

**BOARD OF MAYOR AND ALDERMEN**

**November 21, 2000**

**7:30 PM**

Mayor Baines called the meeting to order in Joint Session with the Library Trustees.

The Clerk called the roll.

Board of Aldermen – Aldermen Wihby, Gatsas, Levasseur, Sysyn, Clancy, Pinard, O'Neil, Shea, Vaillancourt, Pariseau, Cashin, Thibault, and Hirschmann

Library Trustees – Mayor Baines, Madeleine Roy, Kevin Devine, Roger Duhaime, Karen Sheehan-Lord, Carlos Gonzalez, Kathleen Sullivan

Mayor Baines advised that Kathleen Sullivan has resigned from the Library Trustees, and requests a motion to accept the resignation with regret.

On motion of Alderman Thibault, duly seconded by Alderman Sysyn, it was voted to accept the resignation with regret.

Mr. Devine stated point of order. I believe that the motion should come following the new nominations.

Mayor Baines replied I am just doing what the Clerk told me to do. The Clerk will advise the Chair.

Deputy Clerk Johnson stated for the record of the joint boards, the normal process would be to accept a resignation first prior to filling that position and that is what we are attempting to do at this point. It just recognizes the fact that there is an opening on the Trustees. That is all we are trying to establish because there are two openings coming this evening as I understand it.

Mr. Devine responded that is correct, however, the resignation was to be effective after the vote on new members and secondly if you do it in this order, the Board of Trustees of the City Library will not have a quorum for this meeting.

Deputy Clerk Johnson replied that is true. They won't.

Mayor Baines asked where would we go to the agenda if I accept that.

Deputy Clerk Johnson answered you would go to Item 4 if there is no challenge to that, but you may want to get the Solicitor's advice on that.

Mayor Baines stated if we just accepted the nomination at the close of this meeting and have the reappointment effective at the close of this meeting, wouldn't that just take care of it.

Mr. Devine replied that would take care of it.

Deputy Clerk Johnson asked are you trying to get the nomination to be accepted prior to the resignation. Is that the idea? Not necessarily the confirmation.

Mr. Devine answered correct.

Mayor Baines stated I didn't think we were going to start this with a controversy.

Deputy Clerk Johnson replied it is a controversy.

Mayor Baines stated I thought this was going to be the easiest thing of the evening.

Alderman Thibault stated the fact that I am a member of this Board of Trustees, doesn't that give them a quorum.

Mr. Devine replied I believe it would.

Deputy Clerk Johnson stated no. He is a liaison and I don't know that that is an official member of the Board of Trustees.

Mayor Baines asked, Kevin, what would be the problem here because I don't think there is any controversy.

Mr. Devine answered right and I stand corrected. It turns out that one of the members has appeared that we didn't think would be here.

Mayor Baines stated okay why don't we proceed with the agenda.

Mayor Baines advised that nominations are in order to fill the unexpired term of Kathleen Sullivan to the Library Trustees, term expiring October 1, 2006.

On motion of Alderman Pinard, duly seconded by Alderman O'Neil, it was voted to nominate Mary Heath to fill the unexpired term of Kathleen Sullivan to the Library Trustees, term expiring October 1, 2006..

Alderman Pariseau moved to close the nominations. Alderman Thibault duly seconded the motion. Mayor Baines called for a vote. There being none opposed, the motion carried.

Deputy Clerk Johnson stated just to resolve some of the issue they could bring Mary Heath forward as a voting member if they desired.

Mayor Baines advised that Virginia Theo-Steelman has resigned from the Library Trustees, and requests a motion to accept the resignation with regret.

On motion of Alderman Thibault, duly seconded by Alderman Pariseau, it was voted to accept the resignation of Virginia Theo-Steelman from the Library Trustees with regret.

Mayor Baines advised that nominations are in order to fill the unexpired term of Virginia Theo-Steelman, term expiring October 1, 2001.

Alderman Wihby stated Scott Ellison had called me. He lives in my ward and I have nothing against Scott but I know that it was a policy of the last Mayor that if you were on one committee he didn't want to nominate somebody for another committee and I know that Scott is on the MDC Board. I just want to clarify whether it was your intention to allow people to serve on more than one board.

Mayor Baines replied first of all this is not my nomination, but I don't have any objections to that. There are several cases where that has occurred.

On motion of Alderman Wihby, duly seconded by Alderman Pariseau, it was voted to nominate Scott Ellison to fill the unexpired term of Virginia Theo-Steelman to the Library Trustees, term expiring October 1, 2001.

On motion of Alderman Wihby, duly seconded by Alderman Pariseau, it was voted to close the nominations.

On motion of Alderman Thibault, duly seconded by Alderman Pariseau, it was voted to suspend the rules and confirm the nominations of Mary Heath and Scott Ellison to the Library Trustees as presented this evening.

There being no further business to come before the Joint Session, on motion of Mr. Devine, duly seconded by Alderman Shea, it was voted to adjourn.

Mayor Baines called the regular meeting to order.

The Clerk called the roll.

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

Absent: Alderman Lopez

Presentation by Robert Stephen regarding a Convention and Visitors Bureau.

Mr. Stephen stated thank you Mr. Mayor and members of the Aldermanic Committee for allowing us to be here this evening from the Manchester Development Corporation. We are here tonight to hope to get your approval for what our Board has okayed to go through with a feasibility study for the CVB (Convention and Visitors Center). I would like to introduce Ray Pinard who is the Chairman of the Manchester Development Corporation to say a few words first.

Mr. Pinard stated thank you and good evening Mayor and Aldermen. I am here to speak to you tonight concerning efforts undertaken by the MDC with regards to developing a Convention and Visitor's Bureau for the City of Manchester. Early this year, the MDC assembled a multi-agency task force to study the needs and feasibility of having a Convention and Visitor's Bureau in Manchester. Included in this task force were representatives from the MDC, the City, the Airport, the hospitality industry, business and industry, the Chamber of Commerce, Arts Builds Community, Intown, and the State of New Hampshire among several others. In summary, given all of the positive economic, cultural, civic and business projects that are underway in Manchester, there was unanimous agreement among the task force that we should act soon with regard to developing and implementing a plan in making Manchester a destination city for conventions, conferences and visitors in general. Bobby Stephen, who is the Director of the MDC, as well as Director of Community Services for the State of NH Department of Economic Development, agreed to chair our task force and has held several meetings over the past 10 months. Most recently, the Committee requested proposals from experts in the field of convention and visitor bureaus. What we sought to achieve in our request for proposals was to identify someone who could present to us a two-year plan with regard to establishing and implementing a convention and visitor's bureau. To be

considered in their work are areas such as governance, staffing, financial resources and mission development among other issues. Prospects for developing this plan were interviewed and tonight we are here to request your approval for the MDC to spend \$25,000 of MDC funds to engage Tourism Development Associates of Falmouth, Maine to conduct the study. Tourism Development Associates is headed by Ms. Trudy McNulty. Ms. McNulty presented us with a proposal which we believe meets our needs and will provide us with the product necessary for us to engage in developing and implementing a successful convention and visitor's bureau here in Manchester. Ms. McNulty's experience includes working with the Illinois Bureau of Tourism; the Upper Manhattan Empowerment Zone in Harlem; Portland Downtown District in Portland, Maine; Texas Convention and Visitor's Bureaus; the New York Arts and Business Council and other work with regard to convention and tourism in Fort Worth, Texas; Tulsa, Oklahoma; Charlotte, North Carolina; the State of Indiana and the Republic of Panama. At this time, I would like to turn the microphone back over to Bobby Stephen who will speak further about this important project. Thank you.

Mr. Stephen stated as Ray explained, we are here again to request an approval that the MDC Board proceed with hiring a consultant. The consultant would provide a study of an organizational structure of staffing and what type of a budget would be needed to move forward with what I believe is a very important convention and visitor's bureau actually tying in all of the efforts that are happening in these exciting times in the City of Manchester, such as everything that is happening in the Millyard with the high tech industry and development of the airport and the civic center and also the downtown, the Currier Art Gallery, the Palace Theatre. Manchester has fine restaurants and no more will people have to travel to go to another theatre. The Palace Theatre can provide that. The civic center will have a lot of different venues going on. Just briefly, the history of the downtown...I have spent in business as most of you well know, a little over 30 years in the restaurant business. I witnessed the exciting times in the early 1960's and also a depressed downtown for many years. My family and I had a lot of faith in downtown and we chose to stay downtown. Now I see the economic boom and the vitality happening downtown. This would add to the excitement that is happening. Also, to put together a good plan with the right people involved with allow the highest and the best use of the assets of the City of Manchester in regards to conventions, conferences, trade shows, etc. This would be a specialty for someone going out to draw this to the City of Manchester. What will occur is that we will have more folks...you know if you get a 300 to 500 person conference coming to our City you are going to need more beds. The residual effect to all businesses, the tax situation of the rooms and meals tax generated from this would be exciting, especially the portion that is shared with the City. The work in concert with the management of the civic center to bring the right conferences and as I said the right trade shows and conventions to the City...the CVB is an economic tool and

it is important to go forward with this. As the largest City in the State, Manchester is considered the business center of New Hampshire. Statistics say that for every \$1 spent in promotion, \$9.13 is returned in revenue to the City. As I said, the potential increase in revenue from the rooms and meals tax will be greatly needed, of course, in the coming years in the City and this will generate a lot of dollars. On our ad hoc committee we had, as Ray alluded to, a different segment of folks from throughout the City and also the State. We had the Travel & Tourism Director, Lori Klefis who is here this evening. She is also excited about this initiative. In closing, we ask the Board to look favorably upon this request so that we may get involved and promote this project and get it underway as quickly as possible. I thank you for your time and I hope you consider this and vote on this this evening. We will be happy to answer any questions you may have.

Alderman Thibault stated as a member of the MDC with Mary Sysyn, I would like to move that we approve their request to spend \$25,000 for the consultant. Alderman Sysyn duly seconded the motion.

Alderman Vaillancourt stated I do have a question and I welcome the opportunity to ask it. When I was on the House Finance Committee, they used to bandy about that figure of about \$8 returned for every \$1 spent and we always used to say well if we spend a couple of million more will that mean we will get \$16 million more. I wonder if you could quantify and prove to us that it is now up to \$9.13, the figure you just handed out.

Mr. Stephen replied that figure, Alderman, came from the Director of Travel & Tourism. I can ask Lori to quantify that.

Ms. Klefis stated the \$8 figure that you are referring to was a study that was conducted in 1996. The 1998 figure did raise the return. It is a return on investment model that we calculate every two years to that \$9.13 that Bobby referred to.

Alderman Vaillancourt asked so you can supply us something in writing to break that down.

Ms. Klefis answered absolutely.

Alderman Hirschmann stated a few of us Aldermen, Alderman O'Neil, Alderman Wihby and myself had the luxury of flying to South Carolina with Chairman Pinard and visiting Greenville, South Carolina and the civic center there. We actually met with representatives from their Convention & Visitor's Bureau and upon return of that flight I did put a report in that we should pursue this. I think their recommendations are well founded and MDC is going to fund the appropriation so I think it is great.

Alderman Shea asked, Mr. Stephen, what is the timeline for this. In other words, if it starts in a week or two do you have a time limit as far as when it will conclude? Six months? A year?

Mr. Stephen answered I believe, Alderman, and Ray correct me if I am mistaken, I think it is a six month...we want to get this as fast and quickly as we can. We have the consultant here this evening also.

Mayor Baines asked the consultant to come forward. Also, as you may know we have had discussions in my office with the parties involved in this and we would like something quickly because we do have a budget process that is coming up and we are well aware that the initial stage of this has to be addressed in the next budget.

Ms. McNulty stated I am the President of Tourism Development Associates and I will be happy to answer any questions. I will probably have more to say in six months.

Mayor Baines asked what is the timeline for the feasibility study.

Ms. McNulty answered I would guess about six months. I think I will have more to say then.

Alderman Shea asked so from the beginning of when you are funded to the end would be about six months.

Ms. McNulty answered yes.

Alderman Vaillancourt stated so I am to understand that the \$25,000 includes the benefit package as well. It is a total or is there no benefit package?

Ms. McNulty answered there is no benefits. It is an inclusive contract.

Alderman Vaillancourt asked there is no Social Security, Workman's Compensation, all that 33% that we usually add.

Ms. McNulty answered I pay for that.

Mayor Baines stated so it is a flat \$25,000. She is a consultant.

Mayor Baines called for a vote on the motion. The motion carried with Alderman Vaillancourt being duly recorded in opposition.

Presentation regarding the Riverwalk Pedestrian Bridge.

Mayor Baines thanked Helen Closson for volunteering to take this task on and all of the work you have been doing behind the scenes.

Ms. Closson stated I would like to thank you, Mr. Mayor, and the members of the Board for allowing us to come here this evening. I think we have a very exciting project and one which seems to be gathering a lot of interest. I first saw the rendering of the bridge at one of the official...well I don't know if they were official but we went to so many different meetings and presentations and the thing that caught my eye particularly in spite of the fact that we saw things about the civic center and the Riverwalk was this wonderful trestle bridge, which I immediately decided had to happen. Now I hope everyone feels the same way. It does connect both sides of our City and I think that is terribly important. I spoke to some people about it and was very interested in seeing that they shared my enthusiasm. We then decided that our next move was to meet with the Mayor and that was a wonderful meeting and he is very much in favor of this. As a result of that, we asked some other people to join our group and put together a not for profit corporation which we named "Hands Across the Merrimack." Bob MacKenzie is the person who thought up that wonderful name. Our aim is to make this a public/private partnership. Although we hope the City will be a strong partner, we need your support. We want this to be a partnership with the community. It is wonderful that Mayor Baines was able to secure \$600,000 of transportation enhancement T-21 program monies and based on the projected budget which you have in hand, we are hoping for your support to supplement that grant. We are looking for \$200,000 in CIP monies on a three-year basis. You will note that those monies will be matched through our fund raising efforts. The monies requested from the Bean Foundation will enable us to do a feasibility study. Forty or fifty community leaders, bankers, corporate heads and citizens all over the City will be interviewed to develop and determine their level of interest and the support available for the project. There seems to be an incredible amount of enthusiasm for what I call our dream bridge. The results of the feasibility study will be available before CIP monies are needed. We know that there are several groups who are already interested. As a matter of fact, as a result of the Chamber breakfast the other morning, someone who was very interested as part of a biking group I guess has offered his services as a member of our Committee so we are very excited to hear about people coming to us about this project. We sincerely hope that you are going to share our enthusiasm for this because we feel it will be a great addition to the City, it will be a wonderful entrance. I can see it now

lighted in the evening as one comes up the highway coming into Manchester. This City is wonderful and it deserves everything we can do for it. I am excited about it and I hope to rally the forces around and to help us to make this a reality. I would like to turn the floor over to Tom and to Robert who will speak a little bit more about this project.

Mr. Sommers stated I think Helen has really hit on most of the highlights of it and her enthusiasm is infectious. Just very briefly, for those of you who do not know where this bridge is, it is approximately down stream of Granite Street about 1,000 to 1,500 feet. It is a trestle that the City owns and owns the property around. It would become a major bike/pedestrian connection from the East Side to the West Side. It would connect to the west side trail which also has T-21 funding, which is now in design, eventually going over to the St. Anselm College area and eventually even continuing on to the West Side Arena and to Goffstown. On the east side it connects to a portion of the Riverwalk, which is already completed, Phase IA in front of Singer Park and to a portion of the Riverwalk, Phase IB which is now under construction so all of these things would be connected. With the UNH campus coming and the connection south hopefully to Hesser College and the St. Anselm campus not too far off of the trail, eventually this becomes a major pedestrian bike trail for three colleges and to the residential, commercial and industrial community in this City. In talking with other cities that have done this and in talking with other people involved in these things, these are major attractors to a city and major economic improvements to a city. We are talking about essentially having, the buzz word is linear parks, running through the City that basically attract what you want to attract in terms of a nice place to live, work and be. I can answer questions if they come up with respect to I guess the funding and the status and I am going to turn it over to Bob now.

Mr. MacKenzie stated I am going to be very brief. I just wanted to kind of extend how this trail system is covering different parts of the City. As you may know, the Riverwalk is part of the Heritage Trail System that will ultimately run all the way from the Massachusetts border to the Canadian border. East/west extending from this bridge, the City recently acquired from the State the old Portsmouth branch of the B&M railroad, which would extend from the rail yard right near this bridge easterly out to Lake Massabesic and there is already a trail system that runs from Lake Massabesic all the way to the seacoast. So, we have a trail system that converges on this particular bridge that runs north and south the entire length of the state and east and west almost the entire width of the state converging on this particular point. Again, I am going to keep my comments at that and see if anyone has any questions.

