COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2177-CV-00077

GLEN MACLEOD & others[1]

vs.

TOWN OF ROCKPORT & others[2]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

The plaintiffs, Glen Macleod, William Brundage, Armand "Dan" Aparo, Kenneth Knowles, William Tobin, Brock Hale Currier, Janelle Favaloro, Patrick Keating, Kathy Milbury, and Barbara Stavropoulos (the "Taxpayers"), ten citizens who pay taxes to the Town of Rockport (the "Town" or "Rockport"), filed the Complaint (Paper No. 1) against the defendants, Rockport and Sarah Wilkinson, Donald Campbell, Ruth George, Paul Murphy, and Ross Bracket, as members of the Rockport Board of Selectmen, asserting a variety of claims challenging various actions taken by Rockport and its officials, in particular, actions taken relative to the Board of Fire Engineers and the Rockport Fire Department (the "RFD").[3] Currently, this matter is before the court on Defendants' Motion to Dismiss (Paper No. 4). For the reasons explained below, the Motion to Dismiss will be **ALLOWED** in part and **DENIED** in part.[4]

---

[1] William Brundage, Armand "Dan" Aparo, Kenneth Knowles, William Tobin, Brock Hale Currier, Janelle Favaloro, Patrick Keating, Kathy Milbury, and Barbara Stavropoulos

[2] Sarah Wilkinson, Donald Campbell, Ruth George, Paul Murphy, and Ross Bracket, as Members of the Rockport Board of Selectmen

[3] Throughout this Memorandum of Decision and Order, Rockport and the Board of Selectmen are referred to collectively as the "Rockport Defendants."

[4] The Rockport Defendants filed the Motion to Dismiss on March 30, 2021. Approximately three months later, before the court had an opportunity to conduct a hearing relative to that motion, the Taxpayers filed the First Amended Complaint (Paper No. 6). On July 27, 2021, at the hearing on the Motion to Dismiss, the court told the parties it would

BACKGROUND

Rockport is governed by a legislative charter (the "Town Charter"). See St. 1959, c. 242, and amendments at St. 1987, c. 619, and St. 1995, c. 133. The Town's executive branch consists of the elected Board of Selectmen (the "Selectmen"), and the annual town meeting functions as Rockport's legislative body. The current Town of Rockport Code of By-laws (the "Bylaws") was approved by town meeting on April 6, 2013. In the Complaint, the Taxpayers allege that the Town and the Selectmen have made certain appointments and granted responsibilities to certain individuals, which they had no authority to make or grant. Below, the court summarizes the Taxpayers' allegations of wrongdoing.[5, 6]

I. Town Administrator Vieira

Pursuant to the Town Charter, the Selectmen have the option "in their discretion [to] appoint an administrator or executive secretary[.]" St. 1995, c. 133, § 5(b). For several years, the Selectmen have hired a full-time town administrator. Mitch Vieira ("Administrator Vieira") is the current town administrator; the Selectmen appointed him in June 2019, and his contract expires June 30, 2024. Administrator Vieira's duties and obligations are not enumerated in the

---

not address the additional claims asserted in the First Amended Complaint at this juncture, as it was not currently before the court. The court's analysis of the Motion to Dismiss is confined to the Original Complaint filed on January 25, 2021.

[5] Certain facts not specifically set forth here may be referenced during the court's discussion of the parties' arguments in support and opposition to the Motion to Dismiss.

[6] In analyzing a motion to dismiss, the court may consider matters of public record as well as documents integral to, referred to, or explicitly relied upon in a complaint without converting the request for dismissal into a motion for summary judgment. Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 45 n.4 (2004); Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000); Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008). In this case, the Taxpayers attach various exhibits to the Complaint; and, in support of the Motion to Dismiss, the Town submits an affidavit authored by the Town Clerk, which includes exhibits detailing budgets voted on during town meeting. To the extent relevant, the court may take into consideration these documents without converting the Motion to Dismiss to a request for summary judgment. The court also notes that Rockport moves for dismissal under both Mass. R. Civ. P. 12(b)(1) and 12(b)(6), and that, for a motion asserted pursuant to Rule 12(b)(1), the court may consider documents and materials that are outside the pleadings when attached to an affidavit. Pishev v. Somerville, 95 Mass. App. Ct. 678, 682, rev. denied, 483 Mass. 1106 (2019), citing Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 710 (2004).

