

2013 (the “Further Objection”). Mr. Sullivan, Senator Kettle and Representative Morgan seek to distinguish as inapposite certain cases relied upon by the Retirement System in its Motion and Petition. As set forth in the Retirement System’s initial memorandum, and for the further reasons set forth herein, *Cole v. E. Greenwich Fire Engine Co.*, 12 R.I 202 (1878) and *W. Warwick Sch. Comm. v. Souliere*, 626 A.2d 1280 (R.I. 1993) continue to be good law in Rhode Island and support the Retirement System’s Motion and Petition.

Initially MERS questions the standing of Mr. Sullivan, Senator Kettle and Representative Morgan as they are not parties to this action nor creditors of the Central Coventry Fire District. The Supreme Court of Rhode Island last year declined to adopt “taxpayer standing” and continues to require that that a plaintiff’s injury must be "particularized" and that he must "demonstrate that he has a stake in the outcome that distinguishes his claims from the claims of the public at large.” *Watson v. Fox*, 44 A.3d 130, 136 (R.I. 2012)(quotations and citations omitted). Assuming, *arguendo*, that standing does exist, we respond below to Mr. Sullivan, Senator Kettle and Representative Morgan’s arguments.

In *Cole*, the Supreme Court of Rhode Island held that the legislatively chartered East Greenwich Fire Company was a quasi-public corporation and ordered it to assess and collect a tax to pay a judgment. *Cole*, 12 R.I. at 205. Mr. Sullivan and Senator Kettle seek to distinguish *Cole* by saying:

In *Cole* the appropriating authority, as noted by the Court, was not the taxpayers of the Fire District. Rather, it was the “members” of the Fire District who were, pursuant to their charter from the General Assembly, in 1797: ‘invested with an important public franchise, namely, the right to assess and levy taxes not only on themselves, but also “on the whole of the inhabitants of the compact part of the town of East Greenwich....”’¹

¹ Objection of Sullivan and Kettle, p. 3, citing *Cole*, 12 R.I. 204

The Supreme Court made note of the public purpose of the Fire Company and its ability to levy taxes not only on its members, but also on the “whole of the inhabitants,” in holding it to be a quasi municipal corporation.² It cannot legitimately be a matter of dispute that the CCFD is a public or quasi-public corporation, just as in *Cole*, as the CCFD’s enabling legislation similarly confers upon it the powers and privileges of a corporation and invests it with a public purpose and the ability to tax. P.L. 2006, ch. 405, §§ 1 and 7.

In seeking to distinguish the result in *Cole* from the present matter, Mr. Sullivan, Senator Kettle and Representative Morgan focus on the distinction between “members” and “inhabitants,” but fail to note that the Supreme Court explicitly recognized that the *peculiar original* makeup of the Fire Company in 1797 had been changed to make those with the power to tax identical to those taxed:

The charter was amended October, 1850. Schedule, Session General Assembly, October, 1850, p. 26. By the amendment the corporation was enlarged so as to include every person twenty-one years of age or upwards having a freehold title, other than in reversion or remainder, to any building or part of any building within certain designated limits, and so as to empower the corporation by a majority vote at any legal meeting attended by at least thirteen members, to order taxes to be assessed on the buildings within said limits, for the purpose of purchasing, building, and keeping in repair suitable buildings, engines, wells, reservoirs, pumps, hose, and other apparatus.

Cole, 12 R.I. at 204. Accordingly, subsequent to the amendment, the membership in the public corporation was extended to all building owners and the taxpayers *were* all the building owners. While in 1797 the members and taxpayers had been two different groups, in 1850 they were the same, and had been for 28 years prior to the court approving a writ of mandamus in 1878. As such, the distinction between the East

² “We think, therefore, the corporation, notwithstanding its peculiarity, must be regarded as a public or quasi municipal corporation.” *Id.*

Greenwich Fire Company of 1878 and the Central Coventry Fire District of 2013 is a distinction without a difference.

