STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: April 10, 2015]

JAMES C. COURNOYER, SHAUN R. COURNOYER, MARC A. COTE, ROLAND M. MICHAUD, AND ROGER G. JALETTE, SR., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED	:	
V.	:	**C.A. No. PC 2013-4082**
CITY OF WOONSOCKET BUDGET COMMISSION, THE CITY OF WOONSOCKET, THE TAX ASSESSOR OF THE CITY OF WOONSOCKET, AND THE TREASURER OF THE CITY OF WOONSOCKET	:	

DECISION

VOGEL, J. A group of taxpayers, residents, and owners of motor vehicles and real estate in the City of Woonsocket (collectively, Plaintiffs) have brought this action against the City of Woonsocket Budget Commission (Budget Commission), the Tax Assessor of the City of Woonsocket, and the Treasurer of the City of Woonsocket (collectively, Defendants). Plaintiffs challenge the legality of a supplemental tax issued by the City of Woonsocket on certain motor vehicles and real estate. They bring this lawsuit as a putative class action on behalf of themselves and all other similarly situated taxpayers in the City of Woonsocket.[1]

[1] On April 28, 2014, Plaintiffs filed a Motion to Certify Class, pursuant to Super. R. Civ. P. 23(c)(1). Given the Court's determinations on the parties' cross-motions for summary judgment, the Motion to Certify Class becomes moot.

The parties have filed cross-motions for summary judgment, and Plaintiffs filed a "Rule 12(b)(6) Motion to Dismiss Defendants' Counterclaim." Plaintiffs contend that the supplemental tax is illegal and that they are entitled to judgment as a matter of law as to six of the eight counts in their Third Amended Complaint (hereinafter, Complaint). For their part, Defendants argue that the tax is legal and that they are entitled to judgment as a matter of law as to all eight counts in the Complaint.

For the reasons addressed in this Decision, the Court grants, in part, Plaintiffs' Motion for Partial Summary Judgment[2] and denies, in part, Defendants' cross-motion for summary judgment with respect to Count 8 relating to the Open Meetings Act. The Court denies Plaintiffs' Motion for Partial Summary Judgment and grants Defendants' cross-motion for summary judgment with respect to all other counts. The Court also dismisses Defendants' counterclaim for counsel fees. In so ruling, the Court relies on the pleadings, the Partial Agreed Statement of Facts (hereinafter, Facts), affidavits, the wording of the Enabling Act and Ordinance, and the applicable law. This Court exercises jurisdiction over this case pursuant to G.L 1956 § 44-5-27 and G.L. 1956 § 8-2-13.[3]

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[2] Plaintiffs have titled their motion a "Motion for Partial Summary Judgment." Despite this title, Plaintiffs have moved for summary judgment in the entirety on Counts 1, 2, 4, 5, 7, and 8. Consequently, this Court shall hereinafter refer to the motion simply as Plaintiffs' Motion for Summary Judgment.

[3] Although Plaintiffs also seek a declaration under the Uniform Declaratory Judgments Act, the Court does not have jurisdiction to grant such relief here. See Pascale v. Capaldi, 95 R.I. 513, 514, 188 A.2d 378, 379 (1963) ("In our opinion the legislature did not intend that a petition under the uniform declaratory judgments act was to take the place of a taxpayer's suit and, therefore, the superior court had no jurisdiction under the act to grant the petitioner's prayers.").

I

Facts and Travel

In 2012, the City of Woonsocket faced a severe economic crisis. In response, the State's Director of Revenue established a Budget Commission under G.L. 1956 §§ 45-9-1, et seq., entitled "Rhode Island Fiscal Stability Act" (the Act) to initiate and assure the implementation of appropriate measures to secure the financial stability of the city.[4] (Facts ¶ 12.)

The Budget Commission then developed a Five Year Plan entitled the "Woonsocket Deficit Reduction Package," which included both increases in revenue and measures to realize reductions in expenditures. (Facts ¶ 17, Ex. E.) On April 2, 2013, the Budget Commission presented the Five Year Plan to the City's local legislative delegation. (Facts ¶ 16.) To effectuate the Plan, the Budget Commission sought a legislative enactment to enable it to impose a supplemental tax in the amount of $2,500,000 for Woonsocket fiscal year 2012-2013. (Facts ¶ 19.)

Thereafter, on April 4, 2013, the Senate introduced legislation relating to the 2012-2013 $2.5 million Woonsocket Supplemental Tax (2013 – S 820). (Facts ¶ 20, Ex. F.) Pursuant to the Legislative Status Report, on May 9, 2013, the Senate "read and passed" the bill. (Facts ¶ 21,

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[4] As discussed further, the Act established three stages of state intervention in financially distressed cities and towns "including [the Director of Revenue's] appointments of [1] a fiscal overseer, [2] a budget and review commission, and finally [3] a nonjudicial receiver." Moreau v. Flanders, 15 A.3d 565, 569 (R.I. 2011). With respect to the budget commission, § 45-9-5(g) provides:

> "Upon joint request by a city's or town's elected chief executive officer and city or town council . . . which request is approved by the division of municipal finance, the director of revenue, in consultation with the auditor general, may establish a budget commission for such city, town, or fire district."

Section 45-9-6 also gives a budget commission a panoply of powers in order "to secure the financial stability of the city, town, or fire district."

Ex. G.) Also on May 9, 2013, the House introduced legislation on the same issue (2013 – H-6103). (Facts ¶ 22, Ex. H.) Like the Senate, the House "read and passed" the bill. (Facts ¶ 23, Ex. I.)

On July 2, 2013, Senator Picard moved to amend 2013 – H-6103. (Facts ¶ 24, Ex. J.) This amendment added the following language: "Such supplemental tax shall be contingent upon the city of Woonsocket's realization of a total amount of no less than three million seven hundred fifty thousand dollars ($3,750,000) in savings resulting from municipal enactment or concessions from collective bargaining agreements with applicable Woonsocket unions and retirees." Id. The Senate then "read and passed, by unanimous consent, as amended," the bill, 2013 – H-6103, on the same day. Id. On the following day, July 3, 2013, the House also passed the bill, "as amended in concurrence." (Facts ¶ 25, Ex. K.)

On July 5, 2013, the Budget Commission published the Agenda for its July 8 meeting, "which included in its Open Session Item 8: 'Appropriation Ordinance: City of Woonsocket Supplemental Tax for Fiscal Year 2012 . . . .'" (Facts ¶ 26.) The Budget Commission published "Supporting Documents" on the City of Woonsocket's website, including a proposed draft of the ordinance at issue in this case—Ordinance No. 7 (the Ordinance). (Facts ¶ 27, Ex. M.)

On July 8, 2013, the Budget Commission met and enacted the Ordinance. (Facts ¶ 28.) The Ordinance provides for the implementation of the Supplemental Tax and states, in pertinent part, as follows:

> "Such supplemental tax is ordered based upon the projected savings exceeding $3,750,000 from municipal and school department enactments and concessions, achieved from collective bargaining agreements with applicable City of Woonsocket and Woonsocket Education Department unions and retirees.
> . . . .

> This Ordinance shall become effective upon its passage." (Emphasis added.) (Facts, Ex. O.)

The Budget Commission ultimately filed the minutes of the July 8, 2013 meeting with the Secretary of State on October 22, 2013. (Facts ¶ 29.)

On July 11, 2013, Governor Chafee signed H-6103, as amended, into law, and it was codified as G.L. 1956 § 44-5-74.4. (Facts ¶¶ 32, 33.) A few weeks later, on July 30, 2013, the City of Woonsocket sent out the 2012 supplemental tax bills to approximately 23,691 City of Woonsocket taxpayers. (Facts ¶ 34.)

On August 15, 2013, Plaintiffs filed the instant action. Meanwhile, "Woonsocket included the $2.5 million Supplemental Tax in the certified tax levy for fiscal year 2013-2014 and it levied these increased taxes upon approximately 8,997 Woonsocket taxpayers . . . ." (Facts ¶ 35.)

The parties now cross-move for summary judgment based upon Plaintiffs' Complaint. Specifically, Plaintiffs allege that (1) the Ordinance contravenes § 44-5-74.4 (Count 1); (2) the Ordinance is in violation of the presentment requirement in the Rhode Island Constitution because it was enacted prematurely (Count 2); (3) the supplemental tax is illegal (Count 3); (4) inclusion of the supplemental tax in the tax levy for fiscal year 2013-2014 was unlawful (Count 4); (5) inclusion of the supplemental tax in the tax levy for fiscal year 2014-2015 was unlawful (Count 5); (6) the enactment and assessment of the supplemental tax violated Plaintiffs' procedural due process rights (Count 6); (7) the supplemental tax amounted to an impermissible taking (Count 7); and (8) failure to file the minutes of the July 8, 2013 Budget Commission meeting within the statutory time period violated the Open Meetings Act (Count 8).

