

STATE OF NEW HAMPSHIRE

CHESHIRE COUNTY

SUPERIOR COURT

ORDER OF NOTICE - EXPEDITED HEARING

NO. 07-E-0215

Neil Moriarty vs Monadnock Regional School District et al

FILING DATE: 12/19/2007

HEARING DATE: 1/08/2008

An original Pleading, a true copy of which is attached, has been filed with this Court at the address of the Clerk stated below. It is therefore **ORDERED** as follows:

1. Neil Moriarty shall cause true copies of the attached Pleading, this Order of Notice and any Orders made ex parte to be served, in a manner allowed by law, upon Monadnock Regional School District, Kenneth Dassau, Superintendent, Colline Dreyfuss, Eric Stanley Immediately and shall promptly file proof and return(s) of service with this Court; otherwise, this action may be discontinued without further notice.
2. Monadnock Regional School District, Kenneth Dassau, Superintendent, Colline Dreyfuss, Eric Stanley shall file a written appearance with this Court at the address stated below on or before the above Hearing Date, and shall cause true copies of such appearance to be delivered to the party or parties bringing this action, or their attorney if represented by an attorney.
3. All parties shall appear before this Court for hearing on the attached Pleading at the Superior Court in Keene on January 8, 2008 at 9:00 AM.
Time allotted for this hearing: 30 min.
4. Any party who fails to file a written appearance as required above, or who fails to appear when scheduled before this Court, may be subject to the issuance of such order as the Court may find fair and just from the evidence and argument presented at hearing.

Please advise clients, witnesses, and others that it is a class B felony to carry a firearm or other deadly weapon as defined in RSA 625:11,V in a courtroom or area used by a court.



Barbara Hogan
12 Court Street
Keene, NH 03431
603-352-6902

BY ORDER OF THE SUPERIOR COURT
12/20/2007

THE STATE OF NEW HAMPSHIRE
CHESHIRE COUNTY SUPERIOR COURT
EX PARTE ORDER

Cornelius Moriarty v. Monadnock Regional School Dist
et al

DOCKET NO. 07-E-0215

The above entitled action with prayers for ex-parte relief having been filed and proof offered in support thereof; it is ordered that during the pendency of said action and until an order is entered after a temporary hearing, or said case has been dismissed, or this order modified by this court, the Ex Parte orders checked below shall be in effect:

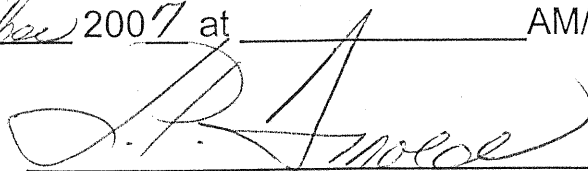
{ } Petition is granted on an ex-parte basis. The Clerk shall schedule a hearing with notice on the Petitioner's preliminary injunction within the next ten (10) days. Petitioner shall arrange for immediate service in the manner provided by law in cases of this type.

~~{ }~~ Petition is denied on an ex-parte basis. The Clerk shall schedule a expedited hearing/ hearing in the usual course.

{ } Other _____

All prayers for temporary orders, including those ordered above, if any, are assigned for temporary hearing by offers of proof before the Cheshire County Superior Court, 12 Court St., Keene, NH on the 8 day of January 2008 at 9:00 AM.
_____ hour is allotted.

DATED this 19th day of December 2007 at _____ AM/PM.



Presiding Justice

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.
SUPERIOR COURT

Cornelius (Neil) Moriarty,
Chairman: Monadnock Regional School District (MRSD), Budget Committee

vs.

