

Executive Council Meeting Report

Meetings of July 10 and July 31, 2019

A. The Judicial Nominations

The Governor nominated Attorney General Gordon MacDonald to be the chief justice of the New Hampshire Supreme Court replacing Robert Lynn who reaches mandatory retirement in late August. He also nominated PUC chairman Martin Honigberg to fill a Superior Court judgeship that became open when Judge Ken Brown retired in February of this year. The Executive Council held hearings on both nominations on June 26th.

The hearing on Mr. MacDonald's nomination was especially well attended with a number of judges and lawyers from larger firms testifying in support of the nomination. There was also an unprecedented petition drive in favor of Mr. MacDonald's nomination that was organized by Jay Surdukowski, a lawyer with a larger firm in Concord. On questioning, it turned out that Mr. MacDonald has never tried a jury trial and, as was evident from his resume, he does not have judicial experience. Mr. MacDonald also could not readily explain his office's intervention in the legislature's consideration of a school voucher bill where the official position of the Attorney General about the bill's constitutionality changed without explanation. Opponents objected to the use of state-funded vouchers that could finance religious education. Early in MacDonald's term, a senior assistant voiced similar concerns. After consulting MacDonald, the assistant changed her position in a short, non-public email sent directly to the Speaker of the House. Finally, Mr. MacDonald testified about his lengthy political resume that included positions in which he was chief of staff and legislative director to U.S. Senator Gordon Humphrey when Senator Humphrey sought to amend the U.S. Constitution to reverse *Roe v. Wade*.

The two judicial nominations were slated for a vote on July 17th. Two days before the meeting, Councilor Pignatelli informed the Governor that three councilors would not support Mr. MacDonald's nomination and the nomination would fail. She asked that the nomination be withdrawn to avoid embarrassing Mr. MacDonald. The Governor refused and, when the Councilors voting in opposition explained their votes, the Governor complained Mr. MacDonald's name was being "dragged through the mud." My opposition to the nomination is explained in a published op-ed available here: concordmonitor.com/Why-I-could-not-support-the-nominee-for-chief-justice-26895023 (hint: no experience, strikingly extreme partisan background, misused the office regarding school voucher law, relationship with the Koch Brothers-funded Josiah Bartlett Center).

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After the vote on MacDonald, the Council should have taken up the vote on Mr. Honigberg to fill the vacant trial court position. Instead, the Governor pulled the nomination claiming he thought we should take a “pause.” Informal polling before the meeting established that Mr. Honigberg’s nomination was non-controversial and that he enjoyed the support of all five Councilors.

B. Inaction re: Judges

The Councilors asked at the July 31st meeting if the Governor would return the Honigberg nomination to the agenda for a vote. The Governor refused. I asked if the Governor had set a new deadline for his Judicial Selection Commission to receive applications for the Supreme Court vacancy. The Governor was unaware of this requirement in his Executive Order and had taken no action to re-start the process despite the looming retirement of Justice Lynn.

C. Further Inaction re: Poet Laureate

In March, the Governor nominated a retired dentist to be the state’s next poet laureate. In doing so, he rejected the careful and considered recommendation of the New Hampshire Poetry Society. Three Councilors, including me, advised the Governor that we would not support his nominee and he withdrew the nomination. However, the Governor has refused to nominate a replacement. Initially, the Poetry Society met privately with the Governor and kept their concerns out of public view. After months of inaction, the Poetry Society went public and an article about the dispute appeared in Slate Magazine. The author framed the question as: “On one side: a decorated literary veteran. On the other: a retired dentist who wrote verse about having sex with Condoleeza Rice. Guess whom the Governor chose?”
slate.com/culture/2019/07/new-hampshire-poet-laureate-controversy.html

D. And, More Inaction re: the Budget

The Executive Council does not have a direct role in re-negotiating the budget that the Governor vetoed. The Council cannot require the Governor to negotiate in good faith or negotiate at all. The Council’s only role is to provide its advice to the Governor. However, the Council is also an aspect of government that is designed to make that government more transparent. So, even if the Governor rejects the advice of the majority of the Council and fails to work quickly to negotiate a resolution, the Councilors may ask questions about the consequences of inaction.

I asked the Commissioner of the Department of Health and Human Services if the budget stand-off affects the provision of services and he said

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that “all services are being provided.” I pressed further noting there are expansions and higher rates of provider compensation in the legislature’s budget. The Commissioner waffled in response. I asked specifically if medical providers have received rate increases while the budget is in limbo and, finally, the Commissioner acknowledged that the increases are stalled. I’ll keep asking questions as the impasse continues.

