

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. _____

In re:

Appeal of Woodsville Fire District re: Department of Revenue
Administration 2022 Warrant Article Determinations

APPEAL BY PETITION

UNDER RSA 541:6 AND N.H. SUP. CT. R. 10

From Orders of the

**New Hampshire Department of Revenue Administration –
Municipal and Property Division and Hearings Bureau**

October 12, 2022

By its Attorneys,

ORR & RENO, P.A.
45 S. Main Street, Ste. 400
P.O. Box 3550
Concord, NH 03302-3550
Phone: (603) 224-2381

Jeremy D. Eggleton, Esq.
N.H. Bar #18170
jeggleton@orr-reno.com

Lynnette V. Macomber, Esq.
N.H. Bar #271596
lmacomber@orr-reno.com

TABLE OF CONTENTS

	<u>Page</u>
(a) Names and Addresses of Parties and Counsel	3
(b) Rule 10(1)(b) Documents	
1. Warrant Article Disallowances, May 4, 2022.....	App. 4
2. Request for Hearing, May 16, 2022	App. 7
3. Receipt of Appeal, May 25, 2022.....	App. 45
4. Notice of Hearing, June 3, 2022.....	App. 47
5. Brief of Woodsville Fire District, July 5, 2022.....	App. 58
6. Brief of Municipal and Property Division, July 5, 2022.....	App. 289
7. Reply of Woodsville Fire District, July 18, 2022	App. 353
8. Reply of Municipal and Property Division, July 18, 2022.....	App. 380
9. Transcript of Hearing Held August 1, 2022.....	Requested
10. Final Order, August 12, 2022.....	App. 514
11. Motion for Reconsideration, August 19, 2022.....	App. 525
12. Objection to Motion for Reconsideration, August 25, 2022.....	App. 540
13. Ruling on Motion for Reconsideration, September 12, 2022	App. 543
(c) Questions Presented.....	5
(d) Constitutional Provisions, Statutes, Rules and Regulations.....	7
(e) Provisions of Relevant Contracts and Other Documents	N/A
(f) Statement of the Case	13
(g) Jurisdictional Basis for Appeal.....	19
(h) Reasons to Accept Appeal and Basis for Difference of Opinion on Questions Presented ..	20
(g) Issues Presented are Preserved	33

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

APPEAL OF WOODSVILLE FIRE DISTRICT BY PETITION
UNDER RSA 541:6 AND N.H. SUP. CT. R. 10

Woodsville Fire District (“Appellant” or “Woodsville”), by and through its attorneys, respectfully appeals to this Court pursuant to RSA 541:6 and N.H. Sup. Ct. R. 10, from the following orders of the New Hampshire Department of Revenue (“DRA”), Municipal and Property Division (“Division”) and Hearings Bureau (“Bureau”) in Docket No. 22-096, Appeal of Woodsville Fire District re Town of Haverhill 2022 Warrant Articles:

- (i) May 4, 2022 Warrant Article Disallowance
- (ii) August 15, 2022 Final Order on Appeal
- (iii) September 12, 2022 Ruling on Motion for Reconsideration.

In support of this Appeal, Woodsville respectfully states as follows:

(a) **Names and Addresses of Parties and Counsel**

Woodsville Fire District
4910 Dartmouth College Hwy
Woodsville, NH 03785

By: Jeremy D. Eggleton, No. 18170
Lynnette V. Macomber, No. 271596
Orr & Reno, P.A.
PO Box 3550
Concord, NH 03302-3550
jeggleton@orr-reno.com
lmacomber@orr-reno.com

Lindsey M. Stepp, Commissioner
New Hampshire Department of Revenue Administration
109 Pleasant Street
PO Box 457
Concord, NH 03302-0457

By: Denise A. Daniel, Esq., Hearings Officer
Hearings Bureau – New Hampshire DRA
109 Pleasant Street
PO Box 1467
Concord, NH 03302-1467

Samuel Greene, Director
Municipal and Property Division – New Hampshire DRA
109 Pleasant Street
PO Box 457
Concord, NH 03302-0457

By: Peter C.L. Roth, Esq. (Same Address)

Town of Haverhill – (Non-Party)
2975 Dartmouth College Hwy, North Haverhill, NH 03774

(b) Rule 10(1)(b) Documents

Copies of the following documents relating to DRA Docket No. 22-096 are included in the Appendix to this appeal (hereinafter “App. ___”) in accordance with N.H. Sup. Ct. R. 10(1)(b):

1. Warrant Article Disallowances, May 4, 2022
2. Request for Hearing, May 16, 2022
3. Receipt of Appeal, May 25, 2022
4. Notice of Hearing, June 3, 2022
5. Brief of Woodsville Fire District, July 5, 2022
6. Brief of Municipal and Property Division, July 5, 2022
7. Reply of Woodsville Fire District, July 18, 2022
8. Reply of Municipal and Property Division, July 18, 2022

9. Transcript of Hearing Held August 1, 2022
10. Final Order, August 12, 2022
11. Motion for Reconsideration, August 19, 2022
12. Objection to Motion for Reconsideration, August 25, 2022
13. Ruling on Motion for Reconsideration, September 12, 2022

(c) **Questions Presented**

1. Did the DRA act unlawfully or unreasonably, or engage in an unsustainable exercise of discretion when it precluded the Woodsville Fire District (an established village fire district within the Town of Haverhill) from requesting a hearing with the DRA Commissioner regarding the DRA's disallowance of two voter-approved warrant articles appropriating taxpayer funds to Woodsville Fire District, which would affect Woodsville's tax rate, on the basis that "only the Town of Haverhill" may request a hearing because the warrant articles at issue were approved by Town of Haverhill voters?

2. Did the DRA act unlawfully or unreasonably, or engage in an unsustainable exercise of discretion when it foreclosed Woodsville, an established village district, from seeking review of the DRA's disallowance of voter-approved warrant articles appropriating funding for that village district because the warrant articles originated with the town in which the village district is located, where there is no dispute that the warrant articles affect the subject village district's tax rate for that year?

3. Did the DRA act unlawfully or unreasonably, or engage in an unsustainable exercise of discretion when it ruled that the Commissioner of

the DRA lacks jurisdiction to review a decision of the Municipal and Property Division until after a tax rate has been set?