Mayor Baines stated again this is for informational purposes only. Obviously, this will be deliberated during the budget process, but if you do have any questions we will take them.

Alderman Hirschmann stated the handout that was given to the Aldermen says "Hands Across the Merrimack, Inc." and it lists the board of directors. Is this a brand-new corporation?

Mayor Baines replied it is a brand-new non-profit organization just founded for this purpose.

Alderman Hirschmann asked so these funds would be entrusted to this corporation to do this project. Is this a City project?

Mayor Baines asked for someone to explain the way this is going to work as far as raising private money.

Mr. MacKenzie answered this is perhaps one of the largest private contribution projects to fund a City project. The monies would eventually be raised and dedicated to the project. The project would be under the control and construction of the Highway Department as part of the rest of the Riverwalk. This would ultimately be a City project, but in order to make it work, it is recognized that a large portion of the funds have to be raised through private capital contributions.

Mayor Baines asked so this would be the repository for private funds that would be raised and then they would be...

Ms. Closson interjected the idea for the not for profit is to make this a public/private partnership because we feel that the community has to be as much a part of this as the City, but obviously the City support is terribly important in this kind of a project.

Alderman Hirschmann asked the City will own the bridge.

Mayor Baines answered that is right.

Alderman Shea asked, Tom, are you going to replace that existing trestle or are you going to use that.

Mr. Sommers answered we are going to use it. If we had to replace that trestle, the \$2 million figure would be closer to \$10 million.

Alderman Shea asked are you going to widen it.

Mr. Sommers answered what we will do is use the top of it and what they call cantilever out on the sides of it so that we can get a 10' wide walk area and then make sure that we have rails that stick out far enough so that people don't have easy access over it. We can use what is there and just picture it widened out across the top.

Alderman Shea asked and that will be maintained and sustained by the Highway Department in terms of plowing.

Mr. Sommers answered it will have to be maintained and that is another good point. I don't know exactly what City department is going to do it, but that is going to have to be part of the discussions. Secondly, as part of the fundraising, we have talked about and are anticipating that we will probably be looking to raise more than the \$790,000 here. My suggestion and everybody seems to agree is that we need to put money aside into some kind of a fund for that purpose and there is one reason for it.

Alderman Levasseur stated the word estimated scares me here. The estimated cost of bridge restoration. When you look at this bridge, does that include that iron trestle?

Mr. Sommers replied yes it does. We have a very detailed estimate as part of the Master Plan on this project. We have gone through the conceptual designs and put together what I call a fairly detailed program cost with a 25% contingency built into it.

Alderman Levasseur asked what is the estimated timeframe to get the start of this construction.

Mr. Sommers answered we cannot get access to the T-21 money until October of 2002. That really is the key to our timeline.

Alderman Levasseur asked what are you looking for as far as width. Are you talking about bikes and roller blades and people walking across there? Is there going to be a substantial width?

Mr. Sommers answered I would say that the area that we would like for pedestrians and bikes to have is a minimum of 10' wide.

Alderman Levasseur asked as far as the location goes, Singer Park...this will hook right up with our Riverwalk.

Mr. Sommers answered this will hook right into the Riverwalk.

Alderman Levasseur asked as far as where the soccer field is located, will it be in that vicinity.

Mr. Sommers answered it is in that vicinity. It will come down around allowing for handicap access we have to keep ramps at a certain...

Alderman Levasseur interjected I like the idea of this also if we tied this into the senior center the people on the West Side could walk across the bridge and come over to the senior center. Do you anticipate that also?

Mr. Sommers replied that is absolutely the case that could happen.

Mayor Baines stated interestingly enough, the aspects of it that impressed the State was the visual and the east/west connector and the north/south connector. They were very excited about that and that is one of the reasons we were able to secure the \$600,000. Again, this is for informational purposes only.

Alderman Vaillancourt stated I have a comment rather than a question or perhaps a rhetorical question and that would be when will it ever end. How much do we have to spend on bread and circuses? When we hear the word public/private partnership, we should immediately see the red light go off in our head. This is yet another \$1.2 million of taxpayer money any way you look at it. We heard tonight about how Highland Goffs Falls School cannot be fixed. We have children passing out and we heard about how their parents have to take them out and put them in private schools. We have to consider what our priorities are and I guess the best that could be said for this is that with \$1.2 million of tax money and \$792,000 of purported private funds, unlike the civic center which has turned into 100% public and 0% private funding at least this looks like the taxpayers will only be paying 60% of it. My rhetorical comment is when will it ever end? When will we ever learn?

Mayor Baines stated I would like to thank the volunteers. In Manchester, as you know, we have a lot of people who are interested in improving our community and making a commitment to our community. The way we are going to showcase our community and make Manchester a destination place to support the economic revitalization of our community is efforts such as this. I want to commend the volunteers and people who do this like Helen, who has been a long-term volunteer looking out for the interest of our community. This is a project that can bring us all together, connect the east and the west

and make a true difference as Manchester makes its way back fully to be a community of destination. Thank you very much for your efforts, Helen. I will be supporting you 100% in everything you do. Thank you very, very much.

Mayor Baines called a five-minute recess.

Mayor Baines called the meeting back to order.

Mayor Baines stated the process that we are going to follow for those here in the Chamber and those listening at home, I am going to ask our Finance Officer, Kevin Clougherty, to explain the whole process that we go through to present the information to the Department of Revenue Administration about the tax rate. It is my understanding from veterans that this is the first time there has been an actual presentation on this issue. I think the process that we went through will be very interesting to all of you. I know we are going to get into some of the concerns and frustrations that led us to this particular date, however, we do have full intentions of bringing the information to the Department of Revenue Administration tomorrow and we will proceed in that manner. At this time, I would like to make a presentation and then we will open up the door for questions from members of the Board.

Mr. Clougherty stated as some of the Board may know, the process for setting the tax rate involves submissions of forms by the City and by the School District, as well as the Assessors. There are three pieces. The evaluation forms are signed and approved by the Assessors. The Finance Officer submits records of what the Board of Aldermen have given for appropriation, along with an estimate of what the revenues would be for the current fiscal year and there is information provided by the School District, which is in the form of two parts. One is a balance sheet for the previous year and a projection for the current year. If you take a look at the sheet that we just handed out, that top part where it says estimated, you can see there are three breakouts. When people get their tax bills, there are three rates. There is the City rate, the School rate and the County rate and then there is the total overall rate that is a combination of all of those. What we have done here is summarized on this estimated form what the Board...when they adopted the budget in June where they thought they would be. In other words, that expenditures for School were \$106 million and for the City \$91 million and for the County \$7.4 million. Veteran's exemptions, we have layered in there what the revenue estimates were. At the time, there was a decision by the Board to use \$1 million in fund balance and that brings you down to a projected tax rate back in June when the budget was adopted of \$30.34. Broken out into three different categories, the City would be \$14.89 and School \$13.56, which includes both the State portions as well as the local portions. Just below that is where we are currently. The expenditures haven't changed. The transit subsidy hasn't

changed. Your overlay and all of those numbers are relatively the same. The one change that is in there is for the County. This is something that is not within the control of the Board of Mayor and Aldermen. Whatever the County comes up with for their budget and submits to the State, the State tells us what our portion is of the County tax and that is why that adjustment is in there. You have your revenues. The fund balance. There is an adjustment on the revenues on the School side because when the Board adopted the budget back in June, there was an expectation that there would be \$550,000 in interest income from the schools that would be used for tax rate setting when the school has submitted their forms to the State. That money has not been included so we backed that out. The fund balance we kept at \$1 million. You come down to your tax revenues. The valuation. There is a change. When back in June you looked at the estimate of \$3.849 billion. We know based on the actual forms and the work of the Assessors that it is \$3.831 billion. You can see the result is that if we go with what we have tonight the rate would, instead of being \$30.34 would be \$30.69 and you can see how that is affecting all of those different break outs.

Alderman Wihby asked are you going to take questions as we go along or wait until the end.

Mayor Baines answered I would like to let him finish up and then we will take questions.

Mr. Clougherty stated we did give, for the Board, some information on what would be required to get back to the estimated tax rate. In other words, if you wanted to get back to the \$30.34 you would have to come up with an additional \$1.34 million either in a combination of revenues or fund balances. Then we provided you with the tax rates for the previous year as a comparison note and what the differences are. The forms that are submitted to the State have, to the best of my knowledge, been provided and we are anxiously waiting to try and get the rate set tomorrow if at all possible so that we can get the tax bills out and start to get some revenue flowing. It is critically important that we come to some consensus on this rate tonight. Mayor, the differences that are outlined here have been discussed with the Board during the budget process so I don't...I am not quite sure how much more detail you want me to go into.

Mayor Baines replied I think really just the facts. It is a for your information report.

Alderman Wihby stated I have some questions for Kevin. Earlier today we saw some numbers and the Committee on Accounts, Alderman Hirschmann's Committee, discussed some of the numbers and some sheets were passed out. First of all, you mentioned that they didn't want to use the interest income of \$550,000. Is that in anticipation that they feel that it is theirs and they can spend it? Is that what the idea was?

Mr. Clougherty replied that is my assumption, but I can't speak for them.

Alderman Wihby stated the second thing is if you look at the form that...the MS-25 form that was passed out in the Committee on Accounts, on Page 3 it has a total there and food service has a total there and I would assume you would add "and other." I imagine other must be federal funds but if you add the general number of \$100,893,164 and the food service number of \$3,667,570 you get a total of \$104,560,735. Are you with me? That is the total amount that was spent. Is that what that is?

Mr. Clougherty replied yes.

Alderman Wihby stated yesterday I went to the taxpayers meeting and that is why I wasn't attending this one and Norm passed out a sheet of paper that says fiscal year budget public hearing August 9. Since it was after July, I assumed it was the budget that the Aldermen had passed and they had that public hearing afterwards. The numbers on that sheet said that the number was \$100,573,000. So, it seems like this Board back in June, July and at the public hearing in August said that the School Board could spend \$100,573,000. Looking at what they sent to the State, it is \$104,560,000 so it is almost \$4 million higher than what this Board voted for back in July. \$4 million. We appropriated \$100 million and they spent \$104 million. Is that true?

Mr. Clougherty replied yes. I think although that you are adding together the revenues on Page 103. Page 104 would be the expenditures, but it is roughly the same. You would be adding the \$100 million...

Alderman Wihby interjected \$103.7 million compared to \$100.5 million. So it is over \$3 million more that was over expended?

Mr. Clougherty replied yes.

Alderman Wihby stated in front of us we have on L that we were all going to take up later, there was a letter L on today's agenda from the State Revenue and there is a paragraph there that says the School District is limited by the total amounts appropriated by the legislative body, i.e. Mayor and Board of Aldermen, as are all other independent school districts and must expend within the voted appropriation. Now, on top of that there is Section 6.09 in the Charter on Page 187, Overspending of Appropriations Prohibited. No payment shall be made or obligation incurred against any appropriation except in accordance with appropriations made. Any authorization of payment or incurring of obligation in violations of the provisions of this Charter shall be void and

any payments made illegal. Now we are still talking about them overspending \$3 million from what this Board appropriated to them. Back in June of this year, we had a discussion and there were comments from you, "Mr. Clougherty stated we received a letter from the Superintendent saying that they will no longer be sending the revenues for the City. They will go to this account and we will be responsible for providing them the tax dollars. We have clarified, I think, with the Superintendent at the meetings that the Mayor and I have been at and this is based on conversations with the City Solicitor that the appropriating body for the City is this Board, the Board of Aldermen, and just because you get additional revenue does not mean that you can spend it. It has to come back to this Board for appropriation." Later on at that same meeting, Solicitor Clark stated "it is clear that the court decision said that they get to earn the interest on their money and they get to keep the interest, however, that does not change the law that you are the appropriating body and you can only spend appropriated funds. There are two options. It either goes to fund balance or we could appropriate the funds." Alderman Gatsas asked, "what happens if they overspend the appropriations?" at the same meeting. Solicitor Clark replied, "The court said you could take that into account the next year and deduct it from their future appropriations. Pay it back out of their future appropriations." The interest that you said they didn't put down on their sheets, which was passed out at the Committee meeting, their MS forms, they don't put down interest earnings. That came up on 5/30 when I stated that we are putting in \$550,000 on the School side and I had talked to Norm and that was roughly the amount that they expected for interest income so it was the intentions of this Board that that money was going to be counted into the tax rate setting, that we were going to get that interest, and in the meantime we gave them an appropriation of \$100 million. Clearly, they spent \$104 million or \$103 million something so they clearly went over at least by \$3,200,000 or whatever that number is. Clearly, they overspent and it is my feeling that this Board should have been the one that allowed them to overspend that amount and that it shouldn't have been a decision from anybody else. I would say that \$1.4 million of that we sort of knew about. We were told let's put it aside in anticipation that they might need it. We argued. I didn't vote for it at the time because it didn't seem right, but it passed. We put money aside and we were going to come back to this Board...the Mayor made it very clear that day that this Board was going to decide how much of that \$1.4 million we were going to give and that the School Department was going to work very hard to go ahead and try to reduce that. Now, they worked very hard but they went the wrong way. They went from \$1.4 million to \$3.3 million or whatever it is. It seems to me, your Honor, that enough is enough as I said in my letter that is coming up and that is a different subject so I don't want to bring that up at this point, but it seems to me that no matter which way you want to explain why they overspent, what happened and how much is really the City's fault or this one's fault, it is clearly, if you look at their numbers, that they overspent their budget. If any other department head did this, they would be fired. I don't know if the School

Board knows they did this, but if so I would like to hear from them on why they think they can just go ahead and spend \$3 million or \$4 million of taxpayer's money without letting anybody know about it because that is exactly what happened. I would say that it is the Administration maybe not letting them know. Maybe they don't know. I don't know, your Honor, but my feeling is...Kevin have I said anything that is wrong out of all of this?

Mr. Clougherty replied no.

Alderman Wihby asked is that number what they spent and not what we appropriated.

Mr. Clougherty answered that is the way it was explained to us today.

Alderman Wihby stated so, your Honor, we are going to talk about giving them \$1.4 million and I imagine that is coming in this discussion. My feeling, your Honor, is that we had a fund balance because we had some hiring freezes and everything else and we did a good job at that. The fund balance was \$4.2 million at one time, Alderman Hirschmann?

Alderman Hirschmann answered yes at one time.

Alderman Wihby stated it went down because of a tax problem to \$3.3 million I think they said today. We used \$1 million of it so there is still \$2.3 million in that fund balance and we told the taxpayers that we were setting a rate at \$30.34 and that they were going to save \$.15 this year. My feeling is that if anything we shouldn't have any increase in taxes. We should make up that \$1.341 million and bring it to at least so there is no increase. The way we do that \$1.341 million, your Honor, is we use some of that fund balance, about \$800,000 of that fund balance that is there and we don't give the School Department \$1,400,000 because they have \$550,000 sitting in interest income that is sitting somewhere that they want to spend. I would deduct the \$550,000 from the \$1.4 million, give them that difference along with using additional fund balance to bring the tax rate so that at least there is no increase. It is still going to be higher than we told the citizens of Manchester, but at least it is not an increase.

Mayor Baines stated notwithstanding the last part of what you said, I am in full concurrence about the concerns expressed about over expenditures. I don't believe there is any excuse for it. I will be calling a special meeting of the Board of School Committee next week to have a full accounting of exactly what happened. I have expressed my concerns about this to the Superintendent and we have a responsibility, the School District has a responsibility to stay within the appropriation of this Board. The taxpayers

have a right to expect it. The Board of Aldermen have a right to expect it and the School Board has a right to expect that. We will be addressing those issues. As far as the report that goes to the DRA, it is my understanding that this is the full measure of accounting signed by the Finance Officer of the City and the Mayor of the City and we have to do what is fiscally prudent. That is my understanding of the process as it has been brought to my attention by the City Solicitor. Am I correct on that, Kevin?

Mr. Clougherty replied yes.

Solicitor Clark replied that is correct, your Honor. The Board does have some role in the fund balance issue, but other than that the form just gets filled out by the Finance Officer and is signed by the Finance Officer and the Mayor.