The Plaintiffs seek summary judgment as to Counts 1, 2, 4, 5, 7, and 8. The Defendants move for summary judgment on all Counts. Plaintiffs also move to dismiss Defendants' counterclaim for attorney's fees pursuant to § 45-9-23.

II

Standard of Review

Summary judgment is appropriate when, after reviewing the admissible evidence in the light most favorable to the non-moving party, "no genuine issue of material fact is evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Super. R. Civ. P. 56(c)). When considering a motion for summary judgment, "the court may not pass on the weight or credibility of evidence, but must consider affidavits and pleadings in the light most favorable to the party opposing the motion." Westinghouse Broad. Co. v. Dial Media, Inc., 122 R.I. 571, 579, 410 A.2d 986, 990 (1980) (internal citations omitted).

During a summary judgment proceeding, "the justice's only function is to determine whether there are any issues involving material facts." Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981) (citing Indus. Nat'l Bank v. Peloso, 121 R.I. 305, 307, 397 A.2d 1312, 1313 (1979)). Moreover, if no genuine issue of material fact exists, the trial justice may determine "'whether the moving party is entitled to judgment under the applicable law.'" Ludwig v. Kowal, 419 A.2d 297, 301 (R.I. 1980) (quoting Belanger v. Silva, 114 R.I. 266, 267, 331 A.2d 403, 404 (1975)). "When there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is properly entered." Tangleridge Dev. Corp. v. Joslin, 570 A.2d 1109, 1111 (R.I. 1990); Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331, 334 (R.I.

1992) ("Summary judgment is proper when there is no ambiguity as a matter of law" (citing Lennon v. MacGregor, 423 A.2d 820, 821-22 (R.I. 1980))).

A partial summary judgment is proper where certain facts could be readily established while others should remain for determination at trial. Russo v. Cedrone, 118 R.I. 549, 558, 375 A.2d 906, 910 (1977). Pursuant to Super. R. Civ. P. 56(d), "[u]pon the trial of the action, the facts so specified [by the partial summary judgment] shall be deemed established and the trial shall be conducted accordingly." Additionally, Super. R. Civ. P. 56(c) provides that "[a] summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

III

Analysis

A

Whether the Ordinance Contravenes § 44-5-74.4

First, Plaintiffs argue that the Ordinance contravened its enabling statute, § 44-5-74.4, because it authorized the supplemental tax based on projected savings rather than on the realization of savings, as provided by the General Assembly. Thus, it is the Plaintiffs' contention that the supplemental tax is illegal as a matter of law. In response, Defendants contend that Plaintiffs misconstrue the definitions of both realization and projected as used in the statute and ordinance, respectively. Therefore, the crux of the parties' dispute hinges on the proper definition of these two terms.

1

The Meaning of the Term "Realization" in § 44-5-74.4

Section 44-5-74.4(c) provides that the supplemental tax "shall be contingent upon the city of Woonsocket's realization of a total amount of no less than three million seven hundred fifty thousand dollars ($3,750,000) in savings resulting from municipal enactment or concessions from collective bargaining agreements with applicable Woonsocket unions and retirees." (Facts ¶¶ 32, 34). Plaintiffs argue that whether the requisite savings have been realized "requires a fact based determination substantially supported by actual financial statements and specific, accurate, and quantifiable cost accounting." (Pls.' Mem. in Supp. of Mot. for Summ. J. at 27.) (Hereinafter, Pls.' Mem.) According to Plaintiffs, it is not enough that Defendants enacted or implemented cost savings measures since the legality of some of those measures have been challenged in the Superior Court.[5] In effect, Plaintiffs assert that savings are realized pursuant to § 44-5-74.4 when the savings are actually held within the City's coffers, free from any possible court challenge.

The Defendants counter that savings are realized at the time that an obligation is reduced. As indicated above, the statute states that the City of Woonsocket must realize the savings "from municipal enactment or concessions from collective bargaining agreements with applicable Woonsocket unions and retirees." Sec. 44-5-74.4(c). Therefore, Defendants argue that the City of Woonsocket complied with § 44-5-74.4 when it enacted and implemented measures such as suspending the cost of living adjustments for retirees, eliminating the obligation to fill fifteen police officer positions, and making changes to the healthcare plans for active and retired city workers. Accordingly, Defendants aver that the City of Woonsocket realized the resulting

[5] Plaintiffs cite to Glen Hebert v. City of Woonsocket, C.A. No PC-2013-3180, with respect to such a court challenge. (Pls.' Mem. at 33.)

savings when those actions became effective on July 1, 2013. Moreover, Defendants assert that a requirement that the City of Woonsocket wait until it can show actual savings before being allowed to implement the supplemental tax would be inconsistent with the statutory scheme because the statute was intended to be implemented immediately as a part of a short-term Five Year Plan.

In Rhode Island, "taxing statutes are to be strictly construed against the taxing authority[,]" and all doubts are to be resolved in the taxpayer's favor. Potowomut Golf Club, Inc. v. Norberg, 114 R.I. 589, 592, 337 A.2d 226, 227 (1975). Moreover, our Supreme Court has held that to protect individuals from the government abusing its authority to tax, the taxing authority must implement the tax by strictly adhering to the "unequivocal instructions" in the statute; "expeditious measures not in conformance with [the limitations provided in the statute], no matter how well intentioned, cannot be substituted for compliance." Cabana v. Littler, 612 A.2d 678, 684 (R.I. 1992).

Further, "[i]t is a fundamental principle that when confronted with a statute that is 'clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" LaBonte v. New England Dev. R.I., 93 A.3d 537, 541 (R.I. 2014) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). Here, since "realization" is not defined by the statute, the Court may look to dictionary definitions. See Defenders of Animals, Inc. v. Dep't of Envtl. Mgmt., 553 A.2d 541, 543 (R.I. 1989) ("In a situation in which a statute does not define a word, courts often apply the common meaning as given by a recognized dictionary."). The American Heritage Dictionary defines "realization" as follows:

> "1. The act of realizing or the condition of being realized. 2. The result of realizing[,]" where "realizing" is defined as "2. To bring

> into reality; make real . . . 4. To obtain or achieve, as gain or profit . . . 5. To bring in (a sum) as profit by sale." Am. Heritage Dictionary of the English Language 1464 (5th ed. 2011).

By its plain terms, therefore, the required savings would be realized when the Budget Commission enacted and implemented several cost-saving measures.[6] When the Budget Commission enacted these changes, the funds that ordinarily would be reserved for former purposes were immediately available for other uses. Consequently, the enactment of the cost-saving measures brought the savings "into reality."

This interpretation of "realization" is further supported by the term's definition in other contexts, namely tax law. Generally, in the tax arena, a gain or loss is "realized," and therefore taxable, when the taxpayer's legal entitlement to the property changes. See Cottage Sav. Ass'n v. C.I.R., 499 U.S. 554, 566 (1991) ("Under our interpretation of § 1001(a), an exchange of property gives rise to a realization event so long as the exchanged properties are 'materially

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[6] As discussed further supra, the Budget Commission enacted the following measures, all of which were effective as of July 1, 2013:

> (a) "all active Education Department and City employees other than firefighters" were enrolled into a single, lower cost healthcare plan which required a twenty-percent co-pay. (Gallogly Aff. ¶¶ 4, 5);
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> (b) all "Medicare-eligible retirees were transferred out of City-sponsored [health] plans to Medicare, and offered a significantly less expensive Medicare supplement." (Gallogly Aff. ¶ 6);
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> (c) nineteen of the City's early retirement health insurance plans were eliminated. (Gallogly Aff. ¶ 7); and,
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> (d) retirees, who were not eligible for Medicare, "were enrolled either in the unified health plan with a 20% premium co-share, or a high deductible plan with a 10% premium co-share that was cost-equivalent to the City." (Gallogly Aff. ¶ 8).

different'—that is, so long as they embody legally distinct entitlements."); see also Loren D. Prescott, Jr., Cottage Savings Association v. Commissioner: Refining the Concept of Realization, 60 Fordham L. Rev. 437, 444 (1991). Accordingly, the discharge of indebtedness to a third party can be an event that triggers "realization" of income for tax purposes. See 26 U.S.C. 61(a)(12) ("[G]ross income means all income from whatever source derived, including (but not limited to) . . . (12) Income from discharge of indebtedness[.]"). "The justification for taxing discharge-of-indebtedness income is that the elimination of the liability (the obligation to repay the funds previously borrowed) makes available to the taxpayer assets that were previously offset by liabilities." Toberman v. C.I.R., 294 F.3d 985, 988 (8th Cir. 2002) (citing United States v. Kirby Lumber Co., 284 U.S. 1, 3 (1931)) (emphasis added).

