



*In all the world there is only one Essex Junction*

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## **MEMORANDUM**

**TO:** Essex Junction Trustees  
**FROM:** David A. Crawford, Village Manager  
**DATE:** February 8, 2011  
**SUBJECT:** Village Attorney Dave Barra's E-Mailed "Current Thinking"

The following e-mail was received from Atty Dave Barra. It is a follow-up to a conversation we had on Friday when we went through Mike Deweese's PC Presentation. Also attached is our VT Statutes Memo.

From: "David A. Barra" <dbarra@barralaw.com>  
To: "David A. Crawford" <dacs40@comcast.net>  
Sent: Monday, February 7, 2011 9:28:23 AM  
Subject: RE: CONFIDENTIAL COMMUNICATION

Dave:

Still haven't made contact with Joe. I will let you know as soon as I do.

To summarize my thinking I offer the following: municipalities have only the authority given by Charter or state law. The Charter says the Village has all authority given by law. State law says a municipality can operate recreation programs. No matter what the past has been, current law authorizes the Village to run recreation programs. This is not in doubt. This is clear. The Charter and the statutes are the ultimate authority on this and they clearly establish that the Village has authority in this area. Any attempt to cast doubt on this point is disingenuous or mistaken.

The school's position is that the 1970 votes taken by the boards are irrevocable: in essence, forever and always a municipal department and/or function was transferred from the Village to the school. However, this position is belied by the discussions and agreement about merger. Those discussions and that agreement clearly recognized that the transfer was not irrevocable.

Moreover, no municipal corporation can take action beyond what it is legally authorized to do. There is no charter or statutory provision that authorizes such a transfer. Unless there is some Charter or statutory authority, the action is not legal. I do not agree that the action of the Trustees can be characterized as an irrevocable transfer but if it is, then it is an *ultra vires* act; that is an act not authorized by law and therefore without force and effect.

The most sensible interpretation of what has occurred is that the Village trustees voted in 1970 to allow the school to run the recreation programs. This is essentially a contractual relationship subject to changing circumstances. I believe that the public interest will be best served if the relationship is made more formal and better documented so that rights and responsibilities in the future will be more clear.

Dave

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