

CHARTER COMMISSION

February 13, 2013

6:00 p.m.

Chairman Duval called the meeting to order.

Chairman Duval called for the pledge of allegiance, this function being led by Commissioner D'Allesandro.

The Clerk called the roll.

Present: Commissioners Duval, Girard, Martin, D'Allesandro, Lopez, Pappas,
Clayton, Ashooh

Commissioner Infantine arrived late

3. Minutes from meeting held January 23, 2013.
(Note: Previously distributed to the board via email for review)

On motion of Commissioner D'Allesandro, duly seconded by Commissioner Martin, it was voted that the minutes be accepted.

Chairman Duval stated we further our discussion tonight with regard to education related topics. We are privileged tonight to have legal counsel to the commission with us in person. We welcome Attorney Rick Lehmann. Rick has spent considerable time delving into the matters pertaining to a number of items as they relate to education topics. He has a report for us tonight which follows the written response to the various questions

posed to him a while ago from the commission. We will have Attorney Lehmann advise us tonight. We want to allow him ample opportunity for him to bring us up to speed and then we will open it up to questions following his initial presentation. Attorney Lehmann, good evening.

Attorney Rick Lehmann, Charter Commission Legal Counsel, stated thank you. It had been my intention to come here today with a more formalized version of the letter I sent to you all last Friday. It wasn't my intent to change the substance in anyway, but simply put it on letterhead and make it more of a finalized version, including correcting some formatting difficulties that I had because I am using a new word processing program. Before I could get to do that, I had some back and forth regarding some follow up questions and some questions about the opinions that I had offered in the letter. It became apparent that there is an open question about what the exact language of the charter currently is in regards, in particular, to section 6.06, concerning the School District budget. The red book that you have contains different language than the version that is printed by American Legal Publishing which is the City's online contractor. The difference is potentially material to some of the opinions that I offered. The gist of it is also present in the 2004 law that Commissioner Infantine had managed to get through the legislature, and in particular, it relates to the question of whether the mayor shall have control over the form and procedures in preparation and adoption of the school department budget. Your red books have essentially that language in it. The online version does not. The online version reads that only the budget shall be submitted in accordance with the schedule established by the mayor under section 6.03. To some extent, my opinions concerning the authority of the mayor and changes that would come about if the voters were to act on the provisions in chapter 778 from 2004 concerned this fact. Until we know whether the current charter should be read to include the language concerning the mayor having the control over the form and procedures for preparation and adoption of the school budget or whether the mayor may only establish the schedule

for adoption of the school budget, I have to reconsider some of the opinions that I offered in the letter I sent out last Friday. It may be worth discussing for a few minutes that it comes to pass that there may be uncertainty about the exact charter language. It goes back to litigation that started back in 1999. In that year, the School District brought an action against the City asking the Superior Court to make a number of legal findings, primarily having to do with the independence of the School District from City control. The School District effectively won that case, got most of the relief, I believe, it was looking for and again, it is hard for me to tell because I have been able to review the decision, but I haven't been able to see all the pleadings so I don't know everything that the school was asking for and if it got everything or if it just got a lot. Whatever it got, in 1999 the district got a fair measure of independence from the Superior Court. Subsequent to that, a charter amendment was proposed that made the School District a department of the City. That was challenged in Superior Court and Judge Mangones issued an order that I have not had a chance to review. This all just came to light this afternoon, by the way, so I have asked the city solicitor to get me a copy of that and I'm going to want to look at the pleadings so that I can see. That one I know contains a number of findings of fact and rulings of law and depending on what findings people asked for, the court's decision may or may not maintain certain holdings. That decision was then appealed by the City. Again, because it will take some legal research to determine this, it is not clear exactly what portions of that Superior Court rulings were appealed and what portions because final judgments that are binding on the parties. The last court decision is one that I believe has been circulated. That is the 2004 decision by the New Hampshire Supreme Court, again, finding in favor of the school and finding that to the extent that the City attempted to make the School District a department of the City it acted outside of its legislative authority. Interestingly, chapter 778, the law that Commissioner Infantine sponsored in the State legislature, passed before the Supreme Court made its decision. That bill was clearly introduced after the Superior Court had ruled but before the Supreme Court had had a chance to rule. That opinion I do stand by.

You do have the authority to make, because of that statute, the School District a department of the City. What that would mean in practice and how that would affect the lines of authority I think is a thorny and difficult question that will be determined to some extent by what we finally decide what the language of the charter actually is and what the implications of the Superior Court decision, in particular, the Judge Mangones decision, that led to the appeal to the Supreme Court and what that holds. Sometimes reporters of laws and potentially the City Solicitor's Office, although I don't know... When a statute is found to be unenforceable or unconstitutional or outside of the authority of the body that enacted it is not unusual for people to think that that automatically strikes the statute from the books or the ordinance from the code of ordinances or the provisions of the charter. The courts don't have the authority to go into your charter and scratch out lines of the charter. All they have the authority to do is declare to the people that that is a provision that won't be enforced. The Supreme Court decided Roe vs. Wade in 1973, but New Hampshire had a statute prohibiting abortion on its books for decades after that. It was only when Governor Shaheen was governor that that was actually removed from the RSAs. Unenforceable provisions remain part of the law, but they are not enforceable by a court. That may be part of the confusion and it may be that someone thought they were being helpful by changing the published version of the charter to reflect the reality of the court decision, but I don't know how it came to be that when I was talking about this question regarding the School District budget there were two different versions of 6.06 floating around out there to be viewed. Until we know that, it is very hard to tease out the specifics about what making or bringing the School District into the City as a department would mean and what it would mean if the Board of Mayor and Aldermen, due to charter amendment, have less authority over the School District. We really need to know what the existing charter provisions are and what courts have ruled before I can give you real firm advice on what the implications would be.

Chairman Duval stated thank you, Attorney Lehmann. How much doubt does it cast over the entire letter that you had presented for commissioners last Friday? How many segments contained within that letter, based upon becoming aware today of the discovery that we potentially have two different versions of the city charter that are out there floating around?