4. Did the DRA act unlawfully or unreasonably, or engage in an unsustainable exercise of discretion when it disallowed two voter-approved warrant articles appropriating funds to the Woodsville Fire District's highway and fire departments, based on unsupported assertions that (i) Woodsville's operation of its fire department may be *ultra vires*, despite its over one hundred year existence and decades of budget approval by the DRA; and (ii) Woodsville's enabling legislation does not permit Woodsville to receive appropriated funds from the Town of Haverhill, contrary to the clear and unambiguous language of Woodsville's enabling statute which provides that "[a]ny appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting." N.H. Laws 2021, 124:1 (SB26, 2021; HB2 91:434 (2021))?

5. Did the DRA act unlawfully or unreasonably, or engage in an unsustainable exercise of discretion when it ruled that "if the Town [of Haverhill] or the Woodsville fire district can produce evidence showing that a village fire district was formed in conformity with the requirements of law then extant [pursuant to N.H. Gen. Laws, 107:1 (1878)], we will reconsider the deletion of [Warrant] Article 28," and then refusing to consider such evidence offered by Woodsville Fire District and refusing to reconsider its deletion of Article 28?

(d) Constitutional Provisions, Statutes, Rules and Regulations

RSA 21-J:13. Rulemaking Authority.

The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The collection of state taxes administered by the department under RSA 21-J:1, II(a).

II. The form of inventories used by individuals and corporations to list taxable property for return to selectmen and assessors, and the form of return blanks used by selectmen in towns and assessors in cities to make certificates of the number of individuals and the ratable valuation of the ratable estates under RSA 21-J:3, I.

III. The uniform auditing of county accounts and a standardized chart of accounts for those county accounts kept by county officers under RSA 21-J:16.

IV. The uniformity of municipal accounts through a standardized chart of accounts under RSA 21-J:17.

V. [Repealed.]

VI. The approval of appraisers of taxable property including:

(a) Evidence of the professional capability of personnel to be employed under contract under RSA 21-J:11; and

(b) The content of the contract to be approved under RSA 21-J:11, as provided in RSA 71-B.

VII. (a) The format and type of information to be submitted by local units of government which the commissioner needs to establish and approve tax rates.

(b) Interpretations of any statutes used in establishing the tax rate.

(c) The method by which a local unit of government may appeal a decision made by the department in the establishment of tax rates under RSA 21-J:3, XV.

VIII. The criteria which must be met to qualify as a nonprofit housing or health care facility for the purposes of RSA 72:23-k.

IX. The forms and any other information that shall be furnished to the department to perform the annual equalization as required under RSA 21-J:3, XIII and RSA 21-J:15.

X. A method for collecting taxes by electronic transfer under RSA 21-J:3,

XI. [Repealed.]

XII. Certification, decertification, enforcement, and hearing requirements under RSA 21-J:14-f and 21-J:14-g.

XIII. [Repealed.]

XIV. The implementation and administration of a voluntary disclosure program established under RSA 21-J:3, XXXII.

RSA 21-J:35. Setting of Tax Rates by Commissioner.

I. The commissioner of revenue administration shall compute and establish the tax rate of each town, city, or unincorporated place. Any assessments report issued by the commissioner pursuant to RSA 21-J:11-a shall not delay or otherwise affect the setting of the tax rate for that municipality.

II. To compute and establish the tax rates of towns, cities and unincorporated places under paragraph I, the commissioner shall examine the reports required under RSA 21-J:34 to ensure that:

(a) All appropriations have been made in a manner which is consistent with procedural requirements established by statute.

(b) No appropriations have been made which are prohibited by statute.

(c) All revenues have been estimated accurately and in a manner which is not prohibited by statute.

(d) All calculations are correct.

III. If the commissioner finds that appropriations were made in a manner which is inconsistent with statute he shall delete the appropriation or that portion in question.

IV. If the commissioner finds that the estimated revenues included are inaccurate or inappropriate he shall adjust the estimates in question.

V. The commissioner shall notify in writing the governing body of each city or town of the rate he has established. This notification shall include a detailed explanation of all changes made in the appropriations or revenue estimates submitted by the municipality or district in question.

VI. Any town, city, or unincorporated place which is dissatisfied with the tax rate set under this section may, within 10 days of notification, request an oral hearing on this matter before the commissioner of revenue administration. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules he shall adopt under RSA 541-A. After hearing, the decision of the commissioner shall be final.

VII. On or before October 1 of each year, the following state agencies shall provide the department of revenue administration estimates of local aid to be distributed to municipalities and school districts in the current fiscal year for the following local aid programs:

(a) State treasury: meals and rooms distribution pursuant to RSA 78-A:26.

(b) Department of transportation: highway construction aid pursuant to RSA 235:23.

(c) Department of environmental services: water pollution control grants pursuant to RSA 486, water filtration grants pursuant to RSA 486-A, and landfill closure grants pursuant to RSA 149-M:43.

(d) Department of education: federal forest land aid pursuant to RSA 227-H:20 through RSA 227-H:22, state aid for an adequate education pursuant to RSA 198:40-a, school building aid pursuant to RSA 198:15-a, and special education aid pursuant to RSA 186-C:18.

RSA 541:6. Appeal

Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

Department of Revenue Administration Rules

Rev 207.01 Appeals of Property Tax Rate.

(a) The rules of practice and procedure set forth in this part shall apply to all requests for hearing under authority of RSA 21-J:35, VI by any town, city or county.

(b) Notwithstanding (a), above:

(1) Petitions appealing a tax rate set by the department shall be filed within 10 days of the receipt of notification of the rate;

(2) Within 3 business days after receipt of a petition for appeal of tax rate, the department shall set a date for hearing not more than 10 days from the date of receipt and send notice thereof by certified mail to the town, city or county, and by state mail to the responding division; and

(3) In accordance with RSA 21-J:35, VI, the order of the department on any tax rate appeal shall be final except that petitions for reconsideration or motions for rehearing shall be permitted if filed within 5 business days of the issuance of the final decision or order.

