

*Copy of letter to Sumner*

October 1, 2003

Sumner Kalman  
147 Main Street  
Box 988  
Plaistow, NH 03865

Dear Sumner:

In 1944 the Town adopted Warrant Article 2 (see enclosed sheets) which gave the authority to elect the Fire Chief to the Fire Association. Last year, the firefighters went from volunteers to paid call.

The Board of Selectmen consider the firefighters town employees and town personnel policies apply—specifically, the Selectmen have the authority to appoint the Fire Chief and other department heads.

Does town personnel policy supercede the town vote in 1944? or Who has the authority to appoint the Fire Chief—the Fire Association or the Board of Selectmen?

Thank you for your advice.

Sincerely,

Vic Richards  
Town Administrator

*Sumner F. Kalman*  
*Attorney at Law, P.C.*

SUMNER F. KALMAN (NH)  
THEA S. VALVANIS (NH & MA)

147 Main Street, Box 988  
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October 6, 2003

Vic Richards, Administrator  
Town of Atkinson  
21 Academy Avenue  
Atkinson, NH 03811

RE: Appointment of Fire Chief

Dear Vic,

We are in receipt of your letter dated October 1, 2003, which asks the question, "Does town personnel policy supercede the town vote in 1944? Or Who has the authority to appoint the Fire Chief-the Fire Association or the Board of Selectmen?"

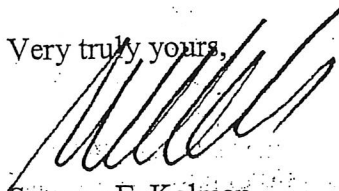
The answer to your question is found in RSA 154:1 entitled, "Organization" III which states "a municipality may choose a form of fire department organization different from those set forth in paragraph I, including the election of the fire chief, fire officers or firefighters, or all such persons, by the firefighters".

It would appear that the Town of Atkinson is functioning under RSA 154:1, III.

Paragraph IV indicates the procedure for a "change" to the "organization of its fire department from one form to another".

It is my opinion that the "town personnel policy" promulgated by the Board of Selectmen would not supercede the town meeting vote of 1944. Any change to the form of organization could only occur by warrant and specific town meeting action.

Very truly yours,

  
Sumner F. Kalman

SFK/dmw

Town Warrant, Town of Atkinson, State of New Hampshire. To the inhabitants of the Town of Atkinson, in the County of Rockingham, in the said State, qualified to vote in town affairs; You are here by notified to meet in the Grange Hall, in said town Monday the twenty fourth day of April next at seven thirty o'clock in the evening to act on the following subjects :

- Article 1. To see if the Town will vote to authorize the Firemen to manage the Fire Department and control all the finances raised by the town for said Department , providing the firemen form an association, keep a record of all finances and expenditures, same to be audited annually by the Town Auditors and printed in the Annual Town Report
- Article 2. The Association to elect the chief and all other officers of the Fire Department, also all new members of the association.
- Article 3. All bills against the Fire Department shall be subject to the approval of a majority of the Board of Engineers before payment, and an order for payment of same shall be signed by a majority of the Board of Engineers and presented to the Board of Selectmen for payment. Expenditures not to exceed the appropriations made at a regular or special Town Meeting

Given under our hand and seal this eight day of April in the year of our Lord, one thousand nine hundred and forty-four. (April 8 – 1944.)

Milton P. Wood	Selectmen of
Oscar P. Little	Atkinson
Roger B. Sawyer	New Hampshire

Attest:	Milton P. Wood	Selectmen of
	Oscar P. Little	Atkinson
	Roger B. Sawyer	New Hampshire

28 April 8 – 1944 con't

Atkinson, N.H.

April 8 1944

We, hereby certify that on the eight day of April last we posted an attest copy of the written warrant at the place of meeting within specified and a like copy at Sitckneys Store, a public place in this town.

Milton P. Wood	Selectmen of
Oscar P. Little	Atkinson
Roger B. Sawyer	New Hampshire

Rockingham, ss.

Then personally appeared Milton P. Wood, Oscar P. Little and Roger B. Sawyer and made oath to the above, before me,

Ruth L. Sawyer Town Clerk  
Attest, Ruth L. Sawyer Town Clerk  
Atkinson N.H.  
April 24 -1944

Special Town meeting called to order at 8:10 PM by John H. Smith, moderator who read the warrant.

Article 1. Mr. Thomas C. Duffy made motion that an amendment to this article be made + asked that he be allowed read from the warrant the article as desired, which follows as read: To see if the Town will vote to authorize the Firemen to manage the Fire Department, providing the firemen form an association, keep a record of all finances and expenditures, same to be audited annually by the Town Auditors and printed in the Annual Town Report.

Hand vote on this amendment was taken 12 yes 0 no. A second vote was requested by John H. Smith moderator to adopt the amendment as read with a hand vote 14 yes 0 no

Article 2. This article was adopted as read from original warrant Mr. T.C. Duffy explained the difference between Board of Engineers and members of Firemen Association. Hand vote after motion and second of same 18 Yes 0 No

Article 3. This article was adopted as read – hand vote 18 yes 0 no  
Question was asked by Harry B. Tuttle, “Can selectmen veto bill when presented?” Answer by Milton P. Pressey No bill will be presented that is larger of any question as to same, without first consulting Selectmen.  
Statement to this effect made as explanation by Mr. Pressey.

Meeting dissolved: at 8:27 PM

Attest: Ruth L. Sawyer, Town Clerk  
Atkinson NH