Mr. Sullivan and Senator Kettle indicated in their initial opposition papers that: “In *Cole*, the Court ordered the *Members* to raise the money to pay the judgment through taxes. This is very different from the case at bar.”³ In point of fact, the Superior Court issued the writ of mandamus to the corporation, not to the members. *Id.* at 203 (“After a hearing thereon, an alternative writ of mandamus was issued **to the corporation**, commanding it to assess the tax and pay the judgment, or to appear and show why it should not.”)(emphasis added). In affirming the action of the Superior Court, the Supreme Court further noted: “We also think the objection that there are no assessors is unavailing. If the **corporation** has no assessors it is its duty to elect them.” *Id.* at 206 (emphasis added).

While the electors of the CCFD may have the power, in their wisdom, to reject proposed budgets for the future provision of fire and rescue services, it is not within their power to evade statutorily required pension obligations owed to the Retirement System, for services already rendered by CCFD personnel, simply by choosing not to assess a tax to meet that legal obligation. The authority of the court to order a municipal corporation to assess a tax to pay an existing obligation is clear. *Richmond v. Kettelle*, 42 R.I. 192 (1919)(“Mandamus [is] the proper proceeding to compel payment of [a] judgment’ against a municipality.”); *Adler v. Lincoln Hous. Auth.*, 623 A.2d 20 (R.I. 1993); *cf.* R.I.G.L. §§45-15-6 and 45-15-7;⁴ *see also* 52 Am Jur 2d Mandamus § 265

³ Objection of Sullivan and Kettle, p. 4.

⁴ § 45-15-6. Town or council meeting to levy tax to pay judgment against town

(“Mandamus lies in a proper case to compel the levy and collection of taxes to meet governmental obligations, and where it seems probable that a public official or body will fail to levy the taxes required by law in order to provide for the payment of an obligation, a writ of mandamus may be granted to compel the levy.”) *citing Commissioners of Santa Fe County v. New Mexico*, 215 U.S. 296 (1909), *West Warwick School Committee v. Souliere*, 626 A.2d 1280 (R.I. 1993) and *Harris County v. Walsweer*, 930 S.W.2d 659, 668 (Tex. App. Houston 1st Dist. 1996). Mr. Sullivan, Senator Kettle and Representative Morgan contend that §§ 45-15-6 & 7 do not apply to the District because it is not a town or city. Further Objection, p. 10. In the absence of case law to the contrary, MERS believes that it is reasonable to include fire districts within the ambit of those sections, as they codify the result in *Cole*. Further, in *R.I. State Labor Rel. Bd. v. Valley Falls Fire Dist.*, (505 A.2d 1170, 1171-2 (R.I. 1986), the Supreme Court found a fire district to be within the meaning of “city or town” in deciding that the Fire Fighters’ Arbitration act applies to a quasi-municipal fire district.

Mr. Sullivan and Senator Kettle attempt to distinguish two other cases where the

On judgment being obtained for a debt, damages, or demand, in case the treasurer does not have sufficient money of the town or city in his or her hands to satisfy and pay the judgment obtained and the charges expended in defending the suit, the treasurer shall make application to any justice of the peace in the town or city, and the justice shall grant a warrant to the town sergeant, requiring the town sergeant to warn the electors of the town to hold a town meeting, at a time and place to be appointed, or to the mayor of the city requiring the mayor to call a special meeting of the city council of the city, for the speedy ordering and making a tax, to be collected for the reimbursement of the treasurer.

§ 45-15-7. Judicial order assessing tax to pay judgment

In case the electors, or the city council, upon due warning given them, shall not take due and effectual care to reimburse, pay, or satisfy the treasurer the money, costs, and charges by the treasurer expended, or recovered against the treasurer, upon complaint filed with the superior court at any time after this, by the treasurer or by the person recovering the judgment named in § 45-15-6, setting forth the facts, the court may order the assessors of the town or city to assess upon the ratable property, and the collector to collect, a tax sufficient for the payment of the judgment, with all incidental costs and charges, and the expense of assessing and collecting the tax.

courts have ordered municipalities to collect a tax sufficient to pay an obligation: *Exeter-West Greenwich Regional Sch. Dist. v. Exeter-West Greenwich Teachers' Ass'n*, 489 A.2d 1010, 1021 (R.I. 1985) and *West Warwick Sch. Comm. v. Souliere*, 627 A.2d 328 (R.I. 1993). In both cases, the courts ordered municipalities to assess and collect taxes to pay for obligations; the first for teacher contracts made by the school committee and not the municipality, and the second affirming an order of the Commissioner of Elementary and Secondary Education requiring the town of West Warwick to assess taxable property to generate sufficient revenue to comply with his order. *Id.* Mr. Sullivan and Senator Kettle point out that the CCFD is not an agency of the state carrying out the General Assembly's obligation under Article XII, section 1 of the Rhode Island Constitution.⁵

