

**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 Health Trust, ) )  
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 Number C-2011000036

**MOTION TO QUASH SUBPOENA DUCES TECTUM**

Now Comes David Lang, President of the Professional Fire Fighters of New Hampshire (“PFFNH”) by and through counsel, Molan, Milner & Krupski, PLLC, and respectfully requests that a subpoena duces tecum served upon him for a deposition be quashed. In support thereof, PFFNH states as follows:

1. On or about December 22, 2011, PFFNH’s counsel agreed to accept service of a subpoena duces tecum for a deposition that is planned on January 23, 2012.
2. Brian M. Quirk, Esq., counsel for the LGC Respondents, issued the subpoena duces tecum requesting both documents and the PFFNH President’s testimony regarding:
  - a) “Any and all E-mails and any other written correspondence between the New Hampshire Bureau of Securities Regulation and David Lang and/or the Professional Fire Fighters of New Hampshire (“PFFNH”) or any affiliated entity from July 2009 through to the present regarding Local Government Center, Inc.

and any of its affiliates, and/or any of the issues raised in the New Hampshire Bureau of Securities Regulation's Staff Petition dated September 2, 2011."

- b) "Any and all E-mails and any other written correspondence between Secretary of State William Gardner and David Lang and/or the PFFNH or any affiliated entity from July 2009 through to the present regarding Local Government Center, Inc. and any of its affiliates, and/or any of the issues raised in the New Hampshire Bureau of Securities Regulation's Staff Petition dated September 2, 2011."
- c) "Any and all E-mails and any other written correspondence between any third party and David Lang and/or the PFFNH or any affiliated entity from July 2009 through to the present regarding Local Government Center, Inc. and any of its affiliates, and/or any of the issues raised in the New Hampshire Bureau of Securities Regulation's Staff Petition dated September 2, 2011."

3. The subpoena duces tecum for the PFFNH deposition should be quashed, however, because Attorney Quirk has no legal authority to subpoena witnesses for depositions relating to matters before the Bureau of Securities Regulation and/or before this hearing officer.

4. "Any justice or notary may issue such writs for witnesses to appear before himself or any other justice or notary, *to give depositions in any matter or cause in which the same may be lawfully taken.*" RSA 516:4 (emphasis supplied).

5. RSA 421-B:22 (II) provide that: "[f]or the purpose of any investigation, hearing or proceeding under this title, the secretary of state or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry."

6. RSA 421-B does not provide statutory authority for parties to a proceeding to issue subpoenas for depositions.

7. Other State of New Hampshire Agencies have followed similar reasoning.

8. For instance, in Re Tilton and Northfield Aqueduct Co., 74 N.H. P.U.C. 451 (1989) (attached), the Public Utilities Commission quashed subpoenas on the grounds that the relevant

statutory language only permitted the Commission to issue subpoenas regarding proceedings before it.

9. Moreover, even if the LGC Respondents can clear the ‘statutory authority’ hurdle (which they cannot), PFFNH has already been determined not to be an “interested party” to this case.

10. When PFFNH filed a Motion to Intervene in this proceeding, the Respondents vigorously objected citing, among other things, due process concerns, lack of standing, the “procedural quagmire” that would be created by such an intervention, and the fact that PFFNH was not an “interested party.” Respondents argued that PFFNH, and any information it may have to offer in this matter were irrelevant to this case and would not have assisted either side in the outcome.

11. Specifically, the Respondents stated that “. . . PFFNH is a third party to the relationships under examination by the Bureau, at best, and merely asserts the interest of a non-party.” Res. Obj. Mot. Int. ¶ 8.

12. Given the Respondent’s position on how tenuous PFFNH’s connection is to this case and the vehement opposition to its intervention in this matter, (let alone the lack of any legal basis to issue the subpoena) they should not be permitted to launch a ‘fishing expedition’ on matters entirely irrelevant to these proceedings.

13. Accordingly, the subpoena duces tecum served upon Mr. Lang should be quashed as Attorney Quirk has no legal authority to issue subpoenas for this purpose and, even if he did, the Respondents lack any compelling need for the information it seeks.

14. Attorney Quirk has acknowledged to PFFNH counsel that RSA 421-B does not permit the conduct of the deposition he seeks (the statute expressly permitting only the Secretary of State or a designee to do so). Undeterred, LGC counsel posits that because it would be “unfair” not to allow the deposition to go forward that, somehow, RSA 421-B is unconstitutional

as violative of LGC's due process rights. LGC counsel in setting out what as most would be some type of argument for an appellate Court, this argument simply cannot be the basis for the hearing officer to ignore the express terms of the statute that controls these proceedings.

WHEREFORE, David Lang respectfully requests the following relief:

- A. Grant this Motion to Quash;
- B. Conduct a Hearing on this Motion; or
- C. Grant such other relief as is appropriate in keeping with the requirements of RSA 421-B.