Bylaws or other provisions of local or state law. Instead, his duties and responsibilities are governed by his contract, which was executed between him and the Selectmen during executive session.[7]

General Laws c. 41, § 101, entitled "[c]ommissioner of public safety; powers and duties," grants a town's selectmen authority to appoint a commissioner of public safety following a vote at town meeting. According to Administrator Vieira's contract, he is tasked with serving as Rockport's public safety commissioner, which includes "overseeing all Public Safety functions and ensuring the orderly and efficient provisions of services of same." The Taxpayers allege the Selectmen made the position of public safety commissioner part of Administrator Vieira's job as town administrator without first obtaining authorization, via vote at town meeting, for the creation of the position of public safety commissioner.[8]

II. Attorney Horvath

Around the same time Vieira was appointed town administrator in June 2019, "in anticipation of conducting the decennial review of the [Bylaws] in 2020," the Town appointed Rockport Police Chief Jonathan Horvath's spouse, Attorney Dinamary Horvath ("Attorney Horvath"), to serve on the Town Government and Bylaw Committee.[9] Also around this time, in

---

[7] Vieira's contract states that he "shall perform the duties set forth in the Town Administrator Job Description." Under the heading "Statement of Duties," the job posting for the Town Administrator position states as follows: "[The Town Administrator] [s]erves as the Chief Administrative, Financial, & Operating Officer of the Town for the Board of Selectmen [Chief Executive Authority]. In such capacity, [the Town Administrator] provides professional administrative, technical and supervisory work in managing and directing all town activities, departments and projects on behalf of the Board of Selectmen including the establishment of departmental goals and objectives, policies and regulations. [The Town Administrator] [r]esearches, analyzes and recommends changes in Town policies, personnel, systems and procedures, and serves as liaison and coordinator between Town officials, employees and citizens; all other related work as requires including reports to the Board of Selectmen as the Board may direct. [The Town Administrator] [is] [r]esponsible for the safety of all Town employees and building operations."

[8] The Taxpayers allege Vieira wears a badge and has been assigned an unmarked police cruiser with lights and police department license plates. According to the Taxpayers, he claims to have quasi-constable authority, serving "No Trespass" orders on residents and restraining their ability to be on Town property without his express permission.

[9] This is a voluntary, unpaid appointment.

June 2019, Rockport hired Attorney Horvath to serve as some type of quasi-special counsel, to conduct external investigations into various firefighters, including then-Rockport Fire Chief James Doyle ("Chief Doyle").[10] The Taxpayers allege Attorney Horvath's involvement in investigating happenings at the RFD and her appointment to the Bylaw Committee were in violation of the Conflict of Interest Law because, while she was investigating him, Chief Doyle's direct supervisor was Assistant Police Chief Mark Schmink ("Assistant Chief Schmink") who reported directly to her husband, Police Chief Horvath.

III. Assistant Chief Schmink and the RFD

Also in June 2019, the Selectmen appointed then-Police Lieutenant Schmink to be Assistant Police Chief and Emergency Services Director. Prior to Assistant Chief Schmink's appointment to these positions, neither position had existed in Rockport.[11] Traditionally, the RFD has been managed by a board of fire engineers appointed by the Selectmen pursuant to the Town Charter, the Bylaws, and G. L. c. 48, § 45. According to the Taxpayers, the Selectmen did not have the authority to create the position of Emergency Services Director without getting approval via a vote at town meeting.