Similarly, the enactment and implementation of the Budget Commission's various cost-saving measures made available assets that were previously offset by liabilities. For example, one cost-saving measure was the elimination of the City of Woonsocket's obligation to fill fifteen police officer vacancies. With this enactment, the liability to fill those vacancies was cancelled, freeing up those funds for other purposes. As such, the term "realization," as used in § 44-5-74.4, means that the City of Woonsocket must demonstrate achievement of the requisite savings through municipal enactments and/or agreed upon reductions in its collective bargaining obligations to the unions and retirees. The fact that these savings may be the subject of some future, unknown court challenge does not affect this interpretation because any such challenge would be speculative at the time the obligations are reduced.

Plaintiffs' interpretation of realization fails as it would undermine the purpose of the statute; namely, to address the City of Woonsocket's financial crisis through the authorization of a supplemental tax. See Torres v. Damicis, 853 A.2d 1233, 1237 (R.I. 2004) ('"When

interpreting a statute, [the Court's] ultimate goal is to give effect to the Legislature's intention.'" (quoting Champlin's Realty Assocs., L.P. v. Tillson, 823 A.2d 1162, 1165 (R.I. 2003))). The plain and unambiguous language of § 44-5-74.4 authorizes the city "to levy a supplemental tax . . . on some of the ratable property of the city . . . for the city's fiscal year 2012-2013." Sec. 44-5-74.4(a). It is clear from the foregoing that the General Assembly intended § 44-5-74.4 not only to "take effect upon passage[,]" (P.L. 2013, ch. 206, § 2), but it also permitted the City of Woonsocket to immediately reassess the value of some of the city's ratable property in order to improve the city's financial status in the short term rather than wait until the next fiscal year. This intent is evidenced by the fact that the statute authorizes the City of Woonsocket to charge interest, beginning on August 31, 2013, on the supplemental tax that it authorized on July 11, 2013. See § 44-5-74.4(c) ("Said supplemental tax shall be paid in one installment . . . and shall carry interest commencing on August 31, 2013 . . . ."). Therefore, Plaintiffs' contention that the City of Woonsocket wait until all saving measures are free of Court challenge and measurable in the city's coffers before implementing the supplemental tax clearly contravenes the plain language of the statute.

2

The Ordinance

The Court next must determine whether the Ordinance comports with the above interpretation of realization as used in § 44-5-74.4. The language of the Ordinance differs from that of § 44-5-74.4 in that it provides in pertinent part:

> "Such supplemental tax is ordered based upon the projected savings exceeding $3,750,000 from municipal and school department enactments and concessions, achieved from collective bargaining agreements with applicable City of Woonsocket and Woonsocket Education Department unions and retirees." Ordinance No. 7. (Emphasis added.)

Thus, according to the Ordinance, the supplemental tax must be based upon projected savings.

The term "project" or "projected" is defined as "[t]o form a plan or intention for . . . [and] [t]o calculate, estimate or predict (something in the future) based on present data or trends." Am. Heritage Dictionary of the English Language, at 1408. Applying the ordinary meaning of the term, it appears that the Ordinance allows the requisite savings to be based on mere estimations or predictions rather than savings that are "realized" or "brought into reality" as required by the statute. However, the second part of the sentence conditions the projected savings upon enactments and concessions that have been achieved from changes to union and retiree collective bargaining agreements. With respect to statutory interpretation, the Rhode Island Supreme Court has made clear that "[t]he plain meaning approach . . . 'is not the equivalent of myopic literalism,' and 'it is entirely proper for [the Court] to look to 'the sense and meaning fairly deducible from the context.'" Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 259 (R.I. 2011) (quoting In re Brown, 903 A.2d 147, 150 (R.I. 2006)). Accordingly, the Court "must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Mendes v. Factor, 41 A.3d 994, 1002 (R.I. 2012) (internal quotation marks omitted). As a result, the Court finds that the term "projected savings" contemplates more than mere calculations or estimations. Instead, the Court finds that the term "projected" must be interpreted in order to give effect to the purpose of the Ordinance.

Like the Enabling Act, the purpose of the Ordinance is to address the City of Woonsocket's immediate financial problems. The fact that the Ordinance provides that projected savings must be achieved through municipal enactments and/or concessions from unions and retirees means that the City of Woonsocket must do more than simply estimate future

savings. Instead, the City of Woonsocket must demonstrate the achievement of savings in an amount exceeding $3,750,000 through actual enactments and/or agreed-upon reductions in its collective bargaining obligations to unions and retirees.[7]

Thus, similar to the meaning of the term "realization" in § 44-5-74.4, the meaning of "projected" in the Ordinance means that the requisite savings are achieved when an obligation to pay is reduced or eradicated, even if that reduction or eradication may be subject to some future challenge. See Raiche v. Scott, 101 A.3d 1244, 1248 (R.I. 2014) (declaring the ultimate goal of statutory interpretation is to give meaning to the enactment at issue). In other words, the meaning of both terms is the same; to wit, that the supplemental tax is conditioned upon the reduction of obligations through enactments and/or concessions. As a result, the Court concludes that the terms "realization" and "projected" have the same meaning such that the Ordinance was enacted legally and is not in contravention of the statute. Accordingly, Defendants' Motion for Summary Judgment is granted as to Count 1, and Plaintiffs' Motion for Summary Judgment as to Count 1 is denied.

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[7] The Court observes that § 44-5-74.4 requires savings of "no less than $3,750,000" and the Ordinance requires savings that exceed $3,750,000. Arguably, the language in the Ordinance impermissibly expands authority granted by the enabling statute, thus rendering it a nullity. See Am. Oil Co. v. City of Warwick, 116 R.I. 31, 35, 351 A.2d 577, 579 (1976) (holding that a municipality "may not change or enlarge upon the specific authority contained in the state enabling legislation, and the jurisdiction thereby conferred can neither be expanded nor diminished by the terms of an ordinance"); see also Mill Realty Assocs. v. Crowe, 841 A.2d 668, 679 (R.I. 2004) ("Jurisdiction in zoning matters is limited in scope by the act and the 'jurisdiction thereby conferred can neither be expanded nor diminished by the terms of an ordinance.'") (quoting Lincourt v. Zoning Bd. of Review of Warwick, 98 R.I. 305, 309, 201 A.2d 482, 485 (1964)). However, the clear language of the statute simply prohibits savings less than $3,750,000; it does not prohibit savings of more than $3,750,000. The fact that the Ordinance requires savings of more than $3,750,000 is not inconsistent with the statute's mandate such that it would constitute an impermissible expansion of authority.

B

Whether the City of Woonsocket Realized the Required Savings Before Levying the Supplemental Tax

Having determined the definition of "realized" pursuant to § 44-5-74.4, this Court next addresses Plaintiffs' contention that the supplemental tax was illegal because the City of Woonsocket had not realized more than $3,750,000 at the time the Ordinance was enacted (Count 3). In other words, the Court must determine whether the Budget Commission's enactments amounted to a realization of savings in the amount specified by statute. The Defendants maintain that the City of Woonsocket actually realized savings greater than the requisite amount and rely on an affidavit submitted by the Director of the State of Rhode Island, Rosemary Booth Gallogly, for support of this contention.

In response, Plaintiffs maintain that the minutes from the July 8, 2013 meeting reflect no evidence of facts presented, or a proper basis for the Budget Commission to find, that the City of Woonsocket had achieved $3,750,000 in projected savings, let alone in realized savings. They assert that there is no evidence that Ms. Gallogly's contentions were before the Budget Commission when it made its decision that $3,750,000 in savings had been realized. In addition, based upon their interpretation of the term "realization," they aver that a genuine issue of fact remains as to whether $3,750,000 in savings actually was realized.

