The State of New Hampshire

ROCKINGHAM COUNTY **SUPERIOR COURT**

ROBERT COLLINS, ET AL

V.

TIMBERLANE REGIONAL SCHOOL BOARD

Docket No. 218-2019-CV-00116

ORDER ON REQUEST FOR MANDAMUS AND/OR INJUNCTIVE RELIEF

On January 20, 2019, Plaintiffs Robert Collins and Peter Bealo petitioned this Court for a writ of mandamus and/or injunctive relief against the Timberlane Regional School Board (the "Board"). See Docs. 1–2.[1] Plaintiffs asked the Court to issue mandamus or an injunction ordering the Board to comply with RSA 40:13 in calculating and presenting the school district's default budget or, in the alternative, to order the Board to adopt the default budget prepared by the school district's business administrator. See Doc. 2 at pp. 9–10.

On January 30, 2019, the Board moved to dismiss Plaintiffs' action. See Doc. 10. After a hearing on January 31, 2019, the Court denied the motion based on Plaintiffs' showing that the Board had not fully complied with RSA 40:13. See Doc. 13. The Court held a second hearing on February 12, 2019 for the purpose of inquiring into the Board's efforts to come into compliance with the statute. Pursuant to the Court's request, the parties submitted status reports following the Board's public meeting on February 21, 2019. See Doc. 18.

[1] "Doc." references are to numbers assigned to documents in the Court's electronic filing system.

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Rockingham Superior Court
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At this stage, it is apparent that the Board has made some efforts to come into compliance with RSA 40:13 by, inter alia, providing more detailed explanations for changes from the 2018–2019 operating budget, compare Doc. 20, Attach. 1 at pp. 4–5 (revised MS-DSB), with Jan. 31, 2019 Hr'g, Ex. A at p. 10–12 (prior MS-DSB), and by correcting certain line item errors that appeared in prior iterations of its 2019–2020 default budget calculation, see, e.g., Doc. 20 ¶ 5 (explaining that at the Board's meeting on February 21, 2019, line item 1200-643 "was increased by $18,000 to match last year's appropriations due to special education related fixed costs of which the Board was unaware at the time of the public hearing"). However, based on the parties' status reports, see Docs. 20–21, and an additional pleading Plaintiffs filed on February 19, 2019, see Doc. 19, the Court still harbors serious doubts with respect to whether the Board has fully complied with RSA 40:13. Nevertheless, for the reasons explained below, Plaintiffs' request for mandamus and/or injunctive relief is **DENIED**.

Mandamus is an extraordinary writ. In re CIGNA Healthcare, Inc., 146 N.H. 683, 687 (2001); Guarracino v. Beaudry, 118 N.H. 435, 437 (1978); Serge v. Ring, 102 N.H. 556, 557 (1960). As such, it will not issue except for the "amelioration of exigent circumstances" created by "plain legal error by the government," and even then only when "the plaintiff has an apparent right to the relief requested, and no other remedy will afford full and adequate relief." Guarracino, 118 N.H. at 437 (citations omitted). Accordingly, if the facts before the Court are conflicting and uncertain, mandamus will be denied. See Fidelity & Casualty Co. v. Lineham, 71 N.H. 622, 622 (1902).

Even when issuance of the writ may otherwise be appropriate, the Court retains discretion to deny it based on the specific circumstances of the case. See In re CIGNA

Healthcare, Inc., 146 N.H. at 687 (explaining that "where the petitioner has an apparent right to the requested relief," a court will issue mandamus "in its discretion"); Jaskolka v. Manchester, 132 N.H. 528, 535 (1989) (describing that mandamus is issued "only when specific circumstances warrant such action"); MacLay v. Fuller, 96 N.H. 326, 328 (1950) (referring to the issuance of mandamus as a "discretionary power"); Goodell v. Woodbury, 71 N.H. 378, 379 (1902) (explaining that the inadequacy of other remedies, "coupled with the danger of a failure of justice, [ ] determines the propriety of the relief by mandamus"); see also Edes v. Boardman, 58 N.H. 580, 586 (1879) ("[T]he embarrassment of public business, by a temporary injunction . . . is to be considered on the question whether justice requires such an injunction.").

As such, in Mueller v. Hopkinton Town Clerk, 113 N.H. 90, 91 (1973), the New Hampshire Supreme Court affirmed the denial of a request for a writ of mandamus compelling the Hopkinton Planning Board to include a zoning amendment on the town's ballot even though the Supreme Court considered the planning board's action of unilaterally deleting the amendment to be of "doubtful validity." Relying on the following rationale, the Mueller court explained why the circumstances did not justify mandamus despite even the "doubtful validity" of the government's action:

> To order the town officials to post a substitute warrant or to amend the one already posted to enable the voters to vote on amendment No. 8 would only serve to spawn further litigation as to the lawfulness of the zoning vote. Consequently without reaching the merits of the case on this record and in view of the short time remaining before the annual meeting four days hence, we decline to order mandamus.

Id.

Here, like in Mueller, the validity of the default budget that the Board has calculated remains doubtful. For instance, as the Court discussed in its February 7,

2019 Order, see Doc. 13, the starting point for calculating the default budget is "the amount of the same appropriations contained in the operating budget authorized for the previous year . . . [,]" RSA 40:13, IX(b). The appropriations in the default budget may then be increased or decreased from the previous year's operating budget for a limited number of statutorily defined purposes. Id. As Plaintiffs aptly point out though, see Doc. 20 at p. 3; Doc. 19 at pp. 1–2, the Board seems to have "corrected" certain unauthorized decreases in the default budget by reducing the amount represented as last year's operating budget, not by increasing the default budget as the law requires.

