

Merrimack School District Budget Committee
Minutes
October 17, 2023

Present: S. Albuquerque, D. Coakley, L. French, G. Groff, J. McCormack, C. Mower, M. Murphy, N. Schoenfeld, E. Wilson and Schol Board Liaison N. Halter.

Excused: M. Bronchuk, M. Mackey and R. Paepke

N. Schoenfeld called the meeting to order at 7:01 PM and led those present in the Pledge of Allegiance.

Public Participation

There was none.

Approval of June 6, 2023 Minutes

D. Coakley asked if he could change his vote at the election of the Vice Chair on June 6, 2023 to an abstention.

N. Schoenfeld called for a motion on the minutes from the June 6, 2023 meeting.

C. Mower made a MOTION to approve the minutes of June 6, 2023. Second: G. Groff.

N. Schoenfeld asked if anyone had any corrections.

G. Groff asked if Dan's request to change how he voted was a correction.

N. Schoenfeld said, as currently written, the minutes reflect what actually happened; however, his request could be noted in the minutes of current meeting to state that he wanted his vote for the Vice Chair position to be an abstention.

N. Schoenfeld called for a vote on the MOTION. MOTION PASSED: 10 – 0 – 0.

N. Schoenfeld asked if anyone wanted any changes to the agenda. No one did

Procedural Updates

N. Schoenfeld told the members that she had created an informational sheet: “Unified Language – Budget Process.” She said there are several different budget versions or requests discussed by the Budget Committee during the creation of a proposed budget. The informational sheet names each budget request based on the author of the request. N. Schoenfeld said she hopes a better understanding of the various requests that are part of the process will smooth out the process and result in everyone working together. She called for discussion.

Discussion included:

- The unified language terms clearly identify which specific entity is making a budget request.
- The terms identify the pieces used in the budget process and how each piece moves through the process.
- There have been misunderstandings and confusion over the statutory responsibility of the Budget Committee.
- The RSAs task the Budget Committee to propose a budget to the voters. The RSAs also indicate that the goal of this proposed budget is that it reflects the goals and intents of the School Board.
- The Budget Committee is the entity that proposes the budget discussed at the Deliberative Session.
- The voters can make changes to the budget at Deliberative Session.
- N. Halter will bring the list of terms back to the School Board and ask for its comments and opinions which she will report back in November .

Meeting Schedule

N. Schoenfeld told the members that a meeting schedule was created with a goal that the Committee will meet once a month during the fall to review the prior year’s final budget as well as meet with the Administration and School Board to learn about their goals and plans for the FY 2024-25 budget in preparation for the weekly meetings in January and February. She also indicated that meeting dates will be finalized once the Presidential Primary is scheduled.

Committee Policies and Procedures

Attendance

N. Schoenfeld reviewed the RSAs and Committee Policies regarding meeting attendance and Roll Call votes.

Communication with the Board

N. Schoenfeld said there have been discussions about ways for the public to communicate with the Committee. She stated, while there is no RSA requiring Public Participation at meetings, she plans to include Public Participation twice during meetings. Additionally, she said members of the public who wish to provide input to the Committee can send an email to the Committee's unified email address which can be found on the Committee's website. She said emails from the public relating to Budget Committee activities will be shared with all members.

Right to Know Law

N. Schoenfeld stated that the Committee is subject to the Right to Know Law: RSA 91-A.

D. Coakley stated for the record, that he objected to the discussion. He said he personally had never met with any Committee member nor discussed any public business except during public Committee meetings.

N. Schoenfeld asked him to clarify his objection.

D. Coakley said his objection was generated by a series of emails he had with N. Schoenfeld. He suggested that those emails should be shared with the Committee and made public so everyone could have the proper background.

N. Schoenfeld explained that D. Coakley had emailed her because he was concerned that several members had participated in private conversations he felt might violate state statutes on public meeting requirements. She said she would provide the email discussion to all members.

D. Coakley shared a statement from the NH Municipal Association Right-to-Know Training that said "Meetings of public body members that are less than a quorum to discuss public business should not be undertaken. All public business should only be discussed at properly convened public meetings." He asked if Merrimack TV had copies of the two meetings that he discussed with N. Schoenfeld in his emails.