The question of whether the City of Woonsocket actually realized the required amount in savings normally would be a fact-intensive inquiry that would not be an appropriate consideration in a motion for summary judgment; however, Plaintiffs do not dispute the figures provided by the Defendants and have not produced any evidence to rebut those figures. See Accent Store Design, Inc., 674 A.2d at 1225 (citing Manning Auto Parts, Inc. v. Souza, 591 A.2d 34, 35 (R.I. 1991)) ("[A] party who opposes a motion for summary judgment carries the burden

of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions."). Instead, Plaintiffs simply maintain that the alleged savings should not be considered realized. As Plaintiffs do not dispute the actual figures presented, and in light of this Court's conclusions concerning the legality of the Ordinance, there is no genuine issue of material fact on this issue. See Long v. Dell, Inc., 93 A.3d 988, 1008 (R.I. 2014) ("[T]he party against whom a motion for summary judgment has been filed 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986))). Consequently, the matter is ripe for summary judgment.

According to Ms. Gallogly's affidavit, the following measures were effective as of July 1, 2013:

> (a) "all active Education Department and City employees other than firefighters" were enrolled into a single, lower cost healthcare plan which required a twenty-percent co-pay. (Gallogly Aff. ¶¶ 4, 5);
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> (b) all "Medicare-eligible retirees were transferred out of City-sponsored [health] plans to Medicare, and offered a significantly less expensive Medicare supplement." (Gallogly Aff. ¶ 6);
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> (c) nineteen of the City's early retirement health insurance plans were eliminated. (Gallogly Aff. ¶ 7); and,
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> (d) retirees, who were not eligible for Medicare, "were enrolled either in the unified health plan with a 20% premium co-share, or a high deductible plan with a 10% premium co-share that was cost-equivalent to the City." (Gallogly Aff. ¶ 8).

At the time, all of the aforementioned healthcare savings were "projected to be $3,596,021 for the 2013-2014 fiscal year alone." (Gallogly Aff. ¶ 9) In actuality, the "decrease in medical expenditures for the City and Education Department between FY13 (audited) and FY14

(unaudited) due to Budget Commission enactments and collective bargaining concessions was approximately $3,500,000." (Gallogly Aff. ¶ 9).

In addition, in June of 2013, the Budget Commission enacted a provision eliminating the City of Woonsocket's obligation to fill fifteen police officer vacancies for fiscal year 2013-2014, which translated into a savings of $1,124,756. (Gallogly Aff. ¶ 10). Furthermore, in March of 2013, the Budget Commission enacted a provision that "suspended the cost-of-living-adjustments (COLA[s]) to police and fire retiree benefits under the City's closed pension plan" resulting in savings of $1,500,000 per year based on a sixteen-year amortization rate. (Gallogly Aff. ¶ 11.) Attached to Ms. Gallogly's affidavit was a "SCHEDULE OF REALIZED SAVINGS" that corroborated the figures stated in her affidavit. The same figures are also reflected in Exhibit Q, the City of Woonsocket's Budget Worksheet, which is attached to the Facts.

Although Plaintiffs contend that the COLAs cannot be considered savings at all because they do not reduce a pre-existing liability or obligation, the record reveals that prior to the enactment of the Ordinance, the City of Woonsocket reduced or eradicated obligations amounting to more than the $3,750,000 required to impose the supplemental tax regardless of whether the funds obtained from suspending the COLAs are considered savings. These reductions in obligations were obtained through the healthcare savings and the savings from eliminating the obligation to fill fifteen police officer vacancies and were well in excess of $3,750,000.

In view of the foregoing, the Court concludes that the City of Woonsocket did realize the required savings before the Budget Commission implemented the supplemental tax. Thus, there

being no genuine issues of material fact remaining on this issue, the Court concludes that Defendants are entitled to judgment as a matter of law with respect to Count 3.

C

The Presentment Clause

It is undisputed that the Ordinance was enacted on July 8, 2013, and that the Governor did not sign the bill into law until July 11, 2013. Thus, Plaintiffs contend that they are entitled to summary judgment because the Ordinance was enacted prematurely in contravention of article IX, § 14 of the Rhode Island Constitution (the Presentment Clause), which provides in pertinent part that:

> "Every bill, resolution, or vote (except such as relate to adjournment, the organization or conduct of either or both houses of the general assembly, and resolutions proposing amendment to the Constitution) which shall have passed both houses of the general assembly shall be presented to the governor. If the governor approve it the governor shall sign it, and thereupon it shall become operative . . . ."

According to the Plaintiffs, because the Ordinance was enacted before § 44-5-74.4 became operative, and because a Rhode Island taxing authority is required to strictly adhere to statute, the Ordinance is null and void. Plaintiffs further contend that even minor violations of the Presentment Clause threaten the separation of powers, and that Rhode Island courts traditionally hold unconstitutional statutes and ordinances void ab initio.

In response, Defendants allege that the Governor's signing of the bill into law "both cured the minor technical irregularity prompted by the [Budget] Commission's premature passage of Ordinance No. 7 and gave the ordinance retroactive authority." (Defs.' Mem. in Supp. of Mot. for Summ. J. at 23) (hereinafter, Defs.' Mem.) The Defendants aver that "[t]o accede to Plaintiffs (sic) request that Ordinance No. 7 be declared void ab initio (i.e., a legal

nullity from inception) . . . would upset vested rights, expose the City to liability for disgorgement of taxes, wreak administrative havoc on the Commission and other municipal offices, and threaten the solvency of the City." (Defs.' Mem. at 29-30.) Additionally, the Defendants point out that it is undisputed that the supplemental tax was not levied until July 30, 2013, which was after the bill was signed into law. (Facts ¶¶ 32, 34.)

As stated, it is undisputed that the Ordinance was enacted before the legislation giving the Budget Commission the power to enact the Ordinance was signed by the Governor. The Rhode Island Constitution clearly provides that an act of the General Assembly does not "become operative" until it is signed by the Governor. See R.I. Const. art. IX, § 14 ("If the governor approve it the governor shall sign it, and thereupon it shall become operative . . . ."). Thus, when the Ordinance was enacted, the statute granting the Budget Commission the authority to enact the supplemental tax had yet to become operative. However, that fact does not render the Ordinance null and void.

Rhode Island courts have utilized the doctrine of void ab initio on numerous occasions to render certain clauses or portions of agreements to be null and void. See, e.g., Am. Condo. Ass'n, Inc. v. IDC, Inc., 844 A.2d 117, 130 (R.I. 2004) (affirming a trial court's decision declaring portions of an agreement void ab initio); Theta Props. v. Ronci Realty Co., Inc., 814 A.2d 907, 913 (R.I. 2003) (holding that a judgment entered against a dissolved corporation not within the prescribed two year period was void). However, there is no Rhode Island case law that has been brought to the Court's attention which deals directly with the issue of whether an Ordinance, enacted prematurely, is void ab initio if the statute authorizing it is later properly enacted.

There are cases outside Rhode Island which provide some guidance. In Bolles v. Town of Brimfield, 120 U.S. 759, 761 (1887), an election was held in the Town of Brimfield on August 3, 1868 to determine whether the town should subscribe funds to the stock of a railway company. Meanwhile, in the same town at the same time, "but without authority of law," an election was conducted to "take the sense of the voters of the town as to an additional subscription" to the same company. Id. On March 31, 1869, the General Assembly of Illinois passed an act declaring that the August 3, 1868 election was "legalized and confirmed, and is declared to be binding . . . ." Id. at 762. The Supreme Court stated that the question was whether "the legislature [could], by subsequent ratification, make that legal which was originally without legal sanction, but which it might, in the first instance have authorized[.]" Id. at 762-63. The court had in the past held that "subsequent legislative ratification of the acts of a municipal corporation, which might lawfully have been performed under legislative sanction in the first instance, was equivalent to original authority." Id. at 760. Thus, it determined that the election was lawfully ratified by the General Assembly. Id. at 764-65.

Similarly, in U.S. v. Heinszen, 206 U.S. 370, 378, 383-84 (1907), the United States Supreme Court held that duties being collected on goods going into the Philippines by order of the President were unlawful but were rendered lawful by later approval of Congress. The Court held that because Congress had the "power to ratify the acts which it might have authorized," it could render the duties legal. Id. at 384. Moreover, the Supreme Court found it also "elementary" that "the power of ratification as to matters within their authority may be exercised by Congress, state governments, or municipal corporations. . . ." Id. at 382.