Attorney Lehmann replied I'll walk through it. On question one, it doesn't affect it at all. I had a conversation with the secretary of state about this within the last couple of days and he said absolutely, the precedent is that charter revisions, and you are all authorized to revise your city charter, are all put into one up or down vote. That is the practice and I will point out, as you are aware, the secretary of state is one of the people who is going to have to approve a proposed charter before it can be put to the voters. His opinion clearly counts. Question two: I continue to agree with the city solicitor that the School District is bound by the cap in that the School District is required to present a budget that doesn't exceed the cap, as are the other City departments. I continue to stand by that. Question three: may the City of Manchester make the School District a department? Yes, based on statute that I have referenced a couple times earlier. It is very clear that that is the State law and the City is authorized to do that. What that means, starting with question four, are very much called into question. The question of the mayor's authority relative to the board. One version of the charter, the version in the red book, says that the mayor has authority over the form and procedures for preparation and adoption of the budget. Whether that line item is included within that I think is a question that bears some investigation and the extent to which the procedural side of budget making and making rules bleeds into the substance of the School Board's authority. It is always going to be a tricky question for people to wrestle with. At some point you can enact a procedure that controls the outcome and a procedure that controls the outcome is inherently related to the substance of the budget. The way the New Hampshire laws are set up, the School Board is an independent authority, the SAU is an

independent entity. They have significant statutory control over the substance of the budget. That doesn't mean that the mayor can't have an important role to play in establishing the procedures to be used and how broad the mayor's authority is in that regard is going to be a tough question. Question five I think is also a difficult question that may be effected, although the biggest problem I had answering question five, quite frankly, is understand exactly what is meant by 'taxing authority'. If you are going to send me back for some more work on that one, I think it is probably worth teasing out exactly what that is.

Commissioner Lopez asked could you explain number five? Some of us might read it differently.

Chairman Duval stated let me just jump in on the tail end of that question, if I might. The statutes that exist certainly wouldn't change what we have in our charter so that certainly wouldn't be changing your opinion.

Attorney Lehmann stated no, it wouldn't.

Chairman Duval stated those statutes exist and they are there. You have relied on those to formulate an opinion.

Attorney Lehmann stated correct.

Chairman Duval stated that is a big one so if you want to delve into that and respond to the commissioner's question, that would be great.

Attorney Lehmann stated my understanding of what constitutes a taxing authority is that the... I think it is difficult to separate taxing from spending when you are responsible for

paying all your bills. The entity that is responsible for creating the budget, the School Board, submits its budget, which is either approved or not by the Board of Mayor and Aldermen, to the extent that if someone wanted to create the school as a taxing authority, you could simply relieve the school of its obligation to seek approval from the Board of Mayor and Aldermen. If you were to do that, if that is what you mean by taxing authority, to the extent that the City then really doesn't have a check on the amount of money that it can spend, arguably that makes the School Board a taxing authority. If what you are saying is if you can do something to give the School Board the authority to set the tax rate, I don't think you can do that. That is governed by statute. I think you are all familiar with the way it works involving the Department of Revenue Administration. I don't know if that is helpful or not. I think the ambiguity of just what 'taxing authority' is may be the source of confusion.

Commissioner Lopez stated let me put it into my language so I understand it the way I read it. The Board of Mayor and Aldermen would approve the City budget. The School Board would submit their budget to the Board of Mayor and Aldermen, but we don't set taxes so the Board of Mayor and Aldermen would send that up in November as the City's appropriation and the School Board... DRA would set the tax rate for the City of Manchester. That is what you are saying, I believe. The City of Manchester would have no say if we had a tax cap of 2% on the City side from the CPI so we would have no control on spending whatsoever.

Attorney Lehmann I believe that you could propose a city charter revision that accomplishes what you just described, if that is what you are inclined to do. The School District is an independent entity, it is a corporation capable of suing and being sued, it has authority to purchase land, hire a superintendent, raise and expend funds, so it doesn't need the City to do that. You are permitted to put it under the City's umbrella and indeed you have. That is the status quo. If that is what the question asks by making the school a

taxing authority is whether it is possible to make the school truly independent from the City, I believe the answer is yes, you could. I'm not aware of anything in statute that requires the school to be under the umbrella of the City.

Commissioner Lopez asked you don't know of any city or town that sends directly to the State to set their taxing authority for the school department?

Attorney Lehmann asked you mean a school that sends it directly?

Commissioner Lopez responded through the governing body.

Attorney Lehmann Concord did. I think Concord still does, but Concord came to be through a different sort of affairs. I can tell you, as someone who lives in Concord, that there are a lot of folks who find it an unsatisfactory arrangement.

Commissioner Girard stated Attorney Lehmann, if the City were to remove the requirement that the School Board submit its budget to the board of aldermen for approval, does that mean that the School Board could decide to spend whatever it wanted?

Attorney Lehmann replied it depends on how a proposal was set up with the interaction with the tax cap. As of now, the School Board, combined with the rest of City government, it subject to the cap. You could take the School Board, if you were so inclined, out from the cap because the cap only applies to the School Board because they are both there in the charter together. You can amend as many sections of the charter as you like. I don't honestly know how it would work to have the School Board not be subject to any oversight from the Board of Mayor and Aldermen, yet at the same time, have its budget, in the aggregate, be combined with the rest of City government with the

cap. I don't see how that would work, but I don't see anything in the law that necessarily prohibits it either.

Commissioner Girard stated your written opinion seemed to indicate that if we were to remove the Board of Mayor and Aldermen from approving the School Board budget, then the School District would no longer be subject to the tax cap. Did I read that correctly?

Attorney Lehmann replied it depends on... My interpretation on what was meant by a taxing authority is that all the authority is then given to the School District. That would necessarily mean that it is taken out from under the cap. I think the way the tax cap interacts with this is complicated. The mechanics of it limit your options somewhat. In a purely legal sense, if you wanted to make the school an independent taxing authority, you could make it independent of the cap. You could also require it to be under the cap. It is your opinion.

Commissioner Girard stated I think I am getting a little lost in the weeds. I'm trying to think how I want to phrase this. If we were to remove the Board of Mayor and Aldermen from the role of approving, giving final approval to the School Board's budget, by what authority... I'm trying to figure out the mechanic by which it would work. Just because they say regardless of whether or not it is subject to that cap, I want to set that aside for a minute. If they say they are going to spend \$165 million this year and that is not subject to the authority of the Board of Mayor and Aldermen, then is the Board of Mayor and Aldermen, a City, going to be required to issue tax bills on its own to cover that \$165 million expenditure?