Monadnock Regional School District / Kenneth Dassau: Superintendent
Colline Dreyfuss: Chairperson: Monadnock Regional School District, School Board
Eric Stanley: Vice-Chairman: MRSD Budget Committee

PETITION FOR INJUNCTION UNDER RSA 91-A

NOW COME Neil Moriarty, the legally elected chairman of the Monadnock Regional School District Budget Committee, at their April 24, 2007 Meeting, and complain against: The Monadnock Regional School District, Kenneth Dassau, Colline Dreyfuss, and Eric Stanley and say:

The Monadnock Regional School District is a cooperative school district, formed pursuant to RSA 195, and both the MRSD School Board and the MRSD Budget Committee are subject to the provisions of RSA 91-A (Commonly referred to as The Open Meeting Law).

1. That this Petition for injunction is brought under the provisions of RSA 91-A: 2, 91-A:7 & 91-A:8, of the laws of the State of New Hampshire, and priority on the court calendar for the within proceeding is claimed by the petitioner under said provision. Also of relevance is RSA 21:15.

2. Defendants belong to the Monadnock Regional School Board, Monadnock Regional School District Budget Committee and the Chief Administrative Officer of the Monadnock Regional School District.
3. Business by both the MRSD School Board & MRSD Budget Committee is conducted in accordance with Robert's Rules of Order.
4. Robert's Rules clearly states that if no other definition is specified, then, "a Quorum consists of a majority." RSA 21:15 states: "Words purporting to give a joint authority to three or more public officers shall give such authority to a majority of them, unless otherwise expressly declared. " With regard to this specific statute, former Attorney General Peter Heed further stated (in his Memorandum on The Open Meeting Law), " A majority of agency members constitutes a quorum absent some other controlling statute".
5. The Monadnock Regional School Board has 15 Members. The Monadnock Regional School District Budget Committee contains the same number of members (15) - plus one liaison member from the School Board (as established in RSA 195:12-a). A *joint* board meeting would—by definition-- thereby have 30 or 31 members and would necessitate at least 16 members present in order to constitute a Quorum.
6. According to the Minutes of the Dec. 11th 2007 meeting; there were five (5) members from the School Board present, and nine (9) members of the Budget Committee present. This is clearly not a Quorum, of the *JOINT* Board which was specified in the RSA 91-A posting.
9. Under the definition of Quorum—Robert's further states, "So whenever during the meeting there is found not to be a quorum present, the only thing to be done is to adjourn.....the debate can be continued, but no vote taken, except to adjourn."
10. Also under Robert's Rules of Order, if is desired to transact business out of it's order, then it becomes necessary to suspend the rules, which requires a 2/3rds vote. This was never done at the Dec. 11th 2007 meeting.

BACKGROUND

1. Neil Moriarty was elected Chairman of the Monadnock Regional School District, Budget Committee, by a vote of 9.801/2.726/0/3.473, at its regularly scheduled and posted April 24th, 2007 meeting. At this same meeting Eric Stanley was elected as Vice-Chairman.
2. On Dec 11th 2007, a joint meeting of the MRSD school board and budge committee was scheduled, to discuss the upcoming warrant articles. It was properly posted at several locations throughout the MRSD in accordance with RSA 91-A. This *joint* meeting was called at the request of the School Board and no agenda was available. Since Neil Moriarty has become the chairman of the MRSD Budget Committee each and every public notification of pending Budget Committee meeting has been accompanied with the entire agenda for that meeting.
3. According to the Minutes of the Dec. 11th 2007 meeting; there were five (5) members from the School Board present, and nine (9) members of the Budget Committee present. This is clearly not a Quorum, of the *JOINT* Board which was specified in the RSA 91-A posting. This meeting was *not* posted as a meeting of the School Board (15 Members). It was *not* posted as a meeting of the Budget Committee (15 Members + 1 School Board liaison). It was posted as a *JOINT* Board meeting – thereby requiring a quorum of the combined membership of both separate Boards. In other words a quorum would require at least 16 separate members.
4. At this illegal “meeting” Colline Dreyfuss (the chair of the School Board stood down,) and Mr. Stanley as the Vice Chair of the Budget Committee proceeded to conduct the meeting as a regular Budget Committee meeting. In fact, as the ranking member of both Boards, where a quorum was not present, (under Robert’s Rules of Order), the only proper motion to consider was a motion to adjourn. However, several upcoming warrant articles were discussed. Then a motion was made by Jennie Gomarlo (budget committee member from Swanzey, and seconded to remove Neil Moriarty as chairman. Eric Stanley who was conducting the “meeting” sought help from the Superintendent, and Colline Dreyfuss as chairperson. of the

