



CITY OF DOVER

CITY COUNCIL/SCHOOL BOARD - MINUTES

Meeting Type: Workshop Session
Meeting Location: Council Chambers, City Hall
Meeting Date: **Wednesday, August 19, 2009**
Meeting Time: **Immediately following Special Meeting**

City Councilors Present: Mayor Myers, Deputy Mayor Trefethen, Councilors Callaghan, Carrier, Cheney, DeDe, McCusker, Scott, and Weston.

School Board Members Present: Chairperson Fisher, Vice Chairperson Lurvey, Ms. Grady, Ms. Hooper, Ms. Mebert, Ms. Schuman, and Ms. Setear

Also Present: City Manager Joyal, City Attorney Krans and City Clerk Lavertu.

1. CITY COUNCIL AUTHORITY TO AMEND PROPOSED EDUCATION REVENUE ESTIMATE DURING MUNICIPAL BUDGET DELIBERATIONS

Mayor Myers said the purpose of the Workshop was to discuss the action that the Council took to reduce the amount of revenue that showed up in the School Board's budget. He said there has been discussion after that decision if the Council had the authority to make changes to revenue within the School Board's budget, or whether that authority was strictly for expenditures only. He said at the request of a few Councilors the City Attorney did issue an opinion, which has been released to the public. He said the School Board also received a legal opinion from Attorney Dean Eggert, of Wadleigh, Starr & Peters, out of Manchester, NH, which was also released to the public. He said each attorney will speak for ten minutes on their opinion, be allowed five minutes for rebuttals, and then it would be opened up at that point for questions. He said he would alternate between the School Board and the Council, allowing 3 to 5 minutes. He asked for questions and not individual statements or opinions.

City Attorney Krans began by thanking the members of the School Board and City Councilors for inviting him. He said the City Attorney represents the corporation known as the City of Dover, providing legal services for the City Manager, City Council, City staff, but also the School Board, School Administration, and School staff. He said he hoped that after tonight it will be felt that his remarks sought not to divide, not to litigate, but to come up with common ground and common solutions for the entire corporation, for the good of our students, our parents, our citizens, and our taxpayers. He said the issue is whether the City Council is permitted to amend the revenues of the School Board when the City Council adopts the annual budget. He said his first point is that "we are one." He referred to Section 4-1 of the Charter that says we are one corporation for School and City purposes. He said the law states that the School Board is solely responsible for managing and guiding the educational system in Dover. He said the School Board members here tonight were the educational leaders of Dover, and the policy makers for education in Dover. He said their authority is broad and their domain is extensive. He said they adopt policy and procedures to deliver educational services to over 4,000 students attending six public schools. He said they have authority over 500 staff members to deliver those services. He went over the examples of the School Board's authority: curricula, sports, busing, extra-curricular activities, discipline, and all the associated areas and actions where educational services are delivered to students, K to 12. He said there were two cases that support his statement that the School Board is solely responsible for management of the school system. He referred to a case in 1971 in Laconia, where the court ruled for the school board and said: "The City Council is the appropriating agency and the Board of Education is the manager and controller of the public schools within the limits of the appropriation made by the City Council." He referred to a second case in 2004 in Manchester, regarding the City side establishing the



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School Department without the School Board going along with it. He said the court said: “The comprehensive statutory scheme exists for schools, which does not permit municipalities to exercise broad control over establishment, powers, and functioning of school districts.” He said the School Board is responsible for education in the City of Dover. He said the law was clear, the management of the Schools is within the authority of the School Board. He gave some examples of what is not permitted from the City Council regarding School Board authority. He asked what if the City Council, as part of the annual budget process, said they would amend the total appropriations to the School Board and direct them to cut sports? He said that clearly was not permitted, and was an invasion of the School Board’s authority. He said if the City Council says they will appropriate and direct the School Board not to have busing – not to have Latin – direct the School Board to do this or that, that was clearly not permitted under the current state of the law. He moved on to discuss the authority of the City Council, which he said was simply stated: The City Council adopts the budget for School and City purposes on an annual basis. The City Council is the appropriating body for the entire City. He referred to the tax levy, and said it was the amount of money raised by property taxes, and the City Council’s responsibility. He referred to the Franklin case in 1958, School Board of Franklin vs. City of Franklin, where the City of Franklin won. He said the School Board wanted to add three new teachers and the City Council would not appropriate the funds. He said the court ruled for the City and said the administration of all City prudential and municipal affairs of the City resides in the City Council. He said the Franklin City Council was the appropriating body. He referred to a Nashua case in 1960. He said the Nashua School Board wanted land for a new school. The City Council said no, and they won the case. He said the City side appropriates and the School side manages the schools. He referred to the Dover Charter, and specifically of revenue, and whether or not the Council can amend revenue. He said C:4-1 says we are one corporation. He referred to C:6-3 where it said there was line item authority over the budget, which was voted for in 2005. He referred to C:6-4 where it said the City Council adopts the budget. He said the word budget is defined as revenues and expenditures. He noted that in 2007 the citizens of Dover approved a new Charter provision, the tax cap. He said in the tax cap it talks about the tax rate. He said RSA 21-J defines tax rate. He said the DRA sets the tax rate by looking at revenues and expenditures. He referred to Paragraph E in the tax cap provision where it said: “Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established pursuant to Paragraph A.2 herein, increased by the other revenues generated by the municipalities.” He said in the same paragraph, revenues and expenditures are mentioned. He said it was crystal clear that the Charter addresses revenue and expenditures. He said the last two municipal elections, 2005 and 2007, have provided Charter changes. He said the voters have spoken in the last four years. He referred to his exhibit, which on the chart showed the budget resolution that was presented in April and the adopted budget passed on June 3rd, highlighting the changes in yellow. He referred to Paragraph 4, which referred to the tax levy portion, and said the City Council changed the tax levy. He said he would reserve the rest of his comments.