Attorney Lehmann replied my understanding of the way it would work, the school would submit its budget, \$165 million, and the rest of the City would submit the rest of its budget, whatever that is, and the whole thing runs through the Department of Revenue

Administration and they would send back a tax rate and then the City tax collector send out the tax bills that include the school portion in that.

Commissioner Girard stated without the Board of Mayor and Aldermen having the authority or the opportunity to say no, we don't want to spend that much money, if we were to do that, then whatever the School Board decided to spend, the City would be compelled to raise taxes.

Attorney Lehmann replied I believe that is correct.

Commissioner Girard stated you mentioned that the City of Concord is the only school district that you know that independently issues a tax bill.

Attorney Lehmann stated I don't think it does independently issue a tax bill. The process goes through DRA and it comes to the Concord taxpayers as a single bill.

Commissioner Girard stated so the arrangement that we just discussed, if we were to remove the board of aldermen from approving the School Board's budget, if we were to do that, would the City of Manchester then be in the same position, mechanically or otherwise, that the City of Concord is in?

Attorney Lehmann replied yes, I think it would.

Commissioner Girard asked it is not the case that the City of Concord school district has its own charter?

Attorney Lehmann replied it does.

Commissioner Girard asked would not then, the City of Manchester School District need to have its own charter before that authority could be established?

Attorney Lehmann replied I don't know why it would because I believe the statute gives the School Board sufficient authority to do everything they need to do to run the schools. A charter might be helpful to establish some ground rules and to give citizens in Manchester an opportunity to weigh in on that and fill in some of the details not filled in by the statute, but my belief is that the statutory scheme is comprehensive and gives the School District, through its ability to hire a superintendent and do all the other things that school districts can do, sufficient authority to operate without a charter. Every school operates under the statute governing school district, but not every school district has its own charter.

Commissioner Girard stated but if this commission is inclined to make that change, remove the board of aldermen from approval of the budget, we could construct it so that the School District is subject to the cap. Is that what you are saying?

Attorney Lehmann replied I think that legally you could. I don't know, in effect, how it would work on the ground.

Commissioner Girard asked if we did that, what would be the mechanism to override the cap? Would it be two thirds of the aldermen? Would it be two thirds of the School Board members or whatever supermajority this commission might enact?

Attorney Lehmann replied I don't know. I think that is a good question. I think the reality is that if you have stronger checks on the general city government than you have on the schools, you put a huge amount of pressure on the general city government and probably force large cuts to the general budget, assuming school expenditures grow.

Commissioner Girard stated so if we did that, if the schools had their own budget authority and they could determine how much they wanted to spend and for whatever reason they weren't subject to the cap, but the City was, then whatever the schools decided to go up by, the City would have to absorb in order to maintain the cap on overall spending?

Attorney Lehmann replied I believe that is how it would work. Incidentally, that may, arguably, be how the School Board's attorney has proposed that the cap work under the current system. As we discussed the last time I was here, the School Board's attorney is of the view that the school doesn't need to submit a budget to the board that complies with the cap as well. The idea may not be as far as it sounds, but I think you are current that that process would put a huge amount of pressure on the general City budget.

Commissioner Girard stated Mr. Chairman, I have no further questions. I can wait, but there is a point of order that I wanted to make on the question of the language in the charter.

Chairman Duval asked can you provide us some summary for informational purposes for commissioners in a follow-up letter with regard to what Concord has, the mechanics of what Concord has, Attorney Lehmann, just so we know how the process works for the City of Concord school district?

Commissioner Ashooh stated I was going to start off tonight by complimenting you on this clear, concise report that you have. After listening to weather men and one armed economists, I thought that this was refreshing. Now you put us back in a situation where I have no idea where we are. To summarize, I think Commissioner Girard hit on a lot of key points. The fact of the matter is, if the School Board does not have to submit to the

City, the City is under the tax cap, so one side will be bound by the tax cap and therefore the school budget could then drive everything else that happens in the City.

Attorney Lehmann replied I think that it correct.

Commissioner Ashooh stated for now that's fine. I'm expecting a lot more clarification on a lot more issues.

Commissioner Lopez stated in the last paragraph it is highly unusual that you use the words collecting taxes be highly unusual and then recommend further investigation. What kind of investigation?

Attorney Lehmann replied I think that the question that Commissioner Girard really warrants... If this is something that is under serious consideration and may be proposed, I think the chairman's suggestion that we look at exactly how mechanically it works in Concord and the extent to which the school budget could crowd out the rest of the City budget and if that is an arrangement that exists in any other places, maybe not just in New Hampshire, but outside as well, it is the kind of thing worth taking a very close look at because it is highly unusual. I would add to my conversation that I had with Bill Gardner recently. He indicated that from the perspective of his office they find this charter amendment process very challenging because the laws are broad, there is very little precedent to go on and every city is different and wants to come up with a different type of proposal to meet its unique and individual needs. From the state's perspective, there is a need to have some level of uniformity because as they go forward doing what they need to do, it complicates things to have so many different arrangements.

Commissioner Martin stated Attorney Lehmann, you were up to number five in discussing what was in question as far as your opinion given the new information we have about the two languages, so what about six and seven.

Attorney Lehmann asked is the School District subject to the city charter? Yes, it is, without question it is subject to the city charter. Again, exactly what that means and how much the charter can intrude on the existing statutory scheme governing schools is going to be a point of contention. The School District may have its own charter; there is a statute that authorized schools districts to have charters. Whether it should have a charter is really a policy decision that is outside the scope of what I do; that is what you were all elected for. I don't think that is changed in any great detail about the uncertainty about the specific language of the charter. Question seven, I doubt that a court would allow the mayor to have a veto over the school budget. Again, this is legally called preemption when there is a state statute that occupies a field of extensive arrangement in statute, it precludes other options. The statute that creates the School Board gives it the authority to control its own budget and it is my opinion that there is no role for the mayor in that statute so my opinion is that if you try to change that, a court would probably tell you that you can't do it that way, that the School Board has that statutory authority.

Commissioner Martin stated I'm on question seven, bottom of the paragraph, I do not believe that the current law, as it applies to the existing city charter allows the charter to be changed in a manner that gives the mayor a veto over School Board votes. Okay, I get that. Is there any statute that says that we cannot remove the mayor, a mayor, as a member of the Board of School Committee or as the chair of the Board of School Committee?