Woodsville's Special Legislation

2021 N.H. Laws 124:1 Town of Haverhill; Woodsville Fire District.

Amend 1887, 204:3, as amended by 1899, 196:2; 1990, 37:1; and 2009, 147:1 to read as follows:

SECT. 3. Said district at each annual meeting shall elect by ballot a moderator, a clerk, one auditor, a treasurer, and three commissioners. All of said officers shall be elected by a

majority vote of all the voters present and voting at the annual meeting. Said officers shall exercise in relation to district meetings the like powers to those of moderator, clerk, and selectmen of towns. The commissioners shall have within the district all the powers of the mayor and aldermen of any city respecting highways, sidewalks, and sewers. They shall control and direct the expenditure of all moneys raised under authority of the district and by the town of Haverhill for expenditure in the district. They shall have sole authority to appoint a highway surveyor in said district, and in default of such appointment shall themselves perform the duties of that office. The surveyor or commissioners performing the duties of highway surveyor in the district shall give bond to the town to account for all money coming into their hands, and for the proper care and custody of the property of the town or district which may come into their custody or control, and shall be deemed officers of the town. Nothing in this act shall be construed to impose any distinct or special liability upon the district respecting highways within its limits. ***Nothing in this section shall preclude the Woodsville fire district from maintaining the roads within the precinct at its own expense.*** Vacancies that may occur in the office of commissioner in the district shall be filled by appointment of the remaining commissioners or commissioner, but any commissioner appointed to fill a vacancy shall hold office only until the next annual district meeting. Commissioners shall be residents of the district. ~~[The money appropriated for the distribution of highway funds in the district which is attributable to the town of Haverhill shall be determined by a fraction, the numerator of which shall be the assessed valuation of the properties in the district, and the denominator of which shall be the assessed valuation of the properties in the entire town of Haverhill as determined annually from the town MS-1 form. The town of Haverhill shall appropriate the percentage represented by such fraction for distribution to the highway fund in care of the Woodsville fire district commissioners.]~~ ***Highway block grant funds shall be distributed in accordance with the department of***

transportation formula. Any appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting.

N.H. Laws 2021, 124:1. See App. at 144.

For the full text of Woodsville’s special legislation 1887-Present, see:

App. at 101 (N.H. Laws 1887, Ch. 204, An Act Enlarging the Powers of the Woodsville Fire District);

App. at 123 (N.H. Laws 1899, Ch. 196), An Act to Amend Chapter 204 of the Laws of 1887, Relating to the Powers of the Woodsville Fire District, and to Legalize, Ratify, and Confirm the Adoption of Chapter 204 of the Laws of 1887 and Chapter 78 of the General Laws by Said District, and to Ratify and Confirm All Subsequent Acts of the District and its Officers, and to Authorize the Issue of Bonds by the District);

App. at 127 (N.H. Laws 1990, Ch. 37, An Act to Change the Formula for the Distribution of Highway Funds in the Woodsville Fire District);

App. at 129 (N.H. Laws 2009, Ch. 147, An Act Changing the Formula for Distribution of Highway Funds in the Woodsville Fire District . . .);

App. at 144 (N.H. Laws 2021, 124:1, An Act Relative to Roads Within the Woodsville Fire District, which “Modifies the law on the operation and funding of the Woodsville fire district and directs that appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted at each annual Haverhill town meeting.”).

(e) **Omitted (Not Applicable)**

(f) **Statement of the Case**

At town meeting in March 2022, Town of Haverhill voters petitioned and approved two warrant articles appropriating funds to the highway and fire department of the Woodsville Fire District, a village fire district located entirely within the Town of Haverhill. See App. at 4, 133, 151. Article 27 approved \$298,630 for Woodsville’s highway department and Article 28 approved \$146,974 for Woodsville’s fire department. App. at 4. Both departments serve Woodsville residents who are at the same time residents of the Town of Haverhill. App. at 133 (“The District is a region inside the Town”).

From January through May 2022, Haverhill’s Town Manager communicated with the DRA, attempting to persuade the DRA to disallow Articles 27 and 28. App. at 160-284. The Town Manager repeatedly asserted the Articles were “illegal”¹ and would lead to a situation where village districts across the state could force town taxpayers to provide funding for district operations – violating the general principle that one municipality cannot fund another municipality’s operations (unless special legislation so provides²). See App. at 194, 200.

¹ Notably, Town counsel’s legal opinion did not expressly state the Articles were illegal and did not address the import of Woodsville’s special legislation. See App. at 198-99.

² Opinion of the Justices, 94 N.H. 499, 501 (1947); Keene v. Roxbury, 81 N.H. 332, 335-36 (1924) (power to distribute the public burden, or the public revenue, is purely legislative); App. at 4 (acknowledging one municipality may fund another where special legislation so provides), App. at 297-98 (same); see also 2 McQuillin Mun. Corp. § 4:138 (3d ed.) (“Statutory charges imposed upon a municipality by the legislature take precedence over a more permissive use of municipal funds.”).

This was not a new argument for Haverhill: in 2019, when Haverhill's current Town Manager took office, a dispute arose between Haverhill and Woodsville over highway funding, which was resolved by litigation in which Woodsville's interpretation of its special legislation prevailed.³ App. at 132-43. In 2021, the New Hampshire Superior Court (Grafton) sided with Woodsville and found that the law required Haverhill to follow the highway funding formula set forth in Woodsville's special legislation to determine how much of Haverhill's town highway budget would be returned to Woodsville for its highway operations. See id. For over one hundred years, various funding arrangements have existed between Haverhill and Woodsville, usually with Woodsville receiving a portion of the Town's total highway budget for use by the Woodsville highway department, which serves and maintains the more commercially developed portion of the Town. App. at 133, 364-65.

While the lawsuit was pending, Haverhill succeeded in changing the law so that Haverhill was no longer required to return a specific percentage of town highway funds to Woodsville each year for use by the Woodsville highway department (as the 2009 version of Woodsville's special legislation required). Instead, Haverhill sought amendment of the law to provide that:

Any appropriations to the Woodsville Fire District shall be as directed by warrant articles duly voted by the voters

³ Woodsville was created as a village fire district in 1885 and its powers were subsequently enlarged by the legislature in 1887 and 1899. Additional amendments were made to Woodsville's special legislation in 1990, 2009, and 2021. The 2019 litigation revolved around the 2009 version of Woodsville's statute.

present and voting at each annual Haverhill town meeting.