D. The Breakfast Meetings

Council meetings are generally preceded by an offsite breakfast that starts at 8 a.m. During the summer, the Councilors and Governor take turns choosing the host location consistent with our on-the-road site selection. Councilor Michael Cryans hosted the Governor and Council on July 17th in his hometown of Littleton. Councilor Russell Prescott hosted our meeting in his hometown of Kingston on July 31st when Kingston was celebrating its 325 anniversary. Both host communities provided the Governor and Council with presentations about their rich histories. Two tidbits-Bette Davis summered near Littleton. Josiah Bartlett is from Kingston. He was one of the Granite State’s signers of the Declaration of Independence. His cousin later went on to star in the West Wing.

E. Agenda Items of Interest

Breast and Cervical Screening (7-17)

The Council approved a small increase in a \$480,000 agreement with HealthFirst Family Care Center of Franklin to provide breast and cervical screenings in Belknap County.

Homeless Assistance (7-17)

The Council approved an agreement with Tri-County CAP of Berlin to administer the state’s \$7 million homeless assistance program through 2021.

Block Grants (7-17)

The Council approved federal block grants to be awarded to the following towns, cities and counties in the following amounts: Merrimack County-\$500,000; Berlin-\$500,000; Cheshire County-\$500,000; Concord-\$500,000; Conway-\$500,000; and Jaffrey-\$500,000.

Grants-in-Aid for OHRV and Snowmobile Clubs (7-17)

The Council approved significant transfers from the Fish & Game Department to OHRV and snowmobile clubs realizing the action is not without

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controversy and that careful study is required to determine the proper economic balance of these activities versus environmental impacts and impacts on property values.

Receipt of “3/12s” Funding (7-31)

The Council approved the receipt of “3/12s” funding for Medicare and Medicaid services from the federal government in the approximate amount of \$10 million. The receipt is of only 90 days-worth of funding because the continuing resolution passed by the legislature and the Governor only provides for the continued operation of the state government for that period of time. Commissioner of Administrative Services, Charlie Arlinghaus, explained that the state is in its eighth continuing resolution in lieu of a budget in 70 years and the last, four years ago, was for six months, not three months.

Opioid Response Grant (7-31)

The Council approved the receipt of a pro rata share of the state’s \$35 million grant to address opioid abuse in our state. The grant only covers the period through September 30, 2019, the expiration date for the continuing resolution.

State Liquor Commission Point of Sale Software (7-31)

The Council approved 4-1 a contract to support the State Liquor Commission’s point of sales software system in the amount of \$1.09 million. I voted against the contract because the Liquor Commission is well behind with this project.

Department of Education Independent Contractor (7-31)

The Council approved 4-1 a contract of \$48,000 with Richard Gustufson to act as the “advisor, trainer, coordinator and observer” for site visits for the New England Commission of Higher Education. I voted against the contract.

Pardon Request-Gregory Dawson (7-31)

The Council rejected Mr. Dawson’s request for a pardon hearing.

F. Nominations and Confirmations

The following nominees were confirmed:

Winslow E. Whitten, Raymond, NH to the Board of Medical Imaging and Radiation Therapy

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Jennifer L. Harper, Laconia, NH- Director of Homeland Security & Emergency Management,
Dept. of Safety

Elizabeth E.D. McCormack, Concord, NH – Manager of Employee Relations, Division of
Personnel

J. Paul Mansour, Bridgewater, NH to the NH Municipal Bond Bank

Benjamin R. Jean, Nottingham, NH and Donald M. Roy, Jr. to the NH Retirement System Board
of Trustees

Patricia H. Gruttemeyer, Contoocook, NH to the Occupational Therapy Governing Board

Allan R. Clark, Sugar Hill to the State Board of Fire Control

The following individuals were nominated:

Joseph W. Lessard, Salem; Loren J. Martin, Chichester; Robert J. Gagne, Manchester and David
K. Marazoff, Westmoreland, NH to the Assessing Standards Board

Kevin P. Lachapelle, Tilton, NH-Assistant Director of Homeland Security and Emergency
Management Department of Safety

Jay A. Patel, Board of Dental Examiners

Rachel M. Parkington, Concord, NH to the Board of Hearing Care Providers

Frederick T. Olive, New London, NH to the Board of Medical Imaging and Radiation Therapy

Craig R. Moul, Weare, NH to the Deferred Compensation Commission

Henry E. Thomas, Jr. to the Enhanced 911 commission

Frank H. Lemay, Concord, NH to the Lakes Management Advisory Committee

Robin G. Allister, Plainfield, NH to the Medical Review Subcommittee

Benjamin W. Wilcox, North Conway, NH to the NH Land & Community Heritage Authority
Board of Directors

Ruth B. Ward, Stoddard, NH to the Rivers Management Advisory Committee

G. Spotlight

\$15 an Hour

At my request, the state's agencies began reporting the lowest rates of
compensation paid by state vendors to their employees on the contracts in
question.