Attorney Eggert introduced himself and his associate, Attorney Jennifer Murphy, to the members of the School Board and City Council. He said the question was which governing body sets the School District’s revenue estimates. He said it was his opinion that the School Board is legally responsible for setting the School District’s revenue estimates. He said he had five reasons that this is the case: The first reason is simply what’s known as the general



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presumption. He said since 1946 the courts have weighed in on the idea, even in a single corporation, that the School Board is going to be responsible for setting its revenues. He said Attorney Krans acknowledged the fact that New Hampshire's Supreme Court has on a number of occasions said they will determine how much responsibility we impose on a School Board, the type of responsibility we impose on a Council for a School District, on the basis of both State law and the City Charter. He said the Supreme Court went on to say that under no circumstances will they allow a City Charter to cross a line past where the legislature has not given explicit authority. He said there is no State statute that says the Council can set or reduce the School Board's revenue estimate. He said they looked at RSA 49-B, which is defined in the statute rather than a dictionary, at what is the operating budget within the City. He said it was deemed to be total appropriations as determined by the DRA, but exclusive to taxes; County and School. He referred to RSA 49-C, which is the statutory body that talks about City Charters that have been created since 1957. He said there was no statutory grant that explicitly said we were going to shift the authority of the School Board to set revenues to the City Council. He said there was no legislative grant of authority to allow that to take place. He said the first conclusion is that there was no legislative authority. He said he looked at the City Charter, which can't supersede the New Hampshire State Law. He said saw that there was no explicit authorization in the City Charter for the Council to be adjusting revenue estimates. He referred to C:6-3 and said the School Board submits its recommended budget to the City Manager, and the City Manager passes that on to the Council with his recommended budget to the Council. He said there was a City Ordinance which states that the School Board should notify the City Manager of its estimated non-property tax revenues. He said if they have a duty to do that, then it seems that they have the duty to make those estimates. He said there was no authority in the Ordinance that the Council can revise those revenue estimates. He said it was also specifically spelled out for line item transfers for the School Board and School Department. He asked who should be held accountable for the School District's revenue estimates. He said since both the School Board and City Council were elected, it made sense to hold the School Board accountable for their revenue estimates. He compared the city's authority to a town's authority. He said a town's selectmen do not have authority over the School Board. He said a city is unique because councils do serve as legislative bodies, and the appropriating bodies. He said selectmen do not serve as legislative bodies. He said if it can't be done in a town, then the question is asked why it would be different in a city. He said the Superintendent and School Board were held accountable by the DRA, under 21-J, for revenue estimates. He said they are the individuals that have to certify revenues for the School Department. He said the Courts have said that when there is any ambiguity they will construe in such a manner as to hold the School Board responsible. He stated that he agreed entirely with Attorney Krans that the City of Dover comes together as boards to work this out.

City Attorney Krans said autonomy for the School Board was addressed in 1977 and 1992 by the voters of the City of Dover, and they voted to rejected it overwhelmingly. He said the thought of any Court saying that the School has autonomy will go against the voters' decisions. He said the DRA has to be comfortable with the revenue estimates, and he submits that the Council has the same goal. He said it was clear in this case that there was a will to make a revenue adjustment on the School side. He said it was clear that the School was behind in their revenues in the spring, and would continue to be behind. He referred to the issue of accountability, and said it was his view that the Council was accountable for the tax levy. He



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said this is the first suggestion that he has heard that the School Board is accountable for part of the tax levy, and he doesn't believe it's true. He referred to his handout entitled: Solutions. He said Ms. Hooper started a conversation a few weeks ago that he would like to continue. He said her statement was for the boards to figure out better ways to communicate. He referred to his handout as some elements of communication between the School Board and the City Council. He said foreclosures year-to-date are 29, versus 2 four years ago at the same time. He said we are in a great depression. It was not the time to litigate, but the time to come together, communicate, and try to resolve these matters.

