



Portsmouth Concerned Citizens

NEWSLETTER

“Information is the currency of Democracy”

- Thomas Jefferson

Editor: Joe Robicheau

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From the President (*Larry Fitzmorris*)

Important PCC Study -- For the first time the PCC has conducted a financial study of the nature of the School Department budget and the forces that are leading us into repeated deficits and budget crises. Art Carrellas and Jerry Cook have produced a detailed study of the NEA contract and the effects that it and the Administrators' contract have had on recent budgets. The study provides answers as to why our school system always seems to be in financial crises. This is an important work and we will make it available to our town's citizens through presentations and a broadcast on the local cable television access channel.

Voter Initiative Alliance – We, and the other members of the Voter Initiative Alliance, are closing in on our goal of 20,000 petition signatures. At last count we had about 19,000 Rhode Island voters who have signed, and as you read this we are likely to have achieved our goal. This is an historical event for our state. No other group in Rhode Island has collected more than 3,000 voter signatures.

In This Issue:

School Department Budget – Kathy Melvin exposes the source of the ever present school budget crisis.

What We Believe – We in the PCC have guiding principals that drive our operations. This article summarizes our views as an organization.

Sustainability – State laws and regulations have a significant impact on the cost of local government. Now is the time for the state to rewrite/repeal the offending legislation to reduce their impact on local budgets.

Access to Town Council Agenda – Paul Kesson discusses the events leading to a formal procedure for citizen access to the Portsmouth Council agenda.

Secret Contracts Right Here In Little Rhody – Joe Matais addresses the companion problem of access to our government: the fine print in the Public Records Act.

Performance Audit – This is a discussion of the Town Council's decision to prevent a timely and detailed audit of recent history of School Department finances.

School Department Budget

(*Kathy Melvin*) Newspaper announcements of school budget shortages are beginning to become an alarming routine in Portsmouth. The answer so far has been for the School Committee to appeal, repeatedly, to the Town Council for additional monies from the Town Surplus Account. How long will this go on while programs for children and personnel not covered by contracts are eliminated? The answer is, in my opinion, the problem will continue year after year. The nub of the problem is the unsustainable School Department payroll and benefit package contained in contractual agreements signed by the School Committee. Until we have elected officials who will do what is right and confront the issue, student needs will continue to be subverted by unjustifiable labor contract provisions.

Payroll and Benefits make up 92.7% of the regular School Budget and 92.95% of the Special Education Budget. The budget breaker is hidden in automatic annual step increases. The newly signed NEA contract giving teachers a 3.4% increase translates into sizably different numbers when the annual step increases for each teacher with less than ten years experience are included. Automatic increases range as follows:

Annual Step Advance	1-2	2-3	3-4	4-5	5-6
Actual Salary Increase	12.0%	9.9%	8.1%	10.1%	9.68%

Annual Step Advance	6-7	7-8	8-9	9-10	10+
Actual Salary Increase	8.98%	9.0%	8.4%	23.4%	3.4%

The system is too big, it is too multi-layered, indiscriminate salary increases are excessive, and now the chickens have come home to roost. The system must be brought back to manageable proportions with a concentration on student needs.

This adjustment is not going to be achieved easily. Rather than tackle the real problems, some Town Council members

refuse to acknowledge the root cause and continue to compare Portsmouth per pupil spending with those cities and towns who enjoy enormous support from the State and Federal Government. It's time to take off the rose-colored glasses. The cut and paste approach to budgeting has got to stop and long-range planning based on practical staffing and budgeting must take precedence.

Right now we are trying to resolve this long festering problem with middle-school children participating in basketball funded by their parents, coached by volunteers and bussed to out-of-town gyms for practice. All this because the lights are out in Portsmouth gyms and the additional cost to parents to turn the lights on would be \$78.80 an hour. Teachers often have difficulty getting necessary materials for class projects and there is a now proposal to bring next year's budget in line by eliminating arts, music, and school sports. Is this the face of Portsmouth Schools in the future? I hope not.