After Assistant Chief Schmink's appointments, he began taking control of the RFD.[12] According to the Taxpayers, in doing so, Assistant Chief Schmink improperly usurped Chief Doyle's authority, exercising supervisory authority over the Board of Fire Engineers, the RFD,

---

[10] In the Complaint, the Taxpayers do not explain the purpose of these alleged "external investigations"; however, they note Chief Doyle's many years of service to the Town. Specifically, the Taxpayers allege that, as of the time in question, Chief Doyle had been on the Board of Fire Engineers for over twenty years, a volunteer firefighter in Rockport for forty-six years, and its Chief Fire Engineer for ten years.

[11] Assistant Chief Schmink received a salary increase for becoming the first ever Assistant Chief for the Rockport Police Department and a stipend for his work as Emergency Services Director.

[12] The Taxpayers allege Assistant Chief Schmink began controlling every aspect of the RFD, including requiring the companies to get his express permission before conducting training, and taking over disciplinary matters, which resulted in the termination of three firefighters and others, including Chief Doyle, being placed on administrative leave.

and Chief Doyle himself, even though he had no experience as a firefighter. The Taxpayers claim that, by appointing him Emergency Services Director, the Selectmen made the Board of Fire Engineers and Chief Doyle subordinate to Assistant Chief Schmink.

In summer 2020, at the recommendation of Assistant Chief Schmink and Administrator Vieira, the Selectmen reappointed both assistant fire chiefs to the Board of Fire Engineers; however, the Selectmen did not reappoint Chief Doyle.[13] On November 9, 2020, the volunteer firefighters sent a letter to the Selectmen demanding that they remove Assistant Chief Schmink from his position as Emergency Services Director and that they return control of the RFD to Chief Doyle. The following day, November 10, 2020, Administrator Vieira placed Chief Doyle on administrative leave, telling him he had twenty-four hours to retire, or he would be terminated. Chief Doyle did not retire.

On the evening of November 10, 2020, the Selectmen met in executive session. The following week, at a public meeting on November 17, 2020, the Selectmen suspended Assistant Chief Schmink from his position as Emergency Services Director. He remained Assistant Chief of Police, and his additional pay remained intact. At the same meeting, the Selectmen tasked Administrator Vieira with drafting a Request for Proposal ("RFQ") for the hiring of an outside auditor to review the RFD.

IV. Municipal Resources, Inc.

Prior to the November 17th meeting, Administrator Vieira had already reached out to Municipal Resources, Inc. ("MRI"). Administrator Vieira's RFQ provides that MRI "shall conduct an in-depth review of the Town's Fire Department['s] . . . Management Structure,

[13] It is unclear from the record whether the failure to reappoint Chief Doyle was the result of a recommendation from Assistant Chief Schmink.

including relationship with Director of Emergency Services position[,] . . . . [and] [r]eview department organizational structure for appropriateness, including relationship with the Director of Emergency Services position."

On December 2, 2020, the Selectmen approved a preliminary draft of the RFQ and allowed Administrator Vieira to turn it into a final version without any additional public review or vote. Thereafter, during the public meeting on January 12, 2020, the Selectmen hired MRI to assess the RFD. One of MRI's primary tasks was to evaluate the RFD's managerial structure relative to the Emergency Services Director position. The Taxpayers claim that MRI cannot be used to evaluate the relationship between the RFD and the position of Emergency Services Director because the position is not lawful.

DISCUSSION

The Taxpayers assert their claims pursuant to the municipal finance statute, G. L. c. 44, § 59 (the "Municipal Finance Statute") (Counts I-IV), the declaratory judgment statute, G. L. c. 231A (the "Declaratory Judgment Statute") (Counts V-XIII), and the ten taxpayer statute, G. L. c. 40, § 53 (the "Ten Taxpayer Statute") (Counts IX-XII). The Rockport Defendants argue all claims must be dismissed because the Taxpayers lack standing. Further, specifically as to the claims asserted pursuant to the Finance Statute, they contend dismissal is warranted because the facts alleged in the Complaint are not sufficient to provide a right to the relief sought. The court addresses these arguments below.