Mr. Clougherty stated I think that is true. Just to clarify one point that Alderman Wihby made, the \$1.341 million would get you back to what your estimated rate was. To get back to zero, you are looking at a number less than that. Probably around \$770,000 or something like that. We can calculate that for you. It would be less than the \$1.3 million. If you were going to take...what you are saying if I understand it right is you would reduce the \$1.4 million and use that amount to offset against the \$550,000 because they haven't included it in their revenue.

Alderman Wihby responded right and then what would I need for additional money to at least have no increase.

Mr. Clougherty replied give us a second to run some numbers here.

Alderman Wihby stated while he is doing that, what I heard just now was that these numbers do go in but that this Board controls the fund balance number. This Board can change that number today. We can increase that number to the tax...when you go down tomorrow and we can sort of add that...well first of all let's get an accounting of it. It was \$3.3 million this afternoon, right Alderman Hirschmann.

Alderman Hirschmann stated the Finance Director and his Deputy were directed this afternoon to provide us with some documentation of our fund balance. Verbally, it was \$3.3 million. Could you pass that out please? We are having this discussion right now.

Mayor Baines replied can you go through and explain it, Kevin. Just so everybody knows and understands, when we started we had over \$4 million. \$1.6 million was a correction on information that goes back to 1995, I believe, and the Assessor is up there

someplace. That took \$1.6 million of it. Now we are at the situation where I would like Kevin to go over every aspect of the fund balance as it remains.

Mr. Clougherty responded as we said when we provided you with the draft back in October, we said that the number was \$4.2 million but we also said that there was a question about \$1.6 million in terms of how that was going to be calculated because there were some questions on how the tax module would affect the fund balance. We have gone back and reconciled that and we are reporting to you tonight that the fund balance that you have when you take that into consideration is \$3,366,615. Now, that \$3,366,615 includes \$1.4 million that we have set aside for school. What Alderman Wihby is saying is if you reduce that \$1.4 million then that has an affect on the fund balance.

Alderman Wihby stated, Kevin, \$3,366,615 is the fund balance using the \$1.4 million.

Mr. Clougherty replied right.

Alderman Wihby stated so if we take the \$550,000 out where that money is sitting somewhere else to make the \$1.4 million whole so it comes out to \$850,000.

Mr. Sherman stated the \$1.4 million has not been taken out of that number.

Alderman Wihby stated so if you take the \$3,366,615 and you deduct the \$850,000 from that, that leaves us \$2,516,615. We said we were going to use \$1 million of that so we have \$1.5 million left over. True?

Mr. Clougherty answered yes.

Alderman Wihby stated so if we use an additional \$800,000 of that to reduce the rate left as undesignated fund balance of \$700,000, we could get to a zero percent increase.

Mayor Baines stated but am I correct, Mr. Clougherty, that that could create some problems because we haven't resolved all of the issues.

Alderman Wihby stated we have \$700,000 left over, your Honor.

Mayor Baines replied there are some other unresolved issues based upon our conversation with the auditor this afternoon.

Alderman Hirschmann stated none that I know of, your Honor.

Mayor Baines replied there are.

Alderman Hirschmann stated none that he spoke to me on.

Mayor Baines replied Kevin will clarify. He knows the situation.

Alderman Hirschmann responded well he better tell us.

Mr. Clougherty stated if I understand what you have done, Alderman Wihby, is that would leave us with a balance of \$700,000 undesignated.

Alderman Wihby replied right to take care of any problems that we have coming up that we don't anticipate.

Mr. Clougherty stated my understanding is that the resolved issues with School as a result of the meeting this afternoon with our auditors and theirs, is \$600,000 so that would cover that.

Alderman Wihby asked is there anything fiscally irresponsible, Kevin, with increasing our fund balance to \$1,800,000 instead of the \$1 million and actually it would be higher than that because we wouldn't be giving them the \$550,000. They could take that out of interest income and we would still get to a zero increase. Is there anything wrong with that, Kevin? That is still leaving you \$700,000 undesignated.

Mr. Clougherty answered our concerns are always that you provide sufficient numbers so that we don't end up overall in a deficit because we still have the rainy day. Our concern is always as you know maintaining some money here for our presentation to the credit rating, which would be the \$700,000. We don't like to run that thin, but if that is the recommendation of the Board that is where you end up.

Alderman Wihby stated this Board said that we were going to give a 15-cent decrease. We have a chance of doing this and using that fund balance and leaving \$700,000 undesignated and at least giving a zero percent increase or no tax increase for the year. I think the citizens of Manchester deserve that at least. It is unbelievable that the School Department would overspend their budget. They overspent it back two years ago. What was the number we heard today, Alderman Hirschmann? \$1,248,000 back in 1998. Now it is a little over \$4 million without getting any appropriation from this Board and I think something has to happen with that.

Mayor Baines replied I think we all agree with that but I am a little confused because we were meeting right up until the very end today and the recommendation that we came forward with this afternoon was the recommendation of the Finance Officer of the City to protect the long-term financial health of the City going into next year. Now I am a little bit nervous about it changing course in here this evening after what we have been through in the last week or so. Now, all of us agree with the situation but Kevin what has changed between then and now. I just need clarification on that.

Mr. Clougherty stated what he is doing is...

Mayor Baines interjected I understand what he is doing.

Mr. Clougherty stated I guess the concern I would have is if you are going to do that tonight then that precludes you in the future from giving the full \$1.4 million because you can't do the tax rate tonight and then turn around and give them \$1.4 million because you wouldn't have that.

Alderman Wihby responded there are two options, Kevin. One is that we go ahead and give them the \$1.4 million and let them count the revenue. They can change that number tomorrow and add the \$550,000 into their number. We can give them the \$1.4 million. That is easy enough to do but if they don't want to change that number and they don't want to concede that the interest is not theirs to spend, then we shouldn't be giving them \$1.4 million. It is as simple as that.

Mayor Baines stated I am going to need some clarification because as I understand it the only two people who are authorized to sign that tomorrow are the Mayor and the Finance Officer. I am going to have to have a recess to meet for 15 minutes, 20 minutes or a half an hour with the Finance Officer to receive advice on that because it is my understanding that that is the way the process works. I want to make sure that we are doing what is right for the City in terms of the long-term financial health of the City.

Alderman Wihby stated I just heard from the City Solicitor that the fund balance number comes from the Aldermen.

Mayor Baines replied but as I understand it the Mayor has to sign this thing. All I am saying is I want to sit down in an environment that we can sit down in and discuss the situation because the two of us are the ones that put our names on that. Am I correct on that?

Alderman Hirschmann stated this is a good environment right here, your Honor. The TV is going. Let's get it out.

Alderman Wihby stated we opened the doors, your Honor. That was your saying.

Mayor Baines replied I don't have any problem with that, but we may...I would be glad to discuss it right here further.

Mr. Clougherty stated my understanding is that is the Finance Officer's responsibility to tell you what the fund balance is and to calculate that, which we have done. It is this Board's responsibility to decide how much is going to be used for tax rate time. If you want to take the \$550,000 and make a decision on that tonight affecting the \$1.4 million, you are painted into that number in the future. You cannot give the School District going forward \$1.4 million because you will not have it and I think everybody had to understand that.

Mayor Baines asked so we would not be able to make up that \$1.4 million for the School District and they would have to cut their existing budget to make-up that difference. Is that what you are saying?

Mr. Clougherty answered no because what he is saying is the interest is...if we were going to set the tax rate based on what had taken place back in June, Mayor, then when the forms when up to DRA from the School District they would have included \$550,000 in interest income and they could still do that tomorrow with an amended form and that would fine. I think that the point the Alderman is making if I understand it right is he feels that he doesn't want to give them the \$1.4 million and let them have an additional \$550,000 out there as well. So one way to deal with that is to say alright we will reduce the \$1.4 million for the tax rate setting, we will give them less than that because they still have \$550,000 on their side and you are back to really where you were.

Alderman Wihby stated just to clarify that, your Honor, we are saying \$550,000 but if you look at what they put in for interest income the year before, it was \$960,000 so there is still \$450,000 playing around there somewhere.

Mayor Baines stated my question, Kevin, would be on the form itself. We would be amending the form is that what you are saying?

Mr. Clougherty stated we would have to put in more fund balance, but by doing that also the rates that you have in front of you...could you give me a second to run some numbers. If we put in \$1.8 million, the tax rate becomes \$30.48. The City's rate

becomes \$14.74, the School's is \$13.70 and the County is \$2.04 and the overall rate would be \$30.48.

Alderman Wihby stated and all we have done at that point, your Honor, is said that we are not going to give them the interest that they haven't counted.

Mayor Baines replied I follow this 100%.

Mr. Clougherty stated what that does is it gets you pretty much to zero because last year's rate was \$30.49. So, you are a penny over.

Alderman Gatsas stated there is a letter here that I have dated August 17.

Mayor Baines asked do we have a copy of that.

Alderman Gatsas stated I believe we have copies to pass out. It is from the State of NH Department of Revenue Administration. It says,

Dear Mr. Clougherty:

Please let me offer my sincerest apologies for a two-month delay in getting back to your inquiry regarding the Manchester School District expending interest income without an appropriation. You wrote that the Superintendent was relying on Page 13, Section 4, Paragraph II of the Declaratory Judgment as an authorization to expend interest. We agree that the decision is correct. They can expend the interest, however, one of the most basic concepts of New Hampshire municipal law in expending public funds is that you must have appropriations to authorize an expenditure, RSA 32:3. You must gross appropriate; meaning you must have an appropriation even if there is offsetting revenue.

If you look at Page 16, the last line, it clearly states they cannot expend more than appropriated. I think it is clear. I am not paraphrasing. There are a few more paragraphs. The final paragraph reads:

I believe the court did intend to allow the school the interest income, but I do not believe the court intended to grant the School District an exception of law of appropriating to authorize expenditures.

I think it is pretty clear that the \$550,000 must appear in the State ruling that goes to the State. It is very clear to that. It is very clear that the \$550,000 needs to come back into the City so that we are only sending back a portion that we are talking about. If we relieve that \$1.4 million to an \$850,000 number and it is pretty clear and certainly Kevin if you can give my colleagues on the Board a copy of this letter and whoever else would

like to look at it...it is there. That came out in August. I don't know if the School Department...Kevin was the School Department sent a copy of this letter?

Mayor Baines stated they never received it until a couple of months afterwards I believe. Actually, two weeks ago.

Alderman Wihby stated we discussed interest income back in May and June.

Alderman Gatsas stated let me follow-up with that because I understand they may have only got it two weeks ago but at a meeting of Bills on Second Reading, I believe Attorney Eggert was here and I asked him the same question four times about whether there was an authorization to overspend a budget and whether he could take, whether he approved the district to expend funds from the 2001 budget for 2000 bills. He said he didn't really know and he never reached that question. Well, I would assume that after somebody asked that question four times he might have done some research to find out if that was possible to do and certainly would have got that information in a timely fashion if they had turned to the Department of Revenue and Administration to get that answer. I think it is clear, your Honor, that the \$550,000 needs to appear. It needs to assist the taxpayers.

Alderman Levasseur stated if you read Judge Nadeau's opinion, I quote "it may also take into consideration income the district will receive from interest on its funds" talking about the district and the City being able to take that into consideration. Before we go that way, I would like to step back to when we started this discussion. Did you, your Honor, have a recommendation coming to the Board for the number that you wanted to see? Was there a 15 or 20 cent tax hike?

Mayor Baines asked on this.

Alderman Levasseur answered I am talking about the tax rate. We never even discussed whether there was going to be an increase or not and we are talking about trying to get it to zero. Was there going to be a recommendation from Finance to the Mayor's Office to be an increase?

Mayor Baines replied this is the recommendation. The methods that we try to apply...first of all we spent...

Alderman Levasseur interjected what was the amount. What is the actual figure? Is it 15 cents?

Mr. Clougherty responded if you look at the report, it was \$30.69.

Alderman Wihby stated 35 cents over what we said.

Mayor Baines stated we met today with our auditor and Mr. Clougherty...they spent a good part of the day with the School people trying to resolve the issues and that was reported to the Committee on Accounts. When I met with the auditor this afternoon, he came into me after meeting with Mr. Clougherty regarding what the rationale was for this \$30.69. That was presented as the most fiscally prudent way for the City to proceed into the next fiscal year.

Mr. Clougherty stated we weren't considering at that time making an adjustment for the interest income.

Mayor Baines replied and again that is a new issue that is up here and that is fine. I just want to make sure that we go through it and that the Board has a thorough understanding of it. I would like to give the School District an opportunity to weigh in on some of the conversation and participate in it. I just want to make sure we proceed so that everybody has a thorough understanding of the ramifications of what we are doing. Understand that it was presented to us today with the auditors that this was the fiscally sound process to proceed so that is where we are.

Alderman Wihby asked do you want a motion, your Honor.

Mayor Baines answered at this point I would like to ask the people from the School District if they would like to come down and respond. Mr. Tanguay and Mr. Chapman, could you please come to the microphone.

Alderman Wihby asked can we have someone explain how they overspent \$3 million plus.

Mayor Baines answered we can address those issues.

Alderman Clancy stated according to the figures we were just discussing, it goes up 35 cents per thousand. In other words if a person has a \$100,000 house, the taxes are going up \$350 right.

Mayor Baines replied no, \$35. That is basically around the valuation of my home so we would pay about \$34 or \$35 more for the entire year. I don't know if Kevin has done any comparisons.

Mr. Clougherty stated that is a pretty good rate this year.

Mayor Baines stated basically with the challenges that we were facing over the last two weeks, especially losing the \$1.6 million that we anticipated that we would have in the fund balance and going through the disappointment of that and then being confronted with the issue with the School District with the increased deficit beyond any of our understanding, we were quite concerned about what was going to happen. Then, with the meetings today when we came out of this with a fairly modest increase and again our goal was to get to zero but to get this modest increase you have to understand that we breathed a collective sigh of relief late this afternoon. Basically, just before the Committee on Accounts meeting I was still meeting with the auditor.

Alderman Wihby asked in your meeting did the interest income come up.

Mayor Baines answered no. That is what we are saying. That is what Kevin is saying. That is a new issue tonight.

Alderman Wihby asked so they never said they were going to keep the interest income at the meeting.

Mayor Baines answered in terms of the issue of dealing with it; yes we did talk about it.

Alderman Wihby asked at the meeting did the School Department say they were going to keep the \$550,000.

Mr. Clougherty answered right. At the meeting this morning, they told us that is not included in their form.

Alderman Wihby asked and you were at that meeting, Mayor.

Mayor Baines answered no. I was at the meeting with the auditor this afternoon. Mr. Tanguay could you please present the situation from your perspective.

Mr. Tanguay stated well I think it will be very brief. I am very disgusted and discouraged by what I am hearing this evening from Alderman Wihby. I think we have been through this before many, many times. Interest income is legally ours and legally we can accept it and spend it. That is the legal opinion we have. We don't wish to go to court to resolve this issue again. Relative to your comment about the extra monies that we would be having in for the tax rate setting, some \$500,000, I have to tell you that a letter went to Mayor Baines indicating that and it also said subject to transitional issues.

That has been addressed. If you cut our budget, and it is already at \$100.6 million, it will have an adverse affect on education in Manchester without a doubt. You can shake your head, but it is going to happen. We are understaffed as it is now. We are able to meet our supply needs, our book needs and our staffing needs. We don't have any wiggle room. I would request this Board to reconsider any kind of budget adjustment that would reduce the funding to schools in Manchester. I am here tonight...

Mayor Baines interjected okay.

Mr. Tanguay stated let me finish please.

Mayor Baines replied hold on a minute. We have been having here...you may disagree with what we are saying but we are having a relatively calm and respectful discussion. My expectation is that it will continue that way. That is my expectation before we proceed any further. Go ahead, Mr. Tanguay.