What We Believe

(Larry Fitzmorris) In recent weeks, individuals have made a number of statements intended to characterize the Portsmouth Concerned Citizens. This is a good time to set the record straight and to describe our core beliefs.

The chairman of the Democratic Party in Portsmouth would like people to believe that the PCC and the Portsmouth Republican Party are in lock step on town issues. This is not true. The PCC strongly opposed two Republicans on the School Committee over the gym issue last year and has in past years opposed Republicans on the Council and School Committee who advocated for excessive budgets.

The truth is that while the budget is the primary issue in town government, budget policy does not break down along party lines. The PCC recently supported Democrats on both the Council and the School Committee when they advocated for financial restraint on both the gym project and budget deficit issues.

A statement on whom and what we are is in order.

We are all volunteers and do not accept funds from outside organizations. We are bipartisan and do not represent the views of any political party. We work to improve openness, efficiency and honesty of our town government. That is why for the last four years we have manned the camera to record town meetings for broadcast on Cox Cable.

The PCC was founded in 1998 by a group of citizens who believed that property taxes in Portsmouth had reached a level of harm for some of our citizens and had become an excessive burden to all. It is our fundamental and passionate belief that property taxes have risen to levels that hurt our citizens, and that the cost of town government is the reason for high property taxes - not high property values. It is our view that the idea that the scope of government should naturally grow year after year is false. As a consequence, we have established a specific budgetary goal for our town

government: the yearly growth in the cost of government should not exceed the rate of inflation of the previous year. This is because the rate of inflation has closely matched the growth in our incomes for some time. Because the tax burden has risen so fast in the last fifteen years, we believe that revenue derived from the taxes paid on new homes and businesses should be used to reduce taxes, not fuel the dreams of those who desire ever larger government in Portsmouth. We also have consistently opposed the practice of managing town government through budget increases. Anyone can do more with more.

We believe that an individual voice is rarely heard in our government, and that to be effective we must speak as a group. Together we can effect change; individually we will be ignored.

We believe, as did Thomas Jefferson, that "Information is the currency of Democracy." Accordingly, we do our homework. The PCC membership includes individuals who have become experts on specific topics, such as the gym design and construction process and the school budget. Our experience has left us with the absolute belief that the Portsmouth budget of \$45 million a year, and the government it supports, is so complex that the average citizen does not have the time to understand the details of its management and finances. That is why we review and research town budgets and publish our views in a newsletter four times a year. Through the PCC newsletter we aim to provide an alternative voice and an independent evaluation of budgetary and other important issues affecting the citizens of Portsmouth.

Why are we disparaged in letters to the editor? Simple, we are effective. Our work opens up town government to the light of day. We are challenging the old way of doing business in Portsmouth. On a number of critical points of policy we are challenging the establishment that has run our town for decades; the individuals and groups that have a vested interest in the growth of our town's government and its operation. The local Democratic Party Chairman, speaking for his faction in the Democratic Party in Portsmouth, is the voice of the status quo. His is the voice of ever-larger government and relentless tax increases.

Sustainability

(Larry Fitzmorris) This year Portsmouth, along with many other communities in our state, is facing a difficult budget choice between affordability and services. This is particularly true in our school department where unchecked spending growth has pushed the cost of town government to the brink. How much longer can we sustain this level of government growth?

In his recent State of the State address, Governor Carcieri signaled that he will not approve tax increases in excess of the limit of 5.5%. Tom Coyne, in his recent editorial in the Providence Journal, commented that the members of the Assembly are telling Rhode Island cities and towns that there will be no increases in state aid to education. It is his view

that Rhode Island government is wedded to the existing welfare system and that that commitment will maintain the state's low level of aid to local education, which currently ranks 44th among the states.

There seems to be little likelihood of any serious increase in state funding in the near future as the economic competitiveness of Rhode Island has declined to dangerous levels relative to surrounding states. Further state tax increases would likely accelerate the problem and further reduce revenues. At the state level we have reached the point of diminishing returns.

