

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:

Local Government Center, Inc; Local
Government Center Real Estate, Inc.;
Local Government Center HealthTrust,
LLC; Local Government Center
Property-Liability Trust, LLC;
Health Trust, Inc; New Hampshire
Municipal Association Property-Liability
Trust, Inc.; LGC-HT, LLC; Local
Government Center Workers'
Compensation Trust, LLC; and the
following individuals: Maura Carroll,
Keith R. Burke, Stephen A. Moltenbrey,
Paul G. Beecher, Robert A. Berry,
Roderick MacDonald, Peter J. Curro,
April D. Whittaker, Timothy J. Ruehr,
Julia N. Griffin, Paula Adriance, John
P. Bohenko, and John Andrews

Case No: C-2011000036

OBJECTION TO MOTIONS TO INTERVENE

NOW COMES Respondent John Andrews, by and through his counsel, Orr & Reno, P.A. and objects to the motions to intervene filed by the Professional Fire Fighters of New Hampshire ("PFFNH"), the New England Police Benevolent Association, Inc. ("NEPBA"), the State Employees' Association of New Hampshire, SEIU Local 1984 ("SEA"), the National Education Association of New Hampshire ("NEA-NH"), the American Federation of State, County and Municipal Employees, Council 93 ("AFSCME"), and the American Federation of Teachers of New Hampshire ("AFT") (collectively the "Moving Parties"). In support of his objection, Mr. Andrews states as follows:

Introduction

1. On September 2, 2011, the New Hampshire Bureau of Securities Regulation (“BSR”) filed a Staff Petition for Relief (the “Staff Petition”) with the New Hampshire Department of State (the “Department”) accusing the Respondents of violations of RSA 5-B and RSA 421-B. Following its receipt of the Staff Petition, the Department issued an Order to Cease and Desist; Order to Show Cause; and Hearing Order (the “Order”). The Order “commences an adjudicative proceeding under the provisions of RSA 421-B:26-a and RSA 5-B:4-a.” Order at p. 1.

2. The Moving Parties seek permission to intervene in this adjudicative proceeding. The motions should be denied because: (a) RSA 421-B:26-a precludes intervention; and (b) the Moving Parties lack standing to intervene both pursuant to RSA 5-B:4, VI and since they are not “political subdivisions of the state” as defined in RSA 5-B:2, III.

Intervention is Not Permitted Under RSA 421-B:26-a

3. The Department is authorized to conduct the instant proceeding pursuant to RSA 5-B:4-a, VI as follows:

Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order.

Id. It is axiomatic that, as used in RSA 5-B:4-a, the term “person” refers only to the entity or individual alleged to have committed a violation. Consequently, the only

persons recognized in RSA 5-B:4-a, VI are the BSR and the respondents alleged to have violated a relevant statute, rule or order.

4. RSA 5-B:4-a also states that “[a]ll hearings shall be conducted in accordance with RSA 421-B:26-a.” *Id.* RSA 421-B:26-a, I states as follows:

Notwithstanding any other law to the contrary, all adjudicatory proceedings pursuant to this chapter shall be conducted by the secretary of state or by a presiding officer appointed by the secretary of state. All hearings conducted pursuant to this chapter shall be governed by the provisions of this section *and the provisions of RSA 541-A shall not apply to this chapter.*

Id. (emphasis added).

5. The legislature’s unambiguous decision to preclude the application of the Administrative Procedures Act (RSA 541-A, *et seq.*) (“APA”) to adjudicatory proceedings before the secretary of state or his appointee mandates denial of the Moving Parties’ motions because it is the APA that provides the basis for the intervention of persons unnamed as respondents in petitions in New Hampshire agency proceedings. *See* RSA 541-A:32 with Library References attached hereto as Exhibit A. In fact, it appears that every state agency that permits intervention does so under the express statutory authority of RSA 541-A:32. *See* Exhibit A.

6. For example, the practice and procedures for the New Hampshire Insurance Department state:

Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as witnesses *or granted intervenor status*, a person who initiates an adjudicative proceeding by complaining to the department about the conduct of a party shall have no role in enforcement or disciplinary hearings.

Ins. 204.11 (emphasis added). In the Appendix for Insurance Rule 204.11, the department cites to RSA 541:A-32 as statutory authority. The practice and procedures

for the Public Utilities Commission state: “Intervention. The commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32.” Puc. 203.17. The practice and procedures for the Department of Safety state: “Intervenors. If a person meets the criteria of RSA 541-A:32, that person shall be allowed to intervene in any action before a hearings examiner.” Saf-C 203.30.