July 10, 2019

Charter Brothers Construction, LLC, Danville, NH, agenda item #78 was
awarded a \$1,187,232 contract. They report their lowest hourly wage is a
summer intern position earning \$16-\$18/hr. Their next lowest paid employee
is an Administrative Assistant earning \$19.23/hr. They also report they plan
no layoffs this year.

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American Home Care Specialists, Inc., Woburn, MA, agenda item #24 was awarded a \$15,000 contract. They declined to provide wage information.

H. Next Meeting

Our next regularly scheduled Executive Council meeting will occur on August 14, 2019 beginning at 10 a.m. at the high school in Dover. The agenda for the meeting will be posted by the Secretary of State on the Executive Council web page late on the preceding Friday afternoon.

<http://sos.nh.gov/GC2.aspx>

I will host the Council breakfast at the Dover High School. The public is welcome to attend. We begin at 8 a.m.

G. Items of Interest to District Two, by Region

July 10, 2019

Region 1-Monadnock Region

[#27](#) Authorized, under the Community Development Block Grant program, to award a grant to the County of Cheshire, Keene, NH, in the amount of \$500,000 to support the Tanglewood Park Cooperative acquisition project situated at 17 Sparrow Street, Keene, NH. Effective July 10, 2019 through June 30, 2021. **100% Federal Funds. VOTE: 5-0**

[#42](#) Authorized the Division of Historical Resources to enter into a contract with The No Tomorrow Book Company Inc., d/b/a Pathways Book Service, Keene, NH, to distribute the expanded second edition of *Preserving Old Barns: Preventing the Loss of a Valuable Resource*, in the amount of \$15,000. Effective upon G&C approval through June 30, 2022. **100% Other Funds. VOTE: 5-0**

[#50](#) Authorized to enter into an agreement with the Southwest Region Planning Commission to complete the *Spofford Lake Watershed-based Management Plan Implementation Phase 1: Watershed/Shoreline Best Management Practices*, in the amount of \$80,000. Effective upon G&C approval through December 31, 2021. **100% Federal Funds. VOTE: 5-0**

[#57](#) Authorized the Bureau of Student Wellness, Office of Social & Emotional Wellness to enter into a **sole source** cooperative project agreement with Keene State College, Keene, NH, to work in partnership with the NH Department of Education to provide external evaluation services of the System of Care, in an amount not to exceed \$483,286.64. Effective upon G&C approval through September 29, 2020. **100% Federal Funds. VOTE: 5-0**

Region 2-Merrimack County

Division of Economic & Housing Stability

[#8](#) Authorized to enter into a **sole source** agreement with Community Action Program

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Belknap-Merrimack Counties Inc., Concord, NH, to provide administrative support to the Bureau of Housing Supports in an amount not to exceed \$200,000. Effective upon G&C approval through June 30, 2021. **100% General Funds. VOTE: 5-0**

[#28](#) Authorized, under the Community Development Block Grant program, to award a grant to the City of Concord, NH, in the amount of \$500,000 to support the sewer infrastructure improvement project at the Top of the Hill Cooperative situated at 190 Manchester Street, Concord, NH. Effective July 10, 2019 through June 30, 2021. **100% Federal Funds. VOTE: 5-0**

Region 3-Strafford County

July 31, 2019

Region 1-Monadnock Region

Region 2-Merrimack County

COMMUNITY DEVELOPMENT FINANCE AUTHORITY

[#47](#) Authorized under the Community Development Block Grant program, to award a grant to the Town of Belmont, NH, in the amount of \$304,000 to support the water system improvement project at the Westview Meadows Homeowners Association situated at Horseshoe Drive, Belmont, NH. Effective July 31, 2019 through June 30, 2021. **100% Federal Funds. VOTE: Unanimous**

Region 3-Strafford County

[#17](#) Authorized to enter into a **retroactive sole source** agreement with the University of NH, Durham, NH, to provide a Pediatric Mental Health Project Extension for Community Healthcare Outcomes to build the capacity of NH pediatric primary care clinicians to diagnose, treat, and provide on-going care management for children and youth up to age 21 with behavioral health disorders in an amount not to exceed \$833,000. Effective January 23, 2019 through June 30, 2021. **100% Federal Funds. VOTE: Unanimous**

[#40](#) Authorized the Bureau of Materials & Research to enter into a **sole source** Cooperative Project Agreement with the University of NH Sponsored Programs Administration, Durham, NH, for a cooperative development of NH specific deterioration curves for key bridge elements, for a fee not to exceed \$159,987. Effective upon G&C approval through December 31, 2021. **100% Federal Funds. VOTE: Unanimous**