With increased state funding unlikely, the cost burden is squarely on the shoulders of local governments and the taxpayers who fund them. This situation has existed for the last few years, and is one of the reasons that the cost of local government is increasing much faster than state government.

Unfortunately, municipal governments are operating in a system in which the cards are stacked against them. Structural costs, primarily labor contracts, are driving-up town budgets at unsustainable rates. Contract costs are increasing at rates in the vicinity of 6% per year in the Portsmouth School system, and at similar rates in other communities. These rates far exceed increases in this community's average incomes.

This is a critical point. Portsmouth cannot sustain tax growth indefinitely at 5 and 6% levels when resident incomes are growing at 2.5 to 3%. In order to avoid local budget instability, Portsmouth must break this cycle now.

In large part these growth rates are promoted by a number of special interest state laws. For instance, state law mandates secret negotiation of labor contracts. This law protects labor contracts from any public scrutiny until after they are signed. As one who has evaluated these contracts, I know it takes weeks to determine their real financial impact. Thorough and effective public review, prior to signature approval, is essential to regaining control of these costly contracts. Once signed, taxpayers are left to ogle the inflated provisions for the next three years. The cycle begins again with a different slate of elected officials that assumes the prior contract, having been approved by predecessors three years earlier, is a good starting point for next contract. Similarly, the influence of special interests is enabled by laws such as those that exempt members of teachers' unions from the Conflict of Interest law when serving on School Committees. This law allows elected officials to vote on labor contracts in which they have a vested interest. Again, taxpayers' interests are trampled. These laws, among others, create an environment in which local elected officials are handcuffed, out-gunned and overwhelmed in the budget process.

If the state truly wishes to help local communities, such as Portsmouth, the Assembly must dismantle the special interest laws that drive-up local costs. The state legislature must restore to local governments the freedom to deal with the budget monster as they see best. Otherwise, we all face rapidly growing local taxes and the very real possibility of instability in local governments around the state. The

Assembly must act now to avoid the looming budgetary train wreck in our cities and towns.

Access to Town Council Agenda

(Paul Kesson) On December 11th, an article entitled, "Citizens can talk; but officials aren't allowed to answer" was published in The Providence Journal. The article detailed how certain town councils were interpreting a recent advisory opinion ("In re Exeter-West Greenwich Regional School District") by the Rhode Island Attorney General's office. These councils interpreted the advisory opinion as a prohibition against discussing issues not on the posted agenda for public meetings. The article focused on a dispute between the Jamestown Council President and a local group, the North End Concerned Citizens (NECC). The dispute centered on the building of a DPW garage in their neighborhood. The NECC could not get their issue on the Town Council's agenda. Having no choice, the NECC used the open forum, a time set aside for electors to speak on any topic. After the NECC presented their concerns, the Council President thanked the audience and sat there in silence. There was no discussion between the council and attendees about their concerns. In a Letter to the Editor titled, "Gotcha' Journalism Distorted Meaning Of Open-Meetings Law" (ProJo, Dec 28), Attorney General Patrick Lynch stated, "Contrary to both the article and the editorial, my office never advised or told anybody that local officials had to sit silently at public meetings." The Attorney General also stated that he had written to every town solicitor to clarify what he labeled, "misinformation" in the aforementioned article.

The next day, at the December 12th Town Council meeting, Councilman Leonard Katzman submitted a new policy proposal that would formalize how items are submitted for inclusion on the Portsmouth Town Council's agenda. As with the current practice, agenda items would continue to be submitted to a council member or the Town Clerk. The proposal, unlike the current tradition established by the last Council, would allow the Town Clerk to reject the submitted agenda item after conferring with the Council President, the Town Administrator, and the Town Solicitor.

What many failed to realize is that electors, until recently, had no right, constitutional or otherwise, to add items to the Council's agenda. Though electors have the right, thanks to the Open Meetings Act, to attend town meetings; electors had no right to speak at them. It was only through tradition that the Portsmouth electorate had direct access to local government. The proposed agenda policy would have ended that tradition.

