

Wensley & Jones, P.L.L.C.
Attorneys at Law

40 Wakefield Street
P.O. Box 1500
Rochester, N.H. 03866-1500

e-mail: wwa@joneswenslev.com
Web page: www.joneswenslev.com

Tel.: 603 332-1234
Tel.: 603 332-1235
Tel.: 603 332-2442
Fax: 603 332-9716

Stephen O. Wallace
(1955-1968)

August 2, 2010

Anthony I. Blenkinsop, Esq.
Senior Assistant Attorney General
Department of Justice
33 Capitol Street
Concord, NH 03301-6397

Mark H. Gardner, Esq.
Deputy General Counsel
Pease Development Authority
55 International Drive
Portsmouth, NH 03801

RE: Skyhaven Airport / City of Rochester / Municipal Taxation

Dear Attorneys Blenkinsop and Gardner:

Please be advised that this office represents the City of Rochester with regard to the above-captioned matter. By letter dated April 27, 2010, addressed to Mark H. Gardner, Deputy General Counsel, Pease Development Authority, Thomas Mullen, Chief Assessor for the City of Rochester, indicated to the Pease Development Authority (the "PDA"), through Attorney Gardner, that the City of Rochester, in accordance with the mandate of RSA 72:23, I, intended to tax hangars located at Skyhaven Airport and leased to private individuals and/or entities, and he stated that he would be requesting the names of tenants of the PDA, their mailing addresses, amount of rental fees paid by each such tenant per month, as well as the number of the building and hangar number with reference to each such tenant. Although such list of items to be requested did not specify copies of all leases or other agreements pursuant to which at Skyhaven Airport lessee and/or renter obtained its right to occupy space at the Skyhaven Airport, such information should also have been included among the information to be requested.

In response to Mr. Mullen's April 27, 2010 letter to Attorney Gardner, Attorney Blenkinsop replied, on behalf of the State of New Hampshire, and presumably the PDA, by letter dated July 1, 2010, in which he concluded that "... it is the State's position that consistent with the language of RSA 12-G:14, VI, property at the Skyhaven Airport is not subject to municipal taxation."

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The rationale for such conclusion was briefly stated as follows:

"The clear statutory language enacted by the Legislature provides that regardless of any other provision of law (i.e. RSA 72:23) the property at Skyhaven Airport is exempt for (sic) all taxes or special assessments of the State or any political subdivision thereof, which, therefore, includes the City of Rochester. In fact, within other sections RSA 12-G:14 the Legislature has included specific language concerning how taxes are to be assessed/paid at other PDA property, such as the port and the old air force base. The absence of such language concerning Skyhaven Airport is further evidence of the Legislature's intent that the property not be subject to such taxes/payments."

The purpose of this letter is two fold. First, in the following few paragraphs, I will attempt to outline to you why the City disagrees with Attorney Blenkinsop's conclusion regarding the meaning and impact of RSA 12-G:14, VI. The second reason for this letter is to request, under the provisions of RSA 91-A:4, certain public documents and information with respect to leases and/or other agreements concerning the rental, lease or other authorization to entities and/or individuals, other than "... the state or a city, town, school district or village district," to use and/or occupy property situate at the so-called Skyhaven Airport.

With regard to the issue of RSA 12-G:14, it is the position of the City of Rochester that such statute in no way prohibits the City of Rochester from imposing municipal property taxes on individuals or entities other than the "state of New Hampshire or ... a New Hampshire city, town, school district or village district", provided that such property is "... used or occupied by other than the state or a city, town, school district or village district under a lease or other agreement the terms of which provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property." See RSA 72:23, I(a).

