

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(PUBLIC HEARING)**

July 31, 2000

6:30 PM

Mayor Baines called the meeting to order.

Mayor Baines called for the Pledge of Allegiance, this function being led by Alderman Sysyn.

A moment of silent prayer is observed.

The Clerk called the roll.

Present: Aldermen Wihby, Gatsas, Levasseur, Sysyn, Clancy, Pinard, O'Neil, Lopez, Shea, Vaillancourt, Pariseau, Cashin, Thibault, and Hirschmann

Mayor Baines advised that the purpose of the special meeting is to hear those wishing to speak regarding a proposed amendment to the City Charter of the City of Manchester, New Hampshire to provide that the school district shall be a department of the City. The Clerk will present the proposed amendment for discussion at which time those wishing to speak will be heard. Anyone wishing to speak must first step to the nearest microphone when recognized and recite his/her name and address in a clear, loud voice for the record. Each person will be given only one opportunity to speak and any questions must be directed to the Chair.

The Clerk presented the proposed amendment:

Amend the Charter of the City of Manchester, New Hampshire to provide that the school district shall be a department of the City and that the mayor shall have control over the form and procedures for preparation and adoption of the school department budget.

Article IV. School and School Committee, section 4.01 school district shall be amended to read as follows:

The City of Manchester, a municipal corporation, shall continue to constitute a single school district, administered by the board of school committee as a department of the City of Manchester. Wherever this charter refers to the school district, school district shall also mean school department. Except as otherwise provided in this charter the board of mayor and aldermen and the school committee shall continue to exercise such power in relation thereto as these respective bodies exercised at the time of the adoption of this charter.

Article VI. Budgets and Appropriations, section 6.03 (a) Budget Formulation, Submission and Message shall be amended to read as follows:

The mayor shall establish the form and organization of procedures for preparation and adoption of the annual budget, including the school department budget, the capital improvement budget, and other budget instruments and plans for future fiscal periods as the mayor deems appropriate and which shall conform to all city ordinances concerning budgets and fiscal matters. Such procedures shall require that all budgets include all proposed expenditures according to general objects of expenditure and the proposed use and all anticipated revenue.

Article VI. Budgets and Appropriations, section 6.06 School District Budget shall be amended to read as follows:

The school committee shall prepare and submit its budget proposal. The budget shall be subject to the approval of the board of mayor and aldermen. The budget shall be submitted in accordance with the budget form, organization of procedures and schedule established by the mayor under Section 6.03 (a). The board of mayor and aldermen shall accept such budget as submitted, or reject it and return it to the school committee along with the explanation for rejection and the maximum dollar amount which the board of mayor and aldermen will approve. The school committee shall then submit a revised budget, which shall not exceed the maximum dollar amount established by the board of mayor and aldermen. The school committee shall administer, expend and account for the funds approved by the board of mayor and aldermen and shall have the exclusive authority to transfer funds among line items in the school budget.

Article VI. Budgets and Appropriations, Section 6.08 shall be amended to read as follows:

The board of mayor and aldermen may provide by ordinance any additional procedures for administering of the budget, including the budget of the school department.

Mayor Baines called for those wishing to speak.

John J. McDonough, 1122 Belmont Street, Manchester, NH stated:

I think the record should show that this is the first time you people have met and anyone has beaten Leona to the microphone. She is usually first. The matter that you are discussing tonight, the referendum question, has already been put to the voters. It happened, of course, when I was trying to become an Alderman while I was teaching at Central. I sent each of you a piece of correspondence during the week. Some of it was filed I am sure and maybe others studied it, but you will notice that the matter at hand was whether the School District is a separate entity unto itself or is it a City Department. Of course, after a long, arduous struggle, five months from the filing period until the last ballot being counted in November, there was a constant drum beat of criticism or whatever from the media and others and in the end we ended up in court of course because I was fortunate enough to win the primary and the election and we ended up in court and Justice Murphy spoke and as he said so many times this has come before the courts and the City Charter, I don't care how it is crafted, can never supercede the

Supreme Court's decision and twice did they say that the School District is a separate entity and is not part of the City of Manchester. After I was seated as an Alderman and believe me I bow to the chemistry and the camaraderie of that Board. They were tremendous, but they decided to send it to a referendum just as you people are going to decide tonight so it went to referendum and the people set the City officials back on their haunches again and they said it was absolutely correct. Teachers can serve as Aldermen and the School District was separate from the City of Manchester as it stands. The Union Leader had two of its best writers in the persons of Jim Finnegan and Joe Blumenthal covering this case and they were, of course, impeccable in their grammar, very precise in their terminology and they were there with a daily drum beat. On Sundays, of course, you would be blessed but other days you would be blistered and you wouldn't forget those blisters I will tell you that, but in the end the people had spoken in the ward election, certainly the court had spoken and then the people of the entire City spoke in the entire referendum and they all came down on the side of the School District is a separate entity. I will finish with just this observation, that you people are, the Aldermanic Board that is, that you are noble souls and you have these lofty goals but you are politicians where you find the Board of School Committee are really humble, civil servants trying their best to do their obligation without any thought of politics or self grandiosement.