N.H. Laws 2021, 124:1 (SB26, 2021; HB2 91:434 (2021)).

Haverhill obtained this amendment by persuading the State Legislature that it should remove the legislatively-imposed funding formula and leave it up to the Haverhill voters to decide. App. at 359, n1. Yet, when voter-petitioned warrant articles passed by the voters at the Town of Haverhill 2022 annual meeting in favor of appropriating funds to the Woodsville highway and fire departments, Haverhill’s Town Manager campaigned the Department of Revenue Administration to disallow the warrant articles, claiming they were “illegal” and would open up towns to being forced to fund village districts all over the state. App. at 194, 200.

Without seeking input from Woodsville commissioners, the Municipal and Property Division (“Division”) of the DRA went along with the Town Manager’s position and disallowed the voter-approved Articles. See App. at 4, 160-284.

On May 4, 2022, the Division sent letters to Woodsville Fire District and the Town of Haverhill notifying each that certain of the 2022 voter-approved warrant articles were being disallowed by the Division pursuant to RSA 21-J:35, III. App. at 4-6. The notice stated, in pertinent part:

RE: Disallowance of Warrant Articles 27 and 28

. . .

The Municipal Bureau is required by RSA 21-J:35 to review estimated revenues, voted appropriations, and the manner in which appropriations were voted. This review includes a determination whether [sic] these items are consistent with applicable state statutes.

Article 27 was warned as “Fund the Woodsville Highway Department 2022 Budget. To see if the Town of Haverhill will raise and appropriate the sum of \$466,619, to fund the Highway Department of Woodsville, NH for 2022 operating budget. The intent is to fund the Highway Department and not to place burden on the Woodsville Precinct voters by funding two departments, (Town and Woodsville Fire District) (sic). The Select Board does not recommend this article (0-4-1). The tax impact of this article will be \$1.0808 per \$1,000. This is a petitioned warrant article.” Article 27 was amended to the sum of \$298,630, and the amended article passed.

Article 28 was warned as “Fund the Woodsville Fire Department 2022 Budget. To see if the Town of Haverhill will raise and appropriate the sum of \$146,974, to fund the Fire Department of Woodsville, NH for 2022 operating budget. The intent is to fund the Fire Department and not to place burden on the Woodsville Precinct voters by funding two departments, (Town and Woodsville Fire District) (sic). The Select Board does not recommend this article (0-4-1). The tax impact of this article will be \$0.3657 per \$1,000. This is a petitioned warrant article.” Article 28 was passed as presented.

Articles 27 and 28 will be deleted pursuant to RSA 21-J: 35, III, because they are not consistent with statute. Specifically, RSA 31: 4 permits the voters to appropriate money for purposes not prohibited by law. Under applicable New Hampshire judicial precedent one municipal entity cannot make an appropriation for another unless special legislation so provides.

With respect to Article 27, the special legislation, N.H. Laws, 124: 1 (2021), does not authorize the Town to appropriate money for the Woodsville fire district’s highway department.

With respect to Article 28, the special legislation of the Woodsville fire district does not authorize funding Woodsville’s fire department because we have not seen any evidence that the Woodsville fire district properly organized a fire department consistent with New

Hampshire law. See N.H. Gen. Laws, 107: 1 (1878). Funding an *ultra vires* activity cannot be considered a lawful purpose. That said, if the Town or the Woodsville fire district can produce evidence showing that a village fire district was formed in conformity with the requirements of law then extant, we will reconsider the deletion of Article 28.

The revised appropriations amount for 2022 is \$4,680,056.

Please feel free to contact me at 230-5092 or at jamie.l.dow@dra.nh.gov if you have any questions or concerns.

Sincerely,
Jamie L. Dow
Municipal Accounts Advisor

App. at 4-5. That letter was sent to the Town Manager of Haverhill. At the same time, Woodsville received notification from the Division that one of the Woodsville 2022 warrant articles was being disallowed by the Division, even though that article did not involve appropriations or have anything to do with establishing Woodsville's tax rate. App. at 6. The Division subsequently reversed that disallowance after Woodsville pointed out that the DRA lacks authority to disallow a warrant article unrelated to funding which does not otherwise affect the municipality's tax rate. App. at 44.

Woodsville contacted the Division to request review and reconsideration of its disallowances of Articles 27 and 28, on the basis that (i) Woodsville's special legislation provides clear authority for the Articles; (ii) the DRA had never disallowed warrant articles in previous years for the reasons given its May 4, 2022 Disallowance Letter to the Town of Haverhill; and (iii) that Woodsville's fire department had been in existence for over one hundred years, and is not *ultra vires*. App. at 7. The Division

had expressly invited Woodsville to provide evidence related to the creation of its fire department in its May 4, 2022 disallowance letter. App. at 5.

However, following substantial briefing and an evidentiary hearing held on August 1, 2022, the Commissioner ultimately concluded that she lacks jurisdiction to act on Woodsville’s request, stating that “the District does not have standing to contest the Town of Haverhill’s tax rate”⁴ and that “the Town of Haverhill is the entity permitted under statute to appeal.” App. at 514 (Order). The Commissioner stated that “the District has no standing to appeal a tax rate in this matter even if one had been set.” App. at 522. The Commissioner also found she lacked jurisdiction because “[t]here is no provision in the statute [RSA 21-J:35, VI] that allows for the appeal of the disallowances of warrant articles prior to a tax rate being set.” App. at 523. The Commissioner stated she lacked subject matter jurisdiction entirely over Woodsville’s request and that “any order that I would make in this case would be void.” Id.

