

March 10, 2017

Michael J. Tursi, Superintendent
Shaker Regional School District School Board
Shaker Regional School District
58 School Street
Belmont, NH 03220

RE: Legal Opinion

Dear Superintendent Tursi and The Members of the Shaker Board:

In response to your request, I have provided an opinion regarding the Board's legal obligations with respect to the Gale School building.

Procedural And Factual History

On March 4, 2016, at the annual school district meeting, the Shaker School District passed warrant article 8, which was amended on the floor of the meeting as follows: (1) to increase the dollar appropriation to \$71,000; (2) to authorize the Board to transfer the property at the corner of Memorial Street and Concord Street; (3) to move the Gale School to said property; and (4) to transfer the Gale School to the Save the Gale School Committee subject to said committee attaining status as a non-profit entity. At the meeting and prior to the amendment, Attorney Matt Serge from this firm advised the voters that that the appropriation of school district funds had to be used for educational purposes and there needed to be a direct school purpose. He advised that moving the Gale School building to the corner lot and giving the building to a non-profit organization would not be a direct school purpose for education. Therefore, he advised, if Article 8 or 9 passed it would be advisory. Attorney Serge informed the voters that the Board would not be obligated to act on articles 7 and 8 if they passed. Likewise, following the amendment and prior to the vote on article 8, the Moderator, Roy Roberts reiterated that article 8 was advisory only. Article 8 passed by voice vote at the meeting.

After the annual meeting, the Save the Gale School Committee obtained non-profit status and filed appropriate paperwork with the Secretary of State to incorporate as a non profit corporation.

On February 8, 2017, at the annual school district deliberative session, there was again a lengthy discussion about the status of the Gale School building in light of the passage of article 8 the previous year. It was clear that some of the voters viewed article 8 as a directive to the Board to sell the building to the Save the Gale School Committee for \$1 and to transfer the building to the corner of Concord street and Memorial street. Other speakers expressed frustration that no

Michael Tursi, Superintendent
Shaker Regional School District School Board
March 10, 2017
Page 2

progress had been made since the 2016 annual meeting. It was also clear that several citizens were under the impression that article 8 was legally binding and that sale of the building to the Save the Gale School Committee, per the terms of article 8, was a foregone conclusion. Notwithstanding the misunderstanding among the citizens, the message was clear that the majority of voters wanted the Board to resolve the fate of the Gale School building once and for all.

Legal Analysis

I concur with the legal opinion provided by Attorney Matt Serge during the 2016 meeting that article 8 was advisory and non-binding. First, by its plain language, article 8 “authorizes” the Board to sell and move the building – article 8 does not contain binding language. Rather, the voters merely authorized the Board to sell and move the building. Therefore, the Board is legally authorized to the extent it is permissible by law.

As a matter of law, however, the Board is not permitted to sell the building for a \$1 and donate school district property to a non-profit corporation, because that would not serve a school district purpose. The general rule is that District cannot spend public funds unless the purpose is directly related to the support of the District’s public schools.¹ As a public municipal corporation, the District relies on authorization from the legislative body to spend any amount of money, and said expenditures must be for a specified purpose. This authorization occurs at the annual District meeting during which voters “raise” and “appropriate” funds for the operation of public schools in the District. Per RSA 198:4, school districts are empowered to raise and appropriate funds only for the support of public schools. As New Hampshire is not a true “home rule” state, school districts have only the powers granted by the legislature, as well as those that are necessarily implied or incidental thereto.² This means that school districts can only appropriate and spend money if there is authority in the law for that specific purpose.

Additionally, the New Hampshire Constitution provides that public money can only be raised and spent for valid public purposes. “Public purpose” is not defined by any statute; however, the New Hampshire Supreme Court has indicated that the “public purpose” limitation means that if public money is spent, the school district has to ensure that the public receives the full benefit of the expenditure.³ If school district funds are spent in a way that incidentally benefits private individuals, the school district must be fully reimbursed by those individuals who benefit so that the taxpayers have not funded a private benefit. Further, such a private benefit can only be made if the purpose is incidental to an action which was carried out for a public purpose.