Attorney Eggert said when he was talking about fiscal autonomy he was not talking at all about corporate autonomy. He said Attorney Krans said the City of Dover was a single corporation. He said it was simply the question of how the City allocates responsibilities for the operation. He said another point that is important is that the School Department is regulated by the State's Department of Education. He said the School Board needs to go to the State's Department of Education if they wish to expend beyond an appropriation or make an emergency expenditure. He said the City Council doesn't answer to the State. He said the School Board is responsible for the implications of the school tax, which is a State tax. He said the City Council has a role in setting the local municipal tax, and ultimately is very concerned about the impact on the school tax. He said the irony of this particular decision is, reducing the good faith revenue estimate affects the local tax rate. He said if the Council can convince the DRA of that revenue estimate, then the Council should be good with that. He said the State may not give you a supplemental appropriation if you find out you don't have that revenue. He said that's the control point that the City Council has in that context. He said he agreed with City Attorney Krans, fundamentally they want to continue what appears to be an excellent collaborative relationship.

Ms. Hooper asked what had changed in the past six years in the Charter or City Ordinances that would change the information that she had always worked under, that the Council has bottom line authority only.

City Attorney Krans said he didn't feel there was any change in the last four or five years. He said the Council has always had the bottom line authority. He said the proper definition of bottom line authority is the tax levy. He said if they went back in history, it becomes clearer what is meant by bottom line. He said in the 1970's the annual resolution for adopting a budget was only three paragraphs long, with the last paragraph being the tax levy. He said we now have longer resolutions, with the tax levy imbedded in the middle. He said in his research of the Minutes for the last three or four decades, there was quite a bit of activity regarding School Board revenues. He said in the 1970's it was very common for the Councilor to move to amend the school revenues. He said in the 1980's and 1990's that slowed down, but he saw discussions and questions about school revenues during the budget process. He said the bottom line was the tax levy, which include revenues and expenditures.

Ms. Hooper said she respectfully disagrees with that interpretation.

Councilor Weston asked both attorneys about a statement she read from the State of New Hampshire Northern District of Hillsborough County; Manchester v. Manchester by Judge Joseph Nadeau: "The Board of Mayor and Alderman must accept the School Board's budget as submitted, or reject it, and return it to the School Board along with an explanation for the rejection and the maximum dollar amount which the Board of Mayor and Alderman will approve." She said she had her own interpretation of this statement, but wanted to hear the attorneys' interpretation.



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Attorney Eggert said he represented the School District in that case. He said the Manchester City Charter has much more City direction, and it really lays out what probably has been the historic practice in Dover. He said in Manchester the School Board delivers their budget as a single line item, the expenditure, to the City. He said the City says they will accept or reject this expenditure. He said the Dover Charter doesn't have that specificity. He said the Council can go through the budget line by line, but the School District is a single line item, because the City has elected school officials who set the budget. He clarified that Judge Nadeau was interpreting very specific Charter language for Manchester.

City Attorney Krans said that case does have some value regarding its reasoning, but doesn't govern the City of Dover. He said that may be a good practice, but didn't feel the Council was bound to do that.

Ms. Grady referred to Ms. Hooper's question, and asked City Attorney Krans with whom the conversation was made between, the School Board and City Council, when it was made, where it was made, and give any written changes to general procedure that she has seen followed since 1947. She said she has never seen anything but a basic bottom line, which means final result according to the dictionary. She said in her 60-something years she has never seen anyone touch revenue, because revenue for the School Department has to be an estimate. She said for somebody to make an estimate in January that you don't really know until October, and tell the State this is what is anticipated, she has difficulty signing this year's paper to the State because it isn't what the School Board estimated, but is what the City Council has estimated. She said she would refuse to sign it unless a letter went to the State indicating it was not the School Board's estimated revenue.

City Attorney Krans agreed with Ms. Grady that it doesn't happen too often. He said he knew she had been on the Board since 1994, but he wanted to refer to 1974.

Ms. Grady said she was in Dover in 1974.

City Attorney Krans said she was a teacher at that time.

Ms. Grady agreed.

City Attorney Krans said on March 15, 1974, Councilor Morrisette moved to reduce the School revenues during the annual budget process. He said there were similar motions by other Councilors in the late 1960s and all through the 1970s. He said in 1981 Superintendent Ryder was asked to provide revenue and expense accounts for food services. He said there were further questions regarding revenues in the School Department at the next meeting. He said there was a difference of opinion regarding \$100,000. He said these types of discussions happen several times over the last four decades.

Ms. Grady said conversation doesn't mean much to them as a Board unless it is given to them in writing, stated definitely, and then they could have argued it.

Councilor Scott said he wanted a yes or no answer to his question: Is it their opinion that the Council overstepped their authority in modifying the revenue from the School Board?"

Attorney Eggert said yes, the Council probably did overstep their authority.

City Attorney Krans said no.

Councilor Scott asked the City Attorney why he felt that way.

