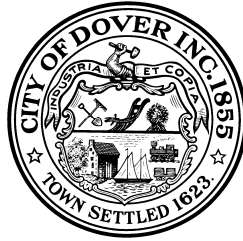


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City of Dover, New Hampshire *OFFICE OF THE CITY ATTORNEY*

June 1, 2009

All Councilors
Dover City Council
City of Dover
288 Central Avenue
Dover, New Hampshire 03820

Re: Line item veto over salaries

CONFIDENTIAL SUBJECT TO THE ATTORNEY CLIENT PRIVILEGE

Dear Honorable Mayor, Deputy Mayor and Councilors:

Thank you for asking a question at the recent Council meeting. I understand the question as follows:

QUESTION: Does Charter provision C6-3 of the Dover Charter providing for a line item review during the budget review process allow the City Council to amend individual salary line items in light of the provisions of C7-3?

PRELIMINARY MATTER

The substance of the answer contained in this opinion was provided in a confidential written opinion to the City Council on or about April 26, 2006. The opinion was later released to the public.

FORM OF GOVERNMENT

The City of Dover, a municipal corporation, is governed using the Council-Manager form of government.

The City Manager is the chief administrative officer in charge of the daily operation of city government. The City Manager hires and supervises all city staff. The City Manager is the sole employee of the Dover City Council and reports directly to the City Council acting as a body. *Dover Charter C5-1; C5-5; C5-6, C5-7; C5-8; C5-9.*

The nine members of the Dover City Council are elected by the citizens of Dover to set policy for City government. The adoption of an annual city budget is a key policy statement of the City Council. *Dover Charter C3-11.*

OVERVIEW OF THE ANNUAL BUDGET REGARDING SALARIES AND WAGES

The annual budget of the City of Dover is a detailed and comprehensive document submitted by the City Manager to the City Council by April 15th of each year. The recently released "Proposed Budget for Fiscal Year 2010" is 487 pages. The City Council adopts an annual budget setting out the revenues and appropriations for the upcoming fiscal year running from July 1st to June 30th. Fiscal year 2010 runs from July 1, 2009 to June 30, 2010.

The FY '10 budget document is organized by Departments. The annual budget appropriations for each Department consist of major budget categories such as Personal Services, Purchased Services, Supplies, Capital Outlay and Other Expenses. Line items appear as subcategories of the major budget categories.

The major budget category dealing with appropriations for staff positions is Personal Services. The Personal Services category of the budget document includes line item appropriations for each Department such as salary, hourly wages, insurances, retirement and staff development. These appropriations are organized by Division. Each Department has two or more Divisions.

Salary appropriations for staff are stated in Line item #4110 throughout the budget document. Line item #4110 appears 38 times in the FY'10 budget document. This line item is entitled "Regular Salaried Employees". Line item #4110 details salary compensation to Department heads, various Division heads, and other supervisory personnel. Some of the staff members involved in line item #4110 are members of collective bargaining units. The remaining staff members have individual employment contracts with the City of Dover.

Nineteen (19) of the 38 times that line item #4110 appears in the FY '10 budget involve one staff member. These 19 stand-alone line items where the line item appropriates funding solely for one person appear on pages 141, 171 and 177(City Clerk/Tax Collector), page 151(City Attorney), pages 193 and 197 (CDBG coordinator) page 251(Building Officer),page 203(Police Chief),pages 207 and 213 (Police Captains), page 231 (Planner), page 237 (Fire Chief), page 297 (Superintendent of Grounds),page 309 (Director of Community Services) page 353 (Aquatics Facility Manager), page 370 (Recreation Director), pages 375 and 381(Assistant Recreation Director) and page 403(Human Services Director).

Appropriations for hourly wage employees are stated in line item #4115 throughout the budget document. Line item #4115 appears 45 times in the budget document and is entitled "Regular Hourly Employees". The vast majority of the wages paid using the appropriations on line item #4115 result from the contractual obligations of collective bargaining unit agreements. The exceptions are very limited. Five (5) of the 45 times that line item #4115 appears in the FY '10 budget involve one staff member. These appear on pages 137, 151 224, 234A and 273.

At the end of each section entitled Personal Services throughout the budget document is a line item entitled "Total Personal Services". This line item appears Fifty (58) times in the FY'10 budget. The "Total Personal Services" line item states the appropriation for the Divisions within each Department as a group with no itemization for individuals.

In addition, the FY '10 budget contains department summaries for Personal Services on page 135 (Executive), page 157 (Finance)page 181 (Planning). Page 201(Police), page 235 (Fire & Rescue), page 267 (Community Services-Public Works), page 337 (Recreation), page 389 (Library), page 401 (Human Services).

HISTORY OF DOVER CHARTER PROVISION C6-3

Over the years in City government, disagreements arose over the extent of the authority of the City Council to amend the proposed budget of the City Manager. Some advocated the City Council had the authority to amend individual line items during the budget process in order to keep spending to reasonable levels. Others held a contrary view. The contrary view stated the Council-Manager form of government does not, and should not, allow the City Council to reduce individual line items, including individual wages and salaries, since to do so would interfere with the administrative function of the City Manager. These advocates maintained the only option for councilors to control spending was to address the bottom line appropriation of each Department, but not the individual line items contained within the budgets of each Department.

The 2005 Charter Commission recommended and the voters adopted a revision to the Charter to clarify the authority of the City Council to address/amend line items during the budget adoption process. This provision contained in C6-3 states:

...."The City Council may examine and amend the recommended budget on a line for line basis."

This language is commonly referred to as the "line item veto".

