really been about education it has really been about my taxes are too high to support our school system – we cannot compete with other cities and towns. They have better taxable property or their community has more money and they can afford to pay higher taxes than we can.

Now the Governor wants to get rid of the statewide property tax, well the statewide property tax is really money that once we used to pay for our education. They took some of that money and labeled it theirs. That is all that happened. Some communities they ended up having to send money to Concord because they ended up being donor communities because they didn't spend the same amount of money as others had to for – it didn't cost them as much for education. When I was up in Concord my recollection was that the statewide property tax actually raised \$32 million new dollars for education. That is all is raised. We talk about this \$450 million, but it was actually \$32 million. Now my understanding is it is something like \$22 million. Now I believe there is some kind of rule or some kind of law that says these donor communities that they spend the excess money that they are supposed to send to Concord if they spend it on education they can keep it in their communities.

What is going to happen? There is going to be an inequity again and we are going to have communities that can't raise funds that are probably the same size as communities that can raise those funds that say it is inequitable, and it is. Until we find the right solution we are going to be at this every single year. On principal I am not going to support the amendment. I think it is a very good amendment. I think it is a lot better than the original resolution. I am going to say no. Thank you Mr. President.

President McCarthy

Are there any further comments on the amendment?

MOTION CARRIED

MOTION BY ALDERMAN BOLTON FOR FINAL PASSAGE OF R-05-238 AS AMENDED

ON THE QUESTION

Alderman Johnson

Thank you Mr. President. When we have a lawyer come before us to find out what the overall picture is and whether or not we should sue I would like to make sure we get time and charges on the actual time that the attorney is doing any type of work because I think at the beginning this \$10,000 is going to be way more than enough that we are going to need for an attorney to advise us. I want to make sure we know where every penny is going and how many hours this attorney has worked to take all of this information into consideration on whether or not we should be suing the State. Thank you.

Alderman Lozeau

Yes I think the intent of the legislation just got changed. From what I heard is that we have to get on board with the other towns and protect our interests while we are on board. I would really ask the maker of the legislation, the Mayor, to weigh in on this amendment if that is possible. We heard from our Senate delegation that time is of the essence – we have to get this going before they cut the check – the intent is to get an injunction on the checks so that we can stop this. I think the intent of this whole legislation just got changed.

Mayor Streeter

That would be right Alderman Lozeau. It is obviously the will of this Board that they are a little skittish about going down the path for pertaining to litigation. Certainly the \$10,000 to get an opinion from an attorney hopefully an attorney that has had some experience in educational funding and I can think of at least one other other than Attorney Volinsky that we will certainly consult with. This attorney will tell us are we heading in the right direction when it comes to the challenge relative to the flawed data that the legislature used. I am not sure about whether this person can give us a definitive response as to whether we should continue to challenge either alone or with other communities relative to the whole constitutionality issue. Certainly from the first step, which would be an injunction I think that we could get a pretty good opinion as to whether we are heading in the right direction.

Alderman Deane

I wanted to, through you Mr. President to Mayor Streeter, would it be an issue if we acted on this on Thursday? Could we get a little more information on this between now and Thursday from the Administration?

Mayor Streeter

What type of information would you want?

Alderman Deane

These 20-22 towns that are involved – what is their – we understand it is all about money, but ...

Mayor Streeter

I think we are discussing Alderman Deane now just to determine whether we should even go down that path. As I say if we can find an attorney who will advise us that the action that the Legislature took was wrong based on flawed data I think that is about all you are going to get out of this.

Alderman MacLaughlin

I support this amendment and I urge my colleagues to do so as well because one reason I support it, it does something that what the other litigation that we are dealing with has not really attempted to do very well, and that is put a I guess an identifier on our chances for success before we commit to the battle – an open ended perhaps unknown in terms of cost. This may not give us the open cost of the battle, but it will at least identify the strategy before we enter the field upon which to fight. This is a very important amendment. It does change the focus of the previous original proposed legislation. It helps us as a city find an advocate who will identify what our options are and tell us what our chances are as we go forward. That is exactly what you want to do when you start considering legal action. To just join the fight to enter a fray where we are going to join many other communities, a number that is growing by day I guess. I am interested in what is right for Nashua, what is right for the taxpayers here and how am I going to go out there and explain my support for legal action? If I am going to support it I have to be able to say for the following legal arguments beyond mere constitutionality. There has got to be something that supports that essential argument. This amendment will get us there and it will help us decide whether it is prudent to proceed. I think it is a great amendment and I think it makes very good sense to support it. Thank you.