Leona Dykstra, 21 Tennyson Drive, Manchester, NH stated:

Just for your information, I allowed John to go first. I was just being courteous. The reason why I did it is because last time I was cut off and the cameras weren't set up so I wasn't going to take any chances but that is okay. That is me. I have to be honest. What can I say? Say it how it is, don't forget my show, and speak your mind. I am not only a concerned citizen but a former Charter Commissioner and I had an awful lot to do with this Charter as you did, your Honor, and Alderman Lopez and so many other people. I believe that this Charter amendment is filled with many contradictions and conflicts, not only of our Charter but of State law. When you look at the first section, Article IV, Section 4.01, of course you are calling the City of Manchester a municipal corporation but you are mentioning here that the School District is going to be administered by the Board of School Committee or this department now. It is going to be changed to a department and administered by a School Committee, but when you look at Article III of the Charter, you can't just forget about it. It deals with departments. If you are going to make this a department, you have to follow the Charter concerning departments and that is where you are going to have a major problem. Section 3.03 said that department heads are nominated by the Mayor and confirmed by eight Aldermen so either Mr. Tanguay is gone or he applies for the job and eight Aldermen have to appoint him but he is the man who is going to be in charge. When you mention that they are going to be an Administrator, in Section 3.04 it says that a department head shall be chief administrative officer of the department subject to departmental policies, the supervisory authority of the

Mayor as to administration and policy directives of the Board of Mayor and Aldermen. So here you are taking away from the School Committee evidently the power you have put in there, but like I said it is conflicting with Article III. So you are going to have a new department head or the same one and this department head is going to have all the power because that is what it says in the Charter and we have to follow the Charter. Evidently what you are planning to do is have School Committee people who are elected by the people replaced by an appointed department head. That is if you go with a department. You can't just pick and choose what you want from a department and what you want from a School District. I am not going to mention the Superior Court ruling. The Honorable John McDonough mentioned that. I am sure the attorney will address that, but certainly I have a problem there in it being legal. You have mentioned here that the Mayor is going to establish the form and organization of procedures, including the School budget. You mentioned that in several places just to make sure, I guess, that you will be doing that. When you look at Article VI when it mentions School District budget, it says that the School Committee shall prepare and submit its budget proposal and of course the Mayor is going to set-up the budget for organization of procedures. Again, you are contradicting and you are in conflict of Article III, Section 3.04, which is budgetary authority. It says the department head shall prepare such budget and program plans and requests as may be necessary. The department head shall submit the same to the Mayor for inclusion in the City budget in accordance with guidelines set-up by the Mayor. So as far as I can see this removes the authority of the School Committee to even have a separate budget and that is what happened in the ruling that just came down recently; that you should have a separate budget. I see many major problems here. I mean if you are going to make it a department, so many times this Aldermanic Board just goes and throws a word in there and thinks they can change everything but that is not the way things should be done. When you go on further, it says that the School Committee shall administer, expend and account for the funds approved by the Board of Mayor and Aldermen and shall have the exclusive authority to transfer funds among line items in the school budget. Well everybody was all happy and wonderful and it even was mentioned in the newspaper today. I guess they stated that the proposal would not change current practices and it gave the BMA bottom line determination for the School District's budget while the School Committee determines where the money will be spent. Well, under this there can be many changes because when you look at Article VI, it says the Board of Mayor and Aldermen may provide by ordinance any additional procedures for administering of the budget including the budget of the School Department. This section 6.08 alone can take away the exclusive authority of the School Committee to transfer funds among line items in the school budget just by passing a school ordinance. So if this Charter amendment passes and I hope it doesn't because it is going to be a problem...I don't know if you pass the Charter amendment, the law that the Charter mentions in Section 301 of Article III that Aldermen shall vote to establish a department by

ordinance. Such ordinance shall describe the functions of the department so established. So, the Charter amendment passes and if that passes where are we? We are in limbo. You have to wait until you get a department head and then you are going to have to set-up an ordinance, have a hearing and go through the process. In the meantime, who is going to be in charge? This is a major undertaking and I am really concerned about it. I see this Charter amendment as an illegal power grab. It is so obvious to me that the intent of some Aldermen is to reduce the power of our elected School Committee to that of making sandwiches in the school cafeteria. Thank you.

Dean Eggert, 95 Market Street, Manchester, NH stated:

I am a partner in the firm of Wadleigh, Starr & Peters. We are located in Ward 3 and we are appearing before you tonight as legal counsel to the School District SAU #37 and the Board of School Committee. Now my task this evening is not to comment on the political wisdom of these amendments. My task is very narrow. I am charged by the Board to appear before you to share with you as the Board of Mayor and Aldermen the legal concerns that we have with these proposed Charter amendments. I believe I have provided, through the City Clerk, a copy of the text which I am going to discuss with you tonight and that has been distributed so I am going to try to keep my comments quick and to the point. On the face of these amendments in terms of their stated purpose, they clearly seek to alter the legal relationship between the District and the City. They seek to be or appear to be an effort to redefine the State statutory definition of the City of Manchester School District, as well as Judge Nadeau's prior ruling in the Declaratory Judgment action which defined the relationship between the City and the School District. To the extent that this Charter amendment or these amendments are interpreted as not doing such, then I would respectfully ask the Board why then are these amendments being proposed. To the extent that the purpose of these amendments is to take the relationship and change it from that of being an independent district, co-dependent with the City to being a department of the City, I then would ask the Board and their counsel to consider is this a Charter amendment or is it a Charter revision because if under the State law it is a Charter revision, the process that has been followed to date is not proper. Before I briefly discuss each of these amendments, I would like to quickly talk with you about an overview of the law that I think helps all of us understand the relationship between the District and the City. New Hampshire is not a home rule State and I believe those of you who are in the State legislature are aware of that fact and there is legislation pending at this point to change that fact. At this point, we are not a home rule State and that simply means that towns, cities and school districts gain their authority not locally but from the State legislature. I am not commenting on the propriety of that, that is simply a fact of law at this point. Now, the pending effort in the legislature to give us some modicum of home rule doesn't actually even change this relationship but the legislature has vested towns and cities with very broad authority. That delegation of