N. Schoenfeld told him that the meetings are available on the Budget Committee Playlist on the Merrimack TV website and read the definition of "meeting" from RSA 91-A:2, I to the members. She said that the statement from the Municipal Association Training that D. Coakley referenced is not part of the NH Right-To-Know law but that some members may have stricter personal ethical guidelines than required by the law.

C. Mower said he appreciated D. Coakley's concerns and stated that every member should be cautious about public actions.

J. McCormack stated she would commit to being more conservative in conversations about the Committee.

Next Meeting

N. Schoenfeld said the next Committee meeting would be November 14, 2023.

N. Schoenfeld that the main focus of the November meeting would be Business Administrator M. Shevenell reviewing the final report on the FY 2022-2023 budget and a year-to-date report on FY 2023-24.

N. Schoenfeld asked members to think about new materials that members might want M. Shevenell to provide to help the Committee during the upcoming budget preparation.

Public Participation

There was none.

Committee Comments

C. Mower said he wanted to make the Committee aware that the District has hired a Director of Pathways to Graduation and Expanded Learning Opportunities. He said he is hoping the programs offered will have a widespread benefit and suggested that the Committee may want to review increasing the budget and the stipend amounts offered.

N. Halter said the District had received a small grant for the Pathways to Graduation program and the School Board would like to grow the program. She also said the School Board decided two important goals for this year are proposing a new Superintendent's office and getting the Support Staff Contract approved.

J. McCormack asked where to find a copy of the School Board's goals. She was told they are on the District Website.

C. Mower stated that he hoped to see the School Board move education in Merrimack forward without relying on grants to fund good and necessary programs.

J. McCormack said she thought grants might be an opportunity to launch new initiatives at no initial cost to the District.

E. Wilson made a MOTION to adjourn. Second: L. French.

N. Schoenfeld declared the meeting adjourned at 8:00 PM.

Respectfully submitted,

Pat Heinrich

**Record of Correspondence Between
Dan Coakley and Naomi Schoenfeld**

Summer, 2023

Formatted for clarity by Naomi Schoenfeld, Oct 18, 2023.

EXCHANGE #1: June 8, 2023 – June 10, 2023:

On Jun 8, 2023, at 4:02 PM, Dan Coakley <coakdj@aol.com> wrote:

Madam Chairwoman:

I hope it is apparent my respect and admiration for you from our liaison service together and from my putting forth a motion to make your election as Chairwoman unanimous. That support, respect, and admiration, remains unchanged.

However, there is a matter that concerns me greatly. There is a “Shadow” Budget Committee that is meeting or has met on issues related to the Committee’s functioning. It first came to my attention during the Carol Lang debacle (which I voted “No”) and you spoke to me about it after the vote. I indicated I was for “Inclusion”. I felt then and now that there was a decision made before that matter came to a vote.

The second vote that confirmed my feelings was the recent election of the Co-Chair. It was the reaction of the Committee when I offered a name for consideration. The looks on many faces indicated that it was a big surprise. More than one Budget person indicated that Dan Coakley was the only one not called. The vote was forced and rushed; I didn’t really know what we were voting on. (I voted “Yes”, but in retrospect should have voted “Abstain”)

Transparency is a process spoken of often theses days, in these two situations in was non-existent.

I must protest this on many levels. One the embarrassment of making a motion which in essence was NOT going to be entertained. Second, the disenfranchisement of an elected member of the Budget Committee, and third the utter disrespect of a member of the Budget Committee. Furthermore, I would question the legality of a non-public meeting. This action smells of the Old Boys network of decisions made in smoky back rooms, of a group of selected committee persons deciding ahead of any vote what the results would be. And that stinks. And it has no place under your Leadership.

I write this as a personal private message to you. I hold you to no confidence. You may do whatever you want with this or do nothing. My purpose was to make you aware of this

so, this situation should not reoccur.

Dan

Dan Coakley
coakdj@aol.com
603-440-3600

On Jun 8, 2023, at 7:28 PM, Naomi Schoenfeld <waystone@mac.com> wrote:

Dan,

Thank you for this. I appreciate your candor, your directness in approaching me, and the topic itself. I hope you will always do so, whether in relation to the Budget Committee or any other ways we may work together.