Alderman Vitale

I agree with the amendment, and I think what I have heard Alderman Lozeau state is that time is of the essence and does this delay the further action that maybe should be taken and maybe counsel can answer that question about how fast, if we hire somebody to give us advice on this, how quick that decision can be made. I believe what I understood Senator Gottesman say is that this may be a correct way to go to get the advice as what the amendment proposes. Maybe what we do need to hear is how long that advice will take so we are not putting ourselves in a position to delay any decision making and maybe he can answer that for us please.

Stephen Bennett

As far as the ability to – we would have to go out to see who was available. There are a lot of the firms that are familiar with education funding also represent a lot of school districts who are in towns who may not be unhappy with the present Bill, and they would have to weigh whether they could represent Nashua on a challenge to a Bill that their other clients support. There are I don't believe a lot of council out there who have been involved in this litigation. As far as timing goes I am not sure how long it would take you to get an opinion. The Bill before the Governor is relatively new. I am not sure if they could be analyzed by the attorneys. As far as getting an injunction if that was the route that was to be taken to stop that first check in September, litigation would have to be

commenced fairly soon I would think within the next couple of weeks because there are return dates with different parties there, to get arguments before the court – this would have to go before the trial court. The Supreme Court doesn't take cases where the facts haven't been solidified so the court can rule. If injunction was the route to take it would have to be done in the next couple of weeks.

Alderman Shaw

The thing that I see by going down this path is it does not I think close the door on our options to still join with those other communities. I guess it could be their choice to say Nashua you are not welcome we have already decided on this course of action and so on, but I would think that at the same time if we end up deciding through advice and if it appears to be the right action to take that our money and participation would probably be very welcome there. I don't see this as shutting that door yet, but I see it from us jumping through that door too quickly without understanding what it means.

Alderman Tollner

I think this probably provides us with at least at this point with the best of both worlds; A: I think as Alderman Bolton said earlier it gives us an opportunity to look into exactly what role we want to take. I think I just have a question for Attorney Bennett – this attorney I thin the name was Volinsky he has an agreement – I am assuming there is an agreement in place with the other communities to move forward or no?

Stephen Bennett

I believe we are exploring that. It is not clear that Attorney Volinsky could or would represent us. He has been with the other municipalities who brought the original Claremont suit. I think he would have to consult with them before taking on.

Alderman Tollner

I think it is safe to say that each community has been stated here tonight – we are interested in Nashua. I think each community that has either signed on or is interested in pursuing this is coming at it probably with a different angle, possibly a different angle than Nashua. I think that the money that is already in place in the account right now – again I don't have any problem with transferring an additional \$10,000 because in the end we are going to have to do that anyhow. I think after listening again to the Senators and to the amended motion I think it does provide the city with the flexibility that I think we should pursue exactly what are the opportunities or course of action that lay in front of us and if we look into that and I know someone mentioned Thursday, but maybe Administration could put something in the packets this weekend and we can act on something more legitimate or substantial on Tuesday night. I don't know how much information you are going to be able to get in two days. What I would like to see is for us to contact Attorney Volinsky, see what roads the city can choose from as far as pursuing this and get a clearer picture between now and possibly Tuesday and then the administration can communicate that to the Board of Aldermen

where we can make a more informed and educated decision as far as how to move forward.
Thank you.

Alderman MacLaughlin

Thank you Mr. President. I am not moved by the argument, however passionate, that we must move fast and quickly. I am more moved by the logical reasons for taking legal action. A case that is well prepared and well advised and organized prior to committing to that course of action is preferable to me. I am just very sure that the taxpayers of this city know that we want to do something as a Board, and I know those in the Legislature are probably expecting us to commit to some type of action. The question I think really is are we comfortable with the terms outlined in this amendment that we have just agreed to, and my answer is yes very comfortable. Let's get our own advocate to identify the areas of law that we can argue to support the constitutionality argument, and if we are comfortable that we are able to identify those whatever time it takes then let's move forward and let's be deliberate.

To do something very quickly for the sake of saying we are doing something very quickly is not the best way to prevail in the court. Thank you.