authority does not extend pass the bound of what a city does, what a town does, and into the management of a school district. NH RSA 49.B talks about how you amend the Charter and it says very clearly that any City Charter must neither conflict with nor be inconsistent with the laws of the State and our Constitution. And I add and our Constitution because that is going to be relevant in my latter comments. Similarly, the City's statutory authority then does not extend to the administration of public schools and in fact New Hampshire RSA 194.1 very clearly states that that authority is delegated to districts and just to be sure, the legislature said wherever we say town or city and it relates to a school, we mean school district. We want to make it very clear that towns and cities don't begin to administer school districts. Now our State Supreme Court has been aware of that and long before the Claremont decision they made statements such as the following: "the degree of control to be exercised by either school board members or municipal officials must be ascertained by reference to statutory and charter provisions." Now if we were to stop there we would be fine, but then the Supreme Court when on to state, "under no circumstances, however, will municipal officers be permitted to exercise any greater control over school finance than that intended by the legislature." Then the Supreme Court went on to state, not in the Claremont case, but back in 1970, "the New Hampshire cases have long recognized the policy favoring financial independence for school districts wherever possible." In other words, a court is going to look at the relationship between a city and its district every time and seek to construe it in a manner that gives a school district fiscal autonomy. You may or may not like that consequence, but that is simply what the courts are going to do. Now the City of Manchester School District, as we know, is called a single city school district and Judge Nadeau has been asked to define what that means in the City of Manchester. He was specifically asked to address the question whether or not the district was a department of the City because as we know in Manchester there has been a process that has developed to refer to the district as a department. Judge Nadeau answered the question and the City did not appeal that ruling. Judge Nadeau found as a matter of law that neither the legislative act back in like 1868 nor the 1986 Charter, let alone the 1996 Charter, ever established the district as a department of the City. He found that even referring to the district as a department did nothing to make it a department, but found that the powers granted to the district by the Charter and State law, aside and apart from calling a rose something other than a rose, clearly made it a district and he set out seven reasons why that was the case. Judge Nadeau stated specifically in his introduction to his decision, "the fact that previous practice established a relationship between the district and the city under which the school board has been subjugated to the authority of the city does not require continuing the relationship." This is especially true because such a result is unjustified under the law as it existed at the time of the adoption of the Charter or as it exists now. In short, Judge Nadeau found that while the City had drifted into a practice that treated the district as a department, that was not a lawful practice and he chastised the City for siphoning off

interest on school taxes and for coming up with undocumented chargebacks that were to the detriment of the school tax rate and artificially suppressed the City tax rate. Even before 1986, the City, whether it is a question of whether or not the district was a department or a district and that was answered with Mr. McDonough's litigation. I am going to speak very quickly about the actual amendment, 4.01, because that is the amendment that seeks to make the district a department of the City. As we know, there are going to be consequences to that label. Otherwise, why would we propose the Charter amendment. I would like to just briefly juxtapose the difference between a department under the Charter and Ms. Dykstra did a good job of tackling that so I will be shorter than I thought I would be, and a stand alone or single city district. Departments are led by department heads. School districts are led by elected officials. I would ask the Board of Mayor and Aldermen to consider what other departments are led by elected officials. Departments are administered by department heads who serve at the nomination of the Mayor and the pleasure of this Board. In contrast, the Superintendent, by State law, is nominated and elected by a Board of School Committee. A lot of us don't realize that there is an actual election and then he serves by contract and can only be removed on a contractual basis. Departments cannot transfer funds among line items. Districts, under State law, have that authority. Departments cannot engage in interdepartmental City chargebacks. I wonder if anybody has considered the legal consequences of taking the School District and calling it a department. I would ask for a legal opinion as to whether or not you can charge your own departments in chargebacks, whereas when you have a stand-alone district you can engage in the practice of chargebacks. Are we inadvertently, in making this legal judgment, this decision, actually acting to the own detriment of the City? The District exists by State law. It is a separate corporation. City departments are not separate corporations. A department's cash flow is controlled by a Finance Office. The District's cash flow is controlled by the State statutory duty to pay over the tax to the District. Those are just a few of a litany of stark differences between the two. I would like to talk briefly about Article 6.03 and 6.06 because my task tonight is to not make anybody's job difficult. In my opinion, the changes to Articles 6.03 and 6.06, if they stand-alone and if they refer to the district as a district, probably do not run afoul of the law. As long as the Mayor understands the limitations that State law placed on the Charter, there is no reason why that amendment could not go forward. The proposed changes to Article 6.08 do provide a problem, though, because the Supreme Court has said that while a Charter may define a relationship with a district provided it doesn't run afoul of State law, nowhere did the legislature say that you could define that relationship by ordinance and that is very clear. There is just no enabling legislation. Neither a town nor a city has the legislative granted authority to adopt ordinances that regulate the manner in which a district administers its budget. I am going to give you nine reasons why that as a case is a matter of law. NH RSA 194:1 states explicitly that school districts administer schools. It says wherever you refer to it as a town or city, the State legislature