7. By rendering the APA inapplicable to the present hearing, the legislature intended to proscribe the ability to intervene in this proceeding. “[T]he expression of one thing in a statute implies the exclusion of another.” *In re Campaign for Ratepayers’ Rights*, 2011 WL 2976875 at *4 (July 21, 2011) (quoting *St. Joseph Hosp. of Nashua v. Rizzo*, 141 N.H. 9, 11-12 (1996)). Moreover, since intervention is not permitted under the statute, allowing the Moving Parties to intervene would result in an unauthorized modification of statutory law. *See e.g. In re: Campaign for Ratepayers’ Rights*, 2011 WL 2976875 at *5 (July 21, 2011) (“Rules adopted by State boards and agencies may not add to, detract from, or in any way modify statutory law.”) (quoting *Kimball v. N.H. Bd. of Accountancy*, 118 N.H. 567, 568 (1978)).

8. The legislature’s determination to exclude the APA and intervention from adjudicatory proceedings is amplified by its inclusion of a means for directly affected persons to ultimately seek recourse from an adverse decision. *See* RSA 5-B:4-a, VIII (“Decisions of the secretary of state may be appealed to the supreme court pursuant to RSA 541.”) Thus, after the present proceeding is concluded, the Moving Parties can avail themselves of RSA 541:3 which states that “[w]ithin 30 days after any order or decision has been made by the commission, any party to the action or proceeding before

the commission, *or any person directly affected thereby*, may apply for rehearing....” *Id.* (emphasis added).¹

9. In the face of the foregoing, the Moving Parties urge that they are entitled to intervene in this adjudicatory proceeding because they are “interested parties” – a phrase not found in RSA 5-B. Instead of citing statutory or other authority in support of their position, the Moving Parties offer a mere conclusory allegation; namely, because the phrase appears in RSA 421-B:26-a it must refer to them and it must mean that interested parties can be granted intervenor status.

10. The Moving Parties’ argument is unavailing. Most importantly, it is contrary to law as explained above. Additionally, as explained below, the most likely meaning of “interested parties” in RSA 421-B:26-a is “respondents.” However, to the extent that the phrase can be interpreted to mean persons or entities other than respondents, RSA 421-B:26-a excludes interested parties from appearing and participating in adjudicatory hearings as parties.

11. RSA 421-B:26-a, XII expressly states that:

Parties shall have the right to:

- (a) Appear pro se or be represented by an attorney.
- (b) Cross-examine witnesses, and
- (c) Present evidence and witnesses on their own behalf.

Id. (emphasis added). Thus, the statute limits the persons or entities that can appear at the hearing to parties. Consequently, the very statute upon which the Moving Parties rely renders their argument for intervenor status meritless.

¹ The Moving Parties must demonstrate that they are “directly affected” by the Department’s final decision to obtain appeal rights. *See* RSA 541:3.

12. In fact, the undefined phrase “interested parties” appears to mean only the Respondents. RSA 421-B:26-a references “interested parties” in only two, limited provisions. The first provision states as follows:

Each hearing shall be set for a date as soon as practicable after the complaint has been received and reviewed. The hearing shall be scheduled to allow sufficient and reasonable time for the preparation of the case by both the department and interested parties.

RSA 421-B:26-a, VIII.² The second provision involves requests to continue a scheduled hearing and states as follows:

The written request or motion for continuance shall contain the following:

- (a) The specific reason or reasons for the request; and
- (b) Optional dates and times when all interested parties shall be available.

RSA 421-B:26-a, XII.

13. Each provision relates solely to scheduling concerns. Particularly considered in the context of the rights of parties (as distinguished from interested parties) to appear and participate in hearings, *see* RSA 421-B:26-a, XII, the Moving Parties’ conclusory allegation rings hollow. Instead, since the instant hearing is the result of a cease and desist order issued by the Department pursuant to RSA 5-B:4-a, VI that is only served on “persons” who are subject to the order, the Respondents, *see id.*, it is reasonable to conclude that “interested parties” as used in RSA 421-B:26-a, VIII means only the Respondents named in the order – those Respondents who become parties by requesting a hearing pursuant to RSA 5-B:4-a, VI and appearing pursuant to RSA 421-

² This provision is curious because it appears to overlook that complaints are insufficient to trigger hearings. Instead, hearings are scheduled as a result of staff petitions. *See* RSA 421-B:26-a, IV(c) and V(a). (“If the staff determines that sufficient basis exists which warrants administrative action, the staff shall petition the secretary of state for relief. . . . [I]f any part of the petition is granted [by the Department], the respondent shall be informed, as part of the hearing notice, of the respondent’s right to a hearing.”) Additionally, notices of hearings are to be “prepared and forwarded” to “interested persons” rather than parties or interested parties. *See* RSA 421-B:26-a, VI(a).