Alderman Bolton

Let me say that I think this may well be a quicker path to where we want to go than anything else. As of Thursday evening, and I have heard nothing that has changed that, Londonderry and the other groups had yet to talk to a lawyer who would even consider taking the case so they are not ready to go seek an injunction tomorrow, they have not decided, and they have not gotten an opinion from any lawyers that would be the way they want to go. If they have, and I think they do, they have \$100,000 war chest they don't have to wait for us to throw our \$20,000 in the pot. If they think that is the best way to go they can go do it, and if they are successful and if it benefits us that is wonderful. On the other hand if we just throw \$20,000 into that same pot and whoever is in charge decides that even though that would benefit Nashua it is not the way to go we could be wondering what happened to our \$20,000 when we have seen no action. It may well be we can get our own council on board who will tell us yes this is what I advise, we bring a challenge on this ground, this ground, this ground, we do it quickly, if the Londonderry and affiliated communities want to get on board with that that is good. If they have already got council we can share some of the work. There are a myriad of possibilities, but I think this enables us to move faster than they may be in a position to move, but if they move fast without us that is fine too. There is no reason they have to wait for us.

President McCarthy stepped down and Vice-President Tollner presided.

Alderman McCarthy

I would actually like to encourage the Board to go forward with the legislation as amended. My reasoning is as Alderman Lozeau points out it does in fact change the intent of the legislation, but I

think the absolute truth of the situation is best represented in the cartoon that Alderman LaRose brought to us, which is that for a decade and a half the Legislature has not addressed this problem in any way that sustains the test of time – it doesn't even sustain the test of the next year in most cases. In fact, if we go after the basic issue of constitutionality and the long term affect of funding, we run the risk of never succeeding. We have to line up \$125,000 worth of experts to testify on why this bill does not meet constitutional muster after the Legislature passed it over the clear statement of the Attorney General of the State of New Hampshire that it was not constitutional last year. I envision that next year we will be putting \$125,000 worth of expert witnesses out in front of the Supreme Court to testify on a bill that by that point will no longer exist and we will have to get a new set of experts to testify on some other formula that probably doesn't pass constitutional muster.

My standpoint here I don't think Nashua is in a position to take on the challenge that really needs to be taken on to force that issue to get resolved. What I want to do is find the money that we lost that we need to offset the tax rate. I actually think from the discussion we had last week that in fact a better solution to that may be found in the technical inadequacies of the current bill and a stronger argument may be made in fact for the injunction based on those technical inaccuracies. I would like to see us get council who will simply represent Nashua in terms of giving us advice on what direction to go, and if necessary proceeding with that litigation. At some point I think it may be appropriate for us to join the larger cause to get the issue eventually solved. Frankly it just – it is a difficult problem to get our arms around. I thin this is the first of these bills where the Nashua delegation has been in fact completely denied it throughout the session and dealt with the issue. We have always faced what turn out to be strong partisan challenges in the Legislature that make the issue just very difficult to get a handle on. I don't think Nashua on its own can resolve the larger issue. I am not convinced that the coalition of towns who put money aside in their local budget but then send representatives to Concord who vote against them can get that problem solved either.

I would urge us to move forward in this direction. We can in fact rapidly take successive action once we have found council and gotten advice on where to go either in the direction of a technical inadequacy of the bill or in the direction of constitutionality. I think that Alderman Bolton is absolutely right the fist thing we need to do is to find council that can give us good advice on what direction to proceed in.

Vice-President Tollner

Are there any other questions?

Vice-President Tollner stepped down and President McCarthy presided.

President McCarthy

If there are no other comments would the Clerk please call the roll.

A Viva Voce Roll Call was requested, which resulted as follows:

Yea: Alderman Tollner, Alderman Vitale, Alderman Gage, Alderman Cardin,
Alderman MacLaughlin, Alderman Deane, Alderman Shaw, Alderman Johnson,
Alderman Bolton, Alderman McCarthy

10

Nay: Alderman LaRose, Alderman Lozeau, Alderman Dion

3

MOTION CARRIED

President McCarthy declared R-05-238 duly adopted as amended

ADJOURNMENT

**MOTION BY ALDERMAN DEANE THAT THE JUNE 20, 2005 SPECIAL MEETING OF THE
BOARD OF ALDERMEN BE ADJOURNED**

MOTION CARRIED

The meeting was declared adjourned at 7:53 p.m.

Attest: Paul R. Bergeron, City Clerk