means district. Secondly, the statutes require that tax monies be paid over to the district and that is the extent of your legislative grant. There is only one duty and that is to pay the money over, not to then administer it. The third reason is that Judge Nadeau has granted the District a statutory right to a treasurer and you have not adopted ordinances that somehow affect that statutory right and in essence you are creating an inconsistency. Statutory law also gives the District its treasurer. Item five, the law limits the scope of municipal ordinances to City affairs. Each of you are probably familiar with the State legislative acts that say what a City can regulate. If you read those, you will see that nowhere has the State legislature said you can adopt ordinances that affect the administration of a school district so there is just not a grant. We also know, as I discussed earlier, that the case law of the State indicates that the courts will preserve the legislative intent of the fiscal economy. We know, seven, that the Statutory law indicates that school districts answer to the State Board of Education and I pose the question are the Board of Mayor and Aldermen ready to be regulated by the State Department of Education because when you make that decision you subject yourself to the regulatory authority of the State Department of Education and I ask you whether or not you are prepared to do that and is that really local control. Our State Constitution, Part I, Article 39, limits Charter amendments to those amendments that do not conflict with the general laws of the State and then of course there is the Claremont decision. I will just say it. The Claremont decision, which unequivocally states that the duty to provide education rests with the State. We know as a matter of law that the district acts as the arm of the State and not the City. Finally, NH RSA 194:C(5) places statutory duties on a superintendent that department heads don't have. It is the superintendent that is statutorily obligated to furnish the financial management services to the district. I thank you for the opportunity to share with you concerns that I shared earlier with the Board of School Committee. My request, on behalf of the Board of School Committee to the extent that I represent their majority vote, would be that you question the wisdom of placing the first and last amendment on the ballot before the voters and that if you wish to proceed with the amendments to 6.03 and 6.06 of the Charter, we respectfully request that you amend them to refer to the district as a district and not a department. I believe all of you have had an opportunity to review the Declaratory Judgment action where the relationship was defined between the district and the city. I would respectfully request that once that was clarified, that we don't need to adopt an amendment that forces us back into the position of having to clarify the fact that we are renaming a rose but it is still a rose.

Alderman Levasseur stated this is going to be one of those strange situations where unless he is going to stay after...I want to question him on a couple of his facts that he stated in public that I need to know. I mean he is talking about a couple of things that I have to ask questions on that might help in my decision.

Mayor Baines stated for some clarification, I understand the rules for a public hearing are for public comment. The Board then will discuss matters separately. That is in the tradition of the Board.

Alderman Levasseur replied this gentleman comes not as a person at a public hearing for the City's point of view, but he comes directly from the District for the District arguing for the District.

Mayor Baines responded I appreciate that and I am sure that he would come back at another time outside of the public hearing. We are going to continue with the public hearing.

Alderman Levasseur asked is this going to be voted on this evening, your Honor.

Mayor Baines answered it is going to Bills on Second Reading.

Alderman Levasseur asked if Atty. Eggert would stay after the public hearing, I have some questions that I think are very relevant that I need answered before I make a decision.

Mr. Eggert answered that would be fine.

Alderman Vaillancourt stated I have a point of clarification. Perhaps your Honor could just explain to the public how we happen to be here. The arguments against this being legal, that this has gone to the Atty. General so could you just let us know for clarification.

Mayor Baines replied just for clarification, when this matter first came to the Board, I agreed not to exercise a veto over this if, in fact, we would send it to the Attorney General's Office for review to test its legality against State law. They have declined to do so after repeated attempts from my office and the City Solicitor's Office and that is why we are in the process we are in now. We are going forward with a public hearing without a review from the Attorney General's Office, which we all would have appreciated but it did not come forward. Thank you Mr. Eggert and I appreciate your willingness to stay and answer any questions that Board members may have after the meeting.

Kathy Sullivan, 192 S. Mammoth Road, Manchester, NH stated:

I was also a member of the Charter Commission along with Leona Dykstra and I am here to speak against the proposed Charter amendment. The reason I am opposed to this Charter amendment is that it will do nothing to improve education in the City of Manchester. It will also do nothing to improve efficiency in City government or in the governance of the School District. It won't end over crowding. It won't fix the school facilities. It won't buy textbooks. With all due respect, I think those are the things that this Board and the School Committee should be focusing on and not the ongoing squabbling which has been going on with the Boards. What this amendment will do is insert more bureaucracy and more politics into school government. This amendment will, in effect, have two elected bodies managing and I daresay micromanaging the governance of our schools and this at a time when the discussion of school administration has more to do with facilities based management and a reduction in bureaucracy and not an increase. What the Manchester School District needs is less bureaucracy and less politics. This amendment is not about excellence in education or even adequacy of education. It is about the desire of some Aldermen to have more power over the management of the School District. With all due respect, I would suggest to those Aldermen who wish to have more involvement with the School District that instead of running for Aldermen next time, run for the School Board. There is a place for you to express your opinions if you are that interested in the operations of the School Committee. I would also respectfully suggest that the Board stop trying to amend the 1996 Charter every year. The Charter passed. Some of you were opposed to it, but it passed. The people spoke. Move on. Stop obsessing over it. There are lots more things that we can all be doing with our time. Finally, based on some of the comments of the first three speakers, I also have to ask how much time and money is the City going to spend on another losing lawsuit. Wouldn't it be better for the children of the City of Manchester and for the taxpayers of the City of Manchester, to put this behind us? Spend that time, energy and money on the kids, not on fighting another losing lawsuit. Thank you very much.