At the January 23rd Town Council meeting, Councilman Leonard Katzman introduced a second version of his proposal. The changes were made in consultation with the local ACLU representative who had objected to the original proposal. In essence, the changes provide a test to determine whether or not the agenda item will be accepted. The test being; is the topic germane to town business; would discussion of the topic by the Council expose the town to legal liability; and is the

topic a repeated agenda item. Though this test was touted as further protecting elector's access to the Council agenda, it could also be interpreted as further protecting the Council from the electors.

After considerable debate Councilman Dennis Canario proposed, and Mr. Katzman accepted, an amendment deleting the requirement for any test and rewording the ordinance to read; "An elector may ask the Town Clerk to place an item on a Town Council meeting agenda." The Town Clerk considers this mandatory language, and all citizens should now have access to the Council's agenda.

The PCC took every opportunity to vigorously oppose Councilman Katzman's first proposal, but fully supports the second version and applauds the Town Council's decision.

Secret Contracts Right Here In Little Rhody

(Joe Matais) Long before the Patriot Act, and long before the continuing struggles to access information kept secret from the public, Rhode Island passed what seemed to be a sorely needed ACCESS to PUBLIC RECORDS ACT (APRA). However, like so much legislation, performance is strangely removed from the promise of the legislation.

In Rhode Island government, not unlike the private sector, the method used to obtain the services of senior executives or specialized talent is an employment contract. Since these contracts, just like union contracts, entail the expenditure of public funds for professional services, it would seem proper and correct that they would be a public documents. Surely then, all government employment contracts in Rhode Island must be open to public scrutiny. And, as stated previously, State law provides for public Access to Public Records. However, there is one very telling and incredible exception. And, that exception is not cited as an exception for employment contracts. To include the exception under employment contracts would invite too much public attention and perhaps lead to unwanted legislative revision. The determination to hide the details of individual employment contracts is revealed in the two step approach.

In Title 38, Chapter 38-2, ACCESS to PUBLIC RECORDS, definitions are listed. The definitions for public records and public business are very inclusive. If you did not read any further, you would feel comfortable in the belief that public business was open for inspection by any resident. You would also be very much in error. Hidden in the very next paragraph, which restricts public access to personal information, is the language that exempts all information contained in individual employment contracts. In part, it states, "All records which are identifiable to an individual...; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality,

work location, business telephone number, the city or town of residence and date of termination shall be public." Although the latter part of the quoted law is seemingly and correctly pointed towards preserving private information of the individual, denial of access to a contract is linked to the very first words, ALL RECORDS (emphasis added) which are identifiable to an individual.

This wording supposedly renders all individual employment contracts, secret. To the average reader, this may seem improbable. But, if you were to ask for a copy of the contract between the Town of Portsmouth and the School Superintendent, your request would be denied on this basis; it is identifiable to an individual. Since Portsmouth does not suffer from a surplus of School Superintendents, the contract is obviously identifiable to an individual. Likewise, it is unarguable that a contract is a record. However, a contract is much more than the sum of the pieces cited above as releasable to the public. Your attention is invited to several.

What might the contract state about non-recurring costs such as severance package, sometimes referred to as a "golden parachute" for executives? Are there any other costs, which will only be appreciated after the hired individual leaves the position? What are the bases, if any, for termination, such as personal conduct and behavior? Many readers may be aware that the NEA contract contains more than four pages describing grievance procedures an individual may invoke including a requirement that the Portsmouth School Department pay for legal representation to defend individuals in certain circumstances. Do similar provisions exist in individual employment contracts? Although the cost of fringe benefits is releasable to the public, what elements are included? For example, does the dollar value include paid vacation time? If so, how many days? Is there sick time and how much? Can sick time be banked? If so, how much? And, certainly, the contract must contain performance measurements, goals and/or objectives. How else does the School Committee assess the performance of any individual under contract?

The Rhode Island Supreme Court has reviewed the exemption of contracts with individual employees and concluded that any record identifiable to an individual is exempt from release to the public. "The unambiguous language embodied in 38-2-2[(4)(a)(A)(1)] makes it unmistakably clear that the Legislature intended to limit the public's access not only to personal information contained in an employee's personnel file, but also to any record that identified a particular employee." Herein lays the origin of secret contracts in Rhode Island.