Woodsville filed a Motion for Reconsideration on August 19, 2022, arguing that (i) it was contesting its own tax rate, not Haverhill’s, and thus has standing to appeal the disallowances; and (ii) the Commissioner has subject matter jurisdiction to allow or disallow appropriations articles and adjust estimated revenues consistent with RSA 21-J:35, I-IV. App. at 527-38. Woodsville also pointed out that the legislature intended the DRA to promulgate rules relative to “[t]he method by which a local unit of government may appeal a decision made by the department in the

⁴ At no point in the proceedings did Woodsville argue that it was contesting Haverhill’s tax rate; to the contrary, Woodsville made clear it was contesting the disallowances as they would affect Woodsville’s tax rate. App. at 532.

establishment of tax rates under RSA 21-J:3, XV.” RSA 21-J:13, VII(c). App. at 529. RSA 21-J:3, XV, directs the Commissioner to “[e]stablish and approve tax rates as required by law.” RSA 21-J:3, XV.

The Commissioner denied Woodsville’s Motion for Reconsideration without addressing Woodsville’s argument that it is appealing its own tax rate, and not Haverhill’s, or that the Commissioner has ongoing jurisdiction over the Tax Rate Setting Process. See App. at 543-48. The Commissioner upheld her finding that the statutory scheme requires the setting of a tax rate before she has subject matter jurisdiction to reverse the disallowance of warrant articles. See id. The Commissioner reiterated her conclusion that Woodsville lacks standing to contest the disallowance of Articles 27 and 28, even if the tax rates had been established, thus foreclosing any ability for Woodsville to appeal the decision – except to this Court.⁵ See id.

The ruling on the Motion for Reconsideration was dated September 12, 2022. App. at 548.

(g) Jurisdictional Basis for Appeal

Decisions of the Department of Revenue Administration are subject to this Court’s review in accordance with RSA 541. RSA 541:6 provides for an appeal by petition to the Supreme Court within thirty days after the

⁵ The DRA’s cover letter to its September 12, 2022 Order stated that “[a]s provided in RSA 21-J:28-b, IV, you have the right to appeal this order within thirty (30) days to the Board of Tax and Land Appeals . . . or to the Superior Court of the county in which you reside.” App. at 543. Accordingly, Woodsville is filing a complaint appealing the DRA’s decisions to the Grafton County Superior Court contemporaneously with the filing of this appeal. However, RSA 21-J:28-b pertains to individual taxpayer abatement appeals and Woodsville submits that appeal to this Court is the correct mechanism for seeking review.

application for a rehearing is denied, or within thirty days after the decision on rehearing. Id. The DRA’s decision on reconsideration was dated September 12, 2022. App. at 548. Therefore, this petition for appeal is timely filed.

Woodsville anticipates that the DRA may argue that this appeal is not ripe, not authorized from a final decision of the DRA, or otherwise is unlawful for lack of subject matter jurisdiction or other avenue for appeal, statutory or otherwise. Given the direct and substantial impact on Woodsville, if there is no statutory or regulatory avenue for appeal of the DRA’s decisions, on the merits and on the procedure, then Woodsville requests that the Court accept this appeal as a request for Writ of Certiorari. See Petition of Malisos, 166 N.H. 726, 728 (2014) (writ of certiorari sole method of obtaining judicial review of agency decision when there is no statutory or regulatory alternative route of appeal); see N.H. Sup. Ct. R. 11.

(h) Reasons to Accept Appeal and Basis for Difference of Opinion on Questions Presented

Introduction

The DRA dismissed Woodsville’s appeal because Woodsville’s “request for reconsideration of the disallowance of the Town of Haverhill’s warrant articles under RSA 21-J:35, VI, was prematurely filed” and “even if the request had not been prematurely filed, the District had no standing to appeal a tax rate for the Town of Haverhill.” App. at 543. The Commissioner determined she lacked subject matter jurisdiction “to issue a decision on the merits in this case” because of the standing issues raised by the DRA’s interpretation of RSA 21-J:35, VI. App. at 523. Thus, this case

presents two issues of first impression for this Court: the scope of the Commissioner's authority over the tax rate setting process under RSA 21-J:35, I-VI, and whether a village district dissatisfied with its tax rate has standing to request a hearing pursuant to RSA 21-J:35, VI, where the request is based on the disallowance of warrant articles of the Town in which the village district is located.

The Commissioner's conclusion that she lacks subject matter jurisdiction over the merits of Woodsville's request – seeking to reinstate Warrant Articles 27 and 28 – was incorrect as a matter of law. The basis for that conclusion, Woodsville's purported lack of standing to request a hearing, was further error: Woodsville is not only a proper party to request reconsideration of a decision affecting its tax rate under RSA 21-J:35, VI and RSA 21-J:13, VII(c), but it is also a party aggrieved by the Division's misinterpretation of Woodsville's special legislation – an interpretation that, without acceptance of this appeal, will continue to stand, and deprives all Town of Haverhill voters (including those residing in Woodsville) of their statutorily granted authority to appropriate funds to the Woodsville Fire District.

This Court has held that “[v]otes passed at town meetings should be liberally construed, and if they fall within the authorized power of the town, subtle distinctions will not be made to defeat the plain intent of the voters.” Baker v. Hudson Sch. Dist., 110 N.H. 389, 393 (1970). Statutes should not be interpreted in a way that contravenes “the policy in this state of allowing the voters to control appropriations.” Id. at 392-93. “Where two constructions of a statute are permissible, the one which preserves the validity of the vote must prevail.” Id. at 393 (emphasis added).

This case should be about protecting the democratic process and the clear, unambiguous act of the legislature granting Haverhill voters authority to appropriate funds to the Woodsville Fire District, as Haverhill has for over one hundred years. See App. at 133. Town of Haverhill voters approved Warrant Articles 27 and 28 at their 2022 annual town meeting even though the Town of Haverhill selectboard recommended against approving those Articles. App. at 4. The voters knew exactly what they were doing; yet the DRA’s disallowance of those Articles – the result of *ex parte* urging by Haverhill’s Town Manager – entirely disenfranchises those votes. Woodsville submits that any person reviewing the merits of its appeal should quickly conclude that the DRA erred in rejecting Articles 27 and 28. See App. at 58, 353 (Woodsville’s briefing on the merits).

Despite an evidentiary hearing lasting over two hours, the Commissioner of the DRA ultimately concluded that she lacked jurisdiction to review the matter at all – regardless of the evidence Woodsville provided that (i) its fire department, in existence since 1886, is not *ultra vires*, and (ii) the clear and unambiguous language of its special legislation authorizes Town of Haverhill voters to approve appropriations to Woodsville Fire District at the annual Haverhill town meeting. N.H. Laws 2021, 124:1 (SB26, 2021; HB2 91:434 (2021)) (“Any appropriations to the Woodsville Fire District shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting.”).