Artemis Paras, 1275 Hanover Street, Manchester, NH stated:

One of the advantages of not being first on an agenda to speak is to have an opportunity to listen to others and I feel doubly blessed because I am one of the speakers who had the opportunity to hear discussions on these proposed Charter amendments at this past week's School Board meeting and I took copious notes and I listened very carefully to Atty. Eggert's presentation to the School Board and I was very impressed and I commended the entire Board as the Mayor may remember on the excellent manner in which business affairs were conducted. What I find very interesting about these amendments is the fact that yes, the Charter was approved and recognizes the School as a separate entity, a School District. That language is clearly stated in the Charter and I recall in reading the order on the petition for the Declaratory Judgment which former

Judge Nadeau wrote he said that in the last two Charters, the language was consistently presented as School District. It was never presented as School Department. Just to summarize again because I think it does help when we hear things more than once because it is a way of making things jell more in our minds, I heard it mentioned that it was hoped that each Aldermen had an opportunity to read the order based on the petition for Declaratory Judgment. I was very fortunate yesterday. Someone called me and said would you like to see it? I have it. Can I come and visit so I said of course, come. It was my first opportunity to see it although I heard reference to it. It is important that each of you have an opportunity to read it. You must not be in the dark. The problem with being an Alderman is you have to be a polymath. You have to know legal business matters...I mean you have to know everything and this is what makes your job so challenging. You could always ask the City Solicitor's Office to give you a brief summary. What is the summation of this order? Tell us so that we can understand. To know is to understand. If you don't understand what you are doing, how can you make an informed decision? I think this is why I keep coming before you because I believe that a lot of the decision-making has a lot of room for improvement. We do have the order regarding the petition for Declaratory Judgment. We do know as a matter of fact that the City chose not to appeal this order. The City could have appealed it and they chose not to. We also know that these proposed amendments are not going to be consistent with State laws. We also heard that they are not going to be consistent with the Constitution. Why are we embarking on this dark road of confusion? Now I did read the legal notice carefully and having been a language teacher I can't help sharing with you one of my observations. Under Article IV, School and School Committee, Section 4.01, may I read you this sentence? It reads, "wherever this Charter refers to the School District, School District shall also mean School Department." Now we have an introduction of Manchester wanting to introduce double talk and as a language teacher, I will not tolerate double talk. We have had enough double talk for many, many years. It is time that Manchester speaks clearly. What is the word that you are using and what does it refer to? That is a basic semantic rule. I would like to just inject, your Honor, and Board members...I have been doing this for quite a while and in the late 1970's I read two marvelous books by a NH native born in 1888. I was living in New York State at the time. His name is Stewart Chase. The titles of the two books are "The Power of Words" and "The Tyranny of Words." Unfortunately, if we go this route I beg of you, you are going to be tyrannized by these words and there will be no guidelines, there will be no direction, you will have absolutely no road map. I thank you for allowing me to mention that fine piece of information because we have to look at what words actually mean and if we are going to start introducing synonyms to the extent that this amendment introduces, this is suicide of language. I also would like to bring to the attention of the Board of Mayor and Aldermen that after I heard Dean Eggert and I do want to thank him for his very professional, legal analysis and I would hope that the Board of Mayor and Aldermen would have another

side from the City Solicitor's Office as to what our City's Solicitor's Office feels the legality of these proposed amendments are so that we can balance one set of statements with another set. I did want the Board to know that back in April if my memory serves me well, I pulled out of an Aldermanic agenda dated April 4 of this current year, Item E on your Information To Be Received and Filed, and it was an excellent letter regarding Dean Eggert's response to Superintendent Tanguay's question regarding whether or not the amendments drafted by Alderman Wihby comply with the laws of the State of NH. It then goes ahead to say what the law is. I would like to suggest that for purposes of understanding and clarity that the City Clerk retrieve this letter and see if they can put it back into an agenda. It always helps when you have a chance to read something a second time when you have been exposed to a better analysis, especially by the Attorney. I would now conclude my statement saying that you had enough evidence here this evening from the professionals. I only profess to be a language teacher. I know the importance of language to the extent that the City's Charters or this local ordinance that is being proposed conflicts with the State's laws and Constitution and I would urge every member to understand what are the legal implications of this proposal and I think it would be in the public's interest to vote at the Bills on Second Reading once and for all that this is inexpedient to move forward and legislate. The facts are here. Let us not deny them. There is no sense in proceeding when it is not necessary to because it is not in the public's interest. It is not publicly accountable and it is not in the taxpayer's interest and I thank you for the allotted time given me.

Dorothy Hebert, 235 South Porter Street, Manchester, NH stated:

I am opposed to the proposed amendments to the City Charter of the City of Manchester and the articles read by Leo Bernier. The proposed amendments would make the School District a City department and give the Mayor and Board of Aldermen control over the School District's budget. I am opposed to the amendment changing the School District into a City department. If the School District were to become a department, then the Mayor and Board of Aldermen would chose who runs the School District and has already been brought up by Leona Dykstra and Atty. Eggert, the department heads are nominated by the Mayor and confirmed by the Board of Aldermen. Presently, the School Board members are elected by the voters. The Superintendent of the School District is nominated by the School Board and elected in accordance with State law. Making the School District a department would give the Mayor and Board of Aldermen authority to chose who sits on the School Board and who the Superintendent of the School District is and not the Manchester voter. Presently, the Mayor and the Board of Aldermen have final authority over the amount of money to be appropriated and levies the amount of money approved for the School budget. I am in agreement with that. That is how the City Charter states it. The School Board is required in the Charter to administer, expend, and account for funds approved by the Board of Mayor and Aldermen. I have no

problem with that. You, as a group, give the School District a bottom line and the School District works with that bottom line. Having School District funds separate from the general fund allows the City of Manchester to know exactly what the school expenditures are and keeps those funds separate so the City of Manchester can better assess how the money is spent, what it is spent on and we also will know who is accountable for it. When it is brought together...if you as a Board take over the School District which we have already found out is against State law, then we don't know where the money comes from or where it is going. When it is separate, they have a separate account and I like it that way. That is all I have to say.