Attorney Lehmann replied no, I think you could do that if you wanted to. I'm not aware of any statute that requires the mayor to be a member of the School Board.

Commissioner Girard stated this is just sharing an experience that I have with Attorney Lehmann and fellow commissioners, if it is helpful. I understand that we obviously want to know what the actual enforceable language of the charter is, but in as much that I have had the privilege of working on five separate City budgets, I can tell you from experience, when you talk about the form and organization of procedures and schedules established by the mayor when it comes to the school department budget or School District budget means virtually nothing. If you take a look at the City side of the budget, the mayor can dictate what the department does with line items. The mayor doesn't say to the Police Department, I want to see a lump sum budget and you worry about the line items. In fact, we used to get down to the level of what goes into their office supply lines. It is little different now where it has been modernized and is done by categories, but the mayor can tell the various City departments that he wants to see this year, minus 3% or I want to see salaries frozen and supplies cut. Because of the statutes governing the School District budget process the mayor can't do that. He never could do that. While I think it is important that we get the clear understanding of what the language in our charter is following the court rulings, I don't know that the commission necessarily should be occupied by that in its discussion because the School District, if you see them come in and make their presentations to the board of aldermen when they present their budget, they have not done it in accordance with anything other than whatever it is they do over there to actually develop their numbers and come and present them. In his capacity as the City's budget officer, the mayor, even under the old charter, was never able to exercise the level of control with the school submission that he was with the City departments. I hope that is helpful. I think that might be a difference without a distinction.

Attorney Lehmann stated it very well may be. One of the things to remember about adopting charter language and statutory language and the language of ordinances in

general, on the one hand, the experience of the City is valuable and frankly, without having experienced people who know how things are done in the past, if you handed this document to people who have no experience with it, they would do things in a very different way than it has seemed to have worked in Manchester. The unwritten practices that are followed matter in the effective operation of the government. When you start talking about putting the language in, it is very difficult to incorporate those things because certainly as a charter, you are not going to write down all the kinds of details that flush those things out. The other thing, when I am advising you, I consider a worst case scenario. I have never been here for a budget process so I don't have any idea how the various players interact. It sounds like over the past several administrations and through different mayors, there haven't been improper attempts to influence the school budget by diving in, in an attempt to exert too much influence. Again, I don't know, I have never been here to see it unfold. If that kind of thing happens, the way it gets resolved is someone takes it to court and says you can't do that, the charter prohibits it or you are acting over the line. Just like it is impossible to draft a charter that contains all the rules and all the collective knowledge of the history that has gone into how these things have worked in the past, it is also impossible to draft a charter that can explicitly delineate all the lines. The charter, in a lot of ways, is a statement of basic principles, which I think is a long handed way of saying that I agree with you, that we may be putting too much emphasis on the inclusion or exclusion of these three or four works. At the same time, in rendering a legal opinion, it is hard for me to ignore that fact that there is an uncertainty.

Commissioner Girard stated Attorney Lehmann, along that line, if the School District were made a department again, what authority or control would be Board of Mayor and Aldermen be able to exercise, if any, over the allocation of the funds, the line items, that are appropriated to the School Board?

Attorney Lehmann replied I think that is the hardest question that I have wrestled with in looking at this. If the City were to enact chapter 778 into its charter, bring the district in as a City department, what is gained? The heart of what my initial interpretation was, that what it gains is an expanded role for the mayor to set procedures. The fact is that the language that gives the mayor that expanded authority to set the procedures for the adoption of the budget is already in the charter then it would seem to just be reenacting what already exists. There is a general rule of statutory interpretation that people who are creating new rules do it for a reason, they intend to make some change. If the language effectively stayed the same, it is not clear to me how the broader principle would interact with the fact that the language is essentially staying the same, which may be a longwinded way of saying I don't know exactly what the change would be. I think it would be clear that the City was trying to make an effort to maximize the amount of authority that the Board of Mayor and Aldermen have over the school budget or the School District. It would still be subject to the limits and the statutes though.

Commissioner Girard asked would not those statutes preclude interference with the allocation of the line items once the budget has been appropriated?

Attorney Lehmann replied yes, I believe it would.

Commissioner D'Allesandro stated having been a member of the School Board and having worked there, chapter 778, the mayor already uses that authority because the mayor, as the chair of the School Board, appoints all of the committees and under the current structure, the finance committee of the School Board is a committee of the whole, shared by the mayor. In essence, without going to chapter law, all of this exists at the present time and as a result of that, the budget that is constructed by the board, the mayor, by virtue as his authority as chair, has all of that authority now and constructs it. I guess my question would be, that is de facto. It may not be de jure, but it is de facto how it is

run at the present time. If we are looking at what the charter grants and what the charter doesn't grant, the fact of the matter is, the structure of that board that we are discussing is dominated by the chair and the chair is the mayor. By virtue of our charter, the mayor is the chairman of the School Board as well as chair of the Board of Mayor and Aldermen. There is a dual responsibility. In essence, you are conducting a meeting based on a meeting that you conducted. That is the fact of the matter, whether or not we like it, it is the way it is. You can look at the chapter law. The mayor doesn't need that because the process is in place as we speak. When you are talking about how the mechanics work, I think the mechanics are pretty clear. I think your explanation, particularly as it relates to seven and eight is quite clear. There is real clarity there. What this board decides to do with that information, that is an action that we would take as a board after discussion, but there is pretty much clarity as to what is going on and as to the authority for what is happening as we speak.

Attorney Lehmann stated I guess what I would say, as much as it may be the case, and obviously I take you at your word that that is what happens, but what the charter provides is the opportunity for somebody, if you want to change that, if you don't find it satisfactory, but also for somebody who thinks that the mayor should do more or less to go to court and get an order requiring it. It is possible that if someone went to court the current system could be changed. I'm not advocating or saying that would be a good thing or a bad thing, but what you are looking to do is to incorporate the de facto process. If you find it satisfactory, it might make sense to put it into the charter because it locks it in place.

Commissioner D'Allesandro stated I agree totally. If indeed that practice is something that this board appreciates, it would be part of our discussion and really part of our decision making process to say it already happens so make it part of the charter so that it is real, rather than, I don't want to say illusionary, but accepted versus non-accepted, as it

relates to the process. I think the answers to the question clearly indicate that there is a methodology that we could use in order to make that happen.