Mr. Tanguay stated I am here tonight at your request, Mayor, and I have to tell you that I did not want to or did not expect to respond to questions or be cross-examined. My duty is to report all fiscal matters to the School Board and I have not had that opportunity. We just recently finished the MS report, for example, and the auditor report is being completed now. The tax rate can be set. The State has all of the documents and the City has all of the documents to set the tax rate. There is no reason why it cannot continue as it was submitted. The difference of \$1.4 million that we have talked about since last year is a real number and it is a number that we need to have funded. We cannot live without the \$1.4 million. Also, we talked about over expending. Well, the School District experienced overspending this past year. Deficit spending, which we covered through revenue sources like interest income that Mr. Wihby is talking about among other things. We were also able to use some unexpended funds as a result of a spending freeze that we implemented. That has helped us a lot. We did not need any City cash. We are not here tonight asking for more money. We are asking for the \$1.4 million that was mysteriously taken away from us. We are asking for that money and that money only. I also want to mention that the deficit resulted from special education again. You hear this time and time again. Special education. \$1.7 million estimated overrun in special education costs. Books and supplies about \$200,000. We all want students to have books and supplies. I hear this over and over again from the Aldermen and they are getting books and supplies. The bottom line is that we were still able to balance our budget. We did it by taking the \$1.3 million over expenditure and again using interest income money and some other revenue sources to meet all Federal and State mandates for special education so that the School District is not violating Federal law. We meet, for your information, on a periodic basis with the Office of Civil Rights and they demand that we staff schools. We have no

choice in the matter. I will be reporting the School District's financial matters at a School Board meeting. I will be glad to respond to your questions after we have a final audit and after I have reported to the School Board as I am required to do. I want to make that very, very clear. I hope you can appreciate the position that I am in this evening being requested to be here when all of the financial data has already been given to the Mayor and the financial officer and the State. Now to hear that you want to, in fact, start cutting our budget when we have prudently administered the School District's budget...I have to tell you that we have met the educational needs of our students and I don't apologize for that. Not for one moment. In closing, I would like to say that my position now is to report to the School Committee on all financial matters. With all due respect to this Board, after that has occurred I will come back and share with you the information and also respond to your questions. Thank you.

Mayor Baines stated I would appreciate it if you could stay there and be available for comments, Mr. Tanguay.

Mr. Tanguay left the Chambers.

Mayor Baines stated I need to comment and I will comment. I am very disappointed in that because I think that all of us as public officials should welcome the opportunity to address any matters of concern in any kind of forum and I am very disappointed that the Superintendent has left the Chamber and isn't available to respond. I can understand his disappointment at the conversation, but I don't believe that was an appropriate response to it.

Alderman Hirschmann stated I don't want to comment on his leaving the room because I really don't feel that he should be the spokesman that meets this panel anyway.

Honestly, the School District SAU #37 has a treasurer and that treasurer has to certify a balance sheet of appropriation. The appropriation that this Board made to that School District was overspent and their treasurer has to certify the balance sheet and report to this Board. I don't want to hear from the School District's administrator about hurting education or anything like that. I want to hear from the responsible party that the School Board sends to us, who should be their treasurer. Our treasurer is Kevin Clougherty and we should hear from their treasurer. I know they have one.

Alderman Wihby stated I have been watching TV lately and there are so many spin artists on TV with Bush and Gore but this one just beat it all, your Honor. If we want to spin something, we can spin it. Hurting the kids and not spending the money and jeez we have a duty, your Honor. We never told them and there are ten different documents that show that the interest income was going to be ours and we calculated that when we set

the rate and when we gave them their amount of money. By reducing the \$1.4 million, there is no cut there, your Honor. They have the money in interest income and it is sitting in another account. We are not reducing anything. We are giving them the amount of money that we thought we were going to give them, the \$1.4 million. We are just doing it a different way. Your Honor, their attorney is here and I would like to ask him a question. I would like to ask him if he gave...first of all there are School Board members here and I would like to know if they know that they have overspent. I am hearing from the Superintendent that they don't even know this yet. I don't know how you can overspend without the School Board knowing. Second of all, your Honor, the attorney is here from the School District and I heard Mr. Tanguay say when he was here that we spent this money and we overspent and I would like to know if he recommended to them just go ahead and overspend because it doesn't matter what you were appropriated. You are your own body and you do whatever you want and the Aldermen don't have anything or if he told them that they should come back for another appropriation. I would like to know that, your Honor.

Mayor Baines asked, Mr. Eggert, do you feel comfortable answering that.

Alderman Wihby stated there is a document that was signed, the MS-22, by Mr. Cook. Maybe we can get Mr. Cook down here. Obviously, he knew what was going on.

Atty. Eggert stated, your Honor, I represent the Board of School Committee and the District. I think the last time I was here on July 31, 2000 I made it very clear that I did not involve myself in the financial administration of the School District anymore than Mr. Clark would involve himself in the financial administration of the City. If you ask me on any given day to give you a snapshot of the City finances or the District finances, that would not be in my...

Alderman Wihby interjected the question is did they ask you if they could overspend their appropriation of \$100 million. Did that ever come up in discussion with you?

Atty. Eggert stated I have never been posed the question of whether or not you can overspend an appropriation. I have been asked the question whether or not you can expend interest. Chief Justice Nadeau was very clear on Page 13 of his decision that there were two things you could expend. The appropriation and the interest earned there on. The DRA did not weigh in on that litigation. There was no appeal of that decision. It was pretty transparent that Judge Nadeau said that the common law was such that the interest goes with the appropriation. Now, the Board is in a little bit of a bind because Judge Nadeau also said that the interest stays with the district so I would just encourage

you to consider and consult with your Solicitor as to whether or not the steps you are taking with regard to this interest income would pass muster.

Alderman Wihby replied well we have. My question, though, is \$100 million was appropriated by this Board and we see by the forms they filled out that it was \$103.1 million. \$3.1 million over expended from what we approved...what the Board thought they were approving and what was spent. Are you saying they have the authority to spend the \$3.1 million? If they had asked you the question would you have told them yes, go ahead and do it?

Atty. Eggert responded it would depend. If the Board of Mayor and Aldermen had approved an unanticipated revenue fund and I believe historically you may have in the past, then it is possible to spend beyond your expenditures. That depends on whether or not you ever approved an unanticipated revenue fund.

Alderman Wihby asked Kevin Clougherty if we did that.

Mr. Clougherty answered I don't know what he is referring to.

Mayor Baines asked Atty. Eggert to clarify that.

Atty. Eggert answered I would need more facts in order to answer the question. For example, if the Board of Mayor and Aldermen back two or three years ago had approved an unanticipated revenue fund for the School District then there is a statutory process where they can tap into unanticipated revenue and expend it. That exists under Section 198. I don't know whether or not you did that. I would need to know that.

Alderman Wihby replied they are saying we didn't.

Mr. Clougherty stated I am still not clear on what he is talking about.

Mayor Baines replied you could talk directly to Atty. Eggert to get clarification, Mr. Clougherty.

Mr. Clougherty asked is this the revenue stabilization fund you are referring to.

Atty. Eggert answered NH RSA 198 (D) allows boards to establish an unanticipated revenue fund. If this Board established an unanticipated revenue fund for the district, then that is one fact pattern where they could over expend their appropriation. I would need more facts to answer that question.

Alderman Wihby replied I shouldn't have put you on that...I am sorry.

Alderman Gatsas asked, Mr. Eggert, are you familiar with the letter of August 17.

Atty. Eggert answered yes. I received that approximately two weeks ago and it would be fair to say that Chief Justice Nadeau and the DRA apparently disagree. I am not sure how they are interpreting his decision. Judge Nadeau's analysis was that as a matter of common law under the State of New Hampshire the interest accrues to the appropriation. There was nothing ambiguous about his statement on Page 13 of his decision that the district could expend the appropriation and the interest earned there on.

Alderman Gatsas asked so you disagree with this letter. The NH RSA's that she is relating to, you disagree with that?

Atty. Eggert answered I agree with Judge Nadeau's decision.

Alderman Gatsas stated I am asking you about the RSA's that Barbara Robinson has made reference to.

Atty. Eggert replied none of those RSA's discuss the issue of interest so I am not sure that I even disagree with you on that.

Alderman Gatsas stated they talk about appropriation.

Atty. Eggert replied yes, Sir.

Alderman Gatsas responded and interest.

Atty. Eggert stated with your gross appropriation, Chief Justice Nadeau says the interest accrues to the appropriation and that the district is able to expend it. If the City disagreed with that conclusion, I assume they would have appealed it.

Alderman Gatsas replied so what you are saying is contradictory to what you said in July.

Atty. Eggert responded what I said in July is...

Alderman Gatsas interjected do you want me to give you the quote because I have it right here.

Atty. Eggert stated you asked me four times and I said I had not yet formed an opinion. I am saying that I do have an opinion and I just shared it with you.

Mayor Baines stated we have had conversations about that because when we had a conversation about that and went back, especially in terms of the issue, and asked for your research on this issue you had definitely come to that conclusion and advised the Superintendent and the School Board that they could in fact do that.

Atty. Eggert stated, Alderman Gatsas, I could have more timely addressed the issue if City Finance had copied the District on the inquiry. I would have been able to provide DRA with some of the supporting information and it might have been possible that we could have reached some consensus on what the opinion was but this was a situation where somebody else, as our bicycle went by, thought they would toss a wrench into our spokes. They never bothered to copy us on that request for an opinion. I thought as a matter of courtesy that counsel would have received one and we did not so there was a delay.

Alderman Gatsas replied well that is usually what happens when somebody steals somebody's bicycle. They try to get that bicycle back. If that means throwing a wrench to get their bicycle back, that is a pretty good idea.

Mayor Baines stated the question that I have to pose at this time is if, in fact, we follow the scenario here and the School District goes to court and whenever we go to court you never know what is going to happen and they say, the court's say or supports Judge Nadeau's opinion that we can do that...and we had taken that deduction from that, what kind of a situation would that put us in if we were ordered to restore it.

Mr. Clougherty asked are you talking about the \$550,000, Mayor.

Mayor Baines answered right.

Mr. Clougherty stated the way that Alderman Wihby is proposing it, he is not talking about taking the \$550,000 he is talking about reducing the \$1.4 million, which is something that this Board has the authority to do.

Alderman Wihby stated we give them the \$850,000 and they have \$550,000 in interest.

Mr. Clougherty stated we just talked to the Solicitor and he says we are not under an obligation so I think the way that you are going about it reducing the \$1.4 million is...

Mayor Baines interjected basically the approach you are coming at is you are going to reduce the...

Alderman Wihby interjected we are going to increase the fund balance by \$550,000.

Mayor Baines asked so they would have to effect another \$500,000 in reductions of their expenditures.

Alderman Wihby answered no. They have interest income, your Honor.

Mayor Baines stated I just want everything clarified because I am convinced that not everyone is totally on track with this issue. Just clarify it, Kevin because they are planning to spend that interest income.

Mr. Clougherty replied right. It wouldn't reduce their appropriation. It would mean that the \$550,000 that they have set aside in interest that perhaps they thought they were going to spend they wouldn't be able to spend this year.

Mayor Baines responded what I am going back at and again I can't ask him this to help us clarify this is that when the comments were made related to you know I can live with the \$106.5 million, etc. as part of that equation was probably that buffer. That is what I am starting to wonder at this point. Any thoughts on that, Kevin?

Mr. Clougherty replied I don't know, Mayor, what their thought process is. At the time, I think the Board and yourself and I thought that everything was on the table and that is what we were looking at. I don't know...I would hate to speak for the School.

Alderman Wihby stated, your Honor, on 6/5/2000 when we talked about the \$1.6 million, I brought up the subject saying that we are always in this fight every year and we look like the bad guys and we should make sure that this is resolved and that they should know that the \$106 million is the \$106 million no matter what happens. It was very clear when we passed the budget that the \$106 million was number. We weren't going to give them the \$106 million plus the interest income.

Mayor Baines replied I am in agreement on that and I understand that. I am just now concerned about the impact. Let's say...

Alderman Wihby stated a grown gentleman stood and talked to us trying to give us answers that we all had questions of and he walked out of the room. He should be fired just for that, your Honor.

Mayor Baines replied let's me just make a comment. I think we are all trying to stay and I think we have done a pretty good job so far...the school children of Manchester didn't walk out of the room. I just want to make sure that we are not doing anything that could ultimately jeopardize that. I think that is worthy of some consideration and discussion because they did not participate in that. I think that is something that I want to be comfortable with and I want members of the Board to be comfortable with.

Alderman Shea stated I don't know if other members here are as confused as I am because really I don't have privy to all of the information that others might have but my question to the attorney is if the School District are asked to give up the \$550,000 and they refuse to do it and they were forced by the Board of Mayor and Aldermen to do it would that involve litigation in your judgment.

Atty. Eggert replied Judge Nadeau was pretty clear that the interest should accrue to the district. There has been, and I think part of the difficulty is I cannot answer the question whether or not there would be litigation because as you know the Board would have to vote to do that. If you ask me my opinion as to whether or not there might be something to talk about to the court, the answer is yes there probably would be. I think a lot of the issues that arise at this juncture have to do with the new requirement by the DRA that both municipalities in the form of towns, cities and school districts submit balance sheets to the DRA. Ultimately, one of the consequences of the Declaratory Judgment Action is that the City of Manchester School District needs to have a balance sheet. I think a lot of the discussions that probably have made the transition more difficult is centered around what that balance sheet would look like. I think maybe that is partly what is causing a little bit of tension on this issue is how you depict the balance sheet.

Alderman Hirschmann stated Alderman Wihby's analysis of coming up with \$850,000 minus the \$550,000, that would work entirely if this Board said they would vote an appropriation of \$550,000, an additional appropriation so that we legally vote that they can spend their interest and then we only allocate the \$850,000. It works out. Do you understand that, your Honor?

Alderman Wihby stated and further we are not changing their number. We are leaving the interest income for them to spend, whatever it is. We are changing our fund balance number and we are going to say we are not going to give them \$1.4 million. That is up to this Board to decide. We had to pick a number anyway going into today so instead of picking \$1.4 million, we are going to realize that they already have \$550,000 of it and we are going to give them the \$850,000. It is as simple as that. It is not changing any of their numbers. It is not doing anything to them. We never promised them \$1.4 million.

We told them we would look at. We set that money aside and now we are going to decide that because they have their interest income we are not going to give them the whole thing. It is as simple as that, your Honor and it is very clear on 6/5/2000 when we talked about the revenue and the interest and everything else that we said that the number is the number and don't come again and don't let this happen again. It is a spin, your Honor, that is put on to try to say so what I overspent I have some authority or don't worry about it. I can't understand how the Superintendent of Schools can overspend \$3 million and not tell the School Board. I can't understand how that can happen.

Mayor Baines replied I don't think anybody is disagreeing with the last part of that. These numbers were new to all of us.

Alderman Levasseur stated while I have you here Atty. Eggert, I just want to ask you because I have Judge Nadeau's opinion in front of me here, when it acts upon the school budget each year as required by the Charter the Mayor and Board of Aldermen can include in its consideration the amount which should reasonably be assessed against the district for school related services provided to the district. It may also take into consideration income the district will receive from interest on its funds. In other words, we do have the right to take...if they decide to expend that on their own, we do have the right to take that interest income into effect when we set another rate?

Atty. Eggert replied I agree. I want to make it very clear that I am not suggesting in any way the Aldermanic appropriating authority is somehow compromised by this decision. You can take into account the district's revenue as much and to whatever extent you wish to. If they generate a fund surplus, you can take that into account in appropriation. I really want to make it very clear that I am not disagreeing with the concept that the Board can take revenue into consideration.

Alderman Levasseur stated so the disagreement that you would have then would be with the fact that if they have extra money and they do make interest on their own income that they do have the right to spend that without coming to this Board. Is that where you would have your disagreement with this Board?

Atty. Eggert replied if the interest accrues on the appropriation, then they can expend that but there is still an appropriating authority on the part of this Board and I want to make it very clear that you as a Board can take a look at the district's fund balance at any given time and let's say they drove a large surplus, obviously you can factor that into your appropriation for the subsequent year and simply that is really how you allocate revenue and you will have to obviously be aware of the fact that the District would need the

latitude to then expend fund balances that it has and you would have to take that into mind as well.

Alderman Levasseur stated to ask the question of the Mayor, when we did the budget and the budget process went through, did you factor in the \$550,000 in interest income.

Mayor Baines replied the budget that we adopted that was factored in. It was a major issue of discussion in this Chamber and it was very clear to me that that was the process that we were going to follow. That it was factored in. The answer is yes. There are members of the School Board here this evening. Do any of you wish to speak?

Alderman Cashin stated I would like to ask School Committeeman Brad Cook as Chairman of the Finance Committee...

Mayor Baines interjected Brad can you come down to the microphone please. There are other members of the School Board here this evening. School Board Members Healy, Vice Chairman of the Board; Katherine Labanaris and John Gatsas. Also, John Sullivan, the auditor.

Mayor Baines recognized Brad Cook and John Sullivan.

Alderman Cashin asked, Brad, were you aware that the School Administration had overspent the budget. Yes or no?