City Attorney Krans said for all the reasons he stated in his argument. He referred to his chart and reiterated that the Council amended the tax levy, which was the official action.

Councilor Scott asked the City Attorney if it was logical, because the impact resulted in a tax increase.



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City Attorney Krans said he was going to let the Council and School Board answer that question, because it's a political question and not a legal question.

Ms. Setear said she had two questions, and she doesn't know who is best suited to answer the first one. She asked: given that the School Board's revenue has been reduced by \$200,000, what happened to the money if the revenues do come in as projected? She said the School Board would have been responsible if the revenues came in lower, and then they would have to adjust their bottom line, and not pass it on to the taxpayer. She asked if that revenue would be returned to the citizens or someplace else.

Attorney Eggert said if the revenue comes in and the School Board doesn't have an appropriation that allows the School to expend that revenue, it would lapse into the General Fund. He said the Council's decision to reduce revenues on the School's side did increase the School tax rate.

City Attorney Krans said if revenues come in higher than expected then they will flow into the General Fund. He said they are always subject to, as has happened in the past, reappropriations, subsequent action by the Council, to increase the appropriation for the School side. He said it was his understanding that has occurred in the past.

Deputy Mayor Trefethen said he wanted to ask Attorney Eggert a question. He prefaced it with a hypothetical situation, which he wanted to make clear the School Board has not engaged in this activity. He said, let's say the School Board had revenues last year for \$20 million, and during their budget deliberations during the current year they decide to set their revenues at \$40 million, which would have the opposite effect of the last question, the tax rate would go way down. He said using Attorney Eggert's comment that the School Board has the responsibility to certify their revenues and the Council should not question that, then wouldn't it be irresponsible of the City Council to not question or reset the revenue under that situation?

Attorney Eggert said that was why the DRA had a certain mechanism in place to avoid that type of hypothetical. He said they will require that the School Board show historic revenues and then demonstrate where their estimates come in. He said it was possible to have that large jump if you enter into a long term tuition agreement with another district. He said Deputy Mayor Trefethen's hypothetical presupposes that the revenue estimate is off. He said the benefit of whether or not the estimate is off is that the Council will choose whether or not to approve any type of supplemental appropriation. He said the School Board has historically sucked it up and expended what they take in. He said the real problem the Council would have is if they began to deficit expend. He said the School Board cannot deficit expend.

Deputy Mayor Trefethen said the DRA would correct that for the School Board.

Attorney Eggert said that was correct.

Deputy Mayor Trefethen said he wasn't sure where that left the taxpayer. He said since the budget was adopted in June the taxpayer is under the assumption that there is a much lower tax levy, and it may go up in October when the DRA sets the rate. He said he wasn't sure where the responsibility for that falls. He felt it would be with the Council if the Council believes there is something wrong that should be corrected as soon as possible.

Attorney Eggert said unlike other City departments, this department is administered by elected officials, and can be self-cured. He said if the citizens see a history of being sandbagged by revenue estimates that don't work out, and the result is an increase on the taxation side, then the citizens will hold the School Board responsible because they got the revenue estimate wrong. He felt the Council should decide what the best allocation of that responsibility is. He



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said the School Board is responsible ultimately for a State tax. He said the Council had to make it clear to the citizen who is to blame if it is wrong.

Ms. Fisher asked both attorneys, if the City Council has the right to adjust the revenues, who signs off to the DRA? She said she would not feel comfortable signing off if she knows the School Board is not the one setting this revenue.

Attorney Eggert said it was his understanding that it is required that the School Board certify those revenues to the DRA and the State Department of Education. He said it would be unusual for the Council to certify revenues to the State Department of Education, and he wasn't sure it would be accepted from a board that doesn't administer the budget from day to day. He said he understood the intent of the motion, but it all goes back to how the responsibility is allocated within the corporation. He said usually the Council puts pressure on the School Board to keep their estimates high.

City Attorney Krans said most cities don't have a tax cap. He said that Dover's tax cap is based upon the previous year's tax levy and impacts the next year. He said there was an impetus to get it right and have an accurate tax levy. He said the certification is certifying the official action of the City Council.

Ms. Fisher said the School Board has always certified what they think the revenue estimate was, and not what the Council thought the revenue estimate was. She said she would feel uncomfortable certifying something that the School Board did not estimate.

Councilor Cheney asked City Attorney Krans what actions the Council took in previous years after a motion was made.

City Attorney Krans said the Council had conversations with the School Board. He said the last time, he believed, was in 2007 when the Council talked about revenues. He said it was a conversation during a workshop, and had to do with adequacy money coming from the State for the schools. He said the School Board was estimating \$4.7 million for 2008 in adequacy money. He said there was a conversation between the Mayor and the Superintendent regarding what happens if the adequacy money comes in higher, and if the School would be asking for more money, and he took a pledge not to do that. He said there was some action taken over the past four decades, but there has been plenty of conversations.