By its terms, RSA 12-G:3, which establishes the PDA, provides that the PDA is a "body politic and corporate of the state" (emphasis supplied). RSA 12-G:14, which is entitled "Limitations on State and Local Taxation; Provision of Services" provides, in paragraph I, that the PDA's exercise of the powers granted to the PDA shall be "... in all respects for the benefit of the people of the state, for their well-being and prosperity, and for the improvement of their social and economic conditions, and, except as provided in paragraph II, the authority (PDA) shall not be required to pay any tax or assessment on any property or project owned by the authority under the provisions of this chapter or upon the revenues from such property or project, nor shall the authority be required to pay any recording fee or transfer of any kind on account of instruments recorded by it or on its behalf." (Emphasis supplied). This sentence is clearly intended to exempt the PDA (the "authority") from the payment of state and local taxes, but it fails to address, to any degree, the authority of other governmental bodies, such as the City of Rochester, to tax PDA owned and/or controlled property in accordance with the requirements, restrictions and mandate of RSA 72:23, I.

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Given the above, it can be seen that RSA 12-G:3, I, establishes the PDA as an arm of the government of the State of New Hampshire, while RSA 12-G:14, I, exempts certain PDA property from the payment of "... any tax or assessment on any property or project owned by the authority under the provisions of Chapter 12-G." Notwithstanding this provision, however, the next sentence of RSA 12-G:14, I, provides specifically that: "Nothing in this section shall be construed to exempt any transferee, leasee or tenant of the authority from paying any recording fee, transfer tax, or other tax required by state law." (Emphasis supplied). The reference in this sentence to the word "section" is a reference to all of the provisions of Section 14 of Chapter 12-G of the New Hampshire Revised Statutes Annotated. Consequently, while RSA 12-G:14, I, establishes the general proposition that "the authority (the PDA) is exempt from state and local taxes," the extent of the exclusion from taxes is, by the plain language of the second sentence of RSA 12-G:14, not to be construed "... to exempt any transferee, leasee, or tenant of the authority from paying any recording fee, transfer tax or other tax required by state law", "... except as provided in paragraph II" (Emphasis supplied).

Paragraph II of RSA 12-G:14 contains provisions that deal with the taxability of authority property located within the boundaries of the Pease Air Force Base, both "within" and "... outside of the airport district located thereon", and further addresses the establishment of the concept of a so-called "municipal services fee" to be paid, in limited instances, to municipalities which own land within the confines of the former Pease Air Force Base property. Similarly, RSA 12-G:14, IV, deals with and defines responsibility for the provision of certain municipal services to PDA property, and provides for certain payments in lieu of taxes to be made to certain local governments by the PDA (the "authority") in regard to certain such municipal services.

RSA 12-G:14, V, which deals with "all property formerly held by the port authority and transferred to the authority (PDA), or acquired by the authority pursuant to RSA 12-G:39", declares such property to be "public property" and establishes that it shall be "exempt from all taxes and special assessments of the state or any political subdivision thereof", but indicates that "in lieu of such taxes the authority shall make a payment to the city of Portsmouth in the amount of \$30,000 annually for the tax year commencing April 1, 2001 and each subsequent tax year for highway maintenance, fire protection and other services."

Similarly, RSA 12-G:14, VI, which is the provision upon which Attorney Blenkinsop relies for his conclusions that "... property at Skyhaven Airport is not subject to municipal taxation", does not, by its terms, specifically refer to Skyhaven Airport. Rather, such provision is applicable to "... all property formerly held by the department of transportation and transferred to the authority (PDA), or acquired by the authority pursuant to this chapter (i.e. Chapter 12-G)", and declares that such property "... shall be exempt from all taxes and special assessments of the state or any political

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subdivision thereof." (Emphasis supplied). Since the word "Chapter", as used in RSA 12-G:14, VI, is a reference to Chapter 12-G of the New Hampshire Revised Statutes Annotated, it clearly appears that the purpose of RSA 12-G:14, VI, was an effort by the legislature to broaden the category of tax exempt authority property covered by the first sentence of RSA 12-G:14, I, so as to extend the tax exemption of authority property, not only to the property held by the PDA at the time paragraph I of Section 14 of RSA Chapter 12-G was adopted, but also to "... all property formerly held by the department of transportation and transferred to the authority, or acquired by the authority pursuant to this chapter" (emphasis supplied), and to declare that such property (like that covered by RSA 12-G:14, I) is declared to be public property, and is, therefore, "... exempt from all taxes and special assessments of the state or any political subdivision thereof."