One further note. The comprehensive Charter Commission revision process in 2005 resulted in a city-wide vote in November 2005 approving the Charter with an 81% approval majority. The 2005 Charter revision, as opposed to a single subject amendment, had the effect of approving all the provisions of the current Dover Charter at the same time. The only exception is the subsequent amendment in 2007 approving an amendment to Section 6.3.

DOVER CHARTER PROVISION C7-3

The line item authority of the City Council is limited by other provisions in the City Charter. Specifically, a restriction on City Council line item review of the budget is contained in C7-3.

Article C7-3 of the Dover City Charter provides:

“The compensation of all officers and employees not fixed by this Charter shall be fixed in the Merit Plan by a schedule of pay which shall include a minimum and maximum and such intermediated rates as may be deemed desirable for each class of position provided for in said plan. In adopting the city budget, the Council shall not increase or decrease any individual salary item but shall act solely with respect to total salaries in the various departments of the city.”
(emphasis added)

In addition, *intra*-department transfers by the City Manager are permitted by the provisions of C6-8 of the Dover Charter. *Inter*-departmental transfers require City Council approval. *C6-8 Dover City Charter*.

GUIDANCE FOR INTERPRETATION OF CHARTER LANGUAGE

Court decisions and state statutes provide guidance regarding interpretation of the provisions of the Dover Charter. The Dover Charter should be interpreted according to the plain and ordinary meaning of the words used. The document should be interpreted as a whole and not piecemeal. Plain and unambiguous language should be interpreted using only the words in the document without inquiry as to the surrounding circumstances or intent. Interpretations that render provisions meaningless should be avoided. *Babiarz v. Town of Grafton*, 155 N.H. 757 (2007); *Appeal of Bethlehem*, 154 N.H. 314,319 (2006); *Town of Hinsdale v. Town of Chesterfield*, 153 N.H. 70,72 (2005); *RSA 21:2*; *Cosseboom v. Town of Epsom*, 146 N.H. 311 (2001).

ANSWER

The City Council has general line item authority pursuant to C6-3 to amend the annual budget as proposed by the City Manager. For example, the City Council may amend line items contained in the Purchased Services, Supplies and Other Expense categories appearing in most department budgets. This authority resulted from the clarification approved by the voters in 2005 as the result of the Charter Commission.

However, there are limitations on the line item authority of the City Council. A key limitation is C7-3. Amendments of salaries may only be achieved by amending the “Total Personal Services” portion of the budget *for each department*. The amendment may only be accomplished on a department basis, and not an individual salary basis. This means that direct amendment of line item #4110 is not permitted.

The words used in the Dover Charter are clearly stated. The plain and ordinary meaning of C6-3 and C7-3 is that C6-3 provides the general authority of the City Council to amend the annual budget on a line by line basis except for line items containing individual salaries. C7-3 permits amendment of salaries only on a department-wide basis.

The proper motion to seek an amendment of salaries on a department-wide basis is: “ I move to increase/decrease the *total department appropriation* for Personal Services for the _____ department by \$_____ as shown on the Summary for the department on page_____” .

Councilors should fill in the page for such a motion by going to the Summary page for the particular Department. The Personal Services summaries for departments appear on the following pages: page 135 (Executive), page 157 (Finance), page 181 (Planning and Community Development), page 201 (Police), page 235 (Fire & Rescue), page 267 (Community Services-Public Works), page 337 (Recreation), page 389 (Library), page 401 (Human Services). (The total Personal Services appropriation for some departments may require adding the Personal Services appropriations for two or more divisions to calculate the total Personal Services appropriation for the entire department.)

OTHER CONTROLS OF THE CITY COUNCIL OVER WAGES AND SALARIES

The City Council has two (2) additional tools to exercise control over wages, benefits and salaries. These tools are available to councilors *outside the annual budget process*.

Control #1

The City Council has direct control over wages and benefits by approving or disapproving the contracts of collective bargaining units. The vast majority of costs for wages result from provisions of collective bargaining agreements. The City Council approves, or disapproves, every collective bargaining agreement. This control mechanism occurs independently from the budget process, but is a vital tool of the City Council to address concerns over wage and benefit costs.

Control #2

The City Council has control over contractual salaries and benefits due to recent amendments to the Merit Plan. The Merit Plan contains personnel rules for the City of Dover. Significant changes to the Merit Plan were proposed by the City Manager in 2006 and ratified by the City Council. The amendments significantly increased the power of the City Council to control salaries and benefits. As the result of the amendments in 2006, every contract involving staff compensation is subject to *prior approval* of the City Council. An example of this procedure occurred recently regarding a proposed contract for the Deputy Director of the Community Services Department.

One other important change to the Merit Plan occurred in 2006. Prior to 2006, the Pay Plan and Classification Plan were considered by some to be separate from the Merit Plan and susceptible to amendment unilaterally by the City Manager. The Classification Plan lists the employment positions of the City of Dover. The Pay Plan states the wage ranges for all employment positions.

As the result of the 2006 changes, the Classification Plan, the Pay Plan and the personnel rules of the Merit Plan are now a single document referred to as the "Merit Plan". All changes to the Pay Plan, the Classification Plan, or the substantive personnel rules of the Merit Plan are subject to the *prior approval* of the City Council. This control by the City Council was recently exercised regarding the addition of the Assistant Recreation Director position to the Classification Plan.

Prior approval by the City Council of employment contracts and prior approval by the City Council to changes in the Pay and Classification plans are important tools for councilors to control wages, benefits and salaries.

I hope I have answered your question. If you have further comments or questions, please let me know.

Sincerely,

Allan B. Krans
City Attorney