Ms. Schuman asked hypothetically if there was any conflict by having the Council do an estimate if they continuously underestimate the revenues, and therefore are benefiting from the surplus that they have in the General Fund that the School doesn't have access to.

City Attorney Krans said the City Council is obligated if they adjust revenue. He said it has to be based on something.

Ms. Schuman said it was hypothetical, but she felt there was a little bit of conflict there because in the end the School doesn't have that money. She said the School Board is not supposed to come up with numbers out of nowhere, and they do have to get them certified. She said it was a trust issue, a trust issue that was brought up way after the process has been completed, and something new that the School Board didn't expect.

Councilor Callaghan referred to the Tax/Spending Cap, and noted to both attorneys that the language in the Tax/Spending Cap says that the City Manager shall prepare a budget and it goes through the CPIU for adjustments. He said it then says that the School Superintendent or School Board will take this information. He said it doesn't say anywhere that the City Manager or Council takes full responsibility for that.



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City Attorney Krans said that Charter provision 6-4 says that the City Council adopts the budget, and that meant revenues and expenses. He said he felt that allowed the Council to address revenues. He said the Tax Cap in 2007 amplified or reiterated what was already there. He asked Councilor Callaghan for clarification on the point that he was trying to make.

Councilor Callaghan said he understood that the Tax Cap changed the rules, and that the bottom line is now defined as revenues and expenditures. He said the Council hasn't reached farther in, because they haven't needed to. He said he understood that now that there is a Tax Cap there is a reason to look further in. He said he was trying to understand how the Council can do that, and he felt the City Attorney did put some light on that. He said the second reason he asked about that was because of Attorney Eggert's comments about the court's view of responsibility, and he asked Attorney Eggert for his spiel was on the responsibility factor, because he felt the Tax/Spending Cap again placed the responsibility on the School Department to come up with a budget that meets the Tax/Spending Cap.

City Attorney Krans asked again for clarification.

Councilor Callaghan said several times the City Attorney mentioned the Tax Cap, and how we were in difficult times. He said he wanted to know how those statements relate to the situation.

City Attorney Krans said his point about difficult time is you don't spend money litigating, but spend money on the services that apply directly to the citizens of Dover. He said the City Council had the power to look at revenues without the Tax Cap language, but the addition of the Tax Cap language reiterated that power.

Attorney Eggert said he felt the Tax Cap language did not change the budgetary process at all. He said each board has to respond to the Charter amendment. He said it may have created a more diligent duty on the part on both boards to scrutinize their revenue estimates.

Councilor Callaghan asked if the Tax Cap reaffirmed that the School Board was responsible for their piece of the budget.

Attorney Eggert said it didn't change the status quo. He said occasionally the School Board can do something wrong, so the fact that there had been some adjustments made in the 1970s wouldn't mean that it was a correct practice. He said until 1977 the legislature hadn't weighed in on the idea of home rule Charter. He said sometime in 1977 the City adopted its own City Charter, which made the City subject to RSA 49-C, and it was no longer the same game.

Mayor Myers said in his six years on the Council he has never sent a budget back to the School Board. He said they have adjusted revenues after the budget has been passed. He said one time they adjusted revenues up because the School received another \$1 million from the State, and part of it was used for a one time capital project and the rest stayed with the School. He said it was the Council that did that. He asked Attorney Eggert to comment on the legality of the Council taking that action and changing revenue in a positive manner. He wanted to know why it was okay then and not now.

Attorney Eggert said the School Board came to the Council and said they were anticipating additional revenues, and therefore they wanted the Council to make a supplemental appropriation. He said if the School Board comes to the Council and says they are changing their revenue estimate, and therefore request that the Council make a supplemental appropriation, the City's Charter clearly enables the Council to make a supplemental appropriation. He said the distinction is that the School Board was the entity estimating the revenues. He said it is the Council's decision to approve or decline a supplemental appropriation.



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Mayor Myers clarified that it was done during the budget process, and was not a supplemental appropriation.

Attorney Eggert said the proper procedure would have been for the School Board to pass on an amendment for the Council to receive and act upon.

Councilor Weston said she felt City Attorney Krans did not answer Ms. Fisher's question on what would happen if they refused to sign the certification.

City Attorney Krans said the School Board has a statutory duty to certify the official act of the City Council.

Councilor Weston asked, if they did this, whether they agreed with the action or not.

City Attorney Krans said they are certifying an official action, similar to certifying a birth record. It's a record of what happened. He said he knew the School Board had some misgivings, and he wasn't sure how he could address that.

Mayor Myers said the point of the Workshop will be to open up for general discussion. He said City Manager Joyal, Superintendent of Schools Dr. O'Connor, Finance Director Daniel Lynch, and Business Administrator for the Schools Laurie Verville were present to answer any questions.

Ms. Grady asked Ms. Verville what happened if the School had an overage.

Ms. Verville said it was turned over to the City's General Fund.

