May 15, 2008

Joyce M. Fulweiler
Town Administrator
Town of Tilton
257 Main Street
Tilton, NH 03276

RE: Fire Study – Legal Questions

Dear Ms. Fulweiler:

The purpose of this letter is to provide advice on the questions raised in Brian Duggan of Municipal Resources’s letter dated March 5, 2008. My understanding is that the Tilton-Northfield Fire District was not originally formed in accordance with the procedure set forth in RSA 52:1. However, it is my further understanding that it is now conceded by all parties involved, including the Towns of Tilton and Northfield, that the Tilton-Northfield Fire District operates under RSA Chapter 52 entitled “Village Districts.” That chapter authorizes the establishment of a district “situated in one or more towns” for a number of municipal purposes, including “the extinguishment of fires.” See RSA 52:1, I(a).

1. **What would be the methodology and timeline associated with dissolving the Tilton-Northfield Fire District?**

RSA 52:21 provides in relevant part that “any village district and any district now in existence having the rights and powers of a village district, may, at an annual meeting, by a 2/3 vote of its legal voters, terminate its existence and dispose of its corporate property.” There are no other provisions in RSA Chapter 52 which govern the dissolution of an existing village district.

Thus the termination of its existence and disposition of its property can only occur at the Fire District’s annual meeting. It cannot occur at a special meeting called for that purpose. Also, dissolution can occur only by “a 2/3 vote of its legal voters.” This does not mean 2/3 of all of the potential legal voters on the Town’s checklist, but only 2/3 of the legal voters who actually attend and vote at the annual meeting.

2. **How would the assets owned by the Tilton-Northfield Fire District be apportioned between the two communities?**

RSA Chapter 52 provides little guidance as to how the assets of an existing district are divided upon dissolution. The first sentence of RSA 52:21 simply provides that the district may vote to “terminate its existence and dispose of its corporate property.” Read
literally, the first sentence of RSA 52:21 would mean that a district could vote at its annual meeting to dispose of its property in any manner whatsoever, as there are no limitations or restrictions in the statute as to how the property may be disposed of. Thus, for example, if the statute is read literally, the Tilton-Northfield Fire District could vote to terminate its existence and transfer all of its property to the Town of Northfield for $1. However, I do not believe that a court of equity would allow that to happen. A court would apply equitable principles so that the property would have to be transferred to the two (2) Towns, Tilton and Northfield, in the same proportion as the Towns contributed to the operation and maintenance of the District over the years, or upon some other equitable basis.

3. What are alternative governance models that could be used to provide oversight to the Fire District and what would be the methodology to change the governance mode?

A village district under RSA Chapter 52 is governed by the district commissioners, in substantially the same way as a town is governed by its board of selectmen. Once a district is formed, it “shall have all the powers in relation to the objects for which it was established that towns have or may have in relation to like objects, and all that are necessary for the accomplishment of its purposes.” See RSA 52:3, II. Further, RSA 52:8 provides as follows:

The moderator, clerk, treasurer and commissioners shall severally qualify and possess the same powers and perform the same duties in respect to the district's meetings and business affairs that the moderator, clerk, treasurer and selectmen of towns respectively possess and perform in respect to like matters in towns.

In the final analysis, therefore, it is the board of commissioners which has all of the powers, duties and responsibilities to govern a village district. Although the commissioners, like the selectmen in a town, have many options available for running the day-to-day affairs of the district, the commissioners are limited in the restructuring that can be done to run those day-to-day affairs.

Pursuant to RSA Chapter 49-B, municipalities (i.e., cities or towns) have the ability to adopt a municipal charter in order to change its basic form of government. See RSA Chapter 49-B. In addition, towns may adopt a charter pursuant to RSA 49-B which abolishes the open Town Meeting form of government and vests legislative authority in a town counsel as elected by the voters of the town. See RSA Chapter 49-D. However, these optional forms of governance do not apply to village districts under RSA Chapter 52.

MRI specifically asks whether control of the District could be restructured through the Fire Chief and, if so, who would be the appointing authority. RSA 52:11 provides as follows:
The commissioners shall appoint a chief engineer and assistant engineers to serve in the fire department for the ensuing year, and may remove them, for cause, after notice and hearing.

While the commissioners have the power to remove the engineers for cause, the chief engineer (i.e., the Fire Chief) runs the fire department on a day-to-day basis, subject to the direction of the commissioners.

MRI also asks whether there could be two (2) representatives from Tilton and one (1) from Northfield as commissioners. All of the commissioners are elected by a district-wide vote at the annual meeting. See RSA 52:3 and 670:1. Unless there is some binding agreement between the two (2) Towns, there could be as few as zero and as many as three (3) commissioners from Tilton or Northfield.

Should you have any questions on any of the above, please contact me.

Sincerely,

Mark H. Puffer

MHP:Jcs

cc: Brian P. Duggan