I. Standard of Review

To survive a motion to dismiss, a complaint must state a basis for relief with "'more than labels and conclusions.'" Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The factual allegations "must be enough

to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id., quoting Bell Atl. Corp., 550 U.S. at 555. In other words, the complaint must set forth "factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief." Id., quoting Bell Atl. Corp., 550 U.S. at 557.

II. Analysis

A. Standing

Standing is a question of subject matter jurisdiction, Indeck Main Energy, LLC v. Commissioner of Energy Resources, 454 Mass. 511, 516 (2009), which "goes to the power of the court to hear and decide the matter." Ginther v. Commissioner of Ins., 427 Mass. 319, 322 n.6 (1998). Essentially, standing is about injury or harm.[14] However, "it is not enough that the plaintiff be injured by some act or omission of the defendant; the defendant must additionally have violated some duty owed to the plaintiff." Doe No. 1 v. Secretary of Educ., 479 Mass. 375, 386 (2018), quoting Penal Insts. Comm'r for Suffolk County v. Commissioner of Corr., 382 Mass. 527, 532 (1981). In other words, a plaintiff must show that he or she was injured as a result of the defendant's conduct and that the injury suffered falls "within the area of concern of the statute or regulatory scheme" in question. Sullivan v. Chief Justice of Admin. & Mgmt. of the Trial Court, 448 Mass. 15, 21-22 (2006), quoting Ginther, 427 Mass. at 323.

1. Ten Taxpayer Statute (Counts IX-XII)

The Taxpayers assert Counts IX-XII as so-called ten taxpayer claims pursuant to G. L. c. 40, § 53, seeking to prevent the Town from: (1) paying Administrator Vieira's salary in

[14] To establish standing, a plaintiff must demonstrate he or she has a "definite interest" such that his or her "rights will be significantly affected by a resolution of the contested point[,]" because courts are not in the business of allowing parties to "litigate matters in which they have no interest affecting their liberty, rights or property[.]" HSBC Bank USA, N.A. v. Matt, 464 Mass. 193, 199 (2013).

accordance with his contract (Count IX); (2) paying the stipend Assistant Chief Schmink receives for his role as Emergency Services Director (Count X); (3) paying Attorney Horvath fees she earned for work performed in connection with investigating the RFD and Chief Doyle (Count XI); and (4) paying MRI consulting fees it earned in association with assessing the RFD and its managerial structure (Count XII). The Rockport Defendants argue the Taxpayers lack standing to bring such claims under the Ten Taxpayer Statute. The court agrees with the Rockport Defendants.[15]

The court does not have general equity jurisdiction to "entertain a suit by individual taxpayers to restrain cities and towns from carrying out invalid contracts and performing other similar wrongful acts." Pratt v. Boston, 396 Mass. 37, 42 (1985); see also Fuller v. Trustees of Deerfield Academy & Dickinson High Sch., 252 Mass. 258, 259 (1925). And, while the Ten Taxpayer Statute serves as "a vehicle whereby concerned taxpayers may enforce laws relating to the expenditure of their tax money by local officials[,]" Edwards v. Boston, 408 Mass. 643, 646 (1990), "a petition by taxpayers may be maintained only when it is brought within the provisions of the statute." Richards v. Treasurer & Receiver Gen., 319 Mass. 672, 675 (1946).

The Ten Taxpayer Statute states, in pertinent part:

> If a town . . . or any of its officers or agents are about to raise or expend money or incur obligations purporting to bind said town . . . for any purpose or object or in any manner other than that for and in which such town . . . has the legal and constitutional right and power to raise or expend money or incur obligations, the supreme judicial or superior court may, upon petition of not less than ten taxable inhabitants of the town . . . restrain the unlawful exercise or abuse of such corporate power.

[15] In opposing the Rockport Defendants' argument regarding standing under the Ten Taxpayer Statute, the Taxpayers rely primarily on case law involving federal taxpayers seeking standing to bring claims in federal court under Article III of the United States Constitution. In the court's view, this case law is not dispositive as to the Taxpayers' standing to bring their claims under the *Massachusetts* Ten Taxpayer Statute.