Unfortunately, the Commissioner’s rulings with respect to Woodsville’s standing have precluded review of the merits of Woodsville’s case. For the reasons set forth below, this Court should hold that the Commissioner has authority and jurisdiction pursuant to RSA 21-J:35, II-

VI, to reinstate Articles 27 and 28, and that Woodsville has standing to request the hearing contemplated by RSA 21-J:35, VI, to “appeal a decision made by the department in the establishment of tax rates”, RSA 21-J:13, VII(c), because the DRA’s disallowance (i) affects Woodsville’s tax rate, and (ii) misinterprets the clear and unambiguous language of Woodsville’s special legislation, in a manner that will carry forward to prevent Woodsville from ever receiving voter-approved funds from the Town of Haverhill, contrary to the clear mandate of the legislature in 2021 N.H. Laws, 124:1.

Acceptance of this appeal is necessary to prevent the substantial injustice caused by the DRA’s decision: disenfranchisement of procedurally valid Haverhill town meeting voter-approved appropriations; significantly decreased estimated revenues for Woodsville’s operations⁶; and the erroneous assertion that Woodsville’s fire department is *ultra vires*, which ignores Woodsville’s formation as a village fire district in 1885⁷ and would have significant consequences for the twenty-plus current employees of the Woodsville fire department. For the reasons set forth below, Woodsville respectfully requests that this Court reverse the decisions of the DRA, find that Woodsville has standing under RSA 21-J:35, VI, reinstate Warrant Articles 27 and 28, and hold that Woodsville’s special legislation authorizes Haverhill voters to appropriate funds to Woodsville fire district as the plain language of the statute clearly permits.

⁶ See App. at 295 (acknowledging that the two warrant articles will affect Woodsville’s tax rate).

⁷ See App. at 65-68 (chronology of Woodsville formation and laws).

1. The Commissioner Has Statutory Authority Over the Tax Rate Setting Process, and Ongoing Jurisdiction to Reinstate Warrant Articles 27 and 28.

The Municipal and Property Division asked the Commissioner to dismiss Woodsville’s request to reinstate Articles 27 and 28 because, it argued, the Commissioner lacked subject matter jurisdiction until such time as the tax rate has been set, and because it construes RSA 21-J:35, VI, as only providing a right of appeal to the Town of Haverhill, but not Woodsville. See App. at 293-96. Although the Division had expressly invited Woodsville to provide evidence demonstrating that Woodsville’s fire department was validly formed consistent with the laws of 1878 – a surprising request in and of itself – it then used an overly technical construction of RSA 21-J:35, VI, to preclude Woodsville from providing the very information requested. The Commissioner adopted the Division’s construction of RSA 21-J:35, VI, and stated that she lacks subject matter jurisdiction to review the merits of Woodsville’s appeal because Woodsville lacks standing to “appeal the Town of Haverhill’s tax rate” and, even if it had standing to request the hearing contemplated by RSA 21-J:35, VI, the Commissioner lacks subject matter jurisdiction until after a tax rate has been set. See App. at 514 (Order). This construction of the Commissioner’s statutory authority and subject matter jurisdiction were error.

The Commissioner is empowered to establish the tax rate and adjust estimated revenues, including appropriations, under RSA 21-J:35, I-IV. While the Commissioner has delegated these duties to the Municipal and Property Division, see App. at 293, the Commissioner retains authority

consistent with the statute to adjust appropriations and revenues prior to the tax rate being set. See RSA 21-J:35, II-V. However, the Commissioner's Order finds that she lacks jurisdiction to review the merits of Woodsville's appeal because it was "prematurely filed pursuant to the provisions of RSA 21-J:35, VI, and N.H. Code of Admin. Rules, Rev. 207.01." This is incorrect because the filing of the appeal is not what creates jurisdiction for the Commissioner to overturn a decision of the Division. The Division is acting on the Commissioner's behalf and the Commissioner is empowered by statute to make adjustments to appropriations. The Commissioner's finding that "any order that I would make in this case would be void" is incorrect because the Commissioner has ultimate say, pursuant to statutory authority, over whether appropriations articles are deleted as contrary to the law. RSA 21-J:35, II-III. This occurs before the annual tax rate is set. RSA 21-J:35, II-V.

RSA 21-J:35, VI provides a 10-day limitation for appeals, running from the receipt of notification of the tax rates established under the chapter, but does not purport to limit the Commissioner's jurisdiction to review her own delegated determinations made by the Department to a post-tax rate setting timeframe. That would lead to an absurd result because the Commissioner, upon discovery of a clear error, would be prohibited from correcting the error until after the tax rate has already been set. The Commissioner has broad subject matter jurisdiction over the tax rate setting process, and construing RSA 21-J:35, VI as imposing a limit on that jurisdiction is contrary to the statutory scheme. The cases relied on in the Order of the Commissioner, including Appeal of Campaign for Ratepayers' Rights, 162 N.H. 245, 250 (2011) and Phetteplace v. Lyme,

144 N.H. 621, 625 (2000), are distinguishable because they involved statutorily created reviewing bodies with specified prerequisites to subject matter jurisdiction (the Site Evaluation Committee and the Superior Court, respectively).⁸

It is clear from the plain language of RSA 21-J:35, I-VI, that the legislature intended to empower the Commissioner to decide whether “appropriations were made in a manner which is inconsistent with statute,” which is the only circumstance in which the Commissioner is instructed to “delete the appropriation or that portion in question.” RSA 21-J:35, III. The Commissioner is empowered to adjust estimated revenues when they are “inaccurate or inappropriate.” RSA 21-J:35, IV. The Commissioner makes these determinations as part of the tax rate setting process, and the legislature sought to provide a mechanism by which “a local unit of government may appeal a decision made by the department in the establishment of tax rates”. RSA 21-J:13, VII(c). As this Court recently found in an analogous scenario, the Commissioner’s interpretation of the statute would impermissibly read out of the statute her authority as provided in RSA 21-J:35, II-IV. See Appeal of Javier Vasquez / Appeal of Matosantos International Corporation (Compensation Appeals Board), ___ N.H. ___, p.4 (Sept. 30, 2022) (finding that the Department of Labor and

⁸ Reliance on Phettplace was especially misplaced because the Court there stated “we have held that compliance with the procedural deadline for filing an appeal is a necessary prerequisite to establishing jurisdiction.” 144 N.H. at 625. (emphasis added). That case involved a filing that was made after a statutory deadline had run; it does not support the proposition that the Commissioner lacks subject matter jurisdiction here over the merits of Woodsville’s appeal simply because it was filed before the tax rate was set.