Though Bolles and Heinszen have some factual distinctions from the present case, the underlying reasoning is persuasive. In this case, the Budget Commission enacted the Ordinance

in accordance with H-6103, as amended, which already had been passed by the General Assembly; thus, the Budget Commission knew that the enactment of § 44-5-74.4 was all but completed. Indeed, the Governor then signed the bill into law just three days after the Ordinance was enacted. Thus, the Budget Commission's actions in prematurely enacting the Ordinance were ratified by the fact that the General Assembly previously had passed, and the Governor subsequently signed, the legislation authorizing the supplemental tax. See Bolles, 120 U.S. at 763.

It is well established that "where a governmental entity takes action which may or may not be statutorily authorized, but where the appropriate legislative body later ratifies that action, the ratification clearly validates the action prospectively and, in the absence of constitutional limitations, may validate the action retroactively." See Baltimore Teachers Union, Am. Fed'n of Teachers, Local 340, AFL-CIO v. Maryland State Bd. of Educ., 840 A.2d 728, 733 (Md. 2004); Town of Canton v. Bruno, 282 N.E.2d 87, 93-94 (Mass. 1972) ("The Legislature may confirm and validate the action of a town which is void by reason of some irregularity or failure to comply with the law if the Legislature could have originally authorized the action. . . ."); see generally 62 C.J.S. Municipal Corporations § 242 at 248-49 (2011) ("As a general rule, the legislature may by curative statute validate some acts and proceedings of municipal corporations."); 6 Eugene McQuillin, Municipal Corporations § 16:93 (3rd revised ed. 2007) ("An ordinance that is void or defective by reason of some irregularity, omission, or want of compliance with the law in its passage, and acts and proceedings under and by virtue of such ordinance, may be cured and rendered valid by state legislation . . . .").

Considering (1) that any issues concerning the premature enactment of the Ordinance subsequently were ratified by § 44-5-74.4, and (2) that the supplemental tax itself was not levied

until July 30, 2013, which was after the Ordinance had been ratified, the Court concludes that Defendants are entitled to summary judgment on Count 2. The Plaintiffs' Motion for Summary Judgment on Count 2 is denied.

D

Inclusion of the Supplemental Tax in the Certified Tax Levy for Fiscal Year 2012-2013

Plaintiffs contend that because the supplemental tax was illegal due to defects in the Ordinance's enactment, its inclusion in the 2012-2013 certified tax levy also was illegal. Consequently, according to Plaintiffs, the increase in taxes for 2013-2014, which was due to the supplemental tax's inclusion in the 2012-2013 certified levy, likewise was illegal. Accordingly, they contend that they are entitled to judgment as a matter of law with respect to Count 4. The Court disagrees.

Under Rhode Island law, cities and towns have the power to levy taxes "on the ratable property of the city or town, either in a sum certain, or in a sum not less than a certain sum and not more than a certain sum." Sec. 44-5-1. Said taxes are "apportioned upon the assessed valuations as determined by the assessors of the city or town as of December 31 in each year at 12:00 A.M. midnight, the date being known as the date of assessment of city or town valuations." Id. In the City of Woonsocket, "[t]he fiscal year of the city shall begin on the first day of July and shall end on the last day of June of the following year." Woonsocket, R.I., Charter, art. 1, § 1. Thus, in accordance with § 44-5-1, the City of Woonsocket was required to assess the value of all of its ratable property by December 31, 2012, for fiscal year 2013-2014.

Section 44-5-74.4 expressly authorizes inclusion of the supplemental tax in the 2012-2013 certified tax levy. See § 44-5-74.4 ("The supplemental tax shall become part of the certified tax levy for the city's fiscal year 2012-2013 for purposes of calculating the maximum

property tax levy according to § 44-5-2 of the general laws for the city's fiscal year 2013-2014, and shall also not be subject to the maximum levy limitations of § 44-5-2 of the general laws for the city's fiscal year 2012-2013."). As the Court has concluded that the Ordinance was valid and that the Budget Commission had authority to levy the supplemental tax, it follows that inclusion of the supplemental tax in the certified tax levy for fiscal year 2012-2013 not only was proper, but also was mandated by the statute. Consequently, Plaintiffs' Motion for Summary Judgment as to Count 4 is denied, and Defendants' Motion for Summary Judgment on this Count is granted.

E

Inclusion of the Supplemental Tax in the Certified Tax Levy for Fiscal Year 2013-2014

The Plaintiffs next aver that even if properly included in the 2012-2013 certified tax levy, the supplemental tax is not a permanent part of the City of Woonsocket's tax base. In so arguing, the Plaintiffs rely on the fact that the statute only references the supplemental tax's inclusion in the certified tax levy for fiscal year 2012-2013 for the purpose of calculating the maximum property tax levy for fiscal year 2013-2014. According to Plaintiffs, therefore, the statute does not permit the supplemental tax to be included in the certified tax levy for any subsequent year. Under Plaintiffs' theory, the 2014-2015 tax levy was illegal because the supplemental tax was impermissibly included in the certified tax levy for the prior fiscal year (2013-2014). In support of their argument, Plaintiffs observe that the Legislature provided that the excise tax for motor vehicles and trailers would not exceed the 1998 rate in fiscal year 2013-2014 "and thereafter[,]" (§ 44-5-74.4(b)), and that the Legislature could have used the term "and thereafter" with regard to the certified tax levies but deliberately did not do so.

With respect to the certified tax levy for fiscal year 2012-2013 and beyond, § 44-5-74.4(b) provides that:

> "The supplemental tax with respect to motor vehicles and trailers shall not be subject to the provisions of subdivision 44-34.1-1(c)(4) freezing excise tax rates at a level identical to the rate in effect for fiscal year 1998 or a lesser rate. For the city's fiscal year 2013-2014 and thereafter, the excise tax rate for motor vehicles and trailers shall not exceed the city's excise tax rate in effect for fiscal year 1998. The supplemental tax shall become part of the certified tax levy for the city's fiscal year 2012-2013 for purposes of calculating the maximum property tax levy according to § 44-5-2 of the general laws for the city's fiscal year 2013-2014, and shall also not be subject to the maximum levy limitations of § 44-5-2 of the general laws for the city's fiscal year 2012-2013." (Emphasis added.)

When read in context, it is clear that the Act does not limit the imposition of the supplemental tax to one year (i.e., included only in the 2012-2013 levy for the purpose of calculating the 2013-2014 maximum property tax, and not in any subsequent levy), but rather clarifies the fiscal year the supplemental tax would first apply. See Torres, 853 A.2d at 1237 (stating that, with respect to statutory interpretation, the "ultimate goal is to give effect to the Legislature's intention") (citation omitted); see also Mendes, 41 A.3d at 1002 (stating that the Court "must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections[]") (internal quotation marks omitted).

When the supplemental tax was enacted in July 2013, the certified tax levy for fiscal year 2011-2012 already had been established. See § 44-5-1 (authorizing municipalities to levy a tax that "is apportioned upon the assessed valuations as determined by the assessors of the city or town as of December 31 in each year at 12:00 A.M. midnight, the date being known as the date of assessment of city or town valuations"). Additionally, § 44-5-2(b) states that "[i]n its fiscal

year 2013 and in each fiscal year thereafter, a city or town may levy a tax in an amount not more than four percent (4%) in excess of the total amount levied and certified by that city or town for its previous fiscal year. (Emphasis added.) Since the 2011-2012 certified levy was already established when the supplemental tax was enacted, the General Assembly specifically mentioned the 2012-2013 levy to clarify when the supplemental tax would begin to be part of the City of Woonsocket's tax base. The General Assembly is presumed to know that the certified tax levy for fiscal year 2011-2012 already was established. See Shelter Harbor Fire Dist. v. Vacca, 835 A.2d 446, 449 (R.I. 2003) ("[T]he Legislature is presumed to know the state of existing law when it enacts or amends a statute.") (internal quotation marks omitted). Accordingly, the General Assembly specifically provided an exemption from § 44-5-2 for the 2012-2013 certified tax levy. See § 44-5-74.4(b) (stating that the supplemental tax "shall also not be subject to the maximum levy limitations of § 44-5-2 of the general laws for the city's fiscal year 2012-2013").