Commissioner Girard actually Mr. Chairman, a question for you or Commissioner D'Allesandro as former members of the School Board. My recollection of the committee structure at the School Board is that the School Board gets to determine what standing committees it has and gets to determine, in this case, I think the School Board voted to make the finance committee a committee of the whole? Isn't that established by policy of the School Board and not dictate of the mayor?

Commissioner D'Allesandro replied I don't know if they did take a vote. When I was on the School Board, and of course that was a few years ago, the mayor appointed every committee.

Commissioner Girard stated I agree with you that the mayor appoints.

Commissioner D'Allesandro stated the mayor would establish what the committees would be and who was a member of that committee and they would vote who would chair each one of those committees. You may be correct by virtue of the board's own vote they may have said that the finance committee is a committee of the whole. I'm sure they have that option.

Commissioner Girard stated my memory is, and we should probably look this up, that the School Board determines, like the board of aldermen determines, what the standing committees are, the mayor does make all off the appointments, you are correct about that, but I believe they had to vote. I see former Alderman Lopez nodding his head. I believe the School Board voted to eliminate its finance committee in favor of a committee of the whole so they could operate more like the board of aldermen did.

Commissioner Lopez stated for the budget purposes they are a committee of a whole.

Commissioner Girard stated they could change that with a vote or with their own policies on what their standing committees are.

Commissioner Lopez stated they can really do whatever they want.

Commissioner Girard stated that is not a function of the mayor's power to create committees for the School Board any more than it is at the board of aldermen. Is that correct, Commissioner Lopez? The mayor can't determine what committees will exist and won't exist?

Commissioner Lopez replied as a board member, he can recommend anything, just like any other board member, but it takes a vote of the body to determine that. They voted last year to make the committee of finance a whole.

Commissioner Girard asked so the School Board did that, not the mayor

Commissioner Lopez replied correct.

Commissioner Martin stated not that I know this for sure, but I think if we want we should probably get a clear answer on that because I distinctly remember being at a School Board meeting at the beginning of the new cycle of board members and the mayor changed the committee on athletics to the committee on athletics and extracurricular activities and he simply did that. I don't remember there being a vote. I could be wrong, but we should probably get some clarification on that if we want a true answer.

Commissioner Girard stated I agree we should get that.

Commissioner D'Allesandro asked when are we going to get clarity on what is on the website and what is in the book? How are we operating?

Attorney Lehmann replied I will forward it to you all through the chair. I hope to have it to you by your next meeting next week. The City Solicitor's Office has been very helpful in providing the information so I don't expect to have any problem getting it.

Chairman Duval stated thank you very much, Attorney Lehmann, for your work.

Commissioner Girard stated I'm sorry, I have one more quick question. In your write-up you mentioned the School District, under law, is a corporation that can be sued. You also wrote that it could own real property.

Attorney Lehmann replied that's correct.

Commissioner Girard stated the City of Manchester, in fact, owns the school buildings; the School District does not. That being the case, does that have any potential bearing on your opinion on what is and isn't possible and what the mechanics might be?

Attorney Lehmann replied I don't think it changes what is possible. The City owns what it owns and the schools have the ability to own property, but apparently doesn't. Mechanically, the City could grant use of the property to the School District, you could charge rent, you could do any number of things. I'm not an expert in school construction or property law, but I think it is potentially a complicating factor if people can't come to some kind of agreement, although you can probably put it in the charter as well.

Commissioner Lopez stated I think in a section of the charter or in a RSA, I don't have the number right now, any school building belongs to the schools. They own it. The only time we can take care of it is if they release it back to the City and then we can sell it. The Board of Mayor and Aldermen don't have any authority to sell any building that belongs to the schools that they are using for schools. I think you will find a RSA in reference to that. They have to release it, just like they did with the Rimmon School; they released it and then we sold it.

Attorney Lehmann stated there may be a RSA. This is not something that I have had a chance to look at. I would completely agree that the City can't sell what the school owns. My read of the statute, when I was answering these other questions, said that the School District is a corporation that has the authority to own property. I don't know if that means that it necessarily owns all the property that it occupies, but if you say there is a statute I will definitely take a look for it.

Commissioner Girard stated I had actually spoken with Solicitor Clark about that today and he said that the City owned the buildings.

Commissioner Lopez stated I'll accept it.

Commissioner Girard stated we should get the answer; I just wanted you to know that is why I asked the question.

Chairman Duval stated in any event, it would be part of whatever it is we propose and vote on and put before the voters.

Chairman Duval addressed item 4 of the agenda:

4. Education Discussion:
 - Timeline of the school budget
 - Role of the mayor on the School Board
 - The number of votes required for a tax cap override
 - School District becoming a City department
 - Topics derived from response from legal counsel

Chairman Duval stated will of the commission on how you want to proceed. The education discussion topics are there in front of us. Based upon the opinion and presentation of Attorney Lehmann, both in writing and what he gave us tonight verbally, of course taking into consideration that there is going to be further clarification coming shortly, if it is the will of the commission to have further discussion about those topics or if you want to defer until the final legal opinion is in, then it is whatever the commission would like tonight. We have the education topics that are in front of us as agenda item four, but there was a little bit of ambiguity that was disclosed to us tonight by Attorney Lehmann so we can defer discussion on any one of those topics or all the topics if you want until we get the final opinion from Attorney Lehmann, in addition to going a little bit further now that we have had this discussion tonight. I'm sure that Attorney Lehmann will put some finishing touches on his final opinion. Maybe until we have that clarity, it would be the will of the commission to defer. What is the sentiment from the commission?

Commissioner D'Allesandro stated I think he is going to get an answer rather quickly. He said that the city solicitor has been very cooperative. The terminology does indicate that there is a quandary there and it has to be squared away because we have a statement that is online and the people who are looking at the charter are looking at that and we are looking at something different. It seems to me that we ought to get his clarity on that

rather quickly. I think it is important that that be clarified. It is very important in terms of what we are reading and what the public is reading.

Commissioner Ashooh stated I think one thing that we probably should talk about, because I think it is splitting hairs, is the number of votes required for a tax cap override. Whether we go to nine votes or ten votes, it is a philosophical decision. Maybe we can dispatch with that tonight. Does it really make a difference whether we have a nine vote override or a ten vote override on the tax cap? Maybe that can be something that we take off the ledger tonight if we want to talk about it.