Compensation Appeals Board have authority to interpret insurance contracts by virtue of reference to resolving disputes between employers and insurance carriers) (citing In re JAMAR, 145 N.H. 152, 154 (2000) (stating that administrative agencies possess implied or incidental power reasonably necessary to carry out the powers expressly granted to them by statute.); Brown v. Brown, 133 N.H. 442, 445 (1990) (language “cannot be read out of [a] statute”)).

The Commissioner’s conclusion that she lacks jurisdiction to reinstate Articles 27 and 28, if true, would deprive the Commissioner of authority to correct any mistakes made during the tax rate setting process, contrary to the statutory scheme and clear intent of the legislature. See RSA 21-J:35, I-VI. Courts “will not defer to an agency's statutory interpretation when . . . it clearly conflicts with the statutory language or is plainly incorrect. Doe v. Comm'r of New Hampshire Dep’t of Health & Hum. Servs., 174 N.H. 239 (2021). Instead, this Court should find that the Commissioner has express authority to make adjustments necessary during the tax rate setting process to ensure that legally adopted appropriations are upheld. That authority includes implicit authority to correct a mistake made by the Division in deciding to disallow Articles 27 and 28.

As Woodsville argued below, the Commissioner’s power to reinstate a warrant article is not determined by the timing of when the tax rate is set, nor who seeks the hearing contemplated by RSA 21-J:35, VI. Assuming Woodsville is correct that Articles 27 and 28 are not illegal or invalid, it is more consistent with the statutory scheme to reinstate them before the tax rate is set, because the goal of the tax rate setting process is to ensure the tax rate is based on valid appropriations, and accurately estimated revenues.

See RSA 21-J:35, II-IV. Where the Articles should not have been disallowed in the first place, it is well within the Commissioner's authority to reinstate them. Because the Commissioner acted "illegally" with respect to construing the limits of her jurisdiction, the Order should be reversed and the case remanded for the Commissioner's determination on the merits.

2. Woodsville Has Standing to Seek Review of the DRA's Decision to Disallow Voter-Approved Warrant Articles that Provide Funding to Woodsville as Authorized by Woodsville's Special Legislation.

Woodsville has standing to seek review of the Division's improper interpretation of Woodsville's special legislation, which was the basis for the Division's disallowance of Articles 27 and 28, because the Division's interpretation affects Woodsville's tax rate and forecloses Woodsville from receiving appropriations that are authorized by statute. RSA 21-J:35, VI provides:

Any town, city, or unincorporated place which is dissatisfied with the tax rate set under this section may, within 10 days of notification, request an oral hearing on this matter before the commissioner of revenue administration. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules he shall adopt under RSA 541-A. After hearing, the decision of the commissioner shall be final.

The legislature sought to provide a mechanism for "local government units" such as Woodsville to appeal "a decision made by the department in the establishment of tax rates", RSA 21-J:13, VII(c), and contrary to the Commissioner's interpretation of the statute, there is no legislative directive that a municipality can only appeal a decision when

that decision does not involve the warrant articles of another municipality. See RSA 21-J:35, VI.

However, that is how the Commissioner interpreted RSA 21-J:35, VI: “only a town, city, or unincorporated place may appeal its own tax rate.” (Aug. 11 Order, p.8) (emphasis added). Woodsville was clear throughout its pleadings and argument that it was contesting a decision affecting Woodsville’s tax rate; not the Town of Haverhill’s. See App. at 533. Yet, the Commissioner’s Orders repeatedly assert that Woodsville was appealing Haverhill’s tax rate. App. at 522, 545. The Commissioner erroneously interpreted the statute to mean that only the Town of Haverhill “is the entity permitted under statute to appeal” because the appeal involved Haverhill’s Warrant Articles 27 and 28. App. at 522.

Woodsville has standing under the statute because it is a “town” for purposes of the statute; otherwise, the Commissioner would have no authority to compute and establish its tax rate under RSA 21-J:35, I (“[t]he commissioner of revenue administration shall compute and establish the tax rate of each town, city, or unincorporated place.”).⁹ It is “dissatisfied” with its 2022 tax rate because the Division disallowed two warrant articles,

⁹ Village districts are made subject to RSA 21-J:35 by virtue of RSA 21-J:34, incorporated into RSA 21-J:35, III. “The governing body of each city, town, . . . and village district . . . shall submit to the commissioner of revenue administration the following reports necessary to compute and establish the tax rate for each” RSA 21-J:34. The commissioner computes and establishes the tax rate by examining the reports required under RSA 21-J:34. Unless the Division construes the statute as not authorizing the commissioner to establish a tax rate for village districts, “town, city, or unincorporated place” must include village districts when construing the statute as a whole. See also, e.g., RSA 37:1 (“town” shall be construed to include village districts or precincts, under law governing Town Managers).

authorized by Woodsville’s special legislation, that will increase Woodsville’s 2022 tax rate. See RSA 21-J:35, VI (requirement that town be “dissatisfied” with tax rate to request a hearing under the chapter). This circumstance, where the Division has misconstrued the plain language of Woodsville’s enabling legislation and improperly refused voter-approved appropriations, appears to be exactly what the legislature contemplated when it instructed the DRA to promulgate rules relative to the “method by which a local unit of government may appeal a decision made by the department in the establishment of tax rates”. RSA 21-J:13, VII(c). Disallowing warrant articles pursuant to RSA 21-J:35, III, constitutes a “decision made by the department in the establishment of tax rates”. Woodsville should not be precluded from this statutory right simply because its request involves warrant articles of “another municipality” – here, the very municipality that Woodsville’s public operations serve in significant part.

