

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF HEARING

TOWN OF KENSINGTON RESIDENTS

Case Name: **In re; Harold Bragg, Town Moderator Town of Kensington, New Hampshire**
Case Number: **218-2018-CV-01039**

The above referenced case(s) has/have been scheduled for: **Evidentiary Hearing**

Date: September 14, 2018 **Rockingham Cty Courthouse**
Time: 9:00 AM **10 Rte 125, Brentwood**
Time Allotted: 15 Minutes **Location:**

PURSUANT TO COURT ORDER ATTACHED

If you do not appear at this hearing, the Court may consider you to be in default and may make orders against you without your input. If you are the defendant and do not appear, the Court may find for the plaintiff(s) and proceed immediately to the assessment of damages or a hearing on the relief sought. If you are the plaintiff and do not appear, the Court may dismiss the case.

Multiple cases are scheduled during this session. Please notify the court immediately if your hearing is expected to last longer than the allotted time, as the Court cannot guarantee that additional time will be available.

If you will need an interpreter or other accommodations for this hearing, please contact the Court immediately.

Please be advised (and/or 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.

September 12, 2018

Maureen F. O'Neil
Clerk of Court

(504)

C: Douglas Martin Mansfield, ESQ;

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss

IN RE PETITION OF HAROLD BRAGG, TOWN MODERATOR
OF THE TOWN OF KENSINGTON, NEW HAMPSHIRE

218-2018-CV-1039

ORDER

Harold Bragg, the Moderator of the Town of Kensington, appearing in his capacity as a citizen of the Town has filed a petition asking the Superior Court to appoint two other citizens of the Town—Michael Schwotzer and Benjamin Cole—to serve as interim Selectmen until the March, 2019 Town election.

Mr. Bragg's petition states that the entire Select Board of the Town resigned at once. Since there are no remaining Selectpersons, the Select Board cannot fill its own vacancies per RSA 669:63. Therefore, under the same statute the Superior Court is required, on petition of any citizen, to fill the vacancies on the Select Board.

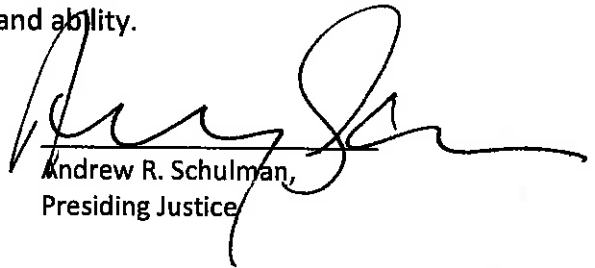
Mr. Bragg has proven a compelling need to take very fast action. The Town cannot meet its payroll without approval by the Select Board (as Mr. Bragg's counsel verified with the Department of Revenue). Thus, it risks serious violation of the wage and hour rules, and its employees may face great hardships if the vacancies remain open for more than a minimal period of time. Further, the Town could not pay its vendors for such items as electrical service, phone service, supplies, etc.

The court shall hold an evidentiary hearing on Mr. Bragg's petition on Friday September 14, 2018 at 9:00 am. Both proposed selectpersons shall appear in person or be available by phone. Other individuals may be nominated or nominate themselves in writing at or before the

hearing. The public is welcome to submit comments or objections in writing, which shall be either filed in court or sent by email to Mr. Bragg's counsel, who will forward them to the court. Mr. Bragg's counsel's email is DMansfield@DTClawyers.com.

This order and the petition shall be made known to the Town residents by (a) placement on at least two town bulletin boards; (b) placement on the Town website; (c) placement on any Town sponsored social media/internet bulletin board; and (c) if possible, by a mass email notification to as many Town residents as possible, such as might be accomplished with the assistance of the School District if it has the technology and ability.

September 12, 2018



Andrew R. Schulman,
Presiding Justice

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

IN RE: PETITION OF HAROLD BRAGG, TOWN MODERATOR
TOWN OF KENSINGTON, NEW HAMPSHIRE

Docket No. _____

**EMERGENCY VERIFIED PETITION PURSUANT TO RSA 669:63 FOR
APPOINTMENT OF SELECTMEN TO FILL VACANCIES**

NOW COMES the Petitioner, Harold Bragg, the Town Moderator and a Citizen of the Town of Kensington, with an address of 154 Amesbury Road, Kensington, New Hampshire, by and through his attorneys, Donahue, Tucker & Ciandella, PLLC, and petitions this Honorable Court pursuant to RSA 669:63 to appoint two individuals to fill the vacancies occurring on September 10, 2018 on the Board of Selectmen for the Town of Kensington, New Hampshire. In support of this Petition, Harold Bragg (the "Petitioner") states as follows:

1. The Town of Kensington has a three person Board of Selectmen. On September 11, 2018, Selectmen Norman DeBoisbriand, Robert Wadleigh, and Linda Blood resigned *en masse*, each submitting their resignation as selectmen for the Town of Kensington, effective immediately. Selectmen Wadleigh and Blood submitted their resignations in writing (copies attached hereto as Exhibit A) and Selectman DeBoisbriand submitted his verbally at the Selectmen's meeting the night before. This resulted in the immediate vacancies of all three positions on the Kensington Board of Selectmen.

