

## **Town / Fire Department Over Expenditure Issue Overview**

After the Fire Department over-expended a budget expense line due to an oversight in the budget process, the town administrator who was unaware of any legal documents to the contrary, did as instructed according to town policy, and requested that an over-expenditure slip be submitted by the Fire Department for approval by the Board of Selectmen.

The Fire Chief took exception to the request and asked to appear before the board at their May 23, 2016 selectmen's meeting. At that time, he stated that the 1944 town warrant that created the Atkinson Fire Department and the related Fire Association gave them (the fire association) authority over the control of the expenses within the department so long as the bottom line of the budget was not over-expended. According to Fire Chief Murphy, a previous Board of Selectmen had once before sought a ruling as to its legality via a legal opinion from our town council, Attorney Sumner Kalman. On October 6, 2003 Attorney Kalman stated that in his opinion, the "town personnel policy" promulgated by the Board of Selectmen would not supersede the town meeting vote of 1944.

After discussion among the board members and the chief, the selectmen voted to ask the Town Administrator Alan Phair to seek outside counsel to get another, more current opinion. They specifically wanted to know whether there are any RSA's in existence that would clarify whether the fire department could still be considered exempt from following the Town Policy as stated.

In the interim, while searching for a firm with experience dealing within this area of municipal law, Mr. Phair sought out an opinion from the New Hampshire Municipal Association. The NHMA felt that because of the way the town purchasing policy read, the town meeting separated the Fire Department from the Selectmen's authority through the specific language in the warrant article although it would not exempt the Fire Chief from complying with municipal budget law under RSA 32:12.

The firm of Upton & Hatfield was hired and on June 17<sup>th</sup> of this year, rendered an opinion that since the Town is not in compliance with the laws of 1993, Chapter 28, wherein they failed to formally vote to establish the proper organizational structure for the Fire Department, that failure raises questions about the continuing vitality of the 1944 vote.

As a result, the firm recommended that the board of Selectmen develop a warrant article for the 2017 town meeting which establishes the form of governance of the Fire Department. The Board took the opinion under advisement and asked the Town Administrator to post the documents on the town's Web Site and other Social Media where practical. This introduction

serves only to give an outline of what transpired and should not be construed that the Board of Selectmen is leaning one way or another regarding said subject matter. All documentation including the 1944 warrant article, the 2003 opinion by Attorney Kalman and the 2016 opinions by the NHMA and Attorney Baron L. Mayer of Upton Hatfield are available on the Town of Atkinson Website at [www.town-atkinsonnh.com](http://www.town-atkinsonnh.com) for your review.