This is particularly true when the Division’s decision to disallow the articles was based on its interpretation of Woodsville’s special legislation, and that interpretation potentially impacts the legitimacy of Woodsville’s fire department operations. The decision impermissibly removes the statutory authority of Haverhill voters to appropriate funds for Woodsville Fire District, and the authority of Woodsville to receive those funds, which impacts (and will continue to impact) Woodsville’s revenue year after year.

The DRA improperly misconstrued RSA 21-J:35, VI, as entirely precluding Woodsville from seeking review of the Division’s May 4, 2022 disallowance, despite the clear legislative mandate that “local units of government” should have a “method by which” to “appeal a decision made

by the department in the establishment of tax rates”, such as the Division’s decision here to disallow Articles 27 and 28 (even if that appeal must occur after the tax rate is set).

Woodsville respectfully requests that this Court hold that the DRA’s interpretation of RSA 21-J:35, VI, was error, and that Woodsville Fire District is authorized by statute to request a hearing on the Division’s decision to disallow two voter-approved warrant articles that provide significant (and legislatively authorized) funding to the District – even if such a hearing must occur after the 2022 tax rate is set.

3. The DRA’s Construction of Woodsville’s Special Legislation is Clearly Unreasonable.

Woodsville’s special legislation expressly authorizes the appropriations that were improperly rejected by the DRA. The legislative intent of Woodsville’s statute is clear from the language of the statute itself, construing that language according to its plain and ordinary meaning: “***Any appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting.***” N.H. Laws 2021, 124:1 (SB26, 2021; HB2 91:434 (2021)) (emphasis in original).

The statute plainly authorizes the voters of the Town of Haverhill to vote at their annual meeting to appropriate funds **to** Woodsville fire district. The legislature used the word “to” – not “of,” “for,” or “on behalf of” – indicating that any appropriations **to** Woodsville, whether selectmen-proposed or voter-proposed, **shall** be as directed by **Haverhill** voter-approved warrant articles. The requirement that Haverhill voters approve

the appropriations makes clear that such appropriations come from Haverhill as a whole and are not appropriations on behalf of Woodsville taxpayers only. Separately, the section provides that “[n]othing in this section shall preclude the Woodsville fire district from maintaining the roads within the precinct at its own expense.” If the statute intended to provide that Woodsville always had to maintain the roads within the precinct at its own expense – which is how the Division interpreted the statute – the legislature would have said so. Instead, it is clear that the statute provides a way for Haverhill to control the amount of appropriations it makes to Woodsville fire district by all of Haverhill’s taxpayers, who must approve the appropriations (and which appropriations are in addition to those raised by Woodsville’s taxpayers). The Legislature’s use of the word “shall” indicates the language is mandatory. That is exactly what the voters of the Town of Haverhill did.

Courts will not construe a statute so as to “render it a virtual nullity.” Wolfgram v. New Hampshire Dep’t of Safety, 169 N.H. 32, 36 (2016). However, the Division’s interpretation of Woodsville’s statute as amended does exactly that. “Where two constructions of a statute are permissible, the one which preserves the validity of the vote must prevail.” Baker v. Hudson Sch. Dist., 110 N.H. 389, 393 (1970).

Where the Commissioner, through the Division, disallowed Articles 27 and 28 despite the plain language of N.H. Laws 2021, 124:1, and the Commissioner has refused to reinstate them (despite holding an evidentiary hearing on the merits of Woodsville’s appeal), this Court should find, upon review of the record, that the DRA acted unreasonably, arbitrarily, and illegally with respect to observance of the law, and reverse the Orders of

the Commissioner dismissing Woodsville’s appeal and the decision of the DRA to disallow Articles 27 and 28. This Court is “still the final arbiter of the legislature’s intent as expressed in the words of the statute considered as a whole.” Doe v. Comm’r of New Hampshire Dep’t of Health & Hum. Servs., 174 N.H. 239 (2021). Where Woodsville’s special legislation unambiguously authorizes Haverhill voters to appropriate funds to Woodsville Fire District, this Court should find that the DRA’s May 4, 2022 disallowance was error.

Conclusion

As set forth above, this case presents the Court with a compelling opportunity to decide, modify, or clarify the jurisdiction of the Commissioner of the DRA over the tax rate setting process, and the relationship between Town and Village District as dictated by the clear and unambiguous act of the legislature. Acceptance of this appeal is Woodsville’s only hope for correction of the Division’s misinterpretation of its enabling statute, which impacts not only Woodsville’s tax rate, but the longstanding and ongoing relationship between Woodsville and Haverhill.

(i) Issues Presented are Preserved

The issues raised in this appeal by petition have been raised in pleadings filed with the Department of Revenue Administration, at the hearing held on August 1, 2022, and in Woodsville’s Motion for Reconsideration, and properly preserved for appellate review. See, e.g., App. at 58 (Woodsville’s Submission to the Hearings Bureau); App. at 353 (Woodsville’s Reply to the Division’s Submission to the Hearings Bureau); App. at 525 (Woodsville’s Motion for Reconsideration).

Respectfully Submitted,

WOODSVILLE FIRE DISTRICT

By its Attorneys,

ORR & RENO, P.A.

Date: Oct. 12, 2022

By: /s/ Jeremy D. Eggleton
Jeremy D. Eggleton, Esq. (N.H. #18170)
Lynnette V. Macomber, Esq. (N.H. #271596)
45 South Main Street
P.O. Box 3550
Concord, NH 03302-3550
Tel: (603) 224-2381
Fax: (603) 223-9018
jeggleton@orr-reno.com
lmacomber@orr-reno.com

I hereby certify that a copy of the foregoing was sent contemporaneously this date to the N.H. Department of Revenue Administration, Municipal and Property Division, to Peter Roth, Esq., and Denise A. Daniel, Esq., via e-mail with conventional service to follow on October 13, 2022, and a copy of the foregoing was also sent to the New Hampshire Attorney General's Office pursuant to N.H. Sup. Ct. R. 10(7).

Date: October 12, 2022

By: /s/ Lynnette V. Macomber
Lynnette V. Macomber, Esq.