Ms. Grady said when the School had a deficit they made up for it from other revenues. She said when they had an overage it went back into the General Fund. She said one year, the School Board asked for the overage back to pay for the roof on the Dover High School. She said a comment was made that never has a budget been sent back to the School Board with a cut, and asked Ms. Verville if she recalled any time when the budget was returned to the School Board with a major reduction.

Ms. Verville said she did, but would have to double check the years.

Ms. Grady said she remembered the budget being sent back once to cut \$500,000, and another time to cut \$250,000, but it wasn't during the Mayor's tenure.

Mayor Myers said his point was that cuts have been made, but it wasn't a statutory requirement to return the budget to the School Board, and then it would have to be resubmitted. He said there were discussions and adjustments were made.

Ms. Setear asked which revenue stream the Council felt the School Board overestimated.

Mayor Myers said it was the total revenues number, because the Council can't look at all the different revenues.

Ms. Setear asked if the Council was looking at last year's revenue, or the last three years, in making that reduction.

Councilor McCusker said he actually looked at revenues for both the City side and School side for the past two years. He said they hear presentations from all the departments on expenditures, and they are discussed line by line. He said it seemed as if the revenues were pre-certified and weren't discussed. He said he looked at the past two years and saw that there were discrepancies, and he brought it forward to the Council.

Ms. Fisher asked Councilor McCusker if he looked at certain areas.

Councilor McCusker said he looked at the bottom line, because the Council doesn't have specific components. He knew that he couldn't go into the School budget and look at certain areas.



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Councilor Weston asked if the City Council gave the overage money in one year back to the School when there was a shortfall in another year.

Mayor Myers clarified that the City budget overages roll into the General Fund as well.

City Manager Joyal said the last two years the School Board has adjusted expenditures to not exceed revenues. He said he will have to research Attorney Eggert's comment that the School Board cannot deficit spend. He agreed that was true of an entity as a whole, but was not sure it about the School, because the School Board has deficit spent in the last 10 years. He said their expenses have exceeded the amount of revenues that came in. He said given that the City is one entity, when department expenditures exceed revenues then they draw upon the cash reserves of the City. He said the Council authorizes a certain amount of expenditures, and that department is authorized to spend up to that level of funding. He said it was his responsibility to look at the finances as a whole and make adjustments in the operations of the City, to stay, ideally, with expenses being less than revenues. He said that hasn't always been the case.

Ms. Hooper said to Councilor McCusker that if he was going to play with the revenue, that he needed to see it all. She said there is a precedent, and she has always been told that the City Council only has bottom line authority. She said she has not heard a real true answer to what has changed. She said she was happy that the Council agreed to keep the Joint Fiscal Committee, because she felt this was a great example of what the committee needs to do. She asked Ms. Verville to tell the public how much money the School Board has turned back to the City in the past 10 years.

Ms. Verville said she actually had a few comments to make, because she couldn't just sit there while the City Manager said there had been several years where the School had deficit spending. She said the third or fourth week in July, the School reconciles with the Finance Department. She said she received a worksheet, and she was surprised that there were one or two years of deficit spending. She said her records have always shown that, in the aggregate of the last nine years, the School Board has returned an excess of \$2.4 million.

Councilor Cheney said she didn't support what happened, and was concerned that the Council also raised the tax bill. She said she heard about the foreclosures and liens being discussed in City Hall. She was astonished that something like this would be happening at a time like this.

Ms. Schuman said none of the City Councilors came to the School Board's budget meetings. She said it was brought up at a Council meeting, but never at a School Board meeting. She said the Council could have come to the School Board and asked them to take another look at the estimated revenues, rather than coming up with a number. She said this came out of left field.

Deputy Mayor Trefethen said the \$2+ million returned to the City is real, but it is not returned to the City Council. He said it was returned to the City, which is the taxpayers, where it sits in a fund for their use in the future. He reviewed Councilor McCusker's comments and how he arrived at the motion to amend the budget. He referred to his conversation with the City Manager on how he was going to propose adjustments in the City's proposed revenues, because they were running behind. He said people were not registering cars like they used to and felt the trend would continue into fiscal year 2010. He said that the City Manager also said that some of the areas in the School Department are running behind in fiscal year 2009. He said he researched the audited financial reports for 2008, and the revenues were less than they had been projected. He said he understood that they were low because of the economy that we're in. He said the City and School are not meeting revenues in 2009 and the economy is