G. L. c. 40, § 53. Thus, the "ten taxable inhabitants" are entitled to relief only if the town is "about to" raise or expend money, or incur obligations.[16] Id. A ten taxpayer petition "will lie only before . . . obligations are incurred and not afterwards." Kapinos v. Chicopee, 334 Mass. 196, 198 (1956) (concluding plaintiffs in ten taxpayer action lacked standing because they petitioned court eleven months after city executed challenged contract).

The Ten Taxpayer Statute is preventative; it is neither anticipatory nor retroactive. The aim of the Statute is to "furnish a prompt and effective remedy to restrain cities and towns from raising, borrowing or expending money for purposes not authorized by law, and to enable a minority to guard their rights and interests when such unlawful acts [are] . . . threatened or in contemplation." Fuller, 252 Mass. at 260. "[T]here must be allegations of actual vote to raise or to pay money or to pledge credit for an illegal purpose." Id. "A well grounded expectation of such conduct is not enough to confer jurisdiction of the statute. Some one of the facts described in the statute is essential as a basis for jurisdiction." Id. And, "[t]he statute does not authorize . . . the correction of wrongs wholly executed and completed." Id. The Ten Taxpayer Statute "cannot be made to reach past transactions." Richards, 319 Mass. at 675.

In the court's view, the claims for relief (Counts IX-XII) the Taxpayers assert relative to the Ten Taxpayer Statute involve past conduct, for which the Statute does not confer standing. In Count IX, the Taxpayers challenge the payment of Administrator Vieira's salary because his job as town administrator allegedly includes duties typically associated with a public safety commissioner, and the Selectmen did not get approval, via a vote at town meeting, to create such a position or to include such a position within the town administrator's job description.

---

[16] In this context, "'[t]he words "to raise money" as applied to a municipality commonly means to raise by taxation.'" Quigley v. Newton, No. 16-P-00425, 2016 WL 7381735, at *2 (Mass. App. Ct. Dec. 19, 2016) (Unpublished Rule 1:28), quoting Dowling v. Assessors of Boston, 268 Mass. 480, 484 (1929).

However, the payment of Administrator Vieira's salary is not an obligation the Town is "about to" incur. Rather, the payment of Administrator Vieira's salary is a contractual obligation that Rockport assumed responsibility for back in June 2019, when it executed his employment agreement, which does not expire until June 30, 2024. The Town's responsibilities relative to Administrator Vieira's employment contract are executed and complete.

In Count X, the Taxpayers challenge the payment of the stipend Assistant Chief Schmink receives for his role as Emergency Services Director. Again, the payment of this stipend is not an obligation the Town is "about to" incur. Assistant Chief Schmink was appointed Emergency Services Director in June 2019, and the stipend associated with this appointment was included in the town budget for that year, which was approved via a vote at town meeting. Rockport is not about to "raise or expend money" or "incur" any other obligations relative to the stipend paid to Assistant Chief Schmink. It has already incurred the obligation and paid the stipend; and, the Ten Taxpayer Statute does not confer standing to address "past transactions." Richards, 319 Mass. at 675.

In Count XI, the Taxpayers challenge the Town's payment of the fees Attorney Horvath earned for work performed in connection with investigating the RFD and Chief Doyle. Again, this represents a past obligation for which the Taxpayers do not have standing to seek redress under the Ten Taxpayer Statute. According to the Complaint, the Town hired Attorney Horvath to investigate the RFD and then-Chief Doyle in June 2019. Even if her hiring represented a conflict of interest due to her relationship with the police chief and his role in supervising Assistant Chief Schmink, at this juncture, Attorney Horvath's investigation is complete and she has been paid for her services. See generally, Spear v. Boston, 345 Mass. 744 (holding claims by taxpayers asserted in connection with awarding of contract became moot when contract had

expired and no further payments would be made). The Ten Taxpayer Statute is preventative; it does not provide a mechanism for correcting conduct already completed.