How did Rhode Island Courts arrive at such a ruling? Why did they choose to ignore the context of the legislation, which is clearly entitled ACCESS to PUBLIC RECORDS ACT! How do you ignore the paragraph which lists virtually every thing as public business, "... all documents, papers, letters, maps books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data or other material regardless of physical form or characteristics made or received pursuant to law or ordinance

or in connection with the transaction of official business by any agency,” but see an exclusion for information, which is not of a personal nature?

Since mostly senior public employees enjoy a personal contract, it appears to be a “perk” of power. Would it surprise anyone in Rhode Island that the law was tweaked to hide sweetheart deals? Similar circumstances may have caused the unsavory Oliver Twist character, Artful Dodger, to pronounce that “The law is a ass.”

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The
PORTSMOUTH CONCERNED
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Call Drena Robicheau at 847-1098
We are Working for Change**

The Performance Audit

(Larry Fitzmorris) At its February 13 meeting the Portsmouth Town Council effectively voted to kill the School Department performance audit.

As most members will remember, it was a PCC initiative that identified the need for a Performance Audit. It was proposed to the Council by our organization last fall.

During the Council meeting Pete McIntyre motion for removal of the Performance Audit agenda item from Old Business so that Al Honnen could vote on the matter. Mr. Honnen had not yet arrived.

Later, after a lengthy discussion among members of the Council on the merits of a Performance Audit, a motion was made by Mr. Honnen that had the effect of ending debate and preventing public comment. Mary Ann Edwards acknowledged that both Senator Levesque and I wanted to speak to the issue. Mrs. Edwards, Mr. Canario and Mr. Honnen voted for the motion, with Mr. Seveney, Mr. Katzman and Mr. West voting against the proposal. Mr. McIntyre cast the deciding vote in favor of the motion. All public comment on the issue was then prohibited.

Senator Levesque vigorously protested that the public was not given the opportunity to speak, at times shouting at Council members and attacking Mr. McIntyre directly for his criticism of the school department staff. Mrs. Edwards ruled Senator Levesque out of order and outburst ended.

The Council then voted to delay action until the budget process was before them. Mr. Canario also asked the Town Finance Director, David Faucher, to provide a line item in the new budget for a performance audit to be conducted during the next fiscal year.

The effect of the Council's decision is to prevent a detailed review of the events and decisions that led to the 2004-2005 deficit before the consideration and approval of the 2005-2006 budget. This action is akin, though in this case intentional, to the School Committee's negotiation and approval of the 2005-2007 NEA labor contract, while unaware of the School Department's deficit spending. The maneuvering over the Performance Audit is intended to protect those in the School Department staff and the School Committee who bear direct responsibility for over spending the school budget.

Upcoming Events

- The PCC will present to the public its Portsmouth School Budget Analysis on March 21 7:00 to 9:00 at the Masonic Hall, 81 Sprague St. Portsmouth. Refreshments will be available.
- The PCC holds its membership meetings on the first Tuesday of each month. We meet at 7:00 PM at the Anthony House, 51 Middle Rd. Our next meeting will be on March 7. All members are encouraged to attend and guests are always welcome.
- The PCC is updating our member's e-mail addresses. If you have a new address or have recently established a new on-line service, you may e-mail your new address to LJFITZ45@aol.com or call Larry Fitzmorris at 683-6127.

Portsmouth Concerned Citizens
50 Kristen Ct.
Portsmouth, Rhode Island 02871

**PORTSMOUTH CONCERNED CITIZENS
MEMBERSHIP FORM**

NAME _____ DATE _____

ADDRESS _____

CITY/TOWN _____

HOME PHONE _____ OFFICE PHONE _____ E-MAIL _____

ANNUAL DUES: \$20 (Single) \$25 (Family) \$100+ (Founder's Club)

Call: 683-6127, or mail this form and your contribution to: Portsmouth Concerned Citizens
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Portsmouth, RI 02871