2. RSA 669:63 provides, in full, the following:

Vacancies in the board of selectmen shall be filled by appointment made by the remaining selectmen. Whenever the selectmen fail to make such appointment, the superior court or any justice thereof, on petition of any citizen of the town, and after such notice as the court shall deem reasonable, may appoint a suitable person to fill the vacancy; provided, however, that if the town has adopted the provisions of RSA 669:61,

IV, and a petition thereunder is submitted before the submission of a petition under this section, the provisions of RSA 669:61, IV shall apply.

3. RSA 652:12 provides, in relevant part, the following:

A "vacancy" shall occur in a public office if, subsequent to his or her election and prior to the completion of his or her term, the person elected to that office:
I. Either dies, resigns [Emphasis added], or ceases to have domicile in the state or the district from which he or she was elected;

4. The Petitioner seeks to have the Court appoint two individuals as Selectmen, on an interim basis, in order to provide the minimum number required to transact any Town business.

5. This of immediate importance, as among other matters that may no longer be addressed by the Town absent any selectmen, the Town must authorize payroll by the end of this week in order to pay its employees. Upon learning of the resignations, the Town, by way of its attorney, contacted Bruce Kneuer, Supervisor of Municipalities, of N.H. Department of Revenue regarding the ability to issue payroll checks to Town employees, which are due on the next payday, September 14, 2018. Bruce Kneuer informed the Town's attorney that the Town Treasurer is without authority to approve the Town's manifest necessary for payment of payroll to Town employees. The manifest must be approved by the Board of Selectmen in accordance with RSA 32. With the current vacancies of all the Town's Selectmen, there is no authorized individual under State law to approve the Town manifest to pay Town employees on its next payday scheduled for September 14, 2018. If the Town fails to pay its employees on this date, it will be in violation of RSA 275:43, which mandates the timely payment of wages to employees on the employer's designated payday.

6. Harold Bragg is a citizen of the Town of Kensington and serves as the Town's Moderator. Mr. Bragg petitions this court pursuant to RSA 669:63 and requests that the Court

appoint the following individuals on an interim basis until the next annual Town Meeting in March 2019. By the time this Petition is filed with the Court, the Town Administrative Assistant shall have posted a notice of this Petition at the Town office and on the Town's website of Town affairs.

7. The individuals recommended to this Court by Petitioner for such appointment under RSA 669:63, and subject to each individual, upon appointment by this court, taking the oath of office required under RSA 669:9, are as follows:

- a. Michael Schwotzer who is domiciled in the Town of Kensington (as required under RSA 669:6), residing at 49 Cottage Road, Kensington, NH 03833. Mr. Schwotzer is a United States' Citizen as required by RSA 91:2; and is of good moral character and standing in the community. Mr. Schwotzer previously served as a Selectman in the Town of Kensington for the periods March, 1999 to March, 2000, and March, 2001 to March, 2004. In addition, Mr Schwotzer recently served as the Town's treasurer.
- b. Benjamin Cole who is domiciled in the Town of Kensington (as required under RSA 669:6), residing at 242 North Haverhill Road, Kensington, NH 03833. Mr. Cole is a United States' Citizen as required by RSA 91:2; and is of good moral character and standing in the community. Mr. Cole has served on the Kensington School Board and is a life-long resident of the Town of Kensington.

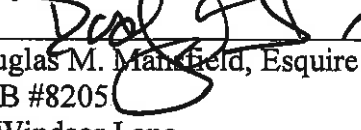
WHEREFORE, the Petitioner respectfully requests that this Honorable Court:

- A. Grant the Petition and appoint the above named individuals pursuant the Court's authority under RSA 669:63 to serve as interim Selectmen for the period of this appointment until the Town's annual Town Meeting in March, 2019; and,
- B. Grant such other relief as is just and proper.

Respectfully submitted,
HAROLD BRAGG
By his attorneys,

DONAHUE, TUCKER & CIANDELLA, PLLC

September 12, 2018
Date

By: 
Douglas M. Mansfield, Esquire
NHB #8205
16 Windsor Lane
Exeter, NH 03833
(603) 778-0686
dmansfield@dtclawyers.com

Verification

I, Harold Bragg, hereby state that the statements of fact contained in this Petition are true and accurate to the best of my knowledge, information and/or belief, and that any and all accompanying attached documentation are true and accurate copies of what they purport to be.

Dated: September 12, 2018


Harold Bragg

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 12th day of September, 2018, before me, the undersigned, personally appeared the above-named Harold Bragg, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that the statements contained herein are true to the best of his knowledge, information and belief.


Notary Public *Justice of the Peace*
My Commission Expires: 10/29/19

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EXHIBIT A

Rae 9/11/18



State of New Hampshire
Town of Kensington

95 Amesbury Road
Kensington, NH 03833

Sept. 11, 2018

To Chief Scott Sanders:

This letter is to inform you that I am resigning from the Board of Selectman in the town of Kensington, as of this date: September 11, 2018.

It is my understanding that you are in charge in an emergency situation when the Board of Selectmen no longer is functioning.

Robert Wadleigh

Rec 9/11/18



State of New Hampshire
Town of Kensington

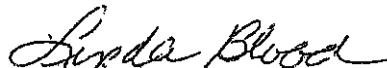
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Linda Blood