Commissioner Lopez stated I don't see that any of these questions are going to be affected by what he finds in 6.06. The scheduling of how the process works with the budget, the timeline or time frame, if the Board of Mayor and Aldermen approve, is not going to change. I'm a little confused why we wouldn't address what is on the agenda.

Chairman Duval stated it is the will of the commission, Commissioner Lopez.

Commissioner Lopez stated I am proposing, after Commissioner Ashooh gets his question answered, that the timeline of the school budget... I do have a proposal that I would like to give to commissioners. If they don't want to take any action tonight I am satisfied with that as long as they have something in hand as we move forward as well as other things. I don't think we can just stop the complete process. Let's move forward and if something happens down the line that changes our mind, that's fine.

Chairman Duval stated also, just to note to commissioners, our clerk just handed out a letter to the commission from Alderman Joyce Craig, the alderman from Ward 1. If you wanted to take a moment to read that briefly, please do, as a supplement to what Commissioner Lopez has just talked about. Comments from commissioners?

Commissioner Martin stated in response to Commissioner Ashooh's suggestion, just for my own clarification, let's say for example we brought this up tonight and decided that we were going to take some action on this item, let's say we were to vote in favor of a nine person override of the tax cap. Would that interfere with any further conversation about the tax cap?

Commissioner Ashooh replied to my mind it wouldn't. I guess part of the clarity I would like on this issue is I believe the State statute that defines a tax cap also defines what a supermajority is and at some point... The City uses a supermajority now of ten votes to pass a bond. There is no question; that is what they use. If the State statute also defines a supermajority of a board of 14 or if we eliminate School Board at-large, aldermen at-large, what is a supermajority then required by law? I would like to have that question answered.

Commissioner Girard stated on a veto, by State law, supermajority is two-thirds so if we were to reduce the number of aldermen from 14 to 12 then the override would be eight. You would need eight to override because eight is two-thirds of 12. If we wanted to reduce the number of votes to gain an override... The reason why it is ten with 14, is because two-thirds of 14 is like 9.4 so nine is not two-thirds, but ten is. Interestingly, right now you need ten which means four can be opposed. If you reduce the number of aldermen you would need eight leaving the same four who could be opposed. Does that make sense? I think the question on whether or not it is eight, nine or ten is maybe premature and potentially tied to a conversation to the number of members of the board.

Commissioner Ashooh stated with those comments and knowing that we have a ten vote supermajority to pass a bond in the City, they have done that successfully many times, and if there is a question on the number of at-large members of the number of wards we

have, I would think that we would probably take the number of votes for a tax cap override off this particular agenda at this point. It may come up again if we reduce or change the numbers, but it sounds like ten is the supermajority of a 14 member board.

Commissioner Girard stated maybe we should move to table that item.

Chairman Duval stated we don't have to take any action on it. These are discussion topics. We could take no action at all. It is the will of the commission.

Commissioner Ashooh stated I don't need to make a motion. I'm just thinking on a practical matter, do we really need to discuss this now? It sounds like it is something that comes up after the fact.

Commissioner Martin stated I'm curious what Commissioner Lopez has to distribute in terms of the timeline of the School District budget.

Chairman Duval stated if Commissioner Lopez has a proposal for the timeline for the school budget we can get to that. Is it specific to that, Commissioner Lopez, or does it involve something else?

Commissioner Lopez stated if the clerk could pass these out and keep one for herself, I think it is important. Since we are missing a commissioner here tonight, I wouldn't want to take a vote on anything, but if we want to discuss anything we can. I would like you to take this stuff with you. During the major snowstorm I was able to sit down for 18 hours and do some stuff. There are different things that I am presenting. As you will note, down the bottom it says a-g. Of course, I didn't want to spend too much money so I just put a, b, c, and d on the bottom right hand corner of each page. These are some of the thoughts that I put together from the experience I have had as an alderman.

Chairman Duval stated you want commissioners to consider what you have proposed for future discussion.

Commissioner Lopez stated I'm asking you to take a look at them. Consider them, if you want to change them, make comments, thrown them in the garbage, that's okay too, but these are proposals that I worked on during the snowstorm.

Chairman Duval stated on the education discussion topics, is there any interest from any commissioner tonight to propose any further discussion or votes on any one of those topics there? Are we going to hold off until we get further clarification from counsel?

Commissioner D'Allesandro stated the question is, if we are going to take a vote, do you want everybody here? I think that there are a couple things on this list that we could vote on today, but if the pleasure of the chair is, if you don't have the entire board here, do you want to take votes with anybody missing? It would seem to me that we could accept and place on file all of the topics that we discussed with our legal counsel. That is done. I think that should be part of the permanent record. We could vote on that. I think that we have some information here about whether the School District could become a City department. Have we had enough information, from both our legal counsel and from our thought process, to vote on something like that? There is going to come a time when we have to start taking votes on these things. We ought to pick the things that we can come to some reasonable solution on. I would say let's take those two, take a look at all of the material that Commissioner Lopez has passed out because there are some significant things here that are pieces of the puzzle and some are inside education and some are outside. We have to get this education stuff done in a relatively short period of time. Time is flying on us. Just a thought, Mr. Chairman. We have five items here, if we could pick a couple that we think we could get rid of at this point in time, have some

discussion and debate about that I think it would serve our purpose as a commission and we could move forward.

Chairman Duval stated I'm willing to entertain motions with regard to any of the topics in front of us, if that is what the commission would like to do, take actual votes tonight. We are expecting Commissioner Infantine any time now. We were told that he should be here anytime now.

Commissioner Ashooh stated I think we should take the supermajority off for discussion because that is more administrative.

Chairman Duval asked are you proposing that as a motion? Is there a second to the motion, to take that off the table?

Commissioner Girard what are we taking off the table?

Chairman Duval asked could Commission Ashooh please confirm for Commissioner Girard and the other commissioners what the motion is?

Commissioner Ashooh stated the motion is to remove for discussion at this time the number of votes required for a tax cap override.

Commissioner Ashooh moved to remove for discussion the number of votes required for a tax cap override. The motion was duly seconded by Commissioner Girard.