Mr. Cook answered we were aware that certain accounts of the school budget...I am sorry that I can't answer that yes or no, we were aware that certain accounts of the school budget were being overspent. We were aware that we had requested \$1.4 million and this Board had segregated that and we were trying like the dickens because we froze spending in the spring to try to bring it into balance. We were not aware of the numbers and I regret and I apologize for what I believe was one of the most ill-conceived public displays I have ever seen in my life where public officials just walked out on you and I am trying to contain myself but we did not know what the total numbers or ramifications of that were until today. Now the reason for that, I think, is that the audit that is being conducted for us by Melanson & Heath is not complete. We are trying to get the most complete numbers we can get. We were not aware as a School Board and we are still not aware as a School Board. As the Superintendent said to you he has not reported yet to the School Board as a whole.

Alderman Cashin asked but you as Finance Chairman...

Mr. Cook interjected I, as Finance Chairman was not aware of what the numbers were until 1 PM this afternoon.

Alderman Cashin asked but you did know there was overspending.

Mr. Cook answered I knew that we were going to come to you...that there were certain accounts that were overspent and that we were anticipating coming to you and asking for the \$1.4 million, which we have made clear to you for six or eight months or maybe a year because that issue came up during the budget and immediately after the budget. Now, if I can tell you what my understanding is of the situation and Mr. Sullivan is here and he can correct me because this has been like...I was practicing law this afternoon and then I came down here and have been here ever since but my understanding is that we had a \$100.5 million appropriation for FY99. That is what you voted. That is what my understanding is we were limited to spend. I don't want to hear anymore nonsense about we can spend whatever we feel like spending because I don't think anybody on the School Board ever had that expectation that we could just go spend willy nilly and the heck with it. My understanding today having heard the numbers is we spent approximately \$2.8 million more than that. Now we can explain it. We can tell you it was necessary special education. We can tell you it was benefits. We can tell you till the cows come home what it was. My understanding is that it was \$2.8 million. Now \$3.1 million and not something else, but I haven't seen audited numbers and believe me I am not going to swear to it. We need the \$1.4 million in its entirety because what the Superintendent and the staff have always told us is we have sufficient supplemental income. Not that you want to take money out of the bank and spend it, but we have supplemental income that can cover the other \$1.4 million and, therefore, we don't need City funds to do it. If we use any of those funds, among which is interest income, we don't have enough supplemental income to cover whatever it is. Had there been a presentation to you earlier, I think that would have been stated. Now, Mr. Sullivan can correct me because I got my information listening to him today and I am...we haven't had a Finance Committee meeting with a presentation of this and we haven't had a full Board meeting with a presentation of this. We all, as citizens of Manchester, want the tax rate to be set but that is my understanding of where we are and if Alderman Wihby's proposal goes forth, there is \$500,000 that isn't going to be available somehow to educate the students of Manchester.

Alderman Cashin stated, Brad, had you realized there was going to be a problem wouldn't it have been better for you, not your particularly, but for the School Board to come before this Board and explain it to us before we got into this position. I mean it seems like last year we went through the same thing. I mean when is this going to stop?

Mr. Cook replied I think it was two years ago and I agree with you completely. We have been waiting and anticipating full numbers based on an audit so that we knew what the ramifications were. It is very tough to come to you and we have come to you consistently and said...we have communicated with the Mayor, the Mayor has been at the meetings, we have come here and said that \$1.4 million and forget all that stuff about who said what to whom in the back, we have said for at least six months we think there is a good chance that we are going to need that \$1.4 million for benefit numbers to contribute to our budget.

Alderman Cashin stated but you never came to this Board with that.

Mr. Cook answered yes we have been to this Board with that.

Mayor Baines stated that is the benefits number that we set aside the money in anticipation. Mr. Sullivan, would you like to add to any of this? Do you have any clarification before we entertain more questions?

Mr. Sullivan stated what I would like to say is that the position that the Superintendent had taken in the past is that he acknowledged there was going to be a deficit and that he felt that he would be able to have that deficit covered by excess revenues, particularly interest income. Those were the statements that he has made publicly. Those are statements that he has made to the School Committee. I think the issue of whether or not there is authority to spend that is an issue that there is disagreement about and I think there are several opinions on that issue.

Mayor Baines stated just to clarify further, from the comments that Mr. Cook made, as you recall the Board has been asking questions about the audit and what was going on and when we would get final figures from the school, etc. We were told and I was told personally that it would be \$1.4 million, it could be as low as \$800,000 or it could be \$900,000 but it would certainly be no more than \$1.4 million. The information that we received today in regards to the meeting that first took place on Friday when we initially got the figures over here and they spent almost the entire day I think crunching them and it was a very cordial meeting, was the first time that we had received that information. Now, we were told by the auditor today that that was part of the process of the difficulty in getting together for the transition I guess and that kind of conversation so the answer to some of the questions we have like when did we first know about it, the first inkling we had about it was on Friday. Am I correct?

Alderman Wihby asked that they overspent.

Mayor Baines answered of the additional money.

Alderman Wihby stated the first that you knew or the first that the Superintendent knew.

Mayor Baines replied the first that we knew because we had been asking...once the issue of the balance...understand also that this is the first time and again people can correct me if I am wrong on this, we were all set about three weeks ago to set the tax rate and the issue surfaced about the balance sheet for the School District. When the inquiry was made, this was the first time and Ron Chapman has been a business administrator for a long time and has had to do these forms, that was the first time he had ever been requested to provide a balance sheet. Am I correct on that? So, that is why they had to regroup and pull all of that information and I am sure, John, that is all you have been doing during this time period was help pull that information together. Am I correct on that?

Mr. Sullivan responded the emphasis in the last several weeks was getting the School's books closed out so that the MS forms could be completed so the tax rate could be set.

Mayor Baines asked now the question I might ask is why so that we understand, I understand and everyone understands why did it take so long to get these numbers. Why are we dealing with it at the last minute, the last hour?

Alderman Wihby answered that is the best time to deal with things your Honor.

Mayor Baines stated he has been involved with it and I am sure he hasn't been delaying doing it. Why did it take so long?

Mr. Sullivan replied the answer is that this is the first year of the School District reporting as a separate entity. It is the first year that the School District has reported a balance sheet and there are issues in the divorce, if you will, between the City and the School District in terms of balances that are split between the two and there continue to be disagreements over some of those. The School District has gone through three business managers in the last 12 months. The School District also went onto a new computer system from scratch July 1, 1999 and this is their first close out year. So, I think that having numbers ready in November given those circumstances is commendable.

Mayor Baines stated the assumption or the feeling that I have is that proper controls are not in place on the School side to monitor the cash flow. I gave the example in my meeting with the Superintendent today that in fact in a world that most of us live in over here we can monitor cash flow and appropriation so that we would know, for example, if

the Highway Department was having a problem in a certain account associated let's say with snow removal. That would show up as an issue and at that point in time Mr. Thomas would come before the Board and say I am in trouble here. Why weren't we in a position on the School District side to have proper controls in place to monitor the cash flow of money from your perspective?

Mr. Sullivan responded I believe the controls were in place. I believe that the decision to spend money in excess of the appropriation was an intentional decision based on the Superintendent's belief that there were revenues, including interest income, in excess of \$100 million. I don't think it was a control issue.

Alderman Gatsas asked could you repeat that please.

Alderman Cashin stated he said intentional, your Honor. That is what he said.

Mr. Sullivan stated I believe that the Superintendent faced spending decisions during the year and made those decisions to spend that money based on his belief that interest income and excess revenues were available to him. I think that it was not an issue of whether or not there were controls over spending levels. I think there were conscious decisions to spend monies with the understanding that the School could spend in excess of \$100 million.

Alderman Hirschmann stated in an audit that is a reportable condition. You are an auditor. You have to report that.

Mr. Sullivan replied absolutely.

Mayor Baines stated I am pursuing this line of questioning specifically because we have been trying during the time that we have been around trying to figure out the School District expenditures and the bottom line to try to figure out both in my life prior to getting here and since being here because I had these frustrations in my other life too is why we could not start with a sum of money, figure out what you are expending as you are going along, and recognize occasionally that things are going to pop up unexpectedly. There is a process to deal with that. For example, if I had an increase in costs in special education or ESL or whatever it might be and I had a certain appropriation going along, certain commitments in terms of basics of electricity and other fuel and whatever they might be like textbooks I would bring it back to the governing body and say ladies and gentlemen I need to inform you that I am facing a situation here that is going to cause us to look at an additional expenditure of let's say \$1.4 million based upon commitments we made and now we are in a situation where we have two choices. Number one, we have to go back and make some cost saving efforts to try to minimize that, which I urged the School District to do in March as I did...I implemented it on the City side by mandate.

We encouraged it on the School side and it was followed that the normal procedure would be to go through that process. Am I correct?

Mr. Sullivan stated the proper procedure should have been that if the School anticipated spending in excess of \$1 million and was anticipating using interest income and other revenues in order to do that, they should have come before the Board of Mayor and Aldermen to seek appropriations.

Mayor Baines stated the other point that I want to make and then I will open it up to the Board because and this is where I am in concert over here because even though we disagree on issues, fundamentally I believe that we are all sincerely committed to meeting the needs of the students in our schools. I sincerely mean that because we went through a very difficult budget process but I never talked to any one Alderman who wanted to do consciously anything but the best in the interest of the students of this school district and I mean that very, very sincerely. When you are forced to make decisions with the lack of information, the uncertainty that we went through during the budget process we all became apprehensive in terms of where this money was going to go. That needs to be said from this perspective because even tonight and I think we need to take a step back and analyze what is the right thing to do based upon the intentional decision of the Superintendent of Schools to overspend his budget without coming back to the governing authority and asking for permission. Not providing that information to the people that I believe were presented with a dilemma over here...if he had come over here and said I have this unexpected thing that has happened here, I believe this Board would have looked for the resources to provide some kind of a supplemental appropriation through its various means to meet the needs of the kids, but we are not given the opportunity and that is why we are in this situation tonight. I need to say those things in defense of this Board through this process.

Alderman Wihby stated I want to thank you for those comments, your Honor. Finance Chairman Cook, the \$100.5 million that you said that the School Board was appropriated, did I hear you say that that was the number that you thought and everybody thought that was the amount you were spending.

Mr. Cook replied my recollection, well, yes. Let me make something very clear because Mr. Sullivan said he thinks that the Superintendent may have been intentionally spending something. We were in a circumstance where we had and it is interesting for me as an attorney to be a client, we had dueling opinions in front of us which you have referred to, at least one of them, from the Department of Revenue. We had one from Mr. Eggert. We had various opinions on what Judge Nadeau's opinion meant and we had various opinions resulting from those opinions on whether we needed somebody else's permission to spend the interest income. There was never, never a School Board Finance

meeting where we did not ask the Superintendent if at the end of the day we were going to balance the budget. In my mind, and I know in the School Board member's minds that I have spoken with, that meant we are not going to spend more than the appropriation for expenditures which we received, which in that particular year was what we asked for and was fully funded by Mayor Wieczorek with or without the support of all of the Aldermen. At no time did the School Board know that we were going to intentionally or did we ever take action to intentionally overspend that. We knew there was the issue of the \$1.4 million on benefits and our instructions to the Administration were keep it as low as you can. Now at the appropriate time and without naming names, we can supply you with information on at least four catastrophic cases that probably add up to the whole thing but that is why we did it, not that we had the right to do it.

Alderman Wihby stated but you agree that when you left here when the budget was done the \$100.5 million was the number you were going to spend.

Mr. Cook replied yes, Sir.

Alderman Wihby stated you agree that somewhere in that discussion you came to us and said we might need up to \$104 million and we said we would look it and we set that money aside.

Mr. Cook replied yes.

Alderman Wihby stated so now you sit there in front of us and say don't deduct the \$550,000 in interest expense because we counted that but yet if we give you the \$550,000 we are appropriating an extra \$550,000 over the amount that you just said that you agreed to.

Mr. Cook replied I did not say that. What I said to you was on the very preliminary information I got as late as today if you do that you have to understand what the ramifications of doing that is. If, in fact, the School District spent \$2.8 million more than its \$100.5 million, which would be \$103.3 million if I am doing it properly in my head, and if you take \$500,000 of our interest income and if you say we will let you spend that but we will only give you \$800,000 more, we will not have the \$500,000 to apply to the other \$1.4 million. My understanding from hearing this today and this is all coming at us like a shot and the School Board has taken no position on this so this is just me talking, if you take \$500,000 tonight and you say you can spend it but we will only give you \$800,000 supplemental instead of the \$1.4 million that you segregated and if, in fact, we are saying which I understand we were saying that the other \$1.4 million that we overspend which is in my opinion a deficit because I am not afraid of that word as some

people, then we will not have \$500,000 of other revenue to spend to help. If you don't take that \$500,000 we will have enough money in supplemental income, additional income, or reserves to cover that \$1.4 million and we don't need that other \$1.4 million from the City revenues, therefore, it will have no effect on you but if you spend it on part of the first \$1.4 million it won't be available to cover the second \$1.4 million and we will have to take it out of this year's budget, which I happen to believe was a little light and we won't have \$500,000 to spend on school services.

Alderman Wihby stated but you have me lost because you are saying that the...I mean you were not appropriated that amount. You shouldn't be spending that amount anyway. It has never been appropriated, the \$2.8 million.

Mayor Baines stated I would like to offer some clarification. I know have figured it out and I am glad we have had this discussion and analysis. I hope people know that we have been devoting considerable time and energy to this. The level of spending and this is my judgment based upon the information that I have been reviewing and based upon this conversation this evening that is why I have been trying to get at this issue is that the level of spending that has been established by the Superintendent supports the issues of the other income that he was anticipating planning to have and, therefore, it is committed as you know mostly on the School side...now understand we are five months into our commitments on contracts and personnel and the percentage on the School District side I had it in my mind but it is not there right now, salaries is what kind of a percentage right now of the budget? 85% and all of your textbook money has been expended or probably has been expended. You have your fixed costs that are established and now we are probably in the 90%+ category. The ability to make up the difference, granting the fact that there was an appropriation, we understood it, they should have understood it that the level of spending may be at a level that we would end up with and this goes back to a side conversation I had with Kevin that if we sustain the level of spending the minimum we could end up with is a \$500,000+ deficit that we would have to make-up next year and that is what our concern is for the financial integrity of the City. Do you want to react to that, Brad or John?

Alderman Wihby stated that was correct, your Honor. I think I had the floor.

Mayor Baines replied I just want them to react to that analysis.

Mr. Sullivan stated I agree.

Alderman Wihby stated I think everybody agrees with that, your Honor. Mr. Cook, somebody works for you and overspends \$2.8 million or \$3.1 million whatever the number is. Do you keep them on?

Mr. Cook replied we don't have that kind of money.

Alderman Wihby asked, John, today is the first day as an auditor that you are finding out that he has overspent and should have come back to this Board and appropriated the funds or you kept quiet or you told him and he didn't listen to you.

Mr. Sullivan answered I told him. He certainly has asked my opinion regarding whether or not an appropriation is necessary. Our position has always been that the interest income would be available to the School based on Judge Nadeau's decision and it is not part of the \$100.5 million appropriation. I think that interest income was available to the School, however, in order to use that additional interest income it has always been our position that it would require an appropriation from the Board of Mayor and Aldermen to do that.

Alderman Wihby asked did you know that we put that number in our budget.

Mr. Sullivan answered you are talking two different fiscal years. The \$500,000 you are talking about is projected interest income for fiscal year 2002. That is the budget that...no you are setting the tax rate for fiscal year 2001. The \$500,000 you are talking about is projected interest income for fiscal year 2001.

Alderman Wihby stated it is the same number.

Mayor Baines asked is he correct on that, Randy.

Mr. Sherman answered the \$550,000 is what was projected as part of your FY2001 budget. The current year's budget.

Mr. Sullivan stated the interest income that the Superintendent has used in fiscal year 2000, which is the year you are discussing deficits, if you look on his MS-25 you will see interest income of \$950,000. That is subject to some discussion, but that is the \$950,000 that he used along with over revenues to cover the deficit. It is why Mr. Tanguay has been saying all along that the School is going to have a deficit, but he feels that it is covered.

Alderman Wihby replied okay but my question to you is when we did our budget we threw the \$550,000 into this year's budget. We threw that in and we asked them the question how much was it. He told us what it was and we threw it in the number. So, obviously we already counted the \$550,000 on our side. You didn't talk to him about that? You didn't say to him well you shouldn't use that \$550,000 because the Board used it or you should go back and get it appropriated?

Mr. Sullivan responded I was not asked regarding your FY2001 budget deliberations and I did not have discussions with the Superintendent...

Alderman Wihby interjected how long ago did you tell him that there was going to be a negative and that he should come back to the Board for it to be appropriated.