The fact that you feel this way is important in and of itself, and worth addressing in its own right — however, there are some inaccuracies in your description of what you believe happened.

Perhaps the simplest remedy is for me to lay out a timeline of my actions.

Regarding the motion to restrict distance participation:

About a month before my motion, Chuck approached me and asked if I would be willing to put forward a motion to help resolve the issues relating to distance participation in Budget Committee meetings. I agreed. Between that agreement and my putting forward the motion itself, I initiated conversation on the topic with not a single committee member (with one exception, more on that in a moment), although I was present for a few side-conversations where enough frustration was voiced that I knew it was an issue worth pursuing. I also twice stepped in to ask committee members in liaison settings to tone down their complaining to a professional level.

The only committee member I spoke with, in fact, was Carol herself — who I initially called to let her know I was intending to offer the motion, since I do not believe in blindsiding individuals with something so directly related to them. After that first call she and I spoke some fifteen times, sometimes multiple times a day, in the run-up to the meeting. I shared my draft motion text, and it benefitted several times from her recommendations, including (as I mentioned publicly at the meeting), the 'sunset' element rather than it coming into effect immediately.

The goal Carol and I shared was not to come to agreement — that, of course, was not an option — but to create a motion that would bring the issue into public conversation, and that she felt was a fair representation of the topic.

Prior to the meeting where the motion was entered, I shared the planned text of the motion, as a courtesy and to ease its inclusion in the minutes, in an email to Pat.

I was disappointed, as was Carol, that more discussion did not take place. I came prepared for a great deal more than happened, and the silence was a bit of a let-down. The lack of discussion also opened the opportunity that the outcome might have been pre-determined, which you voiced, and that I agreed with you that such a thing would indeed be good reason to enter a 'no' vote. Your reason made sense not because that is what had happened, but because I well understood it might feel that way from your vantage point.

Regarding the most recent reorganization:

Over the past six or seven months, increasing community members approached me to ask if I might consider running for chair of the budget committee. I was undecided. As I was making the final decision in terms of whether or not to pursue that role, Chuck's thoughts on the topic were very much on my mind. I asked MacKenzie if she would consider putting herself forward for the vice-chair position, and then contacted exactly three committee members, to ask for their thoughts — Rachel, Shayne, and Lee. I spoke to each by phone, and at no time did I ask for their endorsement or commitment in terms of a vote, nor did I receive one.

After this, I met with Chuck over coffee to let him know I was interested in the chair position. I asked him if he felt strongly about keeping the position. He indicated that he was comfortable stepping aside. We also discussed simply nominating each other, and letting the vote go from there, but that was not his preference. Chuck and I agreed that if the chair was to change hands, a re-org meeting in the summer (which should have been happening anyway) would make transition away from him easier. He and Pat then posted the meeting, according to established procedure.

Even without speaking with more individuals, it was not hard to guess that with Chuck's nomination, I would generally be favored for the role — and it did occur to me rather powerfully that if it was a strong showing, it might seem to you to be similar to what you believed you saw regarding the earlier motion. I considered calling you before the meeting to head this off at the pass, but ultimately decided that would not be a helpful move — as likely to increase suspicion that there /was/ some sort of conspiracy, as it was to reassure that there was not. My wry side-comment to you was an expression of this (the sense I had that you would probably respond a certain way to the meeting). And, of course, as your email indicates, it did indeed come across that way.

I have no doubt that there is gossip a'plenty between committee members, and am certainly open to examining whether it is at inappropriate levels, and if so, how. However, in terms of a 'shadow' budget committee, if there is one, I am not a member.

I am open to any feedback you might have on my conduct, and to discuss any changes you believe I should make. I am also happy to offer (although it is not required, it can be helpful when there is broader mistrust) to publicly report out any communications I have with committee members between meetings, during 'member comment', if you would find it helpful.

I look forward to your thoughts,

Naomi

On Jun 9, 2023, at 9:30 AM, Dan Coakley <coakdj@aol.com> wrote:

Dr. Schoenfeld;

I wrote this to simply make you aware.