Commissioner Martin stated I'm assuming that we could, on February 27th, when the topic is budget and taxes, reconsider that conversation.

Chairman Duval stated revisit it, absolutely.

Commissioner Ashooh stated right now the discussion is based on the RSA that specifies a supermajority. A supermajority of a 14 member board is ten so debating that might be an exercise in futility until we actually decide if we are going to keep a 14 member board for the BMA.

Chairman Duval called for a vote on the motion to remove for discussion the number of votes required for a tax cap override. There being none opposed, the motion carried. Commissioner Infantine was absent for the vote.

Chairman Duval asked are there other issues on the docket that commissioners would be inclined to move?

Commissioner D'Allesandro stated I think we should accept and place on file the responses derived from our legal counsel, unless there are other questions. It seems like we pretty much accepted his comments, we gave him one other charge to give us some clarification on something, but all the topics have been vetted and we ought to either accept them and place them on file as part of the record, topics derived from responses legal counsel.

On motion of Commissioner D'Allesandro, duly seconded by Commissioner Clayton, it was voted that responses from Attorney Lehmann be accepted and filed as part of the record.

Chairman Duval addressed item 5 of the agenda:

5. New business to come before the commission.

Chairman Duval stated I just want to note as a courtesy to Mayor Gatsas, he has put out a press release that we were handed tonight by our clerk and he wants to announce to the community that he will delivering his budget address for 2014 on Tuesday, the 19th of February immediately following public participation. Commissioner Lopez, thank you for your work. You handed that our already so we have that to consider in the next few days. Any other business by the commission tonight?

Commissioner Ashooh stated just briefly, this is a follow up on old news. At last week's meeting Commissioners Girard and Lopez submitted a document for our consideration. I asked that it be tabled because I hadn't had a chance to read it. I did read it and there are a couple of points that I would like to discuss. To a great extent, I think a lot of the issues that were brought up in this document were dealt with in the revised calendar and the suggestion by Commissioners D'Allesandro and Lopez on the guests we were going to have here. Item number three, testimony be limited to those guests specifically invited by the commission unless the commission allows otherwise by unanimous consent. I would oppose that simply because I don't believe in creating a one-man veto on a nine person board. Another kind of vote may be, but I think the one-man veto I think is a problem. I would really like, it item number four, it is a valid point, but I haven't heard yet from legal counsel as to whether or not we could actually have a deliberative session behind closed doors where we just have a conversation. Before we do that, I would just like someone to opine on that. Those are my only objections.

Commissioner Girard stated commissioner, with respect to your points, I'm not personally tied to the idea of unanimous consent, but those are typically the rules of the board of aldermen, which we adopted. My only concern is that we have had meetings, for example, you and I thought it might be wise to have former Clerk Leo Bernier address the commission and that was deemed to be out of order, but there have been other meetings when people not on the agenda to speak have been invited to speak and it seems uneven. I am looking to make sure that if something like that is going to happen, it will happen by the will of the commission and not the decision of one. On point number four, the intent is not to have it be closed doors. Maybe Commissioner Lopez would be better able to speak to this, but this is a very formal setting here and sometimes it is easier to sit across the table from people in a less formal way and have a discussion rather than being in this room, at these tables, behind these microphones. The intent is not to close the door to the public, the intent is just to put us around a conference table in a different environment.

Commissioner Ashooh stated I have no problem with that. As a matter of fact, I find it a much more comfortable way to do business. I'm not sure what the rules are. Does this have to be recorded? Do we need our clerk there? Call it a coffee catch rather than deliberative session, but to sit around the table and basically talk it through. I don't understand the rules.

Commissioner Girard stated just to follow up on that, the clerk would be present and public television would be there recording the meetings. It would be a meeting every bit as official as these, just in a different environment. There is no desire to exclude the news media, community television cameras or anything like that.

Commissioner Ashooh stated based on that, I have no other objections. I would suggest that we consider a receive and file on this because I think a lot of these things have been put in place. When we do the deliberative sessions I think that makes a lot of sense because we are going to have to move fairly quickly over the next two months and I think doing it in that format might be a little bit more facilitative. I'll make a motion to receive and file, but acknowledge that there are suggestions in here that are valid in their nature and should be undertaken.

Commissioner Ashooh moved to receive and file the handout from Commissioners Girard and Lopez regarding procedures. The motion was duly seconded by Commissioner Clayton. The committee further notes that the suggestions put forward are valid.

Commissioner Girard asked Commissioner Ashooh, do you want to take actions on those things that you want to implement?

Commissioner Ashooh stated the only thing that I would really want to implement is the facilitation of a deliberative session. The other things, I think we have had some thoughtful comments on who our upcoming invitees should be. Perhaps we could have a separate discussion on.... Someone made a suggestion about having a public comment session for every meeting. I consider those separate issues. The idea of moving on number four, creating that situation where we can have deliberative session, I will go for. I can't support the unanimous consent, but I think that has been taken off the table by suggestions from the other commissioners as to whom we should be inviting. If we have a discussion on how we are going to handle or facilitate public comment, I think that takes the other issues off the table as well. I would receive and file this and if we want to have individual actions on some of the other suggestions that is fine with me.

Commissioner Martin stated if I look at number three and think about our procedures, if the chair called someone to speak at the podium and I was opposed to that, I would say, Mr. Chairman, I have a comment and I might even make a motion. There is nothing that says that we can't do that. Is that correct?

Chairman Duval replied absolutely.

Commissioner Martin stated I don't know that number three is necessarily necessary given that we can certainly speak up and speak our mind.

Chairman Duval called for a vote on the motion to receive and file the handout from Commissioners Girard and Lopez regarding procedures, further noting that the suggestions put forward are valid. There being none opposed, the motion carried.

Commissioner Ashooh stated to follow up on that, I would like to empower the chairman to go forward and explore and facilitate of a deliberative session, perhaps to follow up on what we had tonight, to see if we could have our discussion and that would leave it open for anyone else who wants to empower any of these other suggestions. I would make the suggestion that the chairman facilitate this type of format.

Commissioner Girard stated I would like to suggest or move that this commission, prior to each meeting, since we only have working sessions scheduled, open with a public comment session beforehand like they do at the Board of School Committee and the board of aldermen so if there are members of the public who want to come speak on our agenda items or anything else that they want to speak on, to inform us of their opinion that it be done.

