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By email to mglidden@dover.k12.nh.us

Melissa Glidden
Business Office Assistant/Human Resources
Dover School District
61 Locust Street, Suite 409
Dover, NH 03820

Re: School Board duties under RSA Chapter 199 related to Dover High School/Career and Technical Center

Dear Ms. Glidden:

I am writing in response to your question about the Dover School Board's legal duties under Chapter 199 of the New Hampshire Revised Statutes Annotated related to the Dover High School/Career and Technical Center school construction project. Specifically, at tonight's School Board meeting, the Board proposes (i) to approve the recommendations of the Joint Building Committee to replace the Dover High School/Career and Technical Center building, (ii) to approve the proposed building site and conceptual plans, and (iii) to request City Council action on project funding. As explained more fully below, even though the project plans and budget are at a preliminary or conceptual stage, it is appropriate for the School Board to request that the Council take action on project funding, and it is for the Council to determine what action on project funding is necessary and appropriate under the circumstances.

I understand the relevant facts to be as follows. The City of Dover School District has a High School/Career Technical Center ("HS/CTC") building that is in need of renovation or replacement. In April 2014, a six-member Joint Building Committee ("JBC") was formed pursuant to RSA 199:4 to investigate feasible options for substantial renovations to, or new construction of, the HS/CTC and then to direct the construction or renovation of the building. The JBC has engaged an architect, HMF, which has performed feasibility and site studies related to the construction/renovation project. HMF has developed conceptual plans for a construction project with an estimated cost of \$86 million. On July 7, 2015, the JBC voted to recommend replacement of the HS/CTC building to the School Board. The JBC recommends that the new HS/CTC building be sited on the current HS/CTC property and that, as part of the construction project, the existing HS/CTC building be demolished to accommodate athletic fields and parking lots. At its meeting tonight, the School Board will vote on whether to endorse the JBC's recommendation to replace the HS/CTC building, to approve the proposed site and

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conceptual plans for the new HS/CTC building, and to request that the City Council authorize and appropriate necessary funding for the HS/CTC project. To inform tonight's vote, the District has solicited input from City boards and departments. The District has also consulted with the City Director of Planning and Community concerning the City's zoning regulations and master plan.

RSA Chapter 199 governs new construction and substantial renovation of public school buildings. In city school districts, a joint building committee has broad authority to direct, oversee, and decide all matters related to school building construction. RSA 199:3, II(a); III(a). The joint building committee may also assist the school district in deciding upon the location of district school buildings. RSA 199:1. The authority of the joint building committee, however, is subject to approval by the district's school board of "all plans, specifications, and the selection of site for any new school buildings." RSA 199:1; 199:3, I. In deciding to renovate or replace existing school buildings, the district must investigate and consider feasible options. RSA 199:1. Consideration of these options requires that the district perform certain matters of due diligence, including holding a public hearing, seeking input from municipal board and departments, and reviewing the municipality's zoning regulations and master plan. RSA 199:1.

The design process for school construction projects typically includes multiple phases, including a site evaluation and conceptual planning phase, a schematic design phase, a design development phase, a construction documents phase, a bidding/negotiation phase, and a construction phase. The statutory requirement that the School Board approve "all plans" for new school buildings contemplates an ongoing process of approval of plans throughout the design process.

At this early stage in the HS/CTC project, the District is required to decide whether renovation or replacement of the existing HS/CTC building is the most feasible option and, if applicable, approve the site selection for the new school building. In making these decisions, the District may consider the recommendation of the JBC as to the location of the new school building, and is required to perform the due diligence required by RSA 199:1 as to whether to renovate or replace the existing HS/CTC. Based on the facts presented, the District will have performed the required due diligence prior to the School Board's vote tonight on whether to renovate or replace the HS/CTC building and to approve the proposed site.

The JBC has also submitted to the School Board conceptual plans for the new HS/CTC building. Because the School Board is required to approve "all plans" for a new school building, these conceptual plans are subject to School Board approval. As a result, it is appropriate under RSA 199:1 for the School Board to consider approving these plans at tonight's meeting.

At this time, the District requires funds for its current contractual commitments related to the project. In addition to architect services, the District proposes to contract an "at risk construction manager" for project construction. Under "at risk construction management," a contractor is selected to perform preconstruction services, typically for a fixed fee. I understand the fixed fee in this case is \$96,000. The preconstruction services include the development of a "guaranteed maximum price" for the project designed by the architect. Only if the District agrees to the guaranteed maximum price is it contractually obligated to move forward. During this preconstruction period, the District, the architect, and the contractor will all work together to

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further develop and refine the project and its costs. At the current stage of the project, it is proper for the School Board to request that the City Council appropriate funding necessary for the current design and preconstruction service phases of the project.

It is within the Council's discretion to determine the source of funds for this appropriation. In general, financing of school construction projects must be coordinated with the planning, design, and construction phases. The timing and amounts of financing depends on available resources, project specific factors, bond market conditions, the City's existing debt retirement schedule, and legal requirements including federal tax laws. It is the City Council's responsibility to determine the appropriate timing to issue temporary and/or permanent bond financing for the project. In making these decisions, the Council may avail itself of the services of a municipal financial advisor.

An additional question has been raised as to whether the existing HS/CTC can be demolished after the new HS/CTC is constructed or whether, when the existing HS/CTC is no longer needed for public school purposes, the School Board must "transfer its care and control to the city," pursuant to RSA 199:4, II. In this case, demolition of the existing HS/CTC is an element of the proposed new HS/CTC project that is necessary to replace athletic fields and parking lots on which the new HS/CTC building will stand. Because the demolition is an essential part of a single school construction project, the provision of RSA 199:4, II is not implicated.

We conclude on the facts described herein, that the proposed actions of the School Board at tonight's meeting are consistent with the requirements of RSA Chapter 199.

If you have any questions about this opinion, or if I can be of further assistance, please let me know.

Very truly yours,

Greg Im