Mr. Sullivan stated those discussions go all the way back to January/February.

Alderman Wihby asked so in January of this year he knew that there was a deficit and it should come back to this Board and be appropriated and not until today...

Mr. Sullivan interjected I said I thought the \$1.4 million should be appropriated and to this day it is not yet appropriated.

Alderman Wihby stated this School Board has not even been talked to about this yet and you are telling me that he knew in January and didn't report to the School Board that there was going to be a deficit.

Mr. Sullivan replied I repeat the Superintendent's position has been that he anticipated the School to be into a deficit and he felt that he had it covered. That was based on his determination.

Alderman Wihby asked but you told him that he should come here and he didn't listen to the auditors.

Mr. Sullivan answered that is correct.

Alderman Thibault stated I am not going to prolong everything that has happened here tonight, but what you said and what Alderman Cashin said was the answer. How many times have we had departments run into problems and come back to the Board and we always look at these problems? I remember years where Frank had to come to this Board because we had more snow storms than we normally do. I mean the problem is not that he didn't know he could have come here. He just didn't. I guess according to this man

here, he felt that he could cover it and right now he knows that he can't cover it. That is all I wanted to say.

Alderman Shea asked Mr. Sullivan were you indicating that Mr. Tanguay indicated to you that in last year's budget there might not be a deficit. Did I hear you correctly? Is that what you are anticipating?

Mr. Sullivan answered if you look on the MS-25 that Alderman Wihby quoted from when he looked at the revenue side of that budget, it was a little bit in excess of \$104 million. If you look at the expenditure side of that it is a little over \$103 million so they are actually based on revenues and expenditures was a surplus not a deficit. Now that is different than the issue of an appropriations deficit. So, when I say that Mr. Tanguay has taken the position that he will have the deficit covered, his intention was to cover that deficit through excess revenues and interest earnings, which he took the position were available to him.

Alderman Shea stated that is almost as important as the Gore/Bush contest to me.

Alderman Gatsas stated John, maybe you can help me with this. I am sure that this is not the only municipality that you folks do or the only company that you folks do?

Mr. Sullivan replied we do approximately 100 cities and towns in Massachusetts and New Hampshire.

Alderman Gatsas asked the budget that you are looking at, is that one of the larger budgets at \$100 million that you have seen.

Mr. Sullivan answered it is not the largest. It is one of the larger ones.

Alderman Gatsas asked would you say that when you run \$100 million company that you have a balance sheet on a regular basis.

Mr. Sullivan answered up until the court ruling in June of 1999, the School never ran a balance sheet because it was a department of the City general fund.

Alderman Gatsas replied I understand that but wouldn't you assume that with \$100 million budget that in the last I guess almost 18 months that they would have something in place.

Mr. Sullivan responded I believe that something was in place. I believe the School Administration knew what their expenditures were.

Alderman Gatsas stated I am saying a balance sheet.

Mr. Sullivan replied again a balance sheet has never been prepared by the School nor could it have been because the assets that would relate to the School District heretofore were City assets. The City Treasurer was the treasurer for the City and the School and all of the cash was co-mingled.

Alderman Gatsas stated I am sure the MS-25 that we are all talking about here...

Mr. Sullivan interjected the MS-25 has a provision for a balance sheet. This is the first year the School District has put a balance sheet on the MS-25.

Alderman Gatsas asked you wouldn't sign off on this as an audited balance sheet would you.

Mr. Sullivan answered we have not completed our audit.

Alderman Gatsas asked have you looked at this sheet.

Mr. Sullivan answered yes, I have seen it.

Alderman Gatsas asked would you attest to it being true.

Mr. Sullivan asked what is your question with the balance sheet.

Alderman Gatsas answered I am just asking. You have looked at it. You certainly are more familiar with this balance sheet than I am.

Mr. Sullivan stated we have not completed our audit and I am not going to be in a position to render an opinion on a balance sheet.

Mayor Baines replied could I clarify that. We did ask that question in a meeting with our auditor in terms of discussion and he made it very clear that you were not in the position to certify that as an audited balance sheet. Am I correct on that?

Mr. Sullivan responded that is correct because there are unresolved transitional items between the City and School. If we were to be asked to give an opinion on that balance

sheet today, we would have to give a qualified opinion because it would be subject to resolution of certain items, including the \$1.4 million appropriation.

Alderman Gatsas asked now the deficit that this balance sheet shows is how much.

Mr. Sullivan answered I believe it is \$187,000, although it is put in a different line. If you look at the fund balance page...I don't remember off the top of my head which page that is but there is a page for fund balance and it actually comes out in the bottom to a \$20,000 figure. That \$20,000 is reserved for encumbrances but if you look above the line, there is a negative \$187,000.

Alderman Gatsas asked so the total that was overspent, if I do the calculation, is somewhere around \$3.2 million.

Mr. Sullivan answered I believe based on the numbers the difference between the \$100.5 million and what is reported as expenditures without...

Alderman Gatsas interjected so when Mr. Tanguay came to us and said that he was going to overspend by \$1.4 million that he not only overspent by \$1.4 million he actually overspent by another \$1.7 million.

Mr. Sullivan stated if you are looking at the School's appropriation, the School's appropriation is over expended in excess of \$3 million based on that MS-25.

Alderman Gatsas asked if we are going down that avenue, the money was spent somewhere and I would hope that every time we bring up about special education and students and education because that is the play that we use and I am the first one to lead the charge for kids, that we aren't going to find that the Administration side is so filled with additional costs that it didn't go to buying new books and it didn't go to buying furniture to fill classrooms and it didn't go to teacher's raises, but it went to the Administration side so when we see that audited statement we may find that that is where it is.

Mr. Sullivan answered I think you will find that the over expenditures are going to be contained in the areas of special education, textbooks, and several other areas.

Alderman Gatsas replied that is fine. So, we shouldn't find it in wages.

Mr. Sullivan responded the wages that are over expended are again the special education tutors. Substantially \$600,000 or \$700,000 probably off the top of my head are special

education tutors over expended. You will not find it in Administration. If there is an over expenditure in administrative salaries, it is very, very small.

Alderman Gatsas asked in your over 100 municipalities that you audit, have you ever seen the arrogance that was shown here tonight to this Board.

Mayor Baines stated I don't know if that is a fair question.

Mr. Sullivan replied I don't think I want to answer that question.

Alderman Gatsas stated let me just conclude that I think back a few months ago in July when I went through the discussion about numbers I said that it was going to be close to \$4 million on a deficit and everybody kind of gave me a look like where are you coming from and I am not too far off because I think that when that final audit figure comes in it may resolve to a few more dollars in there. I think that back then I said that the Superintendent, if he worked for me, I would fire him. I think that if this Board and the other Board was unaware, the School Committee people I think and Mr. Cook was certainly appalled at the behavior we saw tonight and I don't think the other School Board members that were here reacted with any gleam when they saw that, I think that if somebody has been overspending and not telling them then I think they should be made aware of it and they should take whatever procedures they need to take.

Mayor Baines stated just to follow-up on that I will repeat that I will be calling a special meeting of the Board of School Committee to address all of these issues and I want to assert very clearly that it is inappropriate for a public official to display that kind of behavior. I think that he should be willing to stand up and defend and present information in any kind of a forum, whether it be for a public body, a group of citizens in the community...we are all public servants and we are all in a situation to do that. I don't think there is anyone that would condone that activity and certainly in my role as Mayor and Chairman of the Board of School Committee, I am certainly not in the category of any way condoning that behavior. I found it offensive. I found it insulting to this Board and to the citizens of this community.

Alderman Wihby stated a good way of saving \$100,000 is to get rid of him tomorrow and don't fill the position for a year. We can save \$100,000 right there, your Honor, in benefits and wages.

Alderman Shea stated I am a little bit confused. It is like the recount in Florida. You mentioned before that the School Department might not have a deficit. Alderman Gatsas has indicated that we have a \$3.8 or \$2.8 million or whatever...

Alderman Gatsas interjected \$3.1 million.

Alderman Shea asked who is on first and so forth.

Mr. Sullivan answered that is confusing. There are two types of deficits. There is a deficit in the fund balance of the balance sheet and there can be an appropriations deficit, which is the difference between the amount of money that was appropriated and the amount of money that was spent. In the School for this year as the numbers sit right now subject to recount, the School took in \$104 million in revenues, spent \$103 million plus in expenditures, covered a \$1 million deficit due back to the City from 1998 and ended the year with a small surplus. That is what the revenue expenditures beginning and ending fund balances will say. That is found on the MS-25. In terms of appropriations, the School was appropriated \$100.5 million by the Board of Mayor and Aldermen. The School spent \$103 million plus dollars. That results in an appropriations deficit of some \$3 million plus dollars.

Alderman Shea asked so which do you use. A or B?

Mr. Sullivan answered our opinion as auditors is that the School is required to obtain appropriation from the Board of Mayor and Aldermen and cannot spend in excess of the appropriation.

Alderman Hirschmann stated of the utmost importance tonight is that we set the tax rate for the tax paying citizens of Manchester and the School District's deficit position really is an ancillary component of what we are discussing. We have to set the tax rate. You can have your special meeting, your Honor, but I would like after the recess for us to come to quick vote and set the tax rate for the tax paying citizens. Thank you.

Mayor Baines replied it is my understanding that the DRA will actually verify our figures and set the tax rate. We don't do that.

Alderman Wihby stated on top of this, your Honor, we are talking about \$104 million and \$550,000 and all of these other numbers and there is still \$600,000 that I heard from Finance still hanging there trying to figure out if it is School or City side. So, there is still another \$600,000 that we could add to this deficit.

Mayor Baines replied absolutely. The issue with the auditor today who met with us, and I had him sit in a meeting with some of the School officials...there is a serious amount of issues that still remain to be resolved. They would constitute in his view the need for some kind of resolution or mediation of it because they are not all clear cut.

Mayor Baines called for a five-minute recess.

Mayor Baines called the meeting back to order.

Mayor Baines stated what I would like to do is continue the discussion so we can resolve the issue and, in fact, set the tax rate tomorrow. Then, I would like agreement that we will take up a recommendation from the Mayor in terms of court action relative to some of the unresolved issues between the School and to consider a proposal by Alderman Wihby related to a public hearing. Then we will adjourn and have a special meeting next Tuesday night to finish the agenda. We will recess this meeting until next Tuesday night at 7 PM unless something pops up to change it. Our plan will be to recess this meeting and to meet on Tuesday at 7 PM to finish the agenda.

Alderman Wihby moved to increase the fund balance amount from the City from \$100 million to \$100.8 million, which would reduce the tax rate to \$30.48, which would be a penny decrease to the citizens and at the same time giving the School Department \$850,000. Alderman Gatsas duly seconded the motion.

Alderman Cashin asked so you are recommending that instead of the \$1.4 million you go to \$850,000.

Alderman Wihby answered yes.

Alderman Cashin asked what affect does that have on the School Department.

Alderman Wihby answered you have already heard it for three hours.

Alderman Cashin replied I know that I heard it for three hours, but are we going to be sitting here next Tuesday being blamed because they don't have the textbooks they need and they don't have ventilation or anything else.

Mayor Baines responded let's clarify this because I think it is very important to get some clarification for everybody. At least we should look at the potential of what that would be.

Alderman Cashin stated I feel that we are going to wind up wearing the black hats again. Believe me I listened to everything that happened here and I am just as disgusted with this and just as frustrated and to be honest with you I do feel that by cutting the \$1.4 million we are making a mistake. I would suggest that we vote in the \$1.4 million realizing what the problems are and rectifying any situations the School Board may have

and I think there are many but I am sure they can handle that over a period of time. I would recommend that we don't support Alderman Wihby's motion.

Alderman Wihby stated their budget is \$106 million and we are looking to cut \$550,000 and it is not really a cut because we anticipated that revenue and we are letting them maybe spend that revenue I guess. I don't know what we are going to do with that. I guess you are going to come up with something after we take this vote, but this is very...we were deceived by the Superintendent because he gave us that number when we did the budget. He told us what the interest revenue was believing all along that he was going to go ahead and spend the money no matter what anyway. Again, your Honor, it is \$106 million budget. We are going to take \$550,000. They have seven months left to make some cuts. We asked the departments to make a half a percent cut. This is no different, your Honor. I want to put that motion on the floor, your Honor. I guess it was seconded anyway.

Mayor Baines replied it has been moved and seconded.

Mr. Clougherty stated I just want to make one point. If you did this, the School would end up with a slight deficit for last year. The City side would have enough to cover that. You are not reducing their appropriation for this year. They still have their entire appropriation. They just wouldn't have the interest they had before.

Mayor Baines stated my concern is that we don't know right now because we don't have audited figures of what the committed level of spending is at the School District right now for the year. Mr. Sullivan, please come up to the microphone so that I can pursue that. Do we have any ideas from the work that you have been doing on the financial end, what is the committed level of spending for the fiscal school year that we are in right now?

Mr. Sullivan asked fiscal year 2001.

Mayor Baines answered that is correct.

Mr. Sullivan stated I do not have that information. I have not audited or looked at fiscal year 2001.

Alderman Gatsas asked is there a balance sheet that is floating around.

Mr. Sullivan answered a balance sheet would be as of June 30, 2000.

Alderman Gatsas asked so we still don't have a balance sheet.

Mr. Sullivan answered there is a balance sheet as of June 30, 2000. They do not produce a balance sheet on a monthly basis.

Alderman Gatsas asked there is not a monthly balance sheet. With a \$100 million company there is not a monthly balance sheet?

Mr. Sullivan answered a monthly balance sheet could be produced off their financial system. They have not produced a balance sheet as part of their monthly reporting to the School Committee.

Mr. Cook stated we have a monthly...we wouldn't call it a balance sheet. We have a monthly budget sheet that shows what our categories of spending are, how much is committed and what the anticipated total spending for the year is and the reports made to...all I will say to you is the reports made to us so far on committed amounts has us operating within the expenditure budget appropriated for this year based on what we have...

Alderman Gatsas interjected John what you said is they don't produce a balance sheet for the School Board members on a monthly basis.

Mr. Sullivan stated there is a budget to actual report. They do not produce a balance sheet for the School Committee members.

Alderman Gatsas asked do you think that is proper. If you were a School Board member, would you be asking for a monthly balance sheet on \$106 million budget.

Mr. Sullivan answered I think the School producing a balance sheet for their own purpose would be useful. I am not sure that the School Committee would typically take action on the balance sheet.

Alderman Gatsas stated my question is if you were a School Board member, would you be requesting a monthly balance sheet.

Mr. Sullivan replied I am an accountant. Of course I would.

Alderman Gatsas responded thank you. I appreciate your honesty. I think that when you are dealing with \$106 million and people are looking at...that they are going to be looking at a cash flow statement I would hope that when somebody is looking to go

borrow money because they needed funding on a cash flow basis, that a cash flow or flash cash flow statement has been produced...

Mr. Sullivan replied they do cash flows.

Alderman Gatsas stated they do cash flows but they don't do a balance sheet.

Mr. Sullivan replied that is correct.

Alderman Gatsas asked does that make sense to you.

Mr. Sullivan answered it does make sense to me that they would do a cash flow separate from a balance sheet.

Alderman Gatsas asked but not have a balance sheet.

Mr. Sullivan answered as I say they can produce a balance sheet. The School Committee has not seen a need to review their balance sheet.

Alderman Gatsas stated, your Honor, I think when we went through this questioning about \$1.4 million we were promised monthly balance sheets from the Superintendent when he was here.

Mr. Cook replied what you are referring to as a balance sheet we refer to as a tracking of our budget with all of the categories of our spending that says \$106.8 million total at the bottom made up of all of these categories. It has amount committed to date, amount actually spent to date, over and under, total expected spending for the year. We get that sheet monthly if that is what you are referring to as a balance sheet to the budget. We get that monthly. We also get a cash flow.

Alderman Gatsas stated let's not confuse the public out here because I know that you are familiar with a balance sheet. So, when I am talking about a balance sheet, you know what I am talking about and I am not talking about expenditures to a budget. That is much different than a balance sheet. Much, much different than a balance sheet.

Mayor Baines stated I have a question for the Finance Officer. Let's say the level of spending is such and the School Board after that information has surfaced and I am sure it is going to be surfaced after this meeting tonight, they came to the Board of Mayor and Aldermen and said now this has all been surfaced here we are going to have a situation

where we are going to need the support of the Board of Mayor and Aldermen to make up that difference. What avenues would we have, Kevin, to take care of that?