B:26-a, XII, and those Respondents who do not exercise their right to a hearing but must attend the hearing, and therefore, remain only “interested parties.”

The Moving Parties Lack Standing To Intervene

14. As explained above, the Moving Parties should be denied intervention because RSA 421-B:26-a does not allow intervention. However, even if the statute afforded a right to intervention, the Moving Parties’ motions should be denied because they lack standing to participate in the adjudicatory hearing.

15. “A tribunal that ‘exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation.’” *In re Campaign for Ratepayers’ Rights*, 2011 WL 2976875 at *3 (quoting *Figueroa v. C and S Ball Bearing*, 237 Conn. 1, 675 A.2d 845, 847 (1996)). “Thus, where the legislature has provided that only certain persons or entities can invoke the agency’s jurisdiction, the question of standing under the applicable statute is an issue of subject matter jurisdiction of the agency.” *Id.*

16. The Department is vested with the exclusive authority and jurisdiction to enforce the provisions of RSA 5-B, *et seq.* See RSA 5-B:4-a. When the Department exercises its authority to issue a cease and desist order, the statute grants the right to a hearing only to the persons subject to such an order: “[t]he order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order.” RSA 5-B:4-a, VI. The Moving Parties are not persons or entities subject to the cease and desist order, and therefore, they are not granted standing pursuant to RSA 5-B:4-a, VI.

17. Moreover, the purpose of RSA 5-B is to “provide for the establishment of pooled risk management programs and to affirm the status of such programs established for the benefit of political subdivisions of the state.” RSA 5-B:1. Political subdivision “means any city, town, county, school district, charter school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.” RSA 5-B:2, III.

18. The Moving Parties are comprised of current and former employees of political subdivisions. They are not (in whole or part) a “political subdivision.” *See* RSA 5-B:2, III. Had the legislature intended to grant standing to current and/or former employees of political subdivisions, the legislature could have included them in the statutory scheme. Instead, the legislature’s choice to exclude persons and entities other than political subdivisions from RSA 5-B deprives all others of standing. *In re Guardianship of Raymond E.*, 135 N.H. 688, 691 (1992) (“Normally the expression of one thing in a statute implies the exclusion of another.”) For these reasons, the Moving Parties lack standing to intervene in the current adjudicatory proceeding.

Conclusion

Respondent John Andrews respectfully requests that the Moving Parties’ motions to intervene be denied because: (a) RSA 421-B:26-a precludes intervention; and (b) the Moving Parties lack standing to intervene both pursuant to RSA 5-B:4, VI and since they are not “political subdivisions of the state” as defined in RSA 5-B:2, III.

Respectfully Submitted,

JOHN ANDREWS

Date: 10/3/11

By: 

Michael D. Ramsdell, Esq. (NH Bar #2096)

Joshua M. Pantesco (NH Bar # 18887)

ORR & RENO, P.A.

One Eagle Square

P.O. Box 3550

Concord, NH 03302-3550

(603) 223-9185

mramsdell@orr-reno.com

jpantesco@orr-reno.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded this day via electronic mail to Earl Wingate, Esq., William Saturley, Esq., Brian Quirk, Esq., David Frydman, Esq., Peter Peroni, Esq., Glenn Milner, Esq., and Mark E. Howard, Esq.



Michael D. Ramsdell, Esq.

EXHIBIT A
RSA 541:32 (APA) “Intervention”

ment of Environmental Services (DES) on application by water company for a large groundwater withdrawal permit, absent evidence that town was admitted as a party to the proceeding on company's application; though under the Groundwater Protection Act town was entitled to notice of and an opportunity to submit comments on the application, such did not make town a party to the proceeding on company's application, and under the Administrative Procedure Act in order for there to have been a contested case town had to be a party. In re Town of Nottingham (2006) 153 N.H. 539, 904 A.2d 582. Waters And Water Courses ☞ 133

City, as the moving party appealing ruling of the Public Employee Labor Relations Board (PELRB), was required initially to bear the full, reasonable cost of

preparing the transcript, although it was not required to actually arrange for the transcription. In re City of Manchester (2003) 149 N.H. 283, 821 A.2d 1019, reconsideration denied. Labor And Employment ☞ 1893

Department of Labor's imposition of telephonic hearing on former employee's back wage claim, resulting in the complete absence of cross-examination, wherein Department's written notice of hearing failed to comply with regulation requiring Department to obtain agreement of parties before ordering telephonic hearing, was prejudicial to employer and required remand for rehearing. Attitash Mountain Service Co. v. Schuck (1992) 135 N.H. 427, 605 A.2d 1067. (Decided under prior law.)