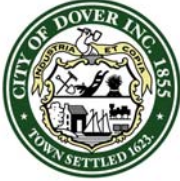


CITY OF DOVER

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showing no signs of recovery, so what are the expectations that our revenues are going to meet fiscal year 2010 estimates? He said Councilor McCusker's budget amendment made sense to him. He does agree with Councilor McCusker's comment that his method was not the best execution, but he agreed with the thought process. He said he has not heard anything to tell him that it was not sound. He said he knew there was a suspicion that there was some type of concerted effort to do something nefarious, and in his mind that was not what was happening. Ms. Mebert said it did seem like a capricious act, and we're spending a lot of money on lawyers and spending a lot of time on this issue. She said if the Council had raised the question, they would have considered it. She asked how it could blindly be brought before the Council and have the majority vote for it. She said she was astounded that it happened this way. Deputy Mayor Trefethen said he didn't know Councilor McCusker was bringing up his motion, but at the time it made sense to him because he had been following that train of thought already. He said just as the City needed to reduce revenue on car registrations, it made sense. Ms. Mebert said for the Council to reduce revenue to the School budget, without discussing it with the School Board, after they spent weeks discussing it, didn't make sense. Ms. Hooper said she wanted to move this forward. She said they were all elected officials serving the City of Dover working on the same team. She said it was a courtesy issue, and this could have been done with discussions between the Superintendent and City Manager. She said the issue is that she is not in a position to let something slip by that will affect future School Boards. She said the City Council stepped over the line, where it shouldn't have been, and a precedent will be set. She said she had always been told that the City Council is allowed bottom line authority only, and the question is if the Council can touch the School Board's budget, other than the bottom line. She said it was her contention that the Council cannot. Mayor Myers said he felt it has been recognized that communications could have been better. He said to be fair, everything is open for discussion during a Council Workshop. Ms. Grady said this all came about because someone looked at revenue for the School Board and thought that there was something wrong, a judgment was made, and a decision to cut revenue with an intent that they were hiding something. She said they had eight budget meetings going over line item by line item. She said there is no exactness to revenues, as the City has found out with the \$600,000 shortfall from the State. She said she believed that the School Board needed a written statement for the future so no one is in this position again. Mayor Myers clarified that the City Council adjusted revenue and did not cut the School's budget by \$200,000. He said it did change the tax levy, but did not cut their budget. He said the Council knew that the revenue from the State was a moving target. He said when the School Board presented their budget he said it was okay, but if something changed in Concord they would need to look at it again. He said he felt this was going to come down to what bottom line authority is, and if it is 2 pieces; expenses and revenue. Councilor DeDe said when the motion was presented there was a little background presented by Councilor McCusker. He said the Council was already aware of downtrends on the City side. He said the vote that night was a recognition of downward trends. He said the Deputy Mayor's suggestion that the Joint Fiscal Committee be eliminated was appropriate because it consisted of three people from the Council and three people of the School Board, which is not a quorum. He said one of the City Attorney's solutions in his handout was the restoration of the Joint Fiscal Committee. It needed to be more broad, and a consensus in a joint meeting like tonight helps prevent problems like this. He said the School Board is actually getting more money this year.



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He said the Governor keeps telling the cities that in the aggregate they are receiving the same amount of money. He said the State lost the lawsuit and took the money away from the City side by downshifting to the towns and cities. He said the ultimate loser is the taxpayer. He said the City is now in a shortfall, and asked if the City side is supposed to shoulder the whole thing. He said that is the type of thing that should be discussed at a Joint Fiscal Committee meeting. He said if he was asked if the City had authority on the budget: yes, they do. He said it has been pointed out that a budget consists of two pieces: income and outgoing, and both are subject to review.

Ms. Fisher said they were present to see if it was legal for the Council to cut revenues. She said she still believed it wasn't legal, and didn't know if anyone's mind has been changed. Mayor Myers asked if anyone has changed their mind. He said at this point no one has changed their mind.

Ms. Hooper said the School Board would have gone into the Joint Fiscal Committee thinking they were going to follow the Tax Cap, which was 3.5%, but it was during that meeting that the School Board realized that they were going to be held to a 2% increase. She said she sees the real reason for the Joint Fiscal Committee, and sees no problem with expanding it. She did say she is still holding her position that the Council stepped over the line and shouldn't have touched their budget.

Mayor Myers disagreed with her timeframe, because the Joint Fiscal Committee didn't meet until April, which was after the School's budget was already passed. He said the direction came from a Council Workshop, where they gave the City Manager direction and discussed giving the same direction to the School Board.

Dr. O'Connor spoke in the hypothetical. He said the School's budget is \$40 million; \$20 million in revenues and \$20 million in expenditures. He asked if the City Council has the authority to learn more about the School's expenditures. He said the Council does not have the authority to do that. He said the Council can only deal with the bottom line. He then asked why the Council would do it with revenues. He said it was the School Board's responsibility. He said if you tell the School Board that \$20 million is too much and to cut \$500,000, then it is up to the School Board to figure out where that \$500,000 is going to be cut.

City Manager Joyal said communication needs to improve; earlier and more often. He said they have started discussions about the revenue shortfalls coming. He said it is important that the Council understands the impact of their decisions. He said the Council can ask questions and gather information from any department. However, he did agree that the Council only has bottom line authority, but will continue to disagree about the definition.