There was no need for you to respond.

It was two separate committee members who told me: “Dan Coakley was the only one not called”

That reinforced my feelings from the Lang situation.

In Looking at RSA 91 I realized if this telephone communication had taken place (and having not been included, I have no firsthand knowledge of such) it could be construed as a illegal non-public meeting under RSA 91.

And if you were called, then you are part of that “Shadow” committee whether you knew it or not. If the statement “everyone was called....”is true, that includes you.

That then made me aware that not being included was disrespectful and disenfranchising.

That demanded a response.

You need never question whether I will respond to an issue.

I think if the Lang situation was presented as you have stated below, it may have generated some discussion. I was unaware of what was going on and had nothing to discuss.

The second situation was the vice chair nomination and when I put Shane’s name forward there was faces made and a discomfort in the room and things moved fast without discussion to a vote. I didn’t really know what I was voting for, as I said in retrospect I would have abstained.

As we say in corporate: Perception is reality

You are now aware, I would leave this as presented. Any discussion would lead to a opening a Pandora’s box of non-public meetings.

I don’t think that is something you want or the committee needs

Thanks for listening

Dan

Dan Coakley
coakdj@aol.com
603-440-3600

On Jun 9, 2023, at 10:14 AM, Naomi Schoenfeld <waystone@mac.com> wrote:

Dan,

(Please know that I use that address because you are using it as your sign-off, and intend no disrespect. If you prefer 'Mr. Coakley', please do not hesitate to let me know.)

Thank you for the continued conversation.

Discussions between individual elected officials (i.e., one member speaking with another) are not, and have never been, a non-public meeting, nor disallowed under any regulations, including RSA 91.

Every phone call I have had is entirely and completely legal and ethical, and I have absolutely no problem or concerns regarding public discussion of any aspect of those actions. If it needs to be aired in order to be clarified, then, as you say, transparency requires that that happen.

The question of whether 1:1 conversations are permitted is something that will need to be clarified if it is misunderstood — and it is probably a good idea to place it on an upcoming agenda in order to make sure everyone understands and is in agreement regarding those regulations. You are welcome to step into that conversation however you wish, but I will bring it up in a way that does not require you to enter the conversation.

I continue to consider it important that you feel disenfranchised, however, and hope there will be a way to address that as well.

You are indicating that you do not wish to continue this conversation — and so, unless I hear otherwise from you, I will consider this something on hold until it is addressed in meeting.

As always,

Naomi

On Jun 9, 2023, at 2:21 PM, Dan Coakley <coakdj@aol.com> wrote:

Mr Coakley was my Dad!

Dan is certainly fine for me!

My question was if one member called every other member save one, that would be a quorum and subject to legal interpretation as a Non-public meeting.

If this goes to a public meeting, I will file for an “Objection” to be entered into the record under my name to indicate that I was NOT included in any perceived phone meeting.

1:1 conversations I am sure are ok, but 1:11 conversations on the same topic related to a vote by the committee would require a Legal decision

I don't think the Committee wants to go that route for many reasons, but it may increase public participation.

You seem to indicate that I am accusing you of something, I am not. I wanted you to know what I observed and what two members said to me.

Why would two members of the committee lie to me? If what they say is true, there is the question of a non-public meeting.

Regardless what they said was disrespectful and disenfranchising of my position as a committee member. I can deal with that.

Please note I am not a thin skinned person who takes things personally. I am a corporate executive who survived the battles by pointing out what was happening as it happened.

I was sharing those observations with you as Chairman nothing more, nothing less.

I hope our relationship remains intact as that is important to me.

Dan

Dan Coakley
coakdj@aol.com
603-440-3600

On Jun 9, 2023, at 3:45 PM, Naomi Schoenfeld <waystone@mac.com> wrote:

Dan,

You may not have intended it as such, but the email you sent does include an accusation of illegal actions while holding public office that I take very seriously indeed — as I hope

anyone would. In your second email, you further suggested that there are problematic elements to the committee that I might prefer to keep hidden while holding capacity in public office, which I take even more seriously.