School Board, regarding the legality of the motion. They assured him that the motion was proper. The motion passed, and the next motion put forth was to appoint James Ells (also of Swanzey) as the new chairman of the Budget Committee. This motion also passed.

Statements of Fact

1. The Dec 11th 2007 Meeting was posted at numerous locations throughout the District, as a *JOINT* meeting of the School Board and Budget Committees. (Separate Entities)
2. A quorum of the *JOINT* Boards was not present. A quorum of the School Board was not present.
3. No meeting of the Budget Committee (as a separate entity) was posted for Dec. 11th 2007 anywhere within the District, as required by RSA 91-A.
4. The “Meeting” which was conducted by Eric Stanley was conducted as a separate Budget Committee Meeting. (Indeed the motion to remove Neil Moriarty as the chairman of the Budget Committee would have been inappropriate at a *JOINT* Board meeting.)
5. Even if the meeting had been legal, the motion to replace the chair was out of order: because no vote to suspend the rules was ever taken (2/3rds required). Also this was not an item on the agenda and no one was aware of any such proposal. (The weather was also very bad)
6. Neil Moriarty sent a letter to Eric Stanley (Vice Chair of the Budget Committee), and Ken Dassau (Superintendent of MRS D), on Dec 12th 2007, requesting that they contact the School Attorney to make a determination of the legality of the actions taken by the Budget Committee on Dec 11th 2007. Mr. Dassau denied that request.

Exhibits Attached

- Exhibit A Minutes of the Monadnock Regional School District School Board/budget Committee Joint Meeting.... December 11, 2007
- Exhibit B Letter, Neil Moriarty, to E Stanley and K Dassau, Subject: Illegal Motion and Vote to Replace the Chair MRSD Budget Committee at Reference a), Dated December 12, 2007
- Exhibit C Letter, K Dassau, to N Moriarty, Response to Exhibit B, Dated: December 13, 2007
- Exhibit D Posted Notification of the Monadnock Regional School District Joint Meeting of the Monadnock Regional School District School Board and Budget Committee.
- Exhibit E Monadnock Regional School District Website Description of the December 11, 2007

WHEREFORE, Neil Moriarty prays:

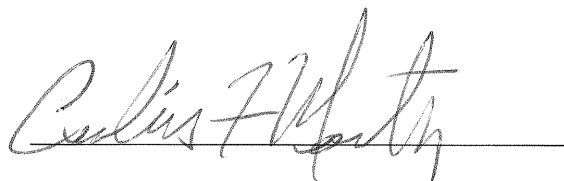
That the Court under RSA 91-A:8 part II, invalidate the actions of the MRSD Budget Committee on Dec. 11th 2007, where that meeting was not legally posted, a quorum of the posted *joint* meeting was not present, the actions taken were also not on any posted agenda.

For injunctive relief under RSA 91-A-:7 & 8 That the Court issue forthwith a temporary restraining order enjoining defendants from:

1. Holding any further meetings Budget Committee (joint or regular), until the Court decides the legality of the actions taken at the Dec 11th 2007 meeting.
2. Making any decisions and/or recommendations concerning the upcoming warrant articles until this issue has been decided.
3. That Ex Parte relief be granted, since time is of the essence, and 30+ million dollars of warrant articles, (for the MRSD,) have to be decided almost immediately, and as stipulated within the time guidelines as stipulated by state statute.