Ellery Hathorn, 4 Betty Lane, Manchester, NH stated:

I have two children who have gone through the Manchester school system. I have never spoken before this Board so I am really nervous. I felt compelled to come tonight because having put two kids through the system and have seen how the system worked prior to the court decision and after the court decision. I still have a child in the system. I can tell you from, and this is my children speaking not my own beliefs, that the system is far worse now and I don't know why the mechanisms aren't working as well since the court made its ruling than before. We have always had problems, granted. My children started in first grade at Smyth Road and have gone all the way through the system. There have always been problems. There will always be problems because how do you spend enough money to fix everything? There isn't enough money in the world to fix the problems. It has been proven over and over and over again that money is not necessarily the solution to all of the world's problems. I will tell you this. At Central High School where my daughter goes, they don't have paper. They have to write on the backs of pieces of paper that have already been used. They do not have current books for many of their subjects. No as I understand it the School Department or the School District has over \$100 million or about \$100 million that they had total responsibility for. I also understand that the Aldermanic Board does not have line item veto or any input into how they spend that money. They have \$100 million, which makes up the bulk of the City's budget yet they cannot find in that \$100 million enough money to provide the proper books, proper paper, I am not even talking facilities. The kids are very adaptive. They have learned to live with the facilities at Central High School. They are very adaptive; much more than the adults are but they are having a little trouble without the paper and the books. I don't think it is because they don't have enough money. They have power to move money around where they need to. Every time I have attended a School Board meeting they blame the Aldermen for everything that is wrong in the district every single time. To me, that tells me that they are not taking responsibility and I am talking about the School Board and the Administration of this City in the School District. They have done a poor job of managing their affairs. I am not a lawyer. I am not a teacher. I am just a concerned parent. Nobody has mentioned that has spoken up until now how well is

this working. Shouldn't that be a concern? I think it should be. You can talk about legal and you can say what the court has said but we all know that the court system isn't perfect either. Need I say more? There is a duplication now of finance. They can't use the City's Finance Department. We have some pretty intelligent people in our Finance Department but they can't use them. They have to hire somebody. They can't use the City Solicitor. They have to hire somebody. They can't use City Personnel. They have to hire somebody. Now those are three positions and I know there are more, but those three positions, add them up. Somebody mentioned let's not get bogged down in duplication and all that sort of thing. This is exactly where we are. We are bogged down in duplication and then the communications are shut off once you get these additional positions. Now the communication stops flowing. So not only are we paying for an additional finance person, an additional legal person and an additional human resources person that we already have in the City, but we are paying for it again through my taxes and I don't think that is such a good idea. These internal transfers are chargebacks. The last number I heard was \$6 million that the School District owed the City. Have you got it yet? What is the City missing in interest that is over there while it is over there in the School District? The Administration of having to administer all of these chargebacks is very awkward I would think and very costly. The School District, correct me if I am wrong, but at least I am aware of two years that the School District has overspent its budget and who bailed them out? I think the Board of Mayor and Aldermen bailed them out. I think that is correct. As has the taxpayer. I think that everything should be revisited depending on how well it works. This is not working well. Whether or not this amendment is a solution, again, a legal answer is not necessarily the correct answer. I think that it behooves everybody to take their head out of the sand and say yes there are some serious problems here and whether this amendment does it or something else, I salute you for never giving up the charge to try to make things better. I hope you will continue to try to do that because this thing is broken. Thank you very much.

Alderman Wihby stated we have heard a lot of different things tonight, your Honor, and I would like to speak for a few minutes and then have the City Solicitor speak. This whole proposal came about because we just can't do what we were doing two or three years ago. We wanted to make it the same as when we had the controls before. Nothing different than what we had two years ago before the Charter came out. We have heard from Charter members today and School Board members today and the attorney for the School District today. They all have an interest, your Honor. My interest is to save some money for the taxpayer and to keep this as it was two years ago. We saw in this year's budget...when they told us at the end of last year when they Okayed this year's budget that they weren't going to have any new administrative costs. We saw that they hired Human Resource people, Finance people and Legal people. We had a whole new computer system set-up so we could run that out of City Hall. That was gone. They did

