

Board of Selectmen's Meeting Minutes
March 18, 2008
Harpswell Town Office
Approved on April 10, 2008

Page 1 of 2

Selectmen Present: James S. Henderson, Mark Wallace and Chairman Amy N. Haible

Staff Present: Kristi Eiane, Town Administrator

Call to Order and Pledge of Allegiance: The meeting was called to order by Selectman Haible at 6:30 p.m. with the Pledge of Allegiance. The meeting was videotaped and broadcast live on Harpswell Community Television.

1. Adoption of the Agenda: Chairman Haible moved, seconded by Selectman Henderson to adopt the agenda as printed; motion passed 3-0.

2. Continuation of Selectman/Employee Situation Discussion: Attorney Katsiaficas, representing Mark Wallace, reviewed a letter he submitted (attached as further reference) supporting his argument that there are no incompatibility issues with Mr. Wallace serving as Selectman and being an employee of the Town as a Transfer Station attendant. Mr. Katsiaficas requested the Town check with the Maine Municipal Association for a written legal opinion and with the insurance companies regarding Worker's Compensation and the Maine Tort Claims Act coverage. Selectman Henderson questioned why Mr. Katsiaficas is opposed to the filing of the suit if he is certain there isn't an issue which therefore should result in a favorable decision for Mr. Wallace. Mr. Katsiaficas expressed concern about the costs to Mr. Wallace, whether the Town Attorney will present the case fairly and the potential risks to Mr. Wallace's employment and benefits.

William Dale, Town Attorney, stated that Mr. Wallace was informed of this potential issue in January, prior to him being elected. Mr. Dale expressed concern about the potential costs to taxpayers if this issue isn't addressed right now and causes a problem in the future. Mr. Dale stated that Mr. Katsiaficas wouldn't sign a letter guaranteeing the Town has no liability exposure and therefore, he reiterated his firm's recommendation that the Town seek a declaratory judgment regarding the potential incompatibility of offices and to take a neutral position in the suit. Mr. Dale responded to a question by Chairman Haible by stating that if the decision declares an incompatibility, then Mr. Dale will request that Mr. Wallace be allowed to choose which position he would prefer to continue in. Selectman Henderson suggested that if the Town files suit, that Mr. Katsiaficas be allowed to review the complaint prior to filing.

Mr. Katsiaficas again requested the Town investigate with MMA and the insurance carriers instead of taking this action. Mr. Katsiaficas agreed with Mr. Dale's statement that he would not sign a letter guaranteeing no liability exposure to the Town just as Mr. Dale wouldn't sign one guaranteeing that Mr. Wallace would be allowed to choose which position he wants if there is an incompatibility issue. Mr. Katsiaficas stated that if Mr. Wallace lost his position at the Transfer Station, it would raise an interesting question about the potential improper firing of Mr. Wallace.

Selectman Wallace asked why this is such an issue in our small Town of Harpswell and why the Town has to set a precedent. Chairman Haible asked Selectman Wallace why he continued to run even with the advance notice of this potential issue. Selectman Wallace responded that he didn't feel it would really be an issue and neither did all the members of the public who spoke with him during his campaign. Selectman Henderson stated in his opinion, it would be irresponsible to not take action on behalf of the Town. Chairman Haible stated she heard reasonable points both for and against taking action but that she would feel criminally negligent if she didn't take steps to protect the taxpayer. Selectman Wallace stated he believes he can successfully hold both positions and recuse himself from potential conflicts and that the decision should be made locally without courts. Mr. Dale stated he believed a judgment could be issued in approximately six weeks and that this case

would be heard in Superior Court which is not precedent setting but if appealed to the Maine Supreme Court that that could be precedent setting.

Members (Jenny Burch, Damek Burch, Lee Theberge, Jonathon Bear) of the public spoke in favor of Mr. Wallace serving in both capacities and against filing a lawsuit. Judith Redwine spoke in support of filing the suit.

Mr. Dale stated there is no harm in seeking further information from MMA and the insurance carriers, but if the Board decides to file suit; it must be very soon to demonstrate to the Judge that this issue is important to the Town and needs to be handled expeditiously. Chairman Haible and Selectman Henderson agreed that the potential exposure to the Town was too great to ignore. Chairman Haible said she believes it would be best to seek a declaratory judgment regarding this matter; to have staff obtain a legal opinion from MMA and positions from the Town's insurance carriers and to include that information with the suit; and to allow Mr. Katsiaficas to review the complaint prior to filing. Selectman Henderson stated it was important not to make this about personalities but about the positions and question of incompatibility and agreed with Chairman Haible's points. Chairman Haible moved, seconded by Selectman Henderson to authorize the Town Attorney to seek a declaratory judgment (neutral request); share the draft complaint with Mr. Katsiaficas and take his feedback into consideration; seek an opinion from MMA and include that with the filing; and check with the Town's insurance carriers regarding coverage; motion passed 2-1 (Selectman Wallace opposed).

Selectman Henderson announced that the Lisbon School Board voted to endorse the proposal of merging with MSAD and that on Thursday at the Vocational 10 school, SAD 75 will meet at 7:00 to make their determination to endorse or not.

3. Adjournment: The meeting was adjourned by unanimous vote at approximately 8:00 p.m.

Respectfully Submitted,

Terri-Lynn Sawyer

Attachments: James Katsiaficas March 18, 2008 letter