Mayor Myers gave an overview of what was discussed. He said he understood that the School Board wanted something in writing to say the Council overstepped beyond the Council's purview and it should not happen again. He felt he could accurately say that it would not be agreeable to the majority of the Council. He felt he could accurately say that the Council agrees that they do not have line item authority, but the bottom line is made up of expenses and revenues.

Councilor Callaghan said he has learned a lot and that they should have another workshop. He said he was convinced that the Council did not have the authority to change the revenue. He said he would like to see some kind of a straw vote.

Councilor Cheney said she voted no on the budget amendment, because she didn't feel it was her place to vote on that budget and because it would increase taxes.



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Councilor Weston said she voted yes on the budget amendment, but if she had to do it over again she would have voted no. She asked if this had to go to court. She said she wasn't sure how they came to some agreement.

Mayor Myers asked the Council how many felt they overstepped their authority.

Vote: 5/4. Mayor Myers, Deputy Mayor Trefethen, Councilors DeDe and McCusker were opposed.

Mayor Myers said they would need six votes to amend the budget.

Councilor Weston asked if there was something the Council could do to assure the School Board that this wouldn't happen again so it didn't have to go to court.

Mayor Myers said the City has to defend the Charter, and the Council can't waive positions on the Charter.

Ms. Schuman asked who would certify their revenue estimates.

Mayor Myers said the City Attorney said it was the official action taken by the City. So when the School Board signs off on it, it is not necessarily in agreement of the number, but that this was the action that was taken by the City.

Ms. Schuman said the School Board can refuse to sign it and say the City Council who has come up with this revenue can sign it, and then it becomes the issue whether the City Council can sign it or not.

Councilor Scott asked if he understood the Mayor that he wanted six votes to block a lawsuit.

Mayor Myers said any legal action taken will be coming from the School Board. He said he needed six votes to amend the budget.

Councilor Scott asked for a vote from the Council on whether the Council was wrong.

City Attorney Krans said it was an informal poll and has no legal authority in a workshop. He said official votes are taken during a regular session. He said as City Attorney for the whole corporation, the discussion should be about better communication and not about litigating.

Ms. Grady said the School Board is in favor of a written statement. She recommended that if the Council made the same decision during a regular meeting, she would prefer that the School Board refer the Statement to our Council so it would be worded in such a way as to protect the School Board.

Deputy Mayor Trefethen said he had not heard anything from the School Board about a lawsuit, and was very dismayed to hear it from the City Council. He proposed a different question.

which he felt would possibly get an unanimous vote: The Council presents a resolution that going forward they will not adjust revenues. He said he would vote for that. He said it was a policy resolution that would expire December 31st. He said it was his opinion that the Council acted wrongly. He said he it would take 6 votes to amend the budget. He said as soon as it is on the table, the Council can amend the amendments. He felt the Council didn't want to go there. He said the real issue is what is going to happen now, and he hoped it wasn't a lawsuit.

Ms. Fisher asked Attorney Eggert what he suggested that would help them have some kind of agreement. She asked about a resolution of some sort.

Attorney Eggert said this meeting was a good start. He agreed with the City Attorney that neither board can bind the City. He said this board can impact the relationship. He said the first obvious step would be to amend the budget. He said there could be a formal resolution of the Council that it would be the policy of this City Council to interpret the Charter such that the bottom line is that single number. He did agree with the City Attorney that this policy is subject to review and revision by subsequent Councils. He said better communication coupled with the



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policy resolution certainly moves things forward. He said the School Board will have to weigh how they feel about the \$200,000 hit. He said the political reality may be that the 6th vote is not there. He said quite candidly that a court weighs in with finality. He said finding the 6th vote solves everything.

Councilor Weston asked City Attorney Krans if it was a violation of the Charter if they do the resolution.

City Attorney Krans referred to Councilor Callaghan's comment to change the word to process rather than decision. He said he felt a combination of a letter of understanding of the process, and better and earlier communication, is the way to resolve this. He didn't think they were at a stalemate. He said they should be careful what they draft as a resolution so it doesn't violate the Charter.

2. CITIZEN'S FORUM

Citizens are invited to speak on the subject matter of the Workshop. Statements shall be limited to five minutes.

Ronald Huml, 199 Mast Road: He said he listened to both Attorneys, the City Council, and the School Board. He said he felt the School Board is right. He was disappointed in the four Councilors who voted against reinstating the \$200,000, and felt they were responsible in raising taxes on the taxpayers. He said the School Board can prove they will get the revenue. He said there were different scenarios every year for revenue. He said he felt the City was right on reducing the revenue for motor vehicle registrations, but should rescind the \$200,000 reduction to the School. He said their vote cost the taxpayers \$254,000. He said he would see their point if they had justified their decision, but felt they didn't justify their point.

Mayor Myers, seeing no one else wishing to speak, closed the Citizen's Forum.

3. ADJOURN

Deputy Mayor Trefethen made a motion to adjourn; seconded by Councilor Cheney.

Vote: 16/0.