However, such an exemption was not necessary for purposes of certifying the tax levy with respect to the 2012-2013 fiscal year since the provisions of § 44-5-2 provide that each year's taxes are relative to the taxes in the previous year. Thus, once the supplemental tax was included in the certified tax levy for 2012-2013, it became part of the City of Woonsocket's tax base. Like any other year, in order to be in compliance with § 44-5-2, the City of Woonsocket simply could not increase its taxes by more than four percent of the certified tax levy in 2012-2013, a tax levy which already included the supplemental tax. Sec. 44-5-2 ("In its fiscal year 2013 and in each fiscal year thereafter, a city or town may levy a tax in an amount not more than four percent (4%) in excess of the total amount levied and certified by that city or town for its

previous fiscal year."). Therefore, there was no need for the General Assembly to provide an exemption from the requirement of § 44-5-2 for any years after the 2012-2013 fiscal year.

This Court further notes that § 44-5-74.4 was enacted as part of the City of Woonsocket's Five Year Plan and that language of a statute must be considered in the "light, nature, and purpose of the enactment." Pierce v. Pierce, 770 A.2d 867, 871 (R.I. 2001). A closer look at the Five Year Plan reveals that the supplemental tax is included in the "Revenues" section from fiscal year 2013-2014 until the last fiscal year which the Five Year Plan covers—2017-2018. (Ex. E, at 9.) Moreover, the Deficit Reduction Plan Explanation section of the Five Year Plan states that the supplemental tax was to be "added to [the] certified role and become part of the base," clearly showing that the Five Year Plan envisioned the supplemental tax continuing beyond fiscal year 2012-2013. Id. at 10. This information would have been available to the General Assembly at the time that it enacted § 44-5-74.4, and it would be illogical to conclude that its intent was to allow for a supplemental tax for only a single year when it was so obviously intended to become part of the City of Woonsocket's tax base pursuant to the terms of the Five Year Plan. See Peak v. U.S., 353 U.S. 43, 46 (1957) ("That seems to us to be the common sense of the matter; and common sense often makes good law."); see also Shelter Harbor Fire Dist., 835 A.2d at 449 ("[T]he Legislature is presumed to know the state of existing law when it enacts or amends a statute.") (internal quotation marks omitted). Thus, it is clear from the context of the enactment of § 44-5-74.4 that the General Assembly intended that the tax continue into subsequent fiscal years. See Town of Burrillville v. Pascoag Apartment Assocs., LLC, 950 A.2d 435, 446 (R.I. 2008) ("[The Court's] interpretation of an ambiguous statute 'is grounded in policy considerations and [it] will not apply a statute in a manner that will defeat its underlying purpose.'" (quoting Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164,

169 (R.I. 2003))). Consequently, with respect to Count 5, the Defendants' Motion for Summary Judgment is granted, and the Plaintiffs' Motion for Summary Judgment is denied.

F

Procedural Due Process

In Count 6, Plaintiffs claim that their procedural due process rights were violated by the enactment of the Ordinance and the assessment of the supplemental tax because the determination regarding whether the City of Woonsocket had realized the required $3,750,000 in savings was not based on an evidentiary hearing; not made at "an open public meeting"; and not based on written findings of fact. (Compl. ¶ 82.) Plaintiffs state that the Budget Commission simply could not declare that they had realized savings on the basis of what Plaintiffs term "administrative presumption, surmise, or fiat." (Pls.' Reply Mem. at 38.) Plaintiffs further assert that the Budget Commission was not acting in a legislative capacity, but rather was acting as a state agency that was implementing a statutory directive from the General Assembly through a fact-finding function.

Plaintiffs also contend that Count 6 cannot be decided on summary judgment at this time because they will need a period of discovery to determine what post-deprivation remedy is available to them. Id. They maintain that such discovery is necessary because Ms. Gallogly stated in her affidavit that if the supplemental tax is found to be illegal, she will be required to appoint a receiver for the City of Woonsocket. (Gallogly Aff. ¶ 13.) Thus, only Defendants move for summary judgment on Count 6.

Conversely, Defendants posit that the principles of procedural due process are not applicable to the legislative enactment of a generally applicable ordinance. Moreover, even if procedural due process were required, Defendants contend that the legislative process which led

up to the passing of the Ordinance provided taxpayers with sufficient notice and an opportunity to be heard. Specifically, Defendants note that the agenda for the July 8, 2013 meeting was posted on July 5, 2013, and supporting documents were provided on the City of Woonsocket's website. Finally, Defendants aver that "[t]he governmental interest in being able to proceed with the legislative function without the added burden of a full evidentiary hearing prior to passage of the act clearly outweighs the burden placed on individual taxpayers to utilize the taxing statute to challenge the act." (Defs.' Mem. at 21-22.)

"A sufficient procedural due process claim must allege 'that [the plaintiff] was deprived of constitutionally protected property because of defendants' actions, and that the deprivation occurred without due process of law.'" Rumford Pharmacy, Inc., v. City of East Providence, 970 F.2d 996, 999 (1st Cir. 1992) (quoting Roy v. City of Augusta, ME, 712 F.2d 1517, 1522 (1st Cir. 1983)). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

As an initial matter, it is important to clarify the nature of the Budget Commission's function—be it legislative or administrative—as it will have bearing on the procedural due process analysis. See 16B Am. Jur. 2d Constitutional Law § 960 at 469-70 (2009) ("Due process requires a notice and hearing only in quasi-judicial or adjudicatory settings and not in the adoption of general legislation."). While Plaintiffs correctly state the due process law as applicable to agencies, the Budget Commission's function is legislative in nature.

At this juncture, a review of the statutory background of the Act is relevant. An earlier version of the Act, originally promulgated in 1993, empowered the State's Director of Administration to establish a budget commission for a municipality when "there was an

imminent threat of default on any or all of [the municipality's] debt obligations." See 1993 R.I. P. L. 242; see also Michelle Wilde Anderson, Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments, 39 Fordham Urb. L.J. 577, 623 (2012) (discussing the various distinctions between the 1993 and 2010 versions of the Act.); Katherine Newby Kishfy, Note, Preserving Local Autonomy in the Face of Municipal Financial Crisis: Reconciling Rhode Island's Response to the Central Falls Financial Crisis with the State's Home Rule Tradition, 16 Roger Williams U. L. Rev. 348, 376-78 (2011) (same). In 2010 and 2011, the General Assembly made sweeping changes to the Act "for the purpose of creating a more effective mechanism to identify and respond to dire financial adversity confronting municipalities." Moreau, 15 A.3d at 571. Relevant here, § 45-9-6 requires a budget commission to "initiate and assure the implementation of appropriate measures to secure the financial stability of the city, town, or fire district." To that end, the statute provides that "[a]ction by the budget commission under this chapter shall constitute action by the city, town, or fire district for all purposes under the general laws, under any special law, and under the city, town, or fire district charter." Sec. 45-9-6(b) (emphasis added). Notably, § 45-9-6(d)(20) also empowers a budget commission to "[e]xercise all powers under the general laws and this chapter, or any special act, any charter provision or ordinance that any elected official of the city, town, or fire district may exercise, acting separately or jointly. . . ." The constitutionality of the Act, in both its original and amended form, has been reviewed thoroughly and upheld by the Rhode Island Supreme Court. See Moreau, 15 A.3d at 575-89 (reviewing the constitutionality of the Act as amended in 2010 and 2011); Marran v. Baird, 635 A.2d 1174, 1178-80 (R.I. 1994) (reviewing the constitutionality of the Act as promulgated in 1993). Accordingly, the Budget Commission constitutes a valid delegation of legislative authority. See Moreau, 15 A.3d at 582-83; Marran, 635 A.2d at 1179-80.

Since in enacting the Ordinance, the Budget Commission was acting in a legislative capacity, the Court must next determine the procedural due process requirements of said action. It is well settled that a Legislature performing its legislative function is not required to provide notice and an opportunity to be heard to every individual affected by a law aimed at the general public. See 75 Acres, LLC v. Miami-Dade Cnty., Fla., 338 F.3d 1288, 1298 (11th Cir. 2003); Nat'l Amusements, Inc., v. Town of Dedham, 43 F.3d 731 (1st Cir. 1995). The underlying reasoning for this general rule is that "[w]here a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. . . . There must be a limit to individual argument in such matters if government is to go on." Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915). As the First Circuit stated in Nat'l Amusements, Inc., "the prospect of a legislative body being required to afford a panoply of protections for all persons who might arguably be affected by a forthcoming statute or ordinance would seem to be a prescription for parliamentary paralysis." 43 F.3d at 746.

In conclusion, Defendants are entitled to judgment as a matter of law because procedural due process rights are not applicable to the Budget Commission's legislative enactment of a generally applicable tax. Thus, the Defendants' Motion for Summary Judgment as it pertains to Count 6 is granted.