Lastly, in Count XII, the Taxpayers challenge the Town's ability to pay MRI consulting fees earned in association with its assessment of the RFD. More specifically, the Taxpayers contend that the Town cannot lawfully pay MRI to assess how the RFD's managerial structure can effectively work with the Emergency Services Director because this position was not lawfully created via a vote at town meeting. The record currently before the court is unclear as to whether MRI has already undertaken its assessment. However, the Town's budget, which was approved via a vote at town meeting, included appropriations for assessment of town departments. Thus, the funds for whatever fees are owed to MRI have already been "raised" and appropriated.

For the reasons explained, because the Taxpayers seek to apply the Ten Taxpayer Statute to challenge past conduct; in some instances, conduct undertaken and completed many months ago, the claims asserted thereunder fail. The Motion to Dismiss will be **ALLOWED** as to Counts IX-XII.

2. Declaratory Judgment Statute (Counts V-XIII)

The Taxpayers assert four claims under the Declaratory Judgment Statute, seeking an order from the court declaring that: (1) Administrator Vieira's contract is in violation of the Town Charter, the Bylaws, and state laws, insofar as it purports to grant him authority to act as public safety commissioner (Count V); (2) the Emergency Services Director position unlawfully usurps the authority of the Board of Fire Engineers, the RFD and Chief Doyle, in violation of the Town Charter, the Bylaws, and state laws (Count VI); (3) hiring Attorney Horvath as quasi-special counsel to investigate matters related to the RFD, including Chief Doyle, constitutes a

violation of the Conflict of Interest Law, G. L. c. 268A (Count VII); and (4) appointing Attorney Horvath to the Bylaw Committee is a violation of the Conflict of Interest Law, G. L. c. 268A (Count VIII). The Rockport Defendants argue the Taxpayers lack standing to pursue these claims. Again, the court agrees with the Rockport Defendants.

It is well settled that the Declaratory Judgment Statute does not provide an independent statutory basis for standing. Pratt, 396 Mass. at 42-43. Thus, "plaintiffs cannot rely on [the Declaratory Judgment Statute] . . . to challenge the validity of official acts without [some] independent standing to sue[.]" Baun v. Board of Selectmen of Ashland, 2015 WL 3769821, at *2 (Mass. App. Ct. Jun. 18, 2015) (Unpublished Rule 1:28), citing Pratt, 396 Mass. at 42-43; Ten Persons of the Commonwealth v. Fellsway Dev., LLC, 460 Mass. 366, 380 (2011). "To proceed, '[t]he petitioning taxpayers [must have an] interest of their own apart from that of all other taxpayers." Baun, 2015 WL 3769821, at *2, quoting Spear, 345 Mass. at 747. That interest is conferred via "the express provisions of . . . [the Ten Taxpayer Statute], and must of course be exercised in the manner there provided." Povey v. School Comm. of Medford, 333 Mass. 70, 71-72 (1955).

Here, the Motion to Dismiss will be **ALLOWED** as to Counts V, VI, VII, and VIII. As described above, the Taxpayers lack standing under the Ten Taxpayer Statute to assert claims relative to the matters addressed within these counts. And, they have identified no other independent statutory basis sufficient to grant them standing under the Declaratory Judgment Statute.

3. Municipal Finance Statute, G. L. c. 44, § 59 (Counts I-IV)

In Counts I-IV, the Taxpayers bring four claims pursuant to the Municipal Finance Statute. The Rockport Defendants argue that, to assert these claims, the Taxpayers must comply

with the requirements applicable under the Ten Taxpayer Statute, and because they have failed to do so, they lack standing to bring these claims. In addition, the Rockport Defendants contend the Taxpayers have failed to allege facts sufficient to state a claim under the Municipal Finance Statute because they do not identify any specific provision of the Statute that has been violated. The court disagrees with the Rockport Defendants.