4. That plaintiff be awarded reasonable attorneys' fees and costs pursuant to RSA 91-A: 8
5. For such other and further relief as may be equitable and just.

Dated: _____



Cornelius Moriarty

On this 9 Day of Dec, 2007, personally appeared Cornelius Moriarty and being duly sworn acknowledged the foregoing to be true to the best of his knowledge and belief.


 Clerk of Court

Exhibit A Moriarty vs MRSD

**Monadnock Regional School District
School Board/Budget Committee Joint Meeting
MRMS/HS Library, Swanzey, NH
December 11, 2007**

Present School Board Members: J. Fortson, G. White, J. Kenyon, C. Dreyfuss and W. Felton.

Present Budget Committee: P. Stulsatz, C. Lothrop, E. Stanley, P. Richmond, J. Gomarlo, J. Ells, A. Weber, W. Lechlinder and R. Smith.

Absent Budget Committee Members: T. Parker, N. Dion, J. Tommila, N. Moriarty, D. Ott, and G. Trembley.

Administration Present: K. Dassau, Superintendent, K. Chambers, Business Manager and D. Hodgdon, Assistant Superintendent.

E. Stanley opened the meeting at 7:05 PM.

Skills Tutor Presentation: The School Board and the Budget Committee went to the Annex for a presentation on the Skills Tutor Program. Two representatives gave a presentation to the committees. It is a web based tutoring program. It is for Kindergarten through adult. It is a supplemental tool. This program does not replace the teacher. There are over 1500 activities and skills. It is integrated into the state standards. A quarterly report will be given to the school. The cost for all the schools is \$67,000.00 for 2 years with and the third year free. There has to be a signed contract before the end of the year for substantial savings. The School Board and the Budget Committee return to the library to continue the Board Meeting.

1. Public Comment Period: W. Imon welcomed the committees.

2. Warrant Articles: K. Chambers passed out information on the SAU Budget.

E. Stanley mentioned establishing a building fund. J. Fortson explained that the Finance Committee is discussing the issue but has tabled it until all the warrants are complete. If it is established the sale of the Surry building could possibly be put in that account if the voters agreed. C. Lothrop commented that the figure for the Surry School is about \$125,000.00. K. Chambers said that it possibly could be \$145,000.00. The Warrant Article says up to \$500,000.00. J. Fortson explained that the Finance and the Facilities Committee are going to have a joint meeting to discuss a proposed building project. If they choose to go this route. K. Dassau explained that for the NEASC we have to have something done for the 10-year plan. W. Felton commented that the Finance Committee would like to hear from the entire Board to see if they would like a building project.

J. Fortson explained the teacher contracts. She also explained the early retirement and that it ends in the 4th year of the contract. J. Kenyon explained that when early retirement ends longevity kicks in. C. Dreyfuss explained longevity and the points system. K. Dassau explained that this is a way to reward people that stay a longtime. The health insurance sharing was discussed. The insurance buyout is \$2500.00. She then continued to explain the support staff contracts.

3. Superintendent's Report: K. Dassau explained that the Skills Tutor would be added to the Board's agenda.

He thanked E. Stanley for chairing the meeting and going through the exercise. The teacher and support staff contract need to be on the top of the pyramid. The Budget Committee needs to support both contracts.