541-A:32 Intervention.

I. The presiding officer shall grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

(a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.

(b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.

(c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

HISTORY

Source. 1994, 412:1, eff. Aug. 9, 1994.

LIBRARY REFERENCES

West Key Number

Administrative Law and Procedure
⊕456.

Westlaw Topic

Westlaw Topic No. 15A.

CJS

C.J.S. Public Administrative Law and Procedure §§ 231 to 232.

New Hampshire Code of Administrative Rules

Rules of the Committee on Architectural Barrier-Free Design of the Governor's Commission on Disability, Abfd 201.01, 209.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the Department of Administrative Services, Adm 205.12, New Hampshire Code of Administrative Rules.

Rules of the Board of Directors Office of Licensed Allied Health Professionals, Ahp 202.01, 210.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Licensing for Alcohol and Other Drug Abuse Professionals, Alc 201.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the State Apprenticeship Council, App 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the New Motor Vehicle Arbitration Board, Arb 203.15, New Hampshire Code of Administrative Rules.

Rules of the Board of Architects, Arch 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Governing Board Athletic Trainers, Ath 201.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the State Board of Auctioneers, Auc 203.03, New Hampshire Code of Administrative Rules.

Rules of the Ballot Law Commission, Bal 206.04, New Hampshire Code of Administrative Rules.

Rules of the Banking Department, Ban 103.02, 201.02, New Hampshire Code of Administrative Rules.

Rules of the State Building Code Review Board, Bcr 202.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Chiropractic Examiners, Ch 201.01, 208.06, New Hampshire Code of Administrative Rules.

Rules of the Christa McAuliffe Planetarium Commission, Cmp 203.01, 203.17, New Hampshire Code of Administrative Rules.

Rules of the Department of Corrections, Cor 202.01, 208.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Dental Examiners, Den 201.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Licensed Dietitians, Diet 201.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Education, Ed 202.01, 1134.20, 1134.23, New Hampshire Code of Administrative Rules.

Rules of the Electricians' Board, Elec 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Bureau of Emergency Communications, Emer 201.01, 208.01, 208.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Professional Engineers, Eng 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Air Resources Council, Env-Ac 204.05, New Hampshire Code of Administrative Rules.

Rules of the Department of Environmental Services Commissioner, Env-C 202.04, 204.14, 204.22, New Hampshire Code of Administrative Rules.

Rules of the Water Council, Env-Wc 203.12, New Hampshire Code of Administrative Rules.

Rules of the Water Council, Env-Wc 202.07, 204.05, New Hampshire Code of Administrative Rules.

Rules of the Fire Standards and Training Commission, Fire 201.12, New Hampshire Code of Administrative Rules.

Rules of the Fish and Game Department, Fis 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the State Board of Registration of Funeral Directors and Embalmers, Frl 206.04, New Hampshire Code of Administrative Rules.

Rules of the Governor's Commission on Disability, Gcd 201.01, 208.01, 208.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Professional Geologists, Geo 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Department of Health and Human Services Commissioner, He-C 201.02, 204.05, New Hampshire Code of Administrative Rules.

Rules of the Health Services Planning and Review Board, He-Hea 201.01, 204.01, 208.07, New Hampshire Code of Administrative Rules.

Rules of the Department of Health and Human Services Division of Public Health Services, He-P 904.03, 1604.03, 1905.01, New Hampshire Code of Administrative Rules.

Rules of the Insurance Department, Ins 204.01, 1810.01, 1813.01, New Hampshire Code of Administrative Rules.

Rules of the Installation Board, Inst 202.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Licensing for Interpreters of Deaf and Hard of Hearing, Int 202.01, New Hampshire Code of Administrative Rules.

Rules of the Department of Justice, Jus 802.01, 809.01, 812.04, New Hampshire Code of Administrative Rules.

Rules of the Juvenile Parole Board, Juv 201.08, New Hampshire Code of Administrative Rules.