Commissioner Ashooh stated only in form and not in substance, does it make more sense to have public comment before we have our meeting or to have our meeting and then solicit public comment after we have spoken? That may be more style than substance. It is a question I would ask the other commissioners.

Commissioner Infantine stated I would like to be more specific on that because want I don't want to happen... It is one thing if we are like the aldermen, you come in on a myriad of different issues. If we are going to speak next week about elections, we have 25 or 30 people who come in here to make some points before we have our professionals, if you will, come in and speak about it. I'm concerned about taking up too much time, we would have to have a limit, three minutes per person or whatever. I just want to understand the procedure because I don't want to have a lot of members of the public coming to talk about things which may be inaccurate before we have the professionals speak. Not that I have a problem with people coming, I think it would be better because I don't think honestly we have the public's interest, with the lack of reporting by the *Union Leader* on what is going on here in an hour and a half long meeting where people are only going to watch a certain amount on television, I think we have to get the people engaged again and I don't think we have thus far, except for some small items with the school. Anything we can do to help the people get more engaged would be great as long as it doesn't interfere with a pretty aggressive agenda that you have put in place.

Commissioner Girard stated along the lines of what you were saying, Commissioner Infantine, if I am not mistaken, the School Board does not open its meeting with a public hearing, I believe it hears from the superintendent first or whoever is going to make their presentations or reports and then they have the public session. They do that at their subcommittee level too. Then they return to their regular business. It is a little different than the board of aldermen where it is technically a special meeting of the Board of Mayor and Aldermen for public comment before they actually hold the meeting. If you

want something where, next week for example, if we get City Clerk Normand here and he wants to make a presentation or we want to ask him questions, let him do that and then let whoever comes from the public address us in open session I'm happy with that. I just think we should build something in so that the public can come and speak on whatever issue they want as often as we can.

Chairman Duval stated I can tell you that if people come here, we can always ask for public comment at the conclusion of our due diligence work session, if that is the will of the commission. I don't object to that at all.

Commissioner Lopez stated I just don't think it is going to be a big thing. If it becomes a big thing we can address it. Even by city charter, at every board meeting people are allowed to speak. That includes commission meetings, Board of Mayor and Aldermen, you name it, they have the right to say something. I agree with you, if we have 25 people we might limit it to what we want to hear about. Most likely we will get two or three people to come in before a work session and we might want to yield to that person and hear from them. It is no big thing. I would just play it by ear and see how things go. Let's continue working. No one is here tonight.

Commissioner Ashooh stated I think Commissioner Lopez has a point. We could play it by ear, but I do think that there should at least be some notification that the public is welcome to speak at any of our meetings, just so they know that the door is open for them.

Chairman Duval stated I think we encourage public input at all times.

Commissioner Ashooh stated if we have ten people show up, great, we can ask that it be germane to the discussion of that night.

Commissioner Girard stated the only thing I would be concerned of is if we put off public comment until after we have had our working session because you don't know how long that could run and you don't want the public sitting here for an hour or an hour and a half before they got a chance to comment.

Commissioner Lopez asked the people for February 20th, I don't know if we invited Commissioner Martineau. Did we?

Clerk Leahy replied he is not on the list, but I would be happy to add him.

Chairman Duval stated we will add him. By the way, thank you very much, commissioners, for your input as I have asked for right along with regard to these work sessions. Please continue to give me names of people who you think should be invited, even if it is until the final morning when we are going to have the work session. We can always pick up the phone and make a phone call. If there are other names that you have come up with in addition to the names that you have offered so far, we can include those. We want to continue to do that.

Commissioner Lopez stated just for clarification, the role of the mayor on the School Board, what did we do with that? On the agenda tonight, did we do anything?

Chairman Duval replied we deferred until we get additional legal opinion. They are on the record. That is the vote that we took.

Commissioner Lopez stated we already know that the mayor can't have a veto on the School Board. What else are we waiting for, I'm just curious.

Chairman Duval stated the consideration of the commission largely, based upon the motion that was made and unanimously adopted, was specifically not to vote on those tonight. That is what we voted on earlier.

Commissioner D'Allesandro stated for clarification, we have a report from our legal counsel as to what the mayor can do. The question that we were to discuss is in our opinion what should the mayor be doing. That is a much different situation. If we are going to set that aside for future discussion I think we ought to codify that in this context. We know that the mayor, at this point, is a member of the board, we know how that action takes place, so the question is if we accept that or do we want to modify that in some context. We have had testimony here from people who say, or from constituents who have said, that the entity being chair of the board is problematic to the administration and to others. That is something that we ought to discuss and then make a decision as to what we think should happen as a result of that and once we have made that decision should it be incorporated as a charter revision. It seems to me that we have had lots of testimony on that particular subject and we ought to frame our discussion or our deliberations as we move forward.

Chairman Duval stated if it is the will of the commission, if the votes are here in this commission to propose autonomy for the School District, then I suppose that is a moot discussion, if that is the way they chose to go.

Commissioner D'Allesandro stated if the votes are to create autonomy for the School District then, as you say, it is a non-issue.

Commissioner Ashooh stated conversely, if the votes are here to create or recreate the School District as a school department, again, it reframes the question because then the mayor's powers become much more pervasive. Really what we are talking about is

taking these three topics, rolling them into one and trying to figure out, what is the greatest benefit to the citizens in the city of Manchester. As one, I suggest that we take some time, hear what Attorney Lehmann has to say and maybe we can consider these three options as one and what is the best way to go. That is just a suggestion.

Commissioner Girard stated I agree with both commissioners, but I thought we were leaving it for a future discussion because, to Commissioner Martin's point, that maybe we should get the rules of the School Board and figure out how the committees are established and what the real authority of the mayor on that board, by their own policy, are. Would it be in order, Mr. Chairman, to ask our clerk to obtain the information from the School Board necessary to determine how committees are structured and what the authority of the mayor is?

Chairman Duval stated I think that is a good suggestion. If we could perhaps make inquiry of the superintendent and include the vice-chairman of the School Board and get that information. That should be easy to confirm. Clerk Leahy, is that clear enough?

Clerk Leahy replied yes, I will do that.

*There being no further business, on motion of **Commissioner Ashooh**, duly seconded by **Commissioner Girard**, it was voted to adjourn.*

A True Record. Attest.



Secretary of the Commission