The broad language of RSA 12-G:14, VI, thus, not only applies specifically to "all property formerly held by the department of transportation and transferred to the authority", but also applies to all property "acquired by the authority pursuant to this chapter (e.g. RSA 12-G)." However, RSA 12-G:14, VI, makes no reference to the specific language of the second sentence of RSA 12-G:14, I, which, as noted above, specifically provides that "... nothing in this section (i.e. RSA 12-G:14) shall be construed to exempt any transferee, leasee or tenant of the authority from paying any recording fee, transfer tax, or other tax required by state law." (Emphasis supplied). Furthermore, RSA 12-G:14, VI, does nothing to abrogate the broad language of the second sentence of RSA 12-G:14, I, which specifically states that nothing in RSA 12-G:14 "... shall be construed to exempt any transferee, lessee or tenant of the authority, from paying any recording fee, transfer tax or other tax required by state law."

Since the specific language of RSA 12-G:14, I, regarding the fact that such section shall not "... be construed to exempt any transferee, leasee or tenant of the authority from paying any recording fee, transfer tax or other tax required by state law", plainly indicates that cities, towns and other political subdivisions of the state (which are subject to the mandatory requirements of RSA 72:23, I, N.E. Tel. & Tel. Co. v. City of Rochester, 144 N.H. 118, 120 (1999)), have both the obligation under RSA 72:23, I, and the retained authority, under the provisions of RSA 12-G:14, I, to tax the property owned, used or occupied by the authority when such property is used or occupied by an "... other... under a lease or other agreement the terms of which provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property," it is clear that RSA 12-G:14, VI, does not prevent the City of Rochester from taxing a "transferee, lessee or tenant of the authority" if "required by state law." RSA 72:23, I(a) and RSA 12-G:14, I.. Furthermore, RSA 72:23, I(b) mandates that all leases or other agreements entered into by all N.H. governmental entities after July 1, 1979 "... shall provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property no later than the due date."

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Given the plain language of the second sentence of RSA 12-G:14, I, and the clear mandate of RSA 72:23, I, it is submitted that it is the indisputable intent of the New Hampshire legislature, and clear mandate of existing New Hampshire law, that property owned or controlled by governmental entities, such as the state, cities, towns and the PDA are subject to municipal property taxes if, and when, the requirements of RSA 72:23, I, are met, as they are in this case.

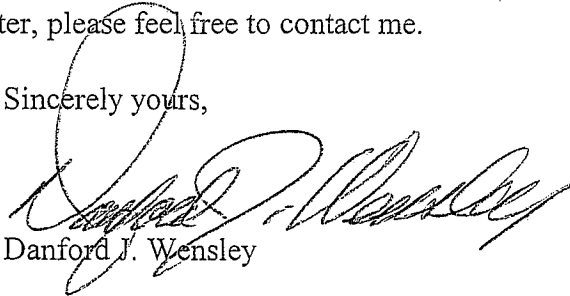
For the reasons set forth above, it is the position of the City of Rochester that, to the extent that a lessee, or similarly situated individual or entity of property located at the Skyhaven Airport uses and/or occupies property falling within the guidelines of RSA 72:23, I, the governmental property used and/or occupied by such "other" individual or entity is subject to taxation under RSA 72:6 and RSA 72:23.

Having the above in mind, and pursuant to the provisions of RSA 91-A:4, on behalf of the City of Rochester, I hereby request that the City, through my office, be provided with copies of the following public records:

- (a) A list of all tenants at the Skyhaven Airport, and their mailing addresses;
- (b) Copies of any lease or other agreement with regard to the space being leased, rented or otherwise occupied by such tenant(s); and
- (c) Any plans, floor plans or other depictions of the space, including land, being leased and/or occupied by such tenant(s).

If you have any questions concerning this letter, please feel free to contact me.

Sincerely yours,


Danford J. Wensley

DJW/pjv

CC: John F. Scruton, City Manager
CC: Thomas Mullen, Assessor