Rules of the Board of Licensure for Land Surveyors, Lan 202.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Licensure for Land Surveyors, Lan 209.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Manufactured Housing, Man 202.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Marital Mediator Certification, Mar 201.01, 208.02, 211.02, New Hampshire Code of Administrative Rules.

Rules of the Milk Sanitation Board, Mil 201.11, New Hampshire Code of Administrative Rules.

Rules of the New Hampshire Motor Vehicle Industry Board, Mvi 204.08, New Hampshire Code of Administrative Rules.

Rules of the Naturopathic Board of Examiners, Nat 201.01, 209.02, 209.03, New Hampshire Code of Administrative Rules.

Rules of the Board of Examiners of Nursing Home Administrators, Nuh

202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Governing Board of Occupational Therapists, Occ 201.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Registration in Optometry, Opt 202.01, New Hampshire Code of Administrative Rules.

Rules of the Personnel Appeals Board, Per-A 203.03, 205.01, New Hampshire Code of Administrative Rules.

Rules of the Pesticide Control Board, Pes 202.15, New Hampshire Code of Administrative Rules.

Rules of the New Hampshire Pharmacy Board, Ph 201.02, New Hampshire Code of Administrative Rules.

Rules of the State Board for the Licensing and Regulation of Plumbers, Plu 201.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Podiatry, Pod 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Police Standards and Training Council in the Department of Regional Community-Technical Colleges, Pol 205.06, New Hampshire Code of Administrative Rules.

Rules of the Public Utilities Commission, Puc 102.01, 203.17, 203.24, New Hampshire Code of Administrative Rules.

Rules of the Real Estate Appraiser Board, Rab 203.06, New Hampshire Code of Administrative Rules.

Rules of the Department of Resources and Economic Development, Res 201.01, 210.01, New Hampshire Code of Administrative Rules.

Rules of the Governing Board of Respiratory Care Practitioners, Resp 201.01,

209.02, New Hampshire Code of Administrative Rules.

Rules of the Board of Trustees of the New Hampshire Retirement System, Ret 201.02, 201.07, 204.02, New Hampshire Code of Administrative Rules.

Rules of the Department of Revenue Administration, Rev 201.03, 204.06, New Hampshire Code of Administrative Rules.

Rules of the Department of Safety Commissioner, Saf-C 203.30, 6403.09, New Hampshire Code of Administrative Rules.

Rules of the Board of Natural Scientists, Soil 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Governing Board of Speech Language Pathologists, Spe 201.01, 209.02, New Hampshire Code of Administrative Rules.

Rules of the Sweepstakes Commission, Sw 206.10, New Hampshire Code of Administrative Rules.

Rules of the Board of Tax and Land Appeals, Tax 201.27, New Hampshire Code of Administrative Rules.

Rules of the Department of Transportation, Tra 202.13, 304.12, New Hampshire Code of Administrative Rules.

Rules of the State Treasurer, Tre 202.01, 209.01, New Hampshire Code of Administrative Rules.

Rules of the Board of Trust Company Incorporation, Tru 102.01, 206.01, 206.02, New Hampshire Code of Administrative Rules.

Rules of the Water Well Board, We 206.15, New Hampshire Code of Administrative Rules.

New Hampshire Practice

5 N.H.P. Civil Practice and Procedure §§ 64.02, 64.13 (2d ed.).

ANNOTATIONS

In general 1 Construction and application 2

1. In general

The Board of Tax and Land Appeals had authority to determine that a taxpayer's settlement agreement with a town

was enforceable; settlement of the abatement appeal related to taxation, and the determination was factual. In re Land Acquisition, L.L.C. (2000) 145 N.H. 492, 767 A.2d 948. Taxation ⇐ 2655

2. Construction and application

"Presiding officer" authorized by statute to render order granting or denying peti-

tion for intervention is the full Public Utilities Commission or a quorum consisting of a majority of its members, and not the chairman of the Commission. Appeal of Seacoast Anti-Pollution League (1985) 126 N.H. 789, 497 A.2d 847. (Decided under prior law.)

Brief statement of reasons required by statute in explanation of order on petition for intervention before the Public Utilities Commission must be supported by basic findings of fact. Appeal of Seacoast Anti-Pollution League (1985) 126 N.H. 789, 497 A.2d 847. (Decided under prior law.)

541-A:33 Evidence; Official Notice in Contested Cases.

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

(a) Any fact which could be judicially noticed in the courts of this state.

(b) The record of other proceedings before the agency.

(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

HISTORY

Source. 1994, 412:1, eff. Aug. 9, 1994.