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October 27, 2023

The Honorable Monica Mezzapelle
Treasurer
New Hampshire State Treasury
25 Capitol Street, Room 121
Concord, NH 03301

RECEIVED

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FRONT DESK
TREASURY DEPT.

Re: Legal Opinion on The Lowell Five Cent Savings Bank's Ability to Accept
Public Funds under RSA 6:8 I-a

Dear Treasurer Mezzapelle:

This firm represents The Lowell Five Cent Savings Bank ("Lowell Five"), a Massachusetts chartered savings bank and an indirect wholly owned subsidiary of Lowell Five Bancorp, MHC, a Massachusetts chartered mutual holding company. Lowell Five, which is headquartered in Tewksbury, Massachusetts, currently operates fourteen branches in the Commonwealth of Massachusetts and one branch in the State of New Hampshire.

Lowell Five has asked us to provide to you pursuant to New Hampshire **RSA 6:8 I-a(d)** our opinion regarding the authority under Massachusetts law for public officials of the Commonwealth of Massachusetts to deposit public funds in state banks or similar financial institutions chartered in states other than the Commonwealth of Massachusetts. In providing this legal opinion, we have reviewed the statutes, regulations, and regulatory guidance of the Commonwealth of Massachusetts and the State of New Hampshire. For the reasons set forth below, we are of the opinion that Massachusetts law permits officials of state governmental units of the Commonwealth of Massachusetts to deposit public funds in state banks or similar financial institutions chartered in states other than the Commonwealth of Massachusetts.

Section 55 of M.G.L. c. 44 provides general authority for the deposit of public funds by officials of state governmental units. Included within this authority are certain limitations and prohibitions regarding both the deposit and the investment of these funds. Subsection 2 of Section 55 lists the types of financial institutions with which officials may deposit these funds, which are limited to "trust companies, national banks, savings banks or cooperative banks"

Further, section 55A of M.G.L. c. 44 limits, in certain circumstances, the liability of public officials who deposit or invest public funds that are subsequently lost as the result of bankruptcy, closing, or liquidation of the institution holding those funds. Unlike the broader language in Section 55 regarding the types of financial institutions authorized to hold these funds, Section 55A

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limits its liability provisions to only those public officials who deposit funds or make investments in good faith and in the exercise of due diligence in:

“a trust company, co-operative bank or savings bank, if the trust company or bank is organized or exists under the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth, a national bank, federal savings bank or federal savings and loan association, if the bank or association may transact business and has its main office or branch office in the commonwealth” (Emphasis added.)

Since context determines meaning, it follows to consider the entire context of the language under the statutory construction. One should look not only at the provisions in question, but also to “the language and design of the statute at a whole.” *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). Reading M.G.L. c. 44, §§ 55, 55A together, it is implied that it is permissible for officials of state governmental units of the Commonwealth of Massachusetts to deposit public funds in state banks or similar financial institutions chartered in states other than the Commonwealth of Massachusetts.

Based on the foregoing analysis, we are of the opinion that there is limited reciprocity in the Commonwealth of Massachusetts that would permit a bank chartered and headquartered in the State of New Hampshire and operating one or more branches in Massachusetts to accept the deposit of public funds from one or more Massachusetts public officials in substantially the same manner and subject to substantially the same terms and conditions as is permitted for banks chartered in Massachusetts. Accordingly, it is our opinion that the condition in subparagraph (a) of New Hampshire RSA 6:8 I-a has been met, and therefore Lowell Five, a Massachusetts-chartered bank with a branch in New Hampshire, may accept the deposit of public funds from one or more New Hampshire public officials without violating the provisions of New Hampshire RSA 6:8 I-a, assuming compliance by Lowell Five with the requirements of subparagraphs (b) and (c) thereof.

This opinion letter and the legal opinion expressed herein shall be interpreted in accordance with the Core Opinion Principles as published in 74 *Business Lawyer* 815 (Summer 2019).

This opinion letter has been prepared solely for your use and the use of Lowell Five in connection with New Hampshire RSA 6:8 I-a(d), and this letter and the legal opinion expressed herein may not be relied upon or used by, circulated, quoted, or referred to nor may any copy of this letter be delivered to any other person or filed with or furnished to any governmental agency or entity or any other person or entity, without our prior written consent. We disclaim any obligation to update this opinion letter or to advise you of facts, circumstances, events or

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developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein.

For your information, we note that members of this firm, including the partner principally responsible for this opinion letter, are admitted to practice law in New Hampshire.

Sincerely,


NUTTER, MCCLENNEN & FISH, LLP

MKK/TJR/PRE

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