their own computer system so the Aldermen wouldn't have any control and couldn't see what was going on. The School Board is still going to be the department head. There is not going to be any change there. The Superintendent is still going to run the schools. He is going to be hired by the School Committee so people who tell you that this Charter is going to do anything different, that is not true. The School Board is still there. They are still getting a budget and they are still going by the bottom line budget, but the Aldermen have control. The Aldermen now in the budget process we talk about chargebacks, we talk about their interest and our interest. We talk about getting sued. All of that stuff would stop. They would be a department, your Honor. We would all work together. This has just been a year...in the last two years with this Charter more fighting than we have had before. For somebody to say well this has been going on and it is worse now, I have been on this Board for 16 years. The attorney spoke and asked why didn't we appeal something. First of all, I think we should have appealed the decision by Judge Nadeau and it doesn't mean that we can't. I think he probably found it that way because the Charter at the time said things and now we are changing the Charter so if he sees a new Charter and he sees that people voted that Charter in, he probably will have a different opinion as to what is going on but to speak that Judge Nadeau did this and Judge Nadeau did that...with what he had in front of him at the time with the old Charter he had some leeway to move that way. I think it should have been appealed but that is in the past. As we move forward in the future, your Honor, we have to do something in this budget process. You have to do something to get the controls back to the Aldermen. You have to be able to have them...if you want to send a directive over there and this is what they are afraid of...we should be able to send a directive like with any other department. They are going to be coming to us with a \$1.4 million at least discrepancy in their budget. We know that it is probably going to be bigger than that. They have been holding off on letting us know what it is. They promise us financial records every month. They promised us everything in the budget process. I haven't seen a financial record since the last budget process. They tell us we were going to come and do this and do that and nothing ever happens and until this Board steps up to the plate and we have to do that...all of those responses come to us anyway. All of the citizens call us up and say what is going on and we tell them that is the School Board talk to them. They control that money, talk to them. That is not right, your Honor. We should be able to say yes you are right and I am going to bring it up at a meeting and we are going to talk about it and see what we can do with it. That is all this Charter amendment does. I want the City Solicitor to speak on it because he approved it. It wasn't just drawn up by me. It was approved by the City Solicitor who had conversations with the school attorney and yes there are two different sides there. They are not going to agree, but someone is going to eventually decide who is right and who is wrong. Our City Solicitor says that what we have in front of us is right. He drafted it and we should put that to the voters and let them

decide if they want to spend their money and keep it the way it is or bring the controls back to the Aldermen, your Honor.

Deputy Solicitor Arnold stated unfortunately Mr. Wihby didn't leave me much to say. I would note that there have been a number of references tonight to Judge Nadeau's decision and the School District suit. That decision in a nutshell interprets the present Charter as it presently exists. Judge Nadeau, in fact, found that under the present Charter the School District is not a department of the City and it is true that the City did not appeal that decision, however, the City and its voters remained free to change the Charter and that is what this amendment proposes to do. It seeks to firmly establish the School District as a department of the City. I believe that if we went back to court and I could say that if this amendment were enacted and we went back to court the judge would find that the Charter has been changed and that the School District is a department of the City. It is clearly stated. There has also been a number of comments tonight about the department head and who would hire the department head. I would note that this particular Charter amendment states that the Board of School Committee shall administer the School District as a department of the City. That does not change how the Superintendent is presently appointed. The School Board would in a sense be the department head and would continue to elect the Superintendent of the Schools or I should say nominate the Superintendent of Schools subject to election by the State Board. This Charter amendment also, although it gives some control to the Board of Mayor and Aldermen in terms of how the budget shall be presented, leaves the School Department with the authority over its own budget once it is established. It clearly states that the School Committee shall retain exclusive authority to transfer monies along the line item of this budget. I guess those would be my comments. I would be glad to address any questions that anyone may have.

Mayor Baines stated the process, as I understand it, Tom, this goes to Bills on Second Reading and then comes back to the Board. Is that correct?

Deputy Solicitor Arnold replied yes that is correct.

Alderman Vaillancourt stated I have a question and I thank you for clearing this up because I think you have done that but if I might rephrase it, what you are saying as I hear it is that these people who were saying this is in violation of the City Charter, it would amend the City Charter so that it wouldn't be in violation of the City Charter. It is like saying this Constitutional amendment is unconstitutional but if it passes it would change the Constitution so it wouldn't be unconstitutional. Is that what I hear you saying?

Deputy Solicitor Arnold replied yes. That is what I think I am saying.

Mayor Baines stated I am confused about the McDonough decision because my understanding of that, if I am correct on my timelines and I may not be because I have been trying to clarify that, that goes back not two Charters, but three Charters. Again, I may be wrong on the dates and I would like clarification of that maybe not tonight but sometime down the line because I understand in that Charter it did state that it was a School Department and it make it very clear. It was only changed in 1986. Is that correct?

Deputy Solicitor Arnold replied I would have to check the dates. That was before my time. I will do that for you.

Alderman Thibault asked if, in fact, the City Solicitor had any major problems with this, why didn't we challenge it. I can't understand at this point why we didn't challenge it if, in fact, we felt that it was not proper. I don't know what the answer to that is, but I would like to know if there are any reasons why we didn't challenge that.

Deputy Solicitor Arnold answered I can't speak for the Board. I can say what happened back...

Alderman Thibault interjected I am talking about why didn't the City Solicitor say that we should challenge that.

Mayor Baines stated that is what he is trying to answer.

Deputy Solicitor Arnold stated back at the time when this decision was handed down, either myself or Mr. Clark and I forget exactly who, wrote a letter to the Board giving the decisions to them and asking for instructions from the Board as to whether it should be appealed or not. At that time, my recollection is the Board did not respond so we did not appeal it because we had asked the Board for permission to do so and that permission wasn't forthcoming.