G

The Open Meetings Act

In Count 8, Plaintiffs allege that Defendants violated the Open Meetings Act by failing to file the minutes of the July 8, 2013 Budget Commission meeting—the meeting at which the Ordinance was enacted—with the Secretary of State within the time period provided in the

statute.[8] Defendants counter that the Budget Commission is not subject to the requirements of G.L. 1956 § 42-46-7(d)[9] because it is not a "public body within the executive branch of the state government" or a state public or quasi-public board, agency, or corporation.

The issue of whether the Budget Commission was subject to the requirements of § 42-46-7(d) can be resolved easily. Section 45-9-6(a), discussing the composition of budget commissions, specifically states that: "The budget commission shall be subject to chapter 46 of title 42 'Open Meetings' when meeting to take action on the following matters: . . . [l]evy and assessment of taxes[.]" See also Marran, 635 A.2d at 1176 (stating that a budget commission "must comply with the open-meetings and open-records laws[]"). Thus, this Court finds that because the July 8, 2013 meeting involved approving an ordinance for levying taxes on the City of Woonsocket citizens, the Budget Commission was required to file the minutes from that meeting with the Secretary of State within thirty-five days of the date of the meeting.

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[8] Plaintiffs also contend that the minutes which were eventually filed also violated § 42-46-7(a) because they did not record the "'vote taken' on the projected savings provision that was added to the publicly distributed draft Ordinance." (Pls.' Mem. at 47 n.20.) There is no evidence of a vote adding the "projected" language to the Ordinance in the minutes of the July 8, 2013 meeting. (Facts Ex. N.) However, this argument hinges on the Plaintiffs' contention that the Ordinance's use of the term "projected savings" contravened § 44-5-74.4. Since the Court has already determined that use of the term "projected" in the Ordinance aligns with the statute's requirement that the savings be "realized," Plaintiffs' argument on this point fails.

[9] Section 42-46-7(d) provides that:

> "All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations, and those public bodies set forth in subdivision (b)(2), shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature." Sec. 42-46-7(d) (emphasis added).

Consequently, the Court concludes that the Open Meetings Act was violated. Accordingly, the Plaintiffs' Motion for Summary Judgment on Count 8 with respect to the issue of liability is granted, and the Defendants' Motion for Summary Judgment with respect to the violation of the Open Meetings Act is denied.

This Court next turns to a remedy for the violation of the Open Meetings Act. The Plaintiffs contend that this Court should declare the enactment of the Ordinance null and void. In their Complaint, the Plaintiffs also seek attorney's fees and costs. The Defendants respond that even if they were subject to § 42-46-7(d), failure to timely file the minutes of the July 8, 2013 meeting with the Secretary of State does not warrant this Court's declaring the Ordinance null and void.

Section 42-46-8(d) specifically provides the remedies available with respect to the Defendants' violation of the Open Meetings Act:

> "The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust. The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars ($5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter." Sec. 42-46-8(d).

Consequently, § 42-46-8(d) grants this Court discretion in deciding whether to issue injunctive relief. See § 42-46-8(d) ("The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter.") (emphasis added); see also Carlson v. McLyman, 77 R.I. 177, 182, 74 A.2d 853, 855 (1950) ("We concede that the ordinary meaning of the word 'may' is permissive . . ."). Specifically, the Open Meetings Act "explicitly grants the court discretion to issue either injunctive relief after finding any violation and/or a

civil fine after finding that a public body or any of its members have committed a willful or knowing violation[.]" Tanner v. Town Council of E. Greenwich, 880 A.2d 784, 799-800 (R.I. 2005).

Plaintiffs maintain that the late filing was a "willful or knowing violation" of the Open Meetings Act and, as such, this Court should declare the Ordinance null and void. However, even if the Budget Commission's failure to timely file the minutes was a "willful" violation, such a minor deviation from the Open Meetings Act's requirements does not, as a matter of law, warrant a declaration that the Ordinance is null and void. Moreover, Plaintiffs have not alleged any intent to defraud on the part of the Budget Commission. See 2 Sandra M. Stevenson, Antieau on Local Government Law § 25.05 (2d ed. 2010) ("[S]ome courts have avoided invalidation in the absence of the members [sic] intent to defraud and where a substantial compliance was shown.").

It is well settled that "so long as substantial compliance with open meeting requirements exists, technical violations and minor deviations from open meeting law requirements will not invalidate an action by a public body." 4 Eugene McQuillin, Municipal Corporations § 13:10 (3d ed. 2007); see, e.g., Stevens v. Bd. of Cnty. Comm'rs of Reno Cnty., 10 Kan. App. 2d 523, 526, 710 P.2d 698, 701 (1985) (stating that "courts will look to the spirit of the law, and will overlook mere technical violations where the public body has made a good faith effort to comply and is in substantial compliance with the [Kansas Open Meetings Act] and where no one is prejudiced or the public right to know has not been effectively denied[]"); Cohan v. City of Thousand Oaks, 30 Cal. App. 4th 547, 556, 35 Cal. Rptr. 2d 782, 786 (1994), as modified on denial of reh'g (Dec. 21, 1994) (holding that "violations of [California's open meetings act] do not invalidate a decision. . . . Appellants must show prejudice[]") (internal citation omitted).

In the present case, it is undisputed that the Budget Commission ultimately filed the minutes of the July 8, 2013 meeting on October 22, 2013, roughly two months after the thirty-five day window mandated by § 42-46-7(d) had expired. However, the contents of the July 8, 2013 meeting were reported in the local media almost immediately after the meeting ended.[10] This resulting public information mitigates against a finding that the violation inhibited the public's notice or awareness of the Budget Commission's actions.

Thus, the Budget Commission's violation is distinguishable from violations of the Open Meetings Act that inhibit the public's notice or awareness of a public body's actions. See Anolik v. Zoning Bd. of Review of Newport, 64 A.3d 1171, 1176 (R.I. 2013) (holding a zoning board's action to be null and void because the board's agenda giving notice of the meeting at issue did not "reasonably describe the purpose of the meeting or the action proposed to be taken" (citing Tanner, 880 A.2d at 798)). It is recognized that "notice of public meetings is critical to their validity." See Sandra M. Stevenson, supra § 25.05. The Rhode Island Supreme Court has also commented that the Open Meetings Act notice requirements "demonstrate[] the Legislature's intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved." Tanner, 880 A.2d at 796. Here, the purposes of the Act have not been thwarted by the Budget Commission's failure to timely file the minutes. That failure rises to no more than a technical and minor deviation. It did not infringe upon the important principles of openness in government.

[10] See, e.g., Russ Olivo, Some Detractors Claim Supplemental Tax is Illegal, The Call, The Blackstone Valley's Neighborhood Newspaper, July 15, 2013, http://www.woonsocketcall.com/node/9031; Yi Wu, Will This Teetering Northeastern City Be the Next Detroit,? Poliymic.com, Aug. 5, 2013, http://ripr.org/post/woonsocket-supplemental-tax-bill-returns-statehouse; see also Ieradi v. Mylan Labs., Inc., 230 F.3d 594, 598 n.2 (3d Cir. 2000) (taking judicial notice of article published in the New York Times).

Invalidation under the facts and circumstances of this case is not warranted since such a remedy would not be proportional to the Budget Commission's violation. Notably, in Edwards v. State, the Rhode Island Supreme Court overturned the remedy for an Open Meetings Act violation for improper notice on the part of the defendant school committee. 677 A.2d 1347, 1349 (R.I. 1996). In that case, the defendant school committee had not adequately published notice of a meeting in a newspaper as required by the open meetings law. Nonetheless, the court determined that the Superior's Court's remedy of declaring the defendant's actions null and void was not "proportional to the breach and the effect thereof." Id. Clearly, the Court has considerable discretion in crafting a remedy, and this Court finds that the technical nature of the violation at issue—the Budget Commission's two-month delay in filing the relevant minutes—does not warrant invalidating the Ordinance. See Karol v. Bd. of Educ. Trs., Florence Unified Sch. Dist. No. One of Pinal Cnty., 593 P.2d 649, 651 (Ariz. 1979) ("The legislature, by specifically providing for resort to the courts for equitable relief, could not have intended that all actions of a public body be rendered null and void by reason of a minor deviation from the requirements of the statute because equitable principles require a balancing of the rights of those involved."). Such an extreme remedy would not be "proportional to the breach and effect thereof." See Edwards, 677 A.2d at 1349.[11]

In addition to providing the Court discretion to award injunctive relief, § 42-46-8(d) states that the Court shall award attorney's fees and costs if the Open Meetings Act is violated unless there is a special circumstance which would make such a grant unjust. See, e.g., Quality

[11] The Court notes that § 42-46-8(d) also states that "the court may impose a civil fine not exceeding five thousand dollars ($5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter." However, the Plaintiffs have presented no argument in support of awarding such a fine and instead confined the majority of their argument to whether this Court should declare the Ordinance null and void. The Court declines to exercise its discretion to award such a penalty.