Our relationship remains very much intact, and I continue to both respect and think highly of you — but at the same time, suggestions that I am breaking the law or supporting others in doing so, are always something that I am going to give the full weight they deserve, and resolve clearly and unambiguously. It is my goal to do just that in this matter, and I appreciate your clarification.

But, to the heart of your most recent email:

You said:

"My question was if one member called every other member save one, that would be a quorum and subject to legal interpretation as a Non-public meeting."

You ask an excellent question. No. If one member called every other member save one, and conversed with each separately on the same topic, it would not break public meeting rules.

Depending on the circumstances it might be ethically dubious, certainly, and I personally would not do it (which is why I keep my one-on-ones to a limited number) but it does not violate the RSA.

In fact, it's not even all that uncommon a course of action in terms of conducting business at all levels of government in the United States. If you think, for example, about the House or Senate at the state or federal level, of course they speak to each other individually, and extensively, between meetings, and negotiate space for support for one vote or another, frequently and legally, outside of times when the body is in session.

(Non-public meets are something else entirely. They are intended to allow a body to meet as it normally would — at full quorum, with binding motions passed and official action taken — with the only difference being that the minutes are not made available to the public. Such non-public meetings can only be evoked in very specific ways, and for very specific and limited reasons, that I'm happy to talk about — but I think that what you are actually asking is at what point do private communications cross the line into territory where they would be illegal if not conducted as part of public, minuted meetings, so I'm going to stay in that territory for now.)

The rules regarding this in New Hampshire fall under the Right to Know statutes, which are gathered in RSA 91-A, which you mentioned in your first email.

RSA 91-A.1 defines a public meeting, as having ALL of the following traits:

- 1) The gathering consists of a quorum of the membership of a public body, or, any equivalent to a quorum that that body might have. For the budget committee, that is seven or more members.
- 2) The gathering happens contemporaneously — in other words, whether in person, by phone conference, or online, the group of participants at or exceeding quorum can all communicate with each other in real time.
- 3) This quorum-sized, contemporaneous group that has convened has done so for the purpose of conducting business of the body — whether by actively making decisions or discussing matters under its purview. A quorum of members who, say, find themselves inadvertently at the same social event, can all stay at the party without breaking the law. There are some other protective exclusions as well, but they are not germane to our situation.

In other words, there is nothing inherent in being elected to a public body that revokes one's first amendment rights to speak to whomever one chooses, whenever one chooses, on whatever matters one chooses. There IS clear space for regulation of when and how an elected body comes together as a quorum and enacts its official business as a group.

The above is my best understanding — and, to the best of my knowledge, is the generally understood implementation.

We do have an option open to us, if you remain unsure or if there is a possibility that I am wrong. We can refer this to legal counsel. The budget committee does have the ability to request legal opinion from the counsel retained by the district — and I, at least, would be very interested in any additional clarity they could bring. Alternatively, we could refer it to the Attorney General's office for resolution. I am not entirely clear on when one would choose legal counsel and when the Attorney General, but I'm sure we could find out.

[Naomi Schoenfeld's note to readers, added Oct 18, 2023 – I was incorrect here. Referring the matter to the Attorney General is not an option that is open to us in this instance.]

As it stands right now, my intent is to place a discussion of RSA 91 on the next agenda, so that we can establish shared understanding of what it includes, what it forbids, and what it allows. I think it is a good and important discussion to have, and possibly one that should happen every year, or at least whenever we have new members.

If problematic differences in our understanding of the RSA emerge, my intent is to suggest the committee refer it to the appropriate venue for resolution (whether that is legal or the attorney general), and then retain that opinion for future reference.

So, to sum up — is it possible that committee members talked extensively with each other, leading to many of them knowing what others intended to do when the

reorganization meeting convened? It's possible, and even likely. I did not myself, but others may well have.

If they did so, while one can certainly hold opinions on the practice, it is not in violation of New Hampshire statutes governing elected bodies such as the Budget Committee.

And, last but not least, it would appear we are long overdue, as a group, for a conversation that will make sure the boundaries that do exist are clear, unambiguous, and enforced.