Mr. Clougherty answered if they are talking about coming back and having to spend an amount in excess of what you appropriated, they would have to come back to this Board and say we need X dollars and they would have to give you a recommendation as to whether that revenue would come from. It might come from additional interest income that they have generated during the year. It might come from some other source like a grant. That is how that would work. They would have to come back to the Board and give you some idea.

Mayor Baines asked it couldn't come from anything on the City side.

Mr. Clougherty answered if the City wanted to go ahead and give them additional funding, we would have to go back and we would probably have to go through some type of an exercise as we did this year to generate the surplus to do that.

Mayor Baines asked, Tom, can you add any insight into this.

Solicitor Clark answered I think under your Charter provisions as they exist there is the ability to transfer unencumbered funds from one budget to another and I believe that probably would entail...

Mayor Baines interjected I think we would have to go to a public hearing.

Solicitor Clark replied no, not to transfer unencumbered funds that have already been appropriated. To appropriate new funds, you would have to do it based upon unexpected revenues or unanticipated revenues and then you would have to go through a public hearing process.

Mr. Clougherty stated right. I would have to certify, after looking and saying there are surplus unencumbered funds and we would have to have that discussion.

Mayor Baines stated please be patient Aldermen with this. Let's say we go through an analysis and we have the audit firm get involved over there to really get a handle on this and we have a problem with a School District because of committed costs that I have already gone through and they come back and say the only way that we can put this in balance now is to do this - for example, let's say lay-off tutors or whatever because of the amount of committed money and they came to this Board and said we really can't do that. They say we are in a situation that we were put in by this situation where and I

don't want to quote Mr. Sullivan again but it is well recorded and I am sure it will be reported tomorrow, what options would we have as a Board not to put the School District in jeopardy based upon what happened here tonight and what was portrayed by the Superintendent's actions to create this situation?

Mr. Clougherty answered you wouldn't be able to go back to a fund balance from the previous year because our understanding is that there is about a \$600,000 question on the School side that we talked about today and we will offset that with a fund balance so you are not going to have excess fund balance to move forward and make available. What you would have to do is go through the exercise like we did last year Mayor and do some type of a freezing of hiring or something on the City side to generate surpluses. That is what Tom is talking about that we could verify and then make available or appropriate and have them look at what they are going to have as an expenditure and they would go into a deficit and we would have to deal with that deficit as part of the budget process and do an appropriation for that.

Mayor Baines asked we could allow them to go into that deficit.

Mr. Clougherty answered no. I mean we wouldn't allow them to go into a deficit, but we have been in that situation before. I suspect what would happen is the Board of School Committee would come back to you and say we need to get to X and you would probably have to look at what they have for revenues. It might be a combination of things as we have seen in the past too, Mayor. They might say well we have interest income and we want to see the City do something and we would have to do some cuts and try and make it work. That is what you are facing.

Alderman Hirschmann stated a relevant comment to what he just said is a precedent was set in 1998. They overspent their appropriation. What happened is they took that deficit out of the following year's appropriation. Is that correct?

Mr. Clougherty replied that is right. If there is a deficit, the court ruling and everything says you raise it.

Alderman Hirschmann asked so if they are short \$550,000, that can come out of another year. The precedent has already been set.

Mayor Baines stated so they would have to knowingly say this is the situation. We are not going to make those cuts. We are going to deliver a deficit. We are just going to tell the people that this is what we are doing and then we have to deal with it at the end of the year again.

Mr. Clougherty replied but that would not be our advice to go into a deficit knowingly. The \$1.4 million again was a year-end deficit. They were in balance up until the last payroll run and that is what put them over and then we had to deal with it the next year.

Alderman Shea stated I have a quick question, Kevin. We give them \$100 million, make it simple, they take in through revenues \$103 million. What happens to the extra \$3 million? Does it go in their reserve fund, our reserve fund? Who is fighting over what?

Mr. Clougherty replied those would be School revenues. It would be in their fund balance and if they decided that they needed to deal with or spend over their \$100 million then they come back to the Board and we could try to do some type of an arrangement that year to help them by making that available through an appropriation process.

Alderman Shea asked so basically they aren't allowed to spend that \$3 million unless we give them authorization, even though they take it in.

Mr. Clougherty answered yes. You have to approve the expenditure.

Alderman O'Neil stated I have a question for Kevin. In fiscal year 2000, the tax rate was \$30.49? The two options that are on the table now the recommendation, I believe from the Mayor and your office is the \$30.69. Is that correct?

Mr. Clougherty replied that is what we had looked at this morning and we had not taken into consideration any of the discussion about the \$500,000.

Alderman O'Neil stated Alderman Wihby's recommendation would bring us down to \$30.48 so it would be an actual one-cent cut over the existing tax rate. Kevin, is it the recommendation of the Finance Office that it is in the best interest of the City to go with the \$30.69?

Mr. Clougherty replied it is really a decision of the Board. With either one you are arguing over a small range of pennies here. As I have said to the Board in the past, we are going to be monitoring this budget with the Mayor constantly. If there is any type of an issue with respect to revenue or whatever, we are going to come back to the Board and ask for adjustments, so either one is acceptable. You are in a range so tight that it is a policy decision for the Board.

Mayor Baines stated the only thing I would say in that regards is that that was not an option that was presented to us today. We were in some pretty intense discussions all day

long dealing with this. The option that is under consideration this evening was never presented to us as a viable option to proceed. The first time that surfaced was here tonight. We did not have the opportunity...that is why we have a Finance Office and a Finance staff to give that kind of advice because they are charged with looking at the long-term fiscal health of this City. That is an important question to me that you just asked there. What is the recommendation of the Finance Officer of which one of those proposals is in the best interest of the long-term fiscal health of the City? I would have asked you that question this afternoon if we had the option. Just tell me which one you would have said to me.

Alderman Wihby stated it is up to the Board.

Mayor Baines replied no. He should be making a recommendation on that as a Finance Officer.

Mr. Clougherty responded either one works, Mayor. When I look at this and I want to make something clear to the Board. We are going through a period in the economy where I think we are seeing a softening out there. One of the things that if the tax bills are going to go out a little bit later, if the tax rate is flat there is more of an incentive for people to pay around Christmas because that is when these bills are going to be billed. That may help us with cash flow because remember if you send it out this week it is going to be late.

Mayor Baines replied I appreciate that but you know I think I should be entitled to that kind of clear advice. Now, we may decide as a Board to go contrary to your opinion, but what is your advice in terms of this matter.

Alderman Wihby stated he just answered you.

Mr. Clougherty replied I am comfortable with either one.

Alderman Wihby stated I am looking at the budget, the green thing that the School Superintendent passed out yesterday to the Concerned Taxpayers Association and it says \$106,832,425. Now, Kevin, is that the number that we voted on three or four months ago that they could spend?

Mr. Clougherty replied yes, I believe so.

Alderman Wihby stated so this Board voted on that in June, right. Brad, is that the number that the School Board thinks it can spend? So, why then should I give you the

\$550,000 interest on top of that and give you \$107,382,000 when the School Board agrees that the number is \$106 million, Finance has \$106 million, we voted \$106 million? Why should I give you the \$550,000? Maybe I shouldn't be asking you but debating it with the Mayor. Why should I give you \$107 million? You walked away that day knowing it was \$106 million. I heard John say you did the budget at \$106 million. Finance is saying that is the number. The Board okayed \$106 million. Why should I know say that on top of that I am going to let you keep the interest income? It doesn't make any sense. My motion still gives them the same number that we appropriated in June. It gives them the same number that their budget and their handouts have been showing for the last six months and it just makes it different in that the interest income is counted this way where we didn't know about it before. It is the same appropriation. We are not making a cut. It is the same number.

Alderman Levasseur stated I would first like to commend you, Mayor, for doing I think a very good job tonight in allowing the discussion to go on. It is a very serious thing. I agree with Alderman Cashin that we are going to be wearing a black hat either way, but Christmas is coming and I don't think we should be dumping coal in the taxpayer's Christmas stocking so I am going to go with Alderman Wihby on this.

Alderman Vaillancourt stated we have heard two people now talk about black hats and I think the blackest hat we could wear is if we promised to do something to the taxpayer and then failed to do it. I think there was a defacto, if not a dujour promise that the tax rate would be lowered, if not at least stabilized this year. So, I think the blackest of all hats we could wear would be to raise the tax rate, which we would do if we don't go with the Alderman Wihby proposal. Now as interesting as it is to sit here and flagellate the School Board and I really have been fascinated by the same comments made over and over again, I think we have to look at these figures and come to the conclusion that this problem is not all the fault of school spending. As you will notice, the County portion of the tax rate seems to have gone from \$1.89 to \$2.04, which is 15 cents of the 35 cent increase, which proportionately is much, much greater than the School problem yet we do not have the County Commissioners in here and flagellate them for three hours. I suggest the problem is not all with the School Department. We also should point out that the estimated tax base that we are dealing from is somewhat less than it was. So, what do we do? It goes back to a comment that I guess I made three hours ago when we were talking about Hands Across the Merrimack and it is indeed sweet irony that this amount that we are struggling with, approximately \$1.3 million, is just about what this Hands Across the Merrimack will cost us. I say what I said earlier. That you cannot continue to spend on projects like this, albeit one that will come up in the future, without paying the piper eventually. You can blame the School Board or you can blame anybody else, but ultimately the blame lies here with this Board for spending on projects like this and

riverwalks and playgrounds and everything else and failing to meet the responsibility of the citizens when we promise something. Having said that, what do we do? Well, if I am expecting a certain amount of revenue and I don't get that amount of revenue, maybe I have to bite the bullet and do a little bit less. Maybe if we bite the bullet that this proposal means, maybe we won't be able to do these projects in the future and I say God bless us for having this crisis upon us because it will force us into some sanity. So, I will support this, although I realize it will drain, is that correct Mr. Clougherty, drain from our rainy day fund or our stability fund?

Mayor Baines replied no.

Mr. Clougherty stated it would be your undesignated fund balance.

Alderman Vaillancourt asked but it will drain from that.

Mr. Clougherty answered yes.

Alderman Cashin asked, Brad, if we don't fund the \$1.4 million what affect does it have. Let's get down to brass tacks. Who is going to get hurt by this?

Mr. Cook answered if you don't fund the \$1.4 million, we have \$500,000...if you do Alderman Wihby's proposal there is \$500,000 that we have to cover from someplace that we would not have to cover otherwise. As I understand the situation, in the last fiscal year and let's not mix fiscal years, as I understand the last fiscal year the \$1.4 million and there is another...it is too bad it is the same number because we get confused this way but we have done that before. There is a \$1.4 million benefits number that we were asking the City to come up with, which has been segregated. There is another \$1.4 million estimated deficit that the School Board is going to have to cover itself from its anticipated revenues. If you don't give us that \$1.4 million, there is going to be \$550,000 or whatever the difference is that we are going to have find someplace and wherever we have to find it, we either have to find it out of appropriated monies, therefore, out of expenditures, or we are not going to have...when Alderman Wihby said why should I give you, which is an interesting concept the extra money, as a School Board that has been separated by a declaratory judgement as an independent school district without any capacity to have reserves...I mean I just asked Mr. Sullivan and I think the answer probably is if we had that interest income this year and he is taking, as I understand it and correct me Alderman Wihby if I am wrong, but he is taking the interest income from FY2001, giving us less money in FY2000 to cover a deficit anticipating that we will use the FY2001 interest income to absorb it because we are going to have to move it into that budget. We, therefore, won't have, assuming that we only spend the \$106.8 million,

which certainly is the School Board's intent, we won't have any cushion in case we have any problem. What you will be doing to us is not having any cushion or forcing us to cut expenditures. One or the other.

Alderman Shea stated may I ask you Brad or Mr. Sullivan do you anticipate any additional revenues during FY2001. In other words, is the State giving you more money like \$8 million more or \$4 million more or do you anticipate the same amount? I know that there was a figure thrown out last night by Superintendent Tanguay. Could you comment please?

Mr. Cook replied I believe the \$8 million more and there are a lot of ifs and we have two incoming Senators in the room but the \$8 million more is the amount in the next fiscal year, not the current fiscal year that would be coming to the City under the Claremont formula. Yes, it comes to the School District but ultimately how it gets appropriated and the effect of it is an action of this Board.

Mayor Baines responded it is my understanding that it is \$4.2 million and not \$8 million.

Mr. Cook stated whatever it is we are expecting more money. I think it is \$8 million, but I will believe it when I see it.

Alderman Shea asked so if we give you \$106 million, you are expecting \$110 million.

Mr. Cook answered it is a different fiscal year.

Alderman Gatsas stated Alderman Cashin I certainly agree with you that the impact would probably be devastating, but I think that they didn't think about that when they overspent \$1.4 million that they came to us this year for. I say that we reduce the tax rate, let them come back to us in June and hopefully they can find a way to mend their own problems and we won't be talking about this. I think the major problem we have to mend...I think we all know what it is.

Alderman Cashin stated are you telling me that because they were irresponsible we ought to be too.

Alderman Gatsas replied I am not saying that we are irresponsible.

Alderman Cashin stated we will be if we don't fund this in my opinion.

Alderman Gatsas responded I think it would be irresponsible if we just give it to them without them making an attempt to do any cost savings. Certainly, the Mayor and this Board have made the attempt to do the reducing and if we didn't take that prudent step we would really be in a fix because we would be in a heck of a shortfall. All I am saying is they need to make that attempt. Now I am looking at this MS-25 sheet and maybe I am reading it wrong, but it looks like there is \$1 million or a \$187,000 number that is in excess from the \$103 million to the \$104 million in revenues. Maybe you can help me with that?

Mr. Sullivan answered that \$187,000 that I referred to that if the numbers stand as they are that would have been the fund balance deficit.

Alderman Gatsas stated so really we are not cutting them \$550,000. We are only cutting...well it is not a deficit, it is a surplus.

Mr. Sullivan replied not it is not. It is a deficit. Based on adjustments that were discussed today, that \$187,000 is covered. That \$187,000 represented a deficit that is not going to be covered by revenues. On that MS-25, at the time that was prepared, that \$187,000 number represented the amount of...a negative \$1 million beginning plus revenues minus expenditures still left them short \$187,000. That is what that number said. That number based on information that we worked on today between the City and School, that \$187,000 has been covered.

Alderman Gatsas stated I think we have been patient in waiting and especially you have because I think you have requested on several occasions when this problem was going to be resolved. Now if somebody would have come to us in September and said we have a bigger problem, I think that maybe we would have been a little more generous in our Thanksgiving promise, but I think maybe we need to make sure we find that bike that somebody threw a wrench in that we stole and let them work a little harder on it. I think that you let them come back and certainly when you look...the scary thing is that when you look at this budget process and you look on the City side and you see expenditures of somewhere in the vicinity of \$92 million and on the School side \$106 million, I think that the generosity has been great. I think that the schools and the kids are very important, but I think the Administration has to find a way to tighten the belt.

Mayor Baines asked, John, if the Board and I were to ask you to go through the FY2001 scenario financially to give us a clear picture based upon committed salaries, fixed costs, etc., how soon could something like that be produced for us.

Mr. Sullivan answered about three weeks.

Mayor Baines stated to have some assurance with this with the Board because you know I do appreciate this dilemma here, let's say we did that analysis and because of the situation that was unfolded here tonight, that process presented a scenario that the only way the School District could meet the appropriation, which we all agree it was and we knew what we did...we knew what we did over here and they were to come to this Board and the School Board and ultimately the Aldermen because I think we all want to pitch in based upon discussions tonight to make things right for the schools and I have a feeling know that this is all out in the open that things will be made right, what kind of options would you see available for us to deal with this situation.

Mr. Sullivan asked for the City to deal with the commitment of resources at the School.

Mayor Baines answered yes. For example, I wouldn't want to see...you know how we did last year when the School District was requested to do the cost savings at the end what we saw was because there were very limited options because of their expenses, we reduced the tutors for ESL. What I have on a situation like that...I know that there were very limited options because they are not contracted people they are hourly people and you can lay them off. Yet, the result of that was services not being delivered to some of the most needy kids in our schools.

Mr. Sullivan stated and all of the tutors became substitutes and ended up charging more against the budget anyway.

Alderman Hirschmann asked say that again.

Mr. Sullivan answered what happened is the school had a shortage of substitutes so when five tutor days was cut back to four tutor days, that made one tutor day available for people to be substitutes and the School didn't save money and in fact lost money because the sub pay rate is higher than the tutor rate.

Alderman Wihby asked why would they do that.

Mayor Baines answered I don't think you heard it right. Can I clarify?

