

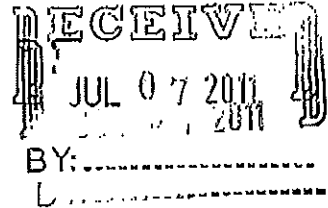
**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

Rockingham Superior Court
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NOTICE OF DECISION

**Tony F. Soltani, ESQ
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Epsom NH 03234-0300**



Case Name: **Alan Bailey, et al v Town of Exeter**
Case Number: **218-2011-CV-00203**

Enclosed please find a copy of the court's order of June 29, 2011 relative to:

Order on Defendant's Limited Motion for Reconsideration

July 05, 2011

Raymond W. Taylor
Clerk of Court

(507)

C: Walter L. Mitchell, ESQ

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

ALAN BAILEY, ET AL

V

TOWN OF EXETER

2011-CV-203

ORDER ON DEFENDANT'S LIMITED MOTION FOR RECONSIDERATION

By Order dated May 27, 2011 the Court found in favor of the plaintiff's with respect to the issue of the amending of two Warrant Articles at the town's recent Deliberative Session. The Court's Order contained the following sentence: "The plaintiffs having prevailed in this litigation are entitled to an award of reasonable attorney fees which the Court orders." It is the award of attorney fees that the defendant is objecting to by its filing of a Limited Motion for Reconsideration.

A fair reading of the plaintiff's pleadings suggest that they base their request for attorney fees on one of three separate and distinct principles of law: (1) that they were forced to seek judicial assistance to secure a clearly defined and established right; (2) that the conduct of the Town of Exeter was so obviously violative of the law so as to render any defense to the plaintiff's initial pleading frivolous; and (3) that this litigation resulted in a public right and afforded great benefit to the taxpayers and voters of the Town of Exeter.

In its Final Order the Court did not specifically indicate on what theory attorney fees had been awarded. It will do so herein. No attorney fees are awarded under theories (1) and (2). The issue of the amended warrant articles was not "a clearly defined and established right" and thus attorney fees could not be awarded on that basis. An award of attorney fees on the basis of frivolous action also would not be

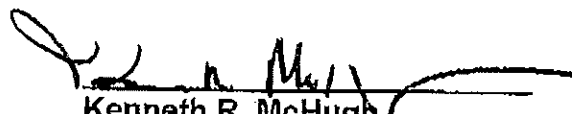
permissible because in fact the Court cannot conclude that the defense in this case was frivolous or in any way indicative of bad faith. Thus attorney fees will not be awarded under Harkeem v Adams 117 N.H. 687 (1977).

Attorney fees are awarded in this case because the Court finds that by bringing the within petition and obtaining the result requested, the plaintiffs have in fact afforded great benefit to the taxpayers and voters of the Town of Exeter. Thus the award of attorney fees is based upon the holding in Taber v Town of Westmoreland 140 N.H. 613 (1996). The Court agrees with the plaintiffs that the right to vote is of substantial and paramount importance. It in fact was undermined by the Town's decision to permit amendments to warrant articles which rendered them a nullity. Thus by making clear what type of amendments would be permitted under the law in Deliberative Sessions, the within action has benefitted the voters of the Town of Exeter.

What is awarded in this case are reasonable attorney fees. The plaintiff is ordered to submit a detailed request for attorney's fees to the defendant. If the defendant believes that the request is not reasonable then it shall file an appropriate motion with the Court whereupon the monetary amount sought by plaintiff's counsel will be reviewed.

So Ordered.

DATED: June 29, 2011


Kenneth R. McHugh
Presiding Justice