That it is not the duty of the CCFD to promote schools and libraries is completely irrelevant to the issues presently before the Court.⁶ That the word "fire" does not appear in the Rhode Island Constitution is also irrelevant. The CCFD is not asked to fulfill the function of a school committee. Rather, it is asked to pay statutorily mandated contributions to MERS related to services already performed. While the voters of the CCFD may refuse to approve budgets for services to be performed in the future if they wish to forego such services, the District is nevertheless obligated to make the required payments to the Retirement System, and neither the District's legal structure nor Rhode

⁵ Objection of Sullivan and Kettle, p. 5.

⁶ § 1. Duty of general assembly to promote schools and libraries

The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

R.I. Const. Art. XII, § 1

Island case law permit the District to avoid its liabilities solely by virtue of a failure to levy a sufficient tax to pay its indebtedness. To the contrary, the CCFD, as a public corporation, has a ministerial obligation to levy appropriate taxes to pay its indebtedness, without discretion to refuse. *Rose v. Mckie*, 145 F.584, 591 (1st Cir. 1906). As stated in *Rose*:

First, where there is a debt, authority to tax is presumed in the absence of some express provision to the contrary. Authority to contract a debt carries with it authority to tax, unless authority to tax is expressly denied. *Ralls County Court v. U.S.*, 105 U.S. 733, 26 L. Ed. 1220; *Citizens' Association v. Topeka*, 20 Wall. 662, 22 L. Ed. 455; *U.S. v. New Orleans*, 98 U.S. 381, 393, 25 L. Ed. 225; *U.S. v. Saunders*, 124 Fed. 124, 128, 59 C.C.A. 394. Second, as the only effective limitation is upon the right to tax, the respondents' return or answer must show not only that this limitation exists, but that the limited authority to tax has been exhausted. *City of Cleveland v. U.S.*, 111 Fed. 341, 348, 49 C.C.A. 383; *Beaulieu v. Pleasant Hill (C.C.)* 14 Fed. 222.

Id. Here, there is no limitation on the District's authority to tax, and any limitations contained in the original enabling legislation were subsequently removed by legislative amendments. *See* 2006. P.L. 2006, ch. 405, § 7. Accordingly, as set forth in *Cole*, this Court is fully authorized to issue a writ of mandamus to the CCFD, acting by and through the Special Master, to provide means for payment of its just debts. *See, Cole*, 12 R.I. at 205. "The power to tax, though permissive in form, creates, under the circumstances, a duty which can be enforced." *Id.*

The argument in the Further Objection that the "Qualified Voters" are not responsible to MERS is unsupported by authority of any kind. As cited above, numerous cases recognize the right of a creditor to seek mandamus for the assessment and collection of a tax to pay the debt. *See, e.g. Cole* and cases cited *supra*. As above, the General Assembly has, contrary to the assertion in the Further Objection (p.11), passed

an act requiring the taxpayers of a municipal entity to pay a debt. R.I.G.L. § 45-15-7.

The argument of Mr. Sullivan, Senator Kettle and Representative Morgan that the refusal of the voters of the CCFD to approve a budget was an exercise of their rights retained under Article I, § 24 of the Rhode Island Constitution (Further Objection, pp. 12-13), simply does not support the notion that the taxpayers have no responsibility to pay for services already received.

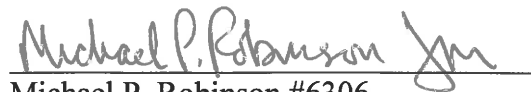
MERS respectfully requests that its motion be granted.

Dated: April 24, 2013.

Respectfully submitted,

The Retirement Board of the Municipal
Employees' Retirement System of
the State of Rhode Island,

By its Attorneys,

A handwritten signature in cursive script that reads "Michael P. Robinson" followed by a stylized initial "JR". The signature is written in black ink and is positioned above a horizontal line.