¹ I also understand that Shelley Gerlarneau, the NH Department of Revenue Municipal Accounts Advisor assigned to the District, has stated in prior emails that there is no obvious public benefit to moving a building only to then give it away.

² *Girard v. Allenstown*, 121 NH 268 (1981).

³ *See Opinion of the Justices*, 88 NH 484 (1937).

In my opinion, the District cannot raise and appropriate funds to preserve a historic building because such expenditure would not be related or incidental to any legitimate public purpose. Although the legislature has empowered the District to purchase school lots and build schools, it has not authorized the District to refurbish or move historic buildings at tax payer expense, or to donate land and buildings to private individuals or corporations without being reimbursed or paid for the land and building. Further, the District is comprised of two towns, Belmont and Canterbury; the restoration and repurposing would only benefit the citizens of one town in the District. Accordingly, the District is prohibited by law from spending taxpayer dollars (a portion of which were raised from taxpayers in Canterbury who would not benefit from the expenditure) to move or preserve the Gale School unless the building will be used for a District purpose.

For the same reason, it would likely be improper for the Board or District to donate property to any person or entity, including a non-profit corporation, unless there is a legitimate school district purpose to support such a donation. The rationale is that the District would be relinquishing revenue from the sale of good and useful land in order to make a donation to private non-profit corporate entity that would not result in a direct benefit to the District.

Next Steps

I understand that a committee made up of Board members, Superintendent Dreyer, and citizens from the Save the Gale School met many times during 2015 and 2016 to exhaustively research and consider all other possible public school district uses for the building. The groups were ultimately unable to agree upon a useful District purpose for the building and the project has been more or less tabled since 2016. The Board and Superintendent Tursi are now in a position where they must bring this issue to a final resolution. I wanted to take some time to frame the legal and practical issues, and then provide you with a preliminary solution. First, you are authorized but not obligated to sell the building, and if you do decided to sell, you are not obligated to sell it to a particular entity or person. Second, \$71,000 was raised and some portion remains in this year's budget. That money will lapse at the end of this fiscal year if it is not spent. You can spend that money to study options for the use or disposal of the Gale School building, including survey costs, legal costs, and other related costs. If you enter into contracts related to this study before June 30, 2017, you can encumber funds to pay those obligations.

Third, assuming the objective of the Board is to dispose of the building once and for all, you can raise and appropriate funds to demolish the building and put a corresponding article on the warrant next year. This was done in 2015 but the article failed. However, because it would cost the District money to demolish the building, I think it would be legal to contribute that same amount to the effort to remove the building from District property. For example, if it would cost \$50,000 to demolish the building, then the District could contribute \$50,000 to any moving/relocation efforts.

Fourth, you are not obligated to donate or sell the Memorial/Concord street lot. The voters cannot mandate the sale unless the Board first recommends it.

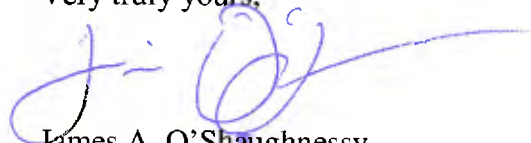
Michael Tursi, Superintendent
Shaker Regional School District School Board
March 10, 2017
Page 4

Finally, there are a couple of threshold questions that need to be answered before the Board can take the next step towards making a plan. The first question is whether the Board wants to find a purpose for the building or dispose of it. Because the second option has been the preference of the Board for several years, I am operating under the assumption that the Board is not interested in using or keeping the building.

The other threshold question is whether the Board is interested in or willing to consider allowing the building to be moved to and occupy the vacant corner lot. Is there a potential future use of this property? Does the Board need to keep it for a legitimate and identified contingency? This determination will dictate the plan, but the Board needs to make a final decision on this issue and communicate the decision to the citizens.

I look forward to discussing this matter with you on Tuesday.

Very truly yours,



James A. O'Shaughnessy

JAO/df