Court Condo. Ass'n v. Quality Hill Dev. Corp., 641 A.2d 746, 751 (R.I. 1994) (stating that as a general rule "shall" is considered mandatory). While the award of attorney's fees for a violation of the Open Meetings Act is mandatory, the Rhode Island Supreme Court has clarified that "[r]ead as a whole, and particularly in light of the fact that attorney's fees are a remedy under the [Open Meetings Act], the [Open Meetings Act] clearly indicates that the Legislature intended the courts to consider the myriad of circumstances involved . . . and instructed the courts to rely upon tenets of justice and fairness in fashioning an award of attorney's fees." Tanner, 880 A.2d at 800.

Here, should Plaintiffs seek a hearing on the issue of attorney's fees incurred as a result of the Open Meetings violation, they must file a motion before this Court with notice to Defendants. Defendants may then assert the defense that special circumstances would render such an award unjust. The Court notes that with respect to such defense, the Open Meetings Act "places the burden of bringing forth evidence of special circumstances on a defendant who seeks to avoid the remedy of attorney's fees . . . ." Id. Moreover, such attorney's fees are distinguishable from costs.

If Defendants fail to meet this burden, Plaintiffs must come forward with evidence as to the amount of attorney's fees sought and must prove that the amount sought is fair and reasonable. In determining a claim for attorney's fees in this case, the Court shall "consider inherent tenets of justice and fairness in determining the amount, ensuring that the remedy is proportional to the breach and the effect thereof." Id. (internal quotation marks omitted). Of course, Plaintiffs would have to distinguish between any services rendered in connection with Count 8 from those rendered in connection with the remaining issues in the case. This Court can render no award for fees unless Plaintiffs prove that the fees that were incurred were reasonable

and necessary in pursuing this count. See Fallon v. Skin Med. & Surgery Ctrs. of R.I., Inc., 713 A.2d 777, 780 (R.I. 1998) (stating that an award of attorney's fees must be "fair and reasonable"); Palumbo v. U. S. Rubber Co., 102 R.I. 220, 223, 229 A.2d 620, 622 (1967) (same).

H

Taking

Plaintiffs, in Count 7, argue that the supplemental tax amounts to an unlawful taking of property in violation of article I, section 16 of the Rhode Island Constitution.[12] However, this Court has already determined that the Budget Commission acted within its delegated authority in enacting the supplemental tax. Since the supplemental tax was legally imposed, it cannot be considered an unlawful taking. Gott v. Norberg, 417 A.2d 1352, 1358 (R.I. 1980) ("[A]rt. I, sec. 16 protects taxpayers from illegal exercise of the taxing authority.") (emphasis added). As such, Defendants are entitled to summary judgment on Count 7, and Plaintiffs' Motion on this Count is denied.

I

Plaintiffs' Motion to Dismiss the Counterclaim

Lastly, Plaintiffs have filed a Super. R. Civ. P. 12(b)(6) "Motion to Dismiss Defendants' Counterclaim" for attorney's fees under § 45-9-23. Defendants have objected to the motion.

"The sole function of a motion to dismiss is to test the sufficiency of the complaint." Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (citation omitted). Looking at the four corners of the complaint, this Court examines that pleading and assumes that the allegations contained in a plaintiff's complaint are true, viewing them in a light most favorable to the plaintiff. Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009). Our Supreme Court has noted that there is a

[12] Section 16 of article I states, "Private property shall not be taken for public uses, without just compensation."

policy to interpret the pleading rules liberally so that ". . . cases in our system are not . . . disposed of summarily on arcane or technical grounds."[13] Konar v. PFL Life Ins. Co., 840 A.2d 1115, 1118 (R.I. 2004) (citation omitted).

While the pleading does not need to include the ultimate facts to be proven or the precise legal theory upon which the claims are based, the complaint is required to provide the opposing party with fair and adequate notice of any claims being asserted. Barrette, 966 A.2d at 1234. The goal is to give defendants sufficient notice of the type of claim being asserted against them. See Konar, 840 A.2d at 1119; see also Berard v. Ryder Student Transp. Servs., Inc., 767 A.2d 81, 85 (R.I. 2001) (noting that the requisite notice under Rule 8[14] of the Superior Court Rules of Civil Procedure requires plaintiff to allege what acts committed by defendant entitle plaintiff to legal or equitable relief). Consequently, "[a] motion to dismiss is properly granted 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Woonsocket Sch. Comm. v. Chafee, 89 A.3d 778, 787 (R.I. 2014) (citation omitted).

Here, Defendants rely on § 45-9-23 for their claim for attorney's fees. This statute provides:

> "Unless such person shall be the prevailing party in a final non-appealable judgment, any person who violates this chapter or ignores a written demand made by a fiscal overseer, budget commission member, receiver or administration and finance officer acting within the scope of his or her duties, shall be required to pay the reasonable attorney fees incurred by the fiscal overseer, budget

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[13] The Court notes that the Rhode Island Supreme Court has not adopted the "[f]ederal guide of plausibility" set forth in Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). See Chhun v. Mortg. Elec. Registration Sys., Inc., 84 A.3d 419, 422 (R.I. 2014).

[14] Rule 8 states in pertinent part that "[a] pleading . . . shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." Super. R. Civ. P. 8(a).

> commission member, receiver or administration and finance officer and/or his or her counsel to seek enforcement of this chapter or compliance with such written demand." Sec. 45-9-23.

Accordingly, Defendants argue that they can recover since "Plaintiffs . . . fil[ed] an unfounded challenge to a validly levied tax. . . ." (Defs.' Obj. to Pls.' Mot. to Dismiss, 1.)

The Rhode Island Supreme Court has made clear that "statutes providing for an award of attorney's fees are in derogation of the common law and must be construed strictly." Moore v. Ballard, 914 A.2d 487, 489 n.3 (R.I. 2007). It is also well settled that this Court "must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Mendes, 41 A.3d at 1002 (internal quotation marks omitted).

Here, Plaintiffs challenge the legality of the supplemental tax pursuant to §§ 44-5-26 and 44-5-27, which provide an avenue of relief for "[a]ny person aggrieved on any ground whatsoever by any assessment of taxes against him or her in any city or town." Sec. 44-5-26. Since this Court "assume[s] [that] the Legislature intended statutes relating to the same subject be construed together to be consistent and to effectuate the policy of the law[,]" State v. Timms, 505 A.2d 1132, 1135 (R.I. 1986), § 45-9-23 cannot be read as to expose taxpayers to attorney's fees when challenging the legality of a tax pursuant to § 44-5-26. See Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 923 (R.I. 2004) ("[I]t is firmly established that [this Court] will not construe a statute to reach an absurd result.") (internal quotations omitted). Accordingly, this Court grants Plaintiffs' Motion to Dismiss Defendants' Counterclaim since Defendants "would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." Woonsocket Sch. Comm., 89 A.3d at 787 (citation and internal quotation marks omitted).

IV

Conclusion

For all of the foregoing reasons, the Court grants the Defendants' Motion for Summary Judgment with respect to Counts 1, 2, 3, 4, 5, 6, and 7. This Court denies the Plaintiffs' Motion for Summary Judgment on Counts 1, 2, 4, 5, and 7. With respect to Count 8, this Court grants the Plaintiffs' Motion for Summary Judgment, in part, on the issue of the Open Meetings Act violation. Should Plaintiffs seek an award of attorney fees incurred with respect to the violation of the Open Meetings Act, they must file a motion before this Court with notice to Defendants. The Court grants Plaintiffs' "Motion to Dismiss Defendants' Counterclaim."

Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	James C. Cournoyer, et al. v. City of Woonsocket Budget Commission, et al.
CASE NO:	PC 2013-4082
COURT:	Providence County Superior Court
DATE DECISION FILED:	April 10, 2015
JUSTICE/MAGISTRATE:	Vogel, J.

ATTORNEYS:

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