The Municipal Finance Statute's enforcement provisions states, in relevant part, as follows:

> The . . . superior court, by mandamus or other appropriate remedy, at law or in equity, upon the suit or petition . . . of one or more taxable inhabitants of a city, town or district authorized by law to incur debt . . . may compel such city, town or district, and its assessors, collectors, treasurers, commissioners of sinking funds and other proper officers, to conform to this chapter.

G. L. c. 44, § 59. There is very little case law interpreting this provision; however, in the court's view, it is distinguishable from the Ten Taxpayer Statute. First, this provision gives "one or more taxable inhabitants" the right to bring suit. Second, the provision talks about compelling compliance with the Municipal Finance Statute as a whole, and does not contain the same limiting language as the Ten Taxpayer Statute, where relief is only available if a town is "about to" raise or expend money, or incur an obligation. The Municipal Finance Statute's enforcement provision contains no language limiting the right to relief to the prevention of harm.

The court concludes the Municipal Finance Statute's enforcement provision, G. L. c. 44, § 59, grants the Taxpayers standing to bring claims, seeking to compel Rockport to comply with the many other provisions of the Statute, without having to comply with the restrictions applicable to claims brought pursuant to the Ten Taxpayer Statute. Of course, standing to assert a claim in the abstract, does not mean that the claims the Taxpayers actually assert in the current matter are viable.

First, in Count III, the Taxpayers allege that hiring Attorney Horvath as quasi-special counsel to investigate the RFD constituted a violation of the Municipal Finance Statute. Even if the Town's retention of Attorney Horvath was a violation of the Statute, at this juncture the claim is moot. See Minasian v. PNC Bank, N.A., 99 Mass. App. Ct. 1113, 2021 WL 772293, at *2 (Mass. App. Ct. Mar. 1, 2021) (Unpublished M.A.C. R. 23.0) ("[a] c[laim] is moot when there is no longer any need for the relief sought"), citing Ott v. Boston Edison Co., 413 Mass. 680, 682 (1992). Attorney Horvath was hired in June 2019, and her investigation has been complete for many months. It is not possible for the taxpayers to compel compliance with the Municipal Finance Statute with respect to conduct long completed. The Motion to Dismiss will be **ALLOWED** as to Count III.

Counts I, II, and IV are distinguishable from Count III because the conduct alleged under these counts seems to involve ongoing violations of the Municipal Finance Statute. First, in Count I, the Taxpayers allege that the inclusion of the duties associated with public safety commissioner in Administrator Vieira's contract violates the Municipal Finance Statute. Next, in Count II, they claim that creation of the Emergency Services Position, usurping the authority of the Board of Fire Engineers, the RFD, and Chief Doyle violates the Municipal Finance Statute. Lastly, the Taxpayers argue hiring MRI to assess the RFD violates the Municipal Finance Statute.

Despite the Taxpayers' allegations that the Municipal Finance Statute has been violated as a result of the above conduct, the Complaint is sparse as to what specific provisions of the Statute have been violated and how those provisions have been violated. For each claim, the Taxpayers allege the Town has violated G. L. c. 44, § 14, which states: "Nothing in this chapter shall exempt a city or town from its liability to pay debts contracted for purposes for which it

may lawfully expend money." According to the Taxpayers, Rockport has violated this provision by spending money on matters which it cannot lawfully expend money. At this early stage of the litigation, the court concludes such an assertion is sufficient, especially given the dearth of case law addressing the Municipal Finance Statute and its enforcement provision. The court declines to dismiss these claims at this juncture, as resolution based on a more developed record is warranted. The Motion to Dismiss will be **DENIED** as to Counts I, II, and IV.

CONCLUSION AND ORDER

For the reasons explained above, it is hereby **ORDERED** that the Motion to Dismiss (Paper No. 4) is **ALLOWED** as to Counts III, V, VI, VII, VIII, IX, X, XI, XII, and **DENIED** as to Counts I, II, and IV.

SO ORDERED.

C William Barrett
Justice of the Superior Court

DATE: August 12, 2021