Respectfully submitted,  
David Lang  
By and through counsel  
MOLAN, MILNER & KRUPSKI, PLLC

January 3, 2012

  
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Glenn R. Milner, Esq. #5568  
100 Hall Street, Ste. 101  
Concord, NH 03301  
(603) 410-6011

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing was this same day forwarded via electronic mail to Earl Wingate, Esq., William Saturley, Esq., David Frydman, Esq., Brian M. Quirk, Esq., Peter Perroni, Esq., and Michael D. Ramsdell, Esq.

  
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Glenn R. Milner, Esq.

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74 NH PUC 451

**Re Tilton and Northfield Aqueduct Company**

DE 89-197

Order No. 19,612

New Hampshire Public Utilities Commission

November 15, 1989

ORDER granting a motion to quash subpoenas served on commission employees.

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WITNESSES, § 2 — Power to subpoena — Parties to commission proceedings — Depositions.

[N.H.] Subpoenas served by a party to a water franchise investigatory proceeding compelling commission employees to appear and give deposition testimony were quashed where (1) there did not appear to be any statutory authority for a party to a commission proceeding to independently compel persons to appear for depositions, (2) the subpoenas were not timely served, (3) the party serving the subpoenas did not demonstrate a compelling need for deposition testimony, (4) the subpoenaed employees asserted the attorney-client, attorney work product, and governmental privileges, and (5) two of the subpoenaed employees would be made available to testify at scheduled hearings.

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By the COMMISSION:

*ORDER*

WHEREAS, on November 13, 1989, subpoenas issued by attorneys for Tilton and Northfield Aqueduct Company (Tilton & Northfield) were served on Robert Lessels and Eugene Sullivan, III, and on November 14, 1989 Eugene Sullivan, Jr. was informed that a subpoena was served on him, commanding their attendance at depositions to be held in Franklin at 9:00 a.m. on November 15, 1989; and

WHEREAS, Eugene Sullivan, Jr. is Finance Director of the New Hampshire Public Utilities Commission (PUC); Robert Lessels is a water engineer employed by the PUC; and Eugene Sullivan, III is one of the PUC's attorneys; and

WHEREAS, on November 14, 1989, the Attorney General of the State of New Hampshire filed Motions to Quash Deposition Subpoenas relative to these matters; and

WHEREAS, as the deposition cites RSA 516:4 as authority for issuing these deposition notices; and

WHEREAS, RSA 516:4 authorizes any justice or notary to issue writs for witnesses "to give

depositions in any matter or cause in which the same may be lawfully taken," and thus, the subpoenas are valid only if there is authority to compel depositions in proceedings before the PUC; and

WHEREAS, although RSA 365:10 and RSA 365:11 authorize the PUC to subpoena witnesses to appear in any proceeding or examination instituted before or conducted by it, there does not appear to be authority for a party to independently compel persons to appear for depositions; and

WHEREAS, even assuming that there exists authority for a party to issue subpoenas for depositions, subpoenas are subject to being quashed if they are unreasonable; and

WHEREAS, Superior Court Rule 38 provides that no notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least three days, exclusive of the day of service and the day on which they

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are to be taken, and here, although the PUC's notice of hearing is dated October 31, 1989, the subpoenas were not served until November 13th and 14th for depositions to be held on November 15, thus, only one day's notice and two days notice, respectively, was given of the depositions; and

WHEREAS, Robert Lessels, Eugene Sullivan, Jr. and Eugene Sullivan, III are all public employees, the time and energies of public officials should be conserved for the public's business to as great an extent as may be consistent with the ends of justice in particular cases (*Gomez v. City of Nashua*, 126 FRD. 432 (D.N.H. 1989)); and

WHEREAS, Tilton and Northfield have not demonstrated a compelling need for deposition testimony of these public employees (*See Alex v. Jasper Wyman & Son*, 115 FRD 156, 158 (D.Me. 1986)); and

WHEREAS, Mr. Sullivan, III as an attorney for the PUC, has asserted the attorney-client privilege and the attorney work product privilege (*See Superior Court Rule 35(b)(2); N.H. Rules Evid. 502*); and

WHEREAS, Robert Lessels, Eugene Sullivan, Jr. and Eugene Sullivan, III also assert the governmental privilege protecting the mental process of government decision makers (*See Gomez, supra.*); and

WHEREAS, Robert Lessels and Eugene Sullivan, Jr. will be available to testify at the hearing scheduled on November 20 and Eugene Sullivan, III, given his role as PUC counsel, will not be available to testify; it is hereby

ORDERED, that the Attorney General's Motions to Quash Deposition Subpoenas are hereby granted and said subpoenas are hereby quashed.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1989.

NH.PUC\*11/15/89\*[51880]\*74 NH PUC 452\*Southern New Hampshire Water Company, Inc.