

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Local Government Center, Inc.; et al

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Case No.: C-2011000036

**LOCAL GOVERNMENT CENTER’S RESPONSE
TO MOTION TO QUASH SUBPOENA DUCES TECUM,
AND NOTICE OF WITHDRAWAL OF SUBPOENA**

Respondents Local Government Center, Inc. and affiliated entities, and Maura Carroll (hereafter, “LGC”), submit this *Response to the Motion to Quash Subpoena Duces Tecum*, and *Notice of Withdrawal of Subpoena*, stating the following:

1. On December 22, 2011, LGC, through counsel, issued a *Subpoena Duces Tecum to Testify at a Deposition and to Produce Documents* to David Lang, President of Professional Fire Fighters of New Hampshire (“PFFNH”), for a deposition on January 23, 2012.¹

¹ The following provides background as to LGC’s efforts prior to the issuance of the subpoena at issue. After the Parties’ Meet and Confer on November 29, 2011, LGC provided its initial list of deponents—which included Mr. Lang—to the BSR and other Respondents on December 2, 2011, and confirmed the previously agreed upon weeks of January 23, January 30, and February 6, 2012 for the depositions.

Thereafter, on December 14, 2011, the Presiding Officer issued the Scheduling Order setting the deadline for all discovery to be completed no later than March 9, 2012. (This date has been extended to March 27, 2012 by the issuance of a Revised Scheduling Order dated December 30, 2011.)

On the same date the Scheduling Order was issued, December 14, 2011, LGC followed up with the BSR in an attempt to confirm dates for depositions. LGC proposed specific dates for its initial list of deponents, including a proposed date of January 23, 2012 for Mr. Lang’s deposition.

Having not heard anything from the BSR regarding LGC’s initial list of deponents provided on December 2, 2011 or its December 14, 2011 follow-up request, LGC followed up with another E-mail on December 20, 2011, stating that counsel for all Parties except the BSR had confirmed the dates for the deposition; and it again requested that the BSR confirm its availability for the depositions.

Again hearing nothing from the BSR, and with the deadline for the depositions fast approaching, on December 22, 2011 LGC contacted Mr. Lang’s attorney directly and thereafter issued the Subpoena Duces Tecum to him. On the same day, LGC provided a Notice of Deposition to BSR and the other Respondents.

After the issuance of the Notice of Deposition and twenty (20) days after LGC notified the BSR of its initial list of deponents, the BSR notified LGC that it objected to five of the eleven deposition requests made by LGC and stated that it reserved its right to object to Mr. Lang’s deposition.

On January 4, 2012, LGC again asked the BSR to confirm the dates and times for four of the proposed witnesses and asked it to reconsider the BSR’s objections to six of the eleven deposition requests that LGC had made. As of the filing of this pleading, the BSR still has not responded to these requests.

2. Prior to serving the subpoena, counsel for LGC contacted Attorney Glenn Milner of the law firm of Molan, Milner and Krupski, PLLC, to advise him of LGC's desire to take the deposition of Mr. Lang. Attorney Milner agreed to accept service of the subpoena, while reserving his right to object to its content.

3. The subpoena called for Mr. Lang's deposition on January 23, 2012, providing more than thirty (30) days' notice to the potential deponent and his counsel, as well as to all Parties of Record.

4. On December 29, 2011, counsel for PFFNH and LGC discussed various issues concerning the subpoena: what testimony LGC sought from Mr. Lang, the BSR's statement to Attorney Milner that it was no longer listing Mr. Lang as a witness, and the statutory basis for issuing the subpoena.

5. Following the December 29, 2011 discussion and in response to the issues raised by Attorney Milner, LGC's counsel drafted a motion to the Presiding Officer seeking authorization for the issuance of the subpoena to David Lang, and drafted a *Subpoena Duces Tecum* for the Presiding Officer's review and signature.

6. LGC planned to raise the subpoena issue concerning Mr. Lang with the Presiding Officer, and to ask him to issue the subpoena, at the upcoming January 3, 2012 Informal Conference with the Presiding Officer and Parties.

7. On December 30, 2011, the Presiding Officer canceled the Informal Conference set for January 3, 2012.

8. On January 3, 2012, LGC advised Attorney Milner that undersigned counsel was planning to raise the procedural aspects of the subpoena with the Presiding Officer and that, after doing so, LGC would provide an update to Attorney Milner.

9. Approximately an hour after that communication, PFFNH filed the *Motion to Quash*.

10. To help streamline the process, LGC withdraws the *Subpoena Duces Tecum* dated December 22, 2011. LGC, instead, has filed a *Motion for the Issuance of a Subpoena Duces Tecum Directed to David Lang of Professional Fire Fighters of New Hampshire*, seeking a subpoena to Mr. Lang directly from the Hearing Officer.

11. Accordingly, LGC respectfully submits that the *Motion to Quash* is moot, and asks that the Presiding Officer grant the accompanying *Motion for the Issuance of a Subpoena Duces Tecum Directed to David Lang of Professional Fire Fighters of New Hampshire* to require Mr. Lang's appearance for a deposition on January 23, 2012, and to produce documents.

WHEREFORE, Local Government Center respectfully requests the Presiding Officer:

- A. Rule that the *Motion to Quash Subpoena Duces Tecum* is moot; and
- B. Grant such other and further relief as may be deemed proper and just.

Respectfully submitted,

LOCAL GOVERNMENT CENTER, INC.;
LOCAL GOVERNMENT CENTER
REAL ESTATE, INC.;
LOCAL GOVERNMENT CENTER
HEALTHTRUST, LLC;
LOCAL GOVERNMENT
HEALTHTRUST, LLC;
LOCAL GOVERNMENT CENTER
PROPERTY-LIABILITY TRUST,
LLC;
HEALTHTRUST, INC.;
NEW HAMPSHIRE MUNICIPAL
ASSOCIATION PROPERTY-
LIABILITY TRUST, INC.;
LGC-HT, LLC;
LOCAL GOVERNMENT CENTER
WORKERS' COMPENSATION
TRUST, LLC; AND
MAURA CARROLL,

By Their Attorneys:
PRETI FLAHERTY BELIVEAU &
PACHIOS, PLLP

Dated: January 10, 2012

By: /s/ Brian M. Quirk
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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of January 2012, forwarded copies of the within Response to New Hampshire Bureau of Securities Regulation's Motion for Clarification *via* E-mail to counsel of record.

/s/ Brian M. Quirk