Michael P. Robinson #6306

James G. Atchison #7682

John H. McCann #2947

Shechtman Halperin Savage, LLP

1080 Main Street

Pawtucket, RI 02860

(401) 272-1400 telephone

(401) 441-5562 facsimile

mrobinson@shslawfirm.com

jgatchison@shslawfirm.com

jmccann@shslawfirm.com

CERTIFICATION

I hereby certify that on this 24th day of April 2013, I emailed a true and accurate copy of this Petition to Special Master Richard J. Land, Esq., Chace Ruttenberg & Freedman, LLP, One Park Row, Suite 300, Providence, RI 02903 and to the following:

Patricia Archambault
Beacon Mutual Insurance Company
One Beacon Centre
Warwick, RI 02886
Parchambault@BeaconMutual.com

Bankruptcy Dept.
Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Internal Revenue Service
2970 Market Street
Mail Stop 5-Q30.133
Philadelphia, PA 19104-5016

Julia Sweeney
Internal Revenue Service/JFK Building
P.O. Box 9112 Stop #20800
Boston, MA 02203
Fax: 855-235-6787

John Furtado, Esq.
Narragansett Bay Commission
1 Service Road
Providence, RI 02905-5505
Fax: 401-461-6540

National Grid
c/o John McCoy, Esq.
Bengtson & Jestings, LLP
40 Westminster Street, Ste 300
Providence, RI 02903
jmccoy@benjestlaw.com

National Grid (Electric)
Accounts Processing
PO Box 960
Northborough, MA 01532

National Grid (Gas)
Bankruptcy Department C-3
300 Erie Boulevard West
Syracuse, NY 13202

Kent County Water Authority
1072 Main Street
PO Box 192
West Warwick, RI 02893
Fax: 401-823-4810

Pension Benefit Guaranty Corporation
Legal Counsel
1200 K Street, N.W.
Washington, DC 20005-4026

Rhode Island Secretary of State
John Fleming, Administration
148 W. River Street
Providence, RI 02904
jfleming@sos.ri.gov

RI Department of Labor & Training
Legal Counsel
1511 Pontiac Avenue
Cranston, RI 02920-4407
Fax: 401-462-8666

RI Dept. of Environmental Management
Legal Services
235 Promenade Street
Providence, RI 02908
mary.kay@dem.ri.gov

David Sullivan, Esq.
RI Division of Taxation
One Capitol Hill
Providence, RI 02908
David.Sullivan@tax.ri.gov

James Borages
US Dept of Labor/Pension Welfare Benefits
JFK Federal Building, Room 575
Boston, MA 02203

Region One Director Mail Code 2241A

US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
spalding.curt@epa.gov

Walter F. Richardson
*Centreville Bank
1218 Main Street
West Warwick, RI 02893
401-827-5248
wrichardson@centrevillebank.com

Lisa Reid
Centreville Bank
1218 Main Street
West Warwick, RI 02893
401-827-5244
lreid@centrevillebank.com

Karen S. D. Grande, Esq.
Edwards Wildman Palmer, LLP
2800 Financial Plaza
Providence, RI 02903
401-455-7608
kgrande@edwardswildman.com

Lisa S. Holley, Esq.
Chief Legal Counsel
Dept. Public Safety
311 Danielson Pike
N. Scituate, RI 02857
401-444-1121
lholley@risp.dps.ri.gov

William J. Conley Jr., Esq.
The Law Office of William J. Conley Jr.
670 Willett Avenue
East Providence RI 02915
401-437-0905
wconley@wjclaw.com

Marc B. Gursky, Esq.
Gursky Law Associates
420 Scrabbletown Road, Ste. C

N. Kingstown, RI 02852
401-294-4700
mgursky@rilaborlaw.com

Elizabeth A. Wiens, Esq.
Gursky Law Associates
420 Scrabbletown Road, Ste. C
N. Kingstown, RI 02852
401-294-4700
ewiens@rilaborlaw.com

Theodore Orson, Esq.
Orson & Brusini, Ltd.
144 Wayland Ave
Providence, RI 02906
401-223-2100
torson@orsonandbrusini.com

Thomas R Hoover
Coventry Town Manager
1670 Flat River Road
Coventry, RI 02816
401- 822-9185
thoover@town.coventry.ri.us

Frederick G. Tobin, Esq.
Coventry Town Solicitor
300 Centerville Road, Suite 100E
Warwick, RI 02886
401-739-2020
fgt@fgtesq.com