Alderman Lopez asked, Mr. Arnold, back on April 4 when we received this document and we received and filed it and the attorney for the School Department wrote this letter to Mr. Tanguay which cites many RSA's and in the oral presentation that was made to us tonight, depending on what the Committee on Bills on Second Reading does, could you prepare a presentation rebutting or clarification of the document that was presented to us on both of these occasions instead of verbal; written documentation to make a

presentation in reference to NH home rule. Do you agree with RSA 194:1, etc. in the presentation that was made tonight? I would like to have a written reply.

Deputy Solicitor Arnold stated if that is the Board's desire, I would certainly provide it.

Alderman Levasseur stated it is interesting to note that the decision by Justice Nadeau which Dean Eggert and most of the School Board rely and properly due so, is based on a strict interpretation of the Charter as written, but that Charter and if I quote the judge correctly in the opinion on Page 4, in the following section the Charter identified the departments in existence at the adoption of the Charter. Significantly, this section does not include the district or a Department of Education. If you read the opinion, it is like a cannonball coming out of a canon shot. The judge's opinion was absolutely 100% for the School District and the City Solicitor who argued this point argued it as hard as he could with what he had at his disposal at that time. He walked in there with a six shooter with no bullets in my interpretation of this opinion. He tried the best he could to explain that a precedent had been set over the prior 100 years of how we had run this City but the judge didn't want to listen to that argument because his statement, "intentional admission is supported by the failure of the Mayor to include the district as a department in an ordinance defining the functions and duties of each department existing at the time of the ordinance as required", which tells you simply that the judge based his rulings specifically on the Charter. What it pretty much tells me as a person reading this opinion is that if we made an ordinance change or the amendment was changed by the proper vote and we did want to include the district as a department that I think the judge may have made a different decision. What we are sitting here doing is we are fighting over or arguing over Judge Nadeau's decision, but Judge Nadeau couldn't have made any other decision based on how the Charter was written and no attorney could have gone in there and done the job that could have been done with the ammunition that that person had at the time. It would be interesting to see if the public, who would be deciding whether this went to amendment, would like to see...as the person from Ward 1 so eloquently spoke in front of us saying that it doesn't seem to be working the way it is at this time, I believe a few of the people on this Board also feel that way. I think it is just a matter of going to the public, allowing that to be decided and then again seeing what the judge would decide if it was changed and it was an ordinance because the judge really does have to follow the statutes and follow the Charter as written. That basically is what we are fighting over here, some legal language, some terminology in the Charter and because it was not admitted in there, whether done so with forethought or hindsight or whatever at the time, that is basically what this whole argument is about. If we wanted to do something more proper, we could keep it the same way as it is now, but instead of sending out one bill, it would be nice to just have the bill sent out by the School Department and then let you guys send out the bill and have you guys responsible for the bottom line. If you decide

you need \$120 million and you have to come here for our approval and we say no, then you send out the bill for \$120 million and then you bear the brunt of that. It is true that the Aldermen do take the brunt of the decisions that you make and the way you run your schools because we do have that control over that bottom line, which makes it unfair because that doesn't really give you the autonomy that you think you have and we are not really that autonomous. So, this is why I think we should go to amendment on this. Just because the Charter was written three years ago doesn't mean that things aren't changed. The Constitution, as written, has been changed at least 27 or 28 times. Even that great Article of Confederation has changed because government is fluid and we just can't keep things straight just because we say they are that way.

Alderman Sysyn stated if everybody feels that there should be amendments, we should have appealed the decision of the court and that would have decided it then and there.

Alderman Wihby stated that is true. We should have appealed it and we didn't appeal it and now we have a chance to correct it. We have a chance to let the citizens decide whether or not they want us to have that control. All we are doing with this is sending it to a Committee and that Committee is going to decide whether or not we want to put it on a ballot and go from there. The citizens are going to decide, not us your Honor. Look how much money...every time we sit down and have a problem with the School Department we have an attorney from there representing us and I don't know how many hundreds of thousands of dollars we spend on attorney fees, but if it wasn't them against us and we were all one department, your Honor, in that alone we would save some money let alone using our Human Resource people and our Finance people and everybody else that they are paying outside services for. With these chargebacks, they might not even take some of our help. They might go somewhere else and spend more money. Your Honor, all we are doing here is getting some control and again we finally make that decision anyway. We are the ones that get the brunt of the citizens calling us. I think we should just send this to the Committee, your Honor, and have positive feedback from the Committee.

Alderman Shea asked what are the financial implications of all of this. I am not sure exactly where it is going to lead. In other words, we know for instance that the School Department will appeal this decision and obviously that will be an expenditure that we have to anticipate, but I am just wondering whether or not in the case of them bringing it to an appeal, whether the decision will be rendered favorable to say an Aldermanic vote which would be to put it before the voters or whether it would be in the favor of the School Department in terms of that. I am just saying that before we make a decision either way, which obviously we will, we have to consider the financial implications. I know, Dave, that you have raised certain questions about how expensive it has been, but I

think we all have to realize that it is going to lead to another appeal by either party, whether it be the City or the School Department and I am not sure whether we will have, in addition to the City Solicitor's Office, we will have legal counsel as well as the School Department, which will cause additional money to be spent.

Mayor Baines advised that all wishing to speak having been heard, the testimony presented will be referred to the Committee on Bills on Second Reading to be taken under advisement with reports to be made to the Board of Mayor and Aldermen on or before August 7, 2000.

Mayor Baines advised that this being a special meeting of the Board, no further business can be presented, and on motion of Alderman Pariseau, duly seconded by Alderman Thibault, it was voted to adjourn.

A True Record. Attest.

City Clerk