As an example, in the revised default budget spreadsheet that the Board provided to the Court at the hearing on February 12th, the Board represented that last year's operating budget for "Special Programs: Books & Info Resources" was $2,900. See Feb. 12, 2019 Hr'g, Defs.' Ex. B at p. 2 (line item 1200-640). As such, the Board has appropriated $2,900 for this account in the default budget, thereby creating the appearance of compliance with RSA 40:13, IX(b)'s "same appropriation" requirement. However, the Board previously represented that last year's operating budget for this line item was actually $28,974—not $2,900. See Jan. 31, 2019 Hr'g, Defs.' Ex. A at p. 3 (line item 1200-640).[2]

[2] Plaintiffs have pointed to seven other similar examples involving the following line items: 1200-733 (decrease from $13,080 to $1); 1200-738 (decrease from $30,000 to $1); 2222-610 (decrease from $8,336 to $7,787); 2222-641 (decrease from $13,103 to $12,597); 2222-733 (decrease from $2,303 to $1); 2223-733 (decrease from $406 to $1); 2223-737 (decrease from $1,705 to $705). Based on all of these decreases, it appears likely that the Board has failed to add a total of $72,915 to the default budget that is otherwise required by RSA 40:13, IX(b). The Court also notes that Plaintiffs assert several other reasons why the Board has not complied with RSA 40:13. Specifically, they argue that the Board has unlawfully eliminated positions in the default budget that are not eliminated in the proposed budget, see Doc. 21 at pp. 3; Doc. 19 at pp. 1, 4–9, unlawfully included "turnover savings" in the default budget for positions that have not been eliminated, see Doc. 21 at pp. 1–2, and unlawfully designated certain account reductions in the default budget as "one-time expenditures," see id. at pp. 3–5. As such, while the Board has calculated the default budget to be $70,948,104, see Doc. 20 ¶ 12, Plaintiffs contend that it should be "somewhere between" $72,741,717 and $73,333,631, see Doc. 21 at p. 6.

Although the Board's compliance with RSA 40:13 therefore remains doubtful at this time, the Court declines to issue the extraordinary remedy of mandamus and to order the Board to adopt a certain default budget as Plaintiffs request. See Doc. 21 at pp. 5–6; Doc. 2 at p. 10. For one, although calculation of the default budget is guided by a precise statutory formula, that formula still leaves the Board with some limited degree of discretion in calculating it. See, e.g., RSA 40:13, IX(b) (permitting decreases for "one-time expenditures," which are defined as "appropriations not likely to recur in the succeeding budget") (emphasis added). Based on this factor, the Court is reticent to issue the relief requested because the Court cannot require the government to reach a particular result when the government is otherwise empowered to exercise discretion in determining what the result should be. See Rockhouse Mountain Property Owners Ass'n v. Conway, 127 N.H. 593, 602 (1986).

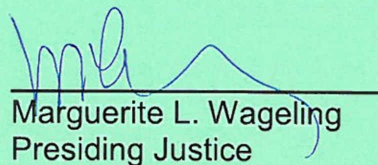
This is not the only factor that warrants against mandamus though, as ordering the Board to recalculate the default budget at this time is simply not practicable in light of the limited time remaining prior to the March 12, 2019 voting session and the impending need to print ballots, including absentee ballots that must be distributed and returned by March 12th. Cf. Mueller, 113 N.H. at 91. As the Board notes in its status report, further delay in printing the ballots carries a heightened risk of reducing absentee participation. See Doc. 20 ¶¶ 10–13. Such delay cuts against the interests of justice and thereby also warrants against a mandamus in this case.

Finally, the importance of the fact that the public now stands as a beneficiary of the scrutiny Plaintiffs have placed on the issues at bar should not be overlooked. It is apparent that this type of public scrutiny was what the legislature intended when it

amended RSA 40:13 in 2018 to require the bodies responsible for calculating default budgets to identify both the "specific items" that changed between the previous year's operating budget and the default budget and "the reasons for each change." RSA 40:13, XI(a)(2). Because of the law's new emphasis on making the default budget calculation process more transparent, Plaintiffs have been able to raise legitimate questions about the Board's default budget calculation. Based on the answers provided by the Board, Plaintiffs have stated: "We are no longer confident in [the Board's] ability to provide accurate information moving forward. The veracity and validity of all [the Board's] documents should be called into question, their credibility has been compromised." Doc. 19 at p. 10. Now armed with the information that Plaintiffs have brought to the fore, the public may agree. For these reasons, at this juncture the Court believes that the best remedy for any impropriety by the Board is the will of the public at the polls, not mandamus from this courthouse.[3] Accordingly, the petition is **DENIED**.

So ordered.

Feb 26, 2019
Date



Marguerite L. Wageling
Presiding Justice

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[3] Because there is "no substantial distinction between mandamus and a mandatory injunction directing the performance of official public duties," Guy J. v. Commissioner, N.H. Dep't of Educ., 131 N.H. 742, 747 (1989) (citations omitted); see Tirrell v. Johnston, 86 N.H. 530, 532 (1934), the Court does not separately consider Plaintiffs' request for injunctive relief.