Nicholas Gorham, Esq.
Gorham & Gorham Associates, Inc.
25 Danielson Pike, P.O. Box 46
North Scituate, RI 02857
401-647-1400
nickgorham@gorhamlaw.com

David D'Agostino, Esq.
Gorham & Gorham Associates, Inc.
25 Danielson Pike, P.O. Box 46
North Scituate, RI 02857

401-647-1400
Dauidagostino@gorhamlaw.com

Steve Morris, Esq.
Department of Health
3 Capitol Hill
Providence, RI 02903
Steve.morris@health.ri.gov

J. Eric Atherholt
Vice President – Legal Services
*CoActiv Capital Partners, Inc.
655 Business Center Drive
Horsham, PA 19044
ratherholt@leaseserv.com

Thomas Barnhart, Esq.
PNC Bank
995 Dalton Avenue
Cincinnati, OH 45203
thomas.barnhart@pnc.com

Chad McNulty
Bankruptcy Legal Support
Sprint
10002 Park Meadows Drive
Lone Tree, CO 80124

[David Gorman](#)
[Union Representative](#)
[c/o Station 4](#)
[240 Arnold Road](#)
[Coventry, RI 02816](#)
president@local3372.org

*U.S. Bancorp Equipment Finance Inc.
PO Box 230789
Portland, OR 97281

John R. Assalone
1A Liena Rose Way
Coventry, RI 02816
peopleplaces@hotmail.com

Carmine Olivieri
1A Liena Rose Way
Coventry, RI 02816
carmine@assalone.com

Lauren E. Jones, Esq.
Jones Associates
72 South Main Street
Providence, RI 02903-2907
T: 401-274-4446 x11
F: 401-274-2805
ljones@appeallaw.com

Mark Tourgee, Esq.
Inman Tourgee & Williamson
1193 Tiogue Avenue
Coventry, RI 02816
jsmallridge@itwlaw.com

Senator Leo Raptakis
sen-raptakis@rilin.state.ri.us

Senator Nicholas D. Kettle
nkettle10@gmail.com

Representative Michael Chippendale
rep-chippendale@rilin.state.ri.us

Representative Lisa Tomasso
rep-tomasso@rilin.state.ri.us

Representative Jared Nunes
rep-nunes@rilin.state.ri.us

Representative Patricia Morgan
rep-morgan@rilin.state.ri.us

Representative Scott Guthrie
rep-guthrie@rilin.state.ri.us

Board of Directors:

John Bonn, President
1333 Hill Farm Road
Coventry, RI 02816
joeyb331@verizon.net

Anna Mae Lapinski, Vice President
9 Crestwood Road
Coventry, RI 02816
alapinski@verizon.net

R. David Jervis, Director
300 Abbots Crossing Road
Coventry, RI 02816
Bbman1@cox.net

Ronald J. Gizzarelli, Director
50 Harrington Road
Coventry, RI 02816

Marie Fisher, Director
84 Lear Drive
Coventry, RI 02816
tripsbytim@cox.net

Linda Giguere, Director
57 Wrightway
Coventry, RI 02816
Privateline2000@cox.net

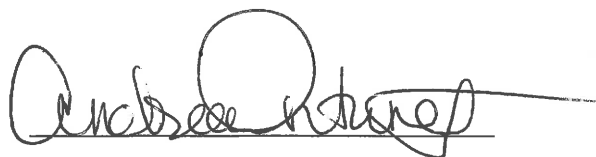
Armond A. Niquette, Jr.
19 Hill Side Avenue
Coventry, RI 02816
Arm1363@verizon.net

Lorraine Houle, Tax Collector
Town of Coventry
1691 Flat River Road
Coventry, RI 02816
Ccfdtaxcollector01@firehousemail.com

Chief Andrew Baynes
Central Coventry Fire District
240 Arnold Rd
Coventry, RI 02816
bcbaynes@yahoo.com

Christine Moniz, Clerk to the Board

Central Coventry Fire District
240 Arnold Rd
Coventry, RI 02816
ccfdadmin@firehousemail.com

A handwritten signature in black ink, appearing to read "Andrew R. Lopez". The signature is written in a cursive style with a long horizontal stroke extending to the right.