As always,

Naomi

On Jun 10, 2023, at 8:45 AM, Naomi Schoenfeld <waystone@mac.com> wrote:

Dan,

Good morning,

One more detail, that may be valuable to you:

In 2015, the Attorney General's office published a memorandum on RSA 91 that affirms the reading that I give below. It can be found at <https://www.doj.nh.gov/civil/publications.htm>.

Apologies for not mentioning it in the original email — I only just found it myself (or rather, in terms of giving credit where it is due, Pat made me aware of it) while double-checking to ensure my reading of the statute was as correct as I could make it.

Best,

Naomi

On Jun 10, 2023, at 10:03 AM, Dan Coakley <coakdj@aol.com> wrote:

Dr Schoenfeld:

Thanks for the correspondence.

I started this correspondence to make you aware of an issue so you (as Chairwoman) could assure it would not happen again.

I feel this correspondence has hit a low that I would not want to be part of.

I would point out that any legal opinion either you or I would put forth is moot as neither of us is an Attorney Specifically with this specialty.

As I have indicated any discussion of this at any meeting I will ask to record an objection under the RSA.

Until that time, I will have nothing to offer to you, any member of the committee, or anyone else.

Thank You for listening.

Dan

Dan Coakley
coakdj@aol.com
603-440-3600

(No further communication until Exchange #2, below.)

EXCHANGE #2: June 27, 2023:

On Jun 27, 2023, at 6:24 AM, Schoenfeld, Naomi (Budget Committee)
<Naomi.Schoenfeld@Sau26.org> wrote:

Dan,

I have received affirmation from the legal counsel for the district that communications between committee members (and/or between the chair and committee members) regarding NH state RSAs do not fall under RSA 91-A, since they are not "*...for the purpose of discussing or acting upon any matter over which the committee has supervision, control, jurisdiction or advisory power.*"

Similarly, if we meet in person to continue the discussion, there are no issues or complications related to RSA 91-A.

With this clarity, while I was not sure how you would view such an offer before — I would be happy to meet to continue our email discussion in person. You may prefer, of course, to continue to wait for the next Budget Committee meeting, but the offer is open should you wish to avail yourself of it.

As always,

Naomi

On Jun 27, 2023, at 9:40 AM, Dan Coakley <coakdj@aol.com> wrote:

I would call your attention to the 9th slide from the training meeting by Counsel:

Meetings Among Public Body Members Outside of Public Meetings
Meetings of public body members that are less than a quorum to discuss public business should not be undertaken – all public business should only be discussed at properly convened public meetings.

91-A:2-a Communications Outside Meetings. –

I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

You may need to highlight to see it.

Dan

Dan Coakley
coakdj@aol.com
603-440-3600

On Jun 27, 2023, at 11:09 AM, Schoenfeld, Naomi (Budget Committee)
<Naomi.Schoenfeld@sau26.org> wrote:

Dan,

I am confused. What in that slide are you drawing my attention to?

The legal counsel — and I, in quoting them — already cite the text on that slide to in demonstration that our discussion not fall under 91-A.

Please take a look at my original email for the matching quote.

-N.

On Jun 27, 2023, at 11:12 AM, DAN COAKLEY <coakdj@aol.com> wrote:

Then we'll agree to disagree?

Dan
Sent from my iPhone

On Jun 27, 2023, at 11:36 AM, Schoenfeld, Naomi (Budget Committee)
<Naomi.Schoenfeld@sau26.org> wrote:

Sure — except it's not my opinion you're disagreeing with. It is the legal opinion.

Here is the reply from Kathleen C. Peahl, Esq., of Wadleigh, Starr & Peters, PLLC:

"Does it meet the definition of a public meeting under RSA 91, for the chair of the Budget Committee to communicate one-on-one with a single member of the committee, to facilitate their understanding of statute such as RSA 91?"

A one-on-one discussion between the Chair and an individual member of the committee would never be considered a meeting because the two members do not represent a quorum of the committee. Further, a discussion about the meaning and application of RSA 91-A is not for the purpose of discussing or acting upon any matter over which the committee has supervision, control, jurisdiction or advisory power.”

My offer to discuss in person is in keeping with RSA. The offer remains open indefinitely if you decide you would like to talk.

-N.

(No further communication)