Alderman Gatsas stated I heard what he said. What he said was that the teacher that was laid off for that extra day was hired as a tutor.

Mayor Baines replied but not to do the same job.

Alderman Gatsas responded not to do the same job, but it cost them more money. Instead of keeping them as a tutor at \$25, they were paying \$55 as a substitute. That makes no sense.

Alderman Shea stated but they were saving the other money and they were having to pay for a tutor anyway. They need a tutor. You can't run a classroom without a teacher.

Alderman Gatsas replied that is not what he is saying.

Mayor Baines stated can I try to clarify this. Having had a little bit of experience in the schools, for example say that someone was tutoring a special ed kid one on one and that person lost that job. I might start hiring that person as a substitute when a language teacher was out or a math teacher was out, etc., but the kid in special ed still would not be getting any services. So, the cost for substitutes would remain the same because you the substitutes. It wasn't like you were taking that substitute and paying the substitute rate to provide the services for special ed.

Alderman Levasseur asked can we speak to the motion, your Honor. I think we are getting way out of wind here. We are debating this issue. No disrespect intended, your Honor.

Mayor Baines stated that needed to be clarified and I clarified it.

Alderman Thibault stated it doesn't make much of a difference for us to do the scenario that Alderman Wihby said before. Why don't we just go that route? If he feels comfortable with it, I have enough faith in him to feel that he is going to get it done or we are going to get it done somehow.

Alderman Levasseur moved to move the question. Alderman Vaillancourt duly seconded the motion. Mayor Baines called for a vote on moving the question. There being none opposed, the motion carried.

Mayor Baines called for a vote on the motion on the floor and asked the Deputy Clerk to clarify the motion.

Deputy Clerk Johnson stated the motion on the floor is to increase the fund balance that was reflected on the sheet that was handed out earlier from \$1 million to \$1.8 million and within discussion it was indicated that in essence although it is all coming from fund balance, \$550,000 of that is from a set aside of \$1.4 million earlier anticipated to the School.

Alderman Wihby asked so we are giving \$850,000 to the School.

Deputy Clerk Johnson answered the School would be receiving \$850,000. I would ask for a separate motion on that if you are actually transferring that money.

Alderman Wihby requested a roll call.

Alderman Hirschmann asked can you clarify the tax rate with the motion.

Deputy Clerk Johnson answered \$30.48.

Alderman Wihby stated it is a one-cent decrease.

A roll call vote was taken on the motion as clarified. Aldermen Wihby, Gatsas, Levasseur, Sysyn, Pinard, Vaillancourt, Pariseau, Thibault and Hirschmann voted yea. Aldermen Clancy, O'Neil, Shea, and Thibault voted nay. The motion carried.

Alderman O'Neil asked what about the second part of that that Carol mentioned she needed a separate motion on.

Alderman Wihby stated they already spent it. Do we have to make a formal appropriation of \$850,000?

Deputy Clerk Johnson stated the Finance Officer is suggesting that perhaps the Board wishes to entertain a motion or the Chair wishes to entertain a motion to transfer the \$850,000 to the School Department.

Mayor Baines asked is there a motion to make that transfer.

Alderman O'Neil moved to transfer \$850,000 to the School Department. Alderman Shea duly seconded the motion.

Alderman Wihby stated when we brought this subject up, I voted against giving them the \$1.4 million. Technically, we are giving them \$1.4 million so I am going to vote against it, your Honor. We are giving them the \$850,000 and we gave them the \$550,000 so there is no change there. I was against the \$1.4 million in the first place.

Mayor Baines asked the Finance Officer if they do not receive the additional \$850,000 what would happen.

Mr. Clougherty answered it would drive them further into a deficit for last year. We would have more a fund balance on the City side to cover that and it and they still have the same appropriation for this year.

Mayor Baines asked does everybody understand that. We need some clarification.

Mr. Clougherty stated it doesn't affect their spending for the current year, Mayor, as long as they live within this current year's appropriation. There would not be fund balance available from the prior year if they need more than their appropriation for this year we would still have to go through that scenario we talked about of generating funds or getting some excess revenues.

Alderman Levasseur stated, your Honor, when we first came into this office you made the steps necessary to save money and put into the bank \$1.4 million. Now we have that \$1.4 million and at the time we took that vote we stated that it did not mean that we had to send that over to the School District. Is that correct?

Mayor Baines replied we knew that it had to come back to a vote, but it was definitely my recommendation that we set that aside and if, in fact, they ended up with that problem in that area that we would recommend that the money be appropriated to the School District.

Alderman Levasseur stated you made the cuts and you saved the City \$1.4 million with those cuts and the hiring freeze.

Mayor Baines replied actually the cost savings that we made just so everybody understand it, there was a hiring freeze and the cost savings from the School District and Kevin correct me if I am wrong, that totaled \$2.4 million. Then, there was the additional \$1.4 million that was set aside. Am I correct on that?

So the implementation of the recommendations that I made to this Board resulted in a total of \$3.8 million.

Alderman Levasseur stated so let me get to my point. Meaning that you could do it, why can't they, your Honor?

Mayor Baines replied I think that has been well discussed this evening. My recommendation stands that we need to make that transfer. Any further discussion?

A roll call vote was taken on the motion to transfer \$850,000 to the School District. Aldermen Levasseur, Vaillancourt, Hirschmann, and Wihby voted nay. Aldermen Sysyn, Pinard, Clancy, O'Neil, Shea, Pariseau, Cashin, Thibault, and Gatsas voted yea. The motion carried.

Mayor Baines stated there are three items we have to take up before we adjourn.

The Committee on Traffic/Public Safety respectfully recommends, after due and careful consideration, that a request from the Chairman of the Christmas Parade Committee for no parking on Elm Street from Webster to Granite Streets on Sunday, November 26, 2000 between the hours of 9 AM and 6 PM to address safety concerns for the 2000 Christmas on Elm Street parade and to set a rain date on Monday, November 27, 2000 be granted and approved subject to meeting all conditions set forth by Fire, Highway, Police, Traffic and City Clerk.

On motion of Alderman Pariseau, duly seconded by Alderman Shea, it was voted to approve this request.

The Committee on Traffic/Public Safety respectfully recommends, after due and careful consideration, that a request to have streets be closed and traffic reduced to one lane as enclosed herein for "Hayrides with Santa" to take place on the evenings of November 30 and December 7 from 5 PM to 7 PM be granted and approved subject to meeting all conditions set forth by Fire, Highway, Police, Traffic and City Clerk.

On motion of Alderman Pariseau, duly seconded by Alderman Pinard, it was voted to approve this request.

Mayor Baines stated I would like to read a memorandum for the record and ask for a motion from the Board to support this.

"In May of 1999, Judge Nadeau issued a judgement declaring the Manchester School District a separate entity from the City of Manchester. In his order, he left the door open for either party to go back to court in the event that issues needed further clarification. Over the past 45 days, I have dealt with issues resulting from the judgment that I as Mayor or Chairman of the School Committee needed definitive answer to. Some of the issues that I have had to deal with include the use interest income by the School District, short-term borrowing by the School District, spending by the School District, what control authority does the Board of Mayor and Aldermen have, and who has ownership of buildings and fixed assets. This is not an exclusive list and additional items may need clarification. Therefore, I am respectfully requesting that the Board of Mayor and Aldermen authorize me to work with the Solicitor's Office to prepare documents to be presented to the court so that further clarification can be obtained. I will also seek

input from the Board of School Committee regarding any issues that the Board might seek clarification on. Over the next 30 to 60 days, I will work with the Finance Department and the Solicitor's Office to determine any concerns they may have.

Alderman Cashin moved to authorize the Mayor to work with the Solicitor's Office to prepare documents to be presented to the court to further clarify the situation between the School District and the City of Manchester. Alderman Wihby duly seconded the motion.

Alderman Vaillancourt stated of all the means that we have of spending money that is wasteful, I believe that spending money for lawyers is the most wasteful, whether it be in Florida or here in the great City of Manchester. Before I would vote for this and I must also add that spending money on lawyers is probably per hour the most expensive thing we have so although I assume that the City Solicitor is on a set salary and it will not increase the cost, I also have to assume that the School Committee will have to respond with its own legal fees so I am wondering how much this motion could end up, round ballpark figure, costing the taxpayers of the City of Manchester for them to fight each other in court. That is a question for Mr. Clougherty or Mr. Clark.

Solicitor Clark replied as far as the City side goes, you are correct. My office is on set salaries and it will not cost any additional funds from my office. I couldn't tell you how much it would cost on the School Board side.

Alderman Wihby stated I would hope that everybody would appreciate this letter and vote for this because in the long run it is going to save money. Every issue is going to end up in court. We just talked about increasing taxes so no matter what you do, unless it is resolved one way or the other, it is going to end up costing the taxpayers money. I think this is a good step forward, your Honor. I also understand that we are going to take up Item 22 today and I would like to see the support to have a public hearing so that we can hear from private citizens as well.

Mayor Baines replied I will be supporting that as well.

Alderman Levasseur stated I think that your interests actually coincide quite well with Alderman Wihby's interests. He brought this in a year ago or less than a year ago asking for us to have a Charter amendment to bring the School District back in as a department of the City. I think that we could save a lot of money, not go to court, not have to spend all of that extra money on the School side if we just go with Alderman Wihby's motion and make them a department in the first place.

Mayor Baines replied to offer some clarification on that, I think there are some legitimate disagreements as to whether that is the appropriate approach or whether it would achieve the appropriate goals. No one is sure of that. The City Solicitor is not sure of that. No one is sure of that. This is a sure thing. At least we will get clarification from the courts and Judge Nadeau's decision left it open. I believe an error was made when that decision came down. I think there are people on the School side who think that an error was made that there wasn't an appeal, but it was decided not to do that. I think because of all of the issues that have surfaced, this is the appropriate way to go. I am willing to go along with the second part of it to have the hearing and we can go from there.

Alderman Levasseur asked, your Honor, so I guess in essence if we did get a Charter amendment to make it a department you feel that there would still be these issues that would...in other words the issues would still be there anyway.

Mayor Baines replied what I think without getting into a long discussion about it, the Charter amendment is suspect because of State law. It is my judgment and it may be wrong but I have talked to a number of people about it, that it would have the same conclusion as the last judgment and that is my belief. However, I do feel we need to go back to the court to at least get these things clarified because they will be clarified and then we can decide what the best approach is going forward.

Alderman Levasseur sit in the enviable position of also having sat on the Charter Commission. If the Charter amendment was passed by a majority of the voters saying that we wanted to make them a department again, we don't have that authority...the people of the City wouldn't have that authority to make that decision and it wouldn't matter what the courts would say because it is legislative.

Mayor Baines replied it is an open question. I think that is what we have agreed to in our discussions. We don't know what the outcome of that would be. We know we would be back in court. They would be citing the State statute. The State statutes in particular are very protective of school districts so how they would rule on that is unknown as it was when we went to court this time. We weren't sure how that would come out. All I am asking is for you to support this because we can get some definitive answers and then deal with that as it comes up through the process. That is all I am asking.

Alderman Shea stated I know that Atty. Eggert is here and in the presentation that he made to the Board in March there were several types of topics that he discussed that sort of fit into what Alderman Levasseur was mentioning, namely Section 6.08, NH RSA 49:B:8. Why wouldn't this change run afoul of the State statutory and judicial policies of fiscal autonomy and if a change were made would the State Legislature become a player

in this matter because certain amendments, which you have purported to discuss your Honor do not conform with the laws of the State of New Hampshire? So, you run into a lot of legal situations here. We also mentioned and I could go on about Section 4.01, namely that the School Department members are elected and not appointed. We appoint Commissioners. The Superintendent of Schools is nominated by the School Board and not appointed by the Mayor. The School Board is required by Charter to administrate and expend and account for funds. I could go on and on, but I think that in bringing it before a judge which we probably should have done initially and didn't do in hindsight, I think that is the proper approach to use and not confuse the two issues. As I mentioned to Alderman Wihby yesterday at a Taxpayer's meeting where we were both taking pros and cons regarding it, the point is that you could put this before the voters and in essence you could give them false hope because in essence if you did have an amendment to the Charter and they approved it and then they found out that it was against State law, it would be in essence nonsequitor, meaning it would not follow that it made any sense.

Mayor Baines stated and that is the essence of it, however, I do want to make it very clear if I thought that would accomplish what Alderman Wihby thinks it would accomplish, I would very much support that. That is where we have a difference of opinion, but that is coming down the line. We will deal with that as it comes along.

Alderman Vaillancourt stated in the spirit of trying to be united as a front, I would certainly like to support this and I am reading it and it doesn't say that any monies would be expended but I am just assuming that in the long run monies would be expended so I haven't had my question answered yet. Maybe School Board Member Cook could tell me how much per hour the School District attorney receives.

Mr. Cook answered \$125/hour.

Alderman Vaillancourt stated so we can just multiply \$125 times how ever many hours.

Mayor Baines replied again this will be up to the School District to make a decision about that and I think it might be an interesting thing if they just joined with us in terms of just identifying the questions. I am not sure it is necessary for the School District to go out and hire legal counsel. They could simply...we could add their questions on here and have the judge rule. I know it is not that simple and there will be some legal involvement, but I think it could be kept to a minimum.

Alderman Hirschmann stated I would like to add a bullet point to your...my bullet point would be overspending the appropriation by the Aldermanic Board as a question on an annual basis.

Mayor Baines replied that is included in the three, the whole spending issue.

Alderman Hirschmann stated that language really has to be in there.

Mayor Baines replied that was our understanding when we drafted this.

Alderman Hirschmann stated the caveat that I would like to throw into this is I would really like Tom Clark, himself, to represent us when this goes to court. I want our top guy handling this and nobody else. Our top guy.

Mayor Baines replied it will occur. I will agree to add that overspending issue.

Alderman Hirschmann stated I think it is in the best interest of both parties at this point.

Mayor Baines stated the motion was already moved and seconded.

Alderman Levasseur stated I would like to reiterate because I read Judge Nadeau's opinion and we discussed this at length for a very long time with our City attorney and Dean was here from the School side and one of the biggest reasons why we lost this case was because the argument was the intentional omission as afforded by the failure of the Mayor to include the district as a department and an ordinance defining the functions and duties of each department existing at the time of the ordinance as required. When you went to the City Charter, your Honor, it was never listed in the City Charter. I feel that...I won't support this because I feel that if we go with Alderman Wihby's amendment and Charter change that if we make this Charter change and put this into our own Charter, when we go to fight a legal battle it will be in the Charter that we have made it a department and I think you will be doing that instead of spending all of this money and going to court. That is what I think legally.

Mayor Baines called for a vote on the motion. The motion carried with Alderman Levasseur duly recorded in opposition.

Communication from Alderman Wihby requesting the Board's support to refer a proposed Charter Amendment, providing 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 to public hearing.

Alderman Wihby stated I wrote a letter to this Board asking for their support in having another public hearing. Three months ago we took it up and we had a public hearing, but I think as you see what happened today the discussion was very interesting and I think it is time that we have another public hearing, your Honor.

Mayor Baines replied and I support that.

Alderman Wihby moved to approve the request to refer the proposed Charter Amendment to a public hearing to be held on January 30, 2001 at 7 PM. Alderman Pariseau duly seconded the motion.

Alderman Vaillancourt stated certainly it is well known now that I am never against public hearings, but I am just wondering what purpose would be solved by this. I assume we will hear the same people making the same arguments we heard before, which they have every right to do and then we will come back and the vote will be 7-7 and the Mayor will not pass it again. Why are we going down this route again? Oh, we haven't had that public hearing yet on the Alderman At-Large positions have we? So, I just don't see what could possibly be solved by having another public hearing. I think we should go immediately to the vote tonight.

Mayor Baines replied I think it is required to have the public hearing and also we are used to hearing the same arguments over and over again.

Alderman Vaillancourt stated can we ask the City Solicitor if, in fact, it is required to go to a public hearing.

Mayor Baines replied yes it is.

Alderman Vaillancourt asked is it required to go to a public hearing.

Solicitor Clark answered yes it is. The last time the Charter amendment came before the Board it died. This is a new proposal and it would have to go to a public hearing.

Mayor Baines called for a vote on the motion. There being one opposed, the motion carried.

Mayor Baines stated I want to thank the Board. I think we tackled an extremely tough issue. We did it with a high degree of professionalism and class and I was very proud to be a part of the process this evening. I thank you for it and this meeting is recessed until next Tuesday, November 28, 2000 at 7 PM.

A True Record. Attest.

City Clerk