The Public Hearing is scheduled for January 10, 2008. **MOTION:** J. Ells. **MOVED** to vote as a Budget Committee tonight to support the teacher and support staff contracts and to get behind what is being proposed so that the voters know that the School Board and the Budget committee are behind them. **SECOND:** R. Smith. **DISCUSSION:** It was mentioned that the Budget Committee would have to go through this exercise again after the Public Hearing. We need the input of the voters first. J. Fortson commented that this is a vote of confidence. Years ago after the Public Hearing we voted and then had to rescind. E. Stanley commented that because of the weather others are not in attendance. It is not fair to vote. J. Ells explained that informally we are getting an opinion prior to the vote of the voters. C. Dreyfuss asked if they have to wait until after the public hearing. K. Chambers explained that it could be done. W. Lechlinder explained that it would be the voter's perception. The voters would want to give input. **MOTION:** E. Stanley **MOVED** to table the motion. **No Second: Motions fails.** K. Chambers appreciates the position but explained that the School Board and the Budget committee may take a position and use the Public Hearing to state their position. There is no right or wrong. P. Stulsatz asked if the Budget Committee could do a straw vote without getting into a situation. J. Ells explained that the School board voted to support without the public input why the Budget Committee can't. P. Stulsatz commented that the weather doesn't vote. J. Kenyon commented that we need these contracts. J. Gomarlo agreed to vote tonight and get the voters support. W. Felton commented that the voters elected the School Board and the Budget Committees and they would like to know how they feel. E. Stanley commented that some members are not in attendance. It is legal to vote but it is perception. C. Dreyfuss commented that she understands E. Stanley's position but the Budget committee had the opportunity to be in attendance. Those that showed up can take a vote. E. Stanley commented that you can make the vote but you still have some members that could be used against any support. J. Kenyon asked where those people are. **J. Ells and R. Smith withdraw their motion.** **MOTION:** J. Gomarlo **MOVED** to show good faith in the negotiating process and show faith in the figures for the teacher's contract put forth to date. **SECOND:** J. Ells. **DISCUSSION:** C. Lothrop agrees. R. Smith asked if this is going to hold anything. **MOTION to amend.** J. Kenyon **MOVED** to change the word "faith" to "recommend" when referring to the figures in the teacher's contracts. **SECOND:** C. Lothrop. **VOTE on amendment:** 9.231/0.259/0/6.510. **Motion passes.** **VOTE on amended motion:** 9.490/0/0/6.510. **Motion passes.** **MOTION:** J. Ells **MOVED** to show good faith in the negotiating process and recommend the figures in the support staff contract's put forth to date. **SECOND:** J. Kenyon. **VOTE:** 9.231/0/0.259/6.510. **Motion passes.**

MOTION: J. Gomarlo **MOVED** to dispose of N. Moriarty as chair of the Budget Committee and put in E. Stanley. **SECOND:** J. Ells. **DISCUSSION:** J. Gomarlo commented that the meeting was much more relaxed. It was a pleasant meeting. E. Stanley said that he would not take the chair position. E. Stanley said it was a time issue. **VOTE:** 5.202/2.476/1.812/6.510. **Motion passes.** E. Stanley declined as chair. **MOTION:** J. Kenyon **MOVED** to institute J. Ells as chair of the Budget Committee. **SECOND:** P. Richmond. **DISCUSSION:** W. Felton commented that this is the only time that the School Board and the Budget Committee have been on the same page. E. Stanley commented that this is not being taken seriously. This is a bad road to go on. J. Ells commented that E. Stanley has done a great job. The meeting is more

comfortable. There is no fear or apprehension that hangs over the Budget Committee. He said that he does not want to be chair he would prefer E. Stanley. W. Lechluder commented that he read article about the Budget Committee prior to being on the committee and there is an issue but now he sees it. There is no guilt on his vote. P. Richmond said that she is very serious. The committee is bullied and there is a bad atmosphere. J. Gomarlo commented that N. Moriarty is a big bully. She explained that there is only the Public Hearing and asked E. Stanley to run it as chair. He has declined. **VOTE:** 6.199/1.238/2.053/6.510. **Motion passes.**

4. Setting agenda: The next meeting is on Jan. 3, 2008

5. Motion to adjourn: MOTION: J. Gomarlo **MOVED** to adjourn the meeting at 10:00 PM. **SECOND:** J. Kenyon. **VOTE:** Unanimous for those present. **Motion passes.**

Respectfully submitted,

Laura L. Aivaliotis
MRSD Recording secretary