

IN BOARD OF SELECTMEN  
THURSDAY, SEPTEMBER 18, 1997

Present: Chairman Lawrence L. Blacker, Selectmen John C. Drobinski and Maryann K. Clark.

The statutory requirements as to notice having been complied with, Chairman Blacker called to order a special meeting of the Board at 3:35 p.m. at the Fire Department Headquarters, 77 Hudson Road.

Town Counsel Interview - Pickett and Miyares

Present: Judith Pickett and Thomas J. Harrington, Attorneys, Pickett and Miyares; Finance Director Maureen Valente and Assistant Town Manager Terri Ackerman.

Appearing for interview for the position of Town Counsel were Judith Pickett and Thomas J. Harrington, attorneys from the firm of Pickett and Miyares, 47 Winter Street, 7th floor, Boston, MA 02108.

Town Manager Steven Ledoux introduced the Board and provided a background of the Town's previous solicitations for Town Counsel services. He then invited the applicants to tell the Board about themselves, their firm and their municipal experience.

Atty. Judith Pickett replied, in part, as follows: The firm specializes in municipal law, serves as Town Counsel for Littleton and Stockbridge, serves as special counsel for several towns and agencies, has experience in litigation (naming a Lawrence residency requirement case), does much drafting of zoning bylaws and regulations and work with ZBAs, prepared subdivision regulations for towns on reservoirs for the MDC, is redoing Stockbridge's Zoning Bylaw, and just prepared subdivision regulations from start to finish. Atty. Thomas Harrington added that the firm represents the Nashoba Associated Boards of Health, has Conservation Commission skills (having just completed a Wetlands Bylaw), and has widespread experience in the areas of municipal law.

The remaining time was taken by prepared questions asked alternately by Board members and Town Manager.

Some responses of the applicants follow.

To save the Town money, the firm would keep track of what is going on with each department, suggest the Town Manager screen and identify requests, and their knowledge and experience will save time in providing answers.

Ms. Pickett expressed their desire to service Sudbury as Town Counsel stemmed from a genuine liking for municipal law and liking Sudbury as a town to work for.

If any court is preferred, it would be the Land Court, if prosecuting.

They have been involved with a substantial number of large building projects, such as schools. They use a model construction universally, and has been involved with no litigation relative to construction, just bid protests.

Selectmen and boards are educated to avoid litigation and deal with litigation, not by their attending all board meetings, but by holding seminars and providing educational materials.

Responding to a hypothetical question regarding a situation where only one of three Selectmen does not have a conflict of interest, Atty. Pickett said that the Rule of Necessity would apply. She would call the Ethics Commission for a ruling.

They keep up-to-date on changes in state and federal law via review of the Legislative Reporter, Lawyer's Weekly, and other publications, as well as review of case law and belonging to associations.

Division of work among law firms can be done but Ms. Pickett recommends against parceling out just the litigation.

She often consults with state agencies, and if there is disagreement, memorandums back and forth usually bring resolution.

She has no problem litigating where there is no case law.

For staff, they do not use paralegals, they have one secretary and all the lawyers utilize PCs themselves.

They do very few tax foreclosures, as towns they work in use special counsel for this. They handle only the few difficult cases.

As to how the relationship with the Town would work: Atty. Pickett would be the principal liaison; there would be some division of work among the four attorneys, depending upon the type of work involved; meetings would be held with boards/departments; if she is not in the office, the call would go to another attorney, she would personally spend time in Sudbury, but expressed her belief that two days in Sudbury could be inefficient unless there was an extensive law library; and she suggested spending one day in Sudbury instead. She would need to get familiar with everyone, and prefers to put answers to questions in writing as opposed to answering questions verbally. They stressed their "at once" availability.

In conclusion, their firm should be hired because they enjoy their work and are good at it. They are not a large firm and can give individual attention.

If selected, in handling the transition, they would sit down with Mr. Kenny to review major litigation and work something out with him as desired--not cut him out of things immediately.

The Board thanked Attorneys Pickett and Harrington for their attendance and interest in serving the Town.

Town Counsel Interview - Murphy, Hesse, Toomey and Lehane

Present: Michael C. Lehane, Attorney, Murphy, Hesse, Toomey and Lehane; and Finance Director Maureen Valente.

Appearing for interview for the position of Town Counsel was Michael C. Lehane, representing the firm of Murphy, Hesse, Toomey and Lehane (MHT&L), Crown Colony Plaza, 300 Crown Colony Drive, Suite 410, P. O. Box 9126, Quincy, MA 02269-9126.

Town Manager Steven Ledoux provided a background of the Town's solicitation for Town Counsel services, and invited Mr. Lehane to begin by providing some introductory information concerning himself, his firm, and what the firm can offer for municipal services.

Atty. Lehane responded, in part, as follows: MHT&L is a firm of about thirty lawyers, concentrating heavily in municipal law, representing municipalities, fire districts, retirement boards, etc. Most of their lawyers working in the municipal area, like himself, have done so for approximately twenty-eight years. The firm has a guiding principal: being sensitive to situations in the public sector, having different constraints and public scrutiny than the private sector, the firm holds that Town Counsel must not intrude in policy issues. The firm operates on a high ethical level and will tolerate no conflict of interest or appearance thereof. It strives to be client driven, in that it will try to deliver the services desired in a manner most compatible with the client. It would also assist the Town in providing it with a database of opinions for reference.

There followed a series of prepared questions asked alternately by the Board and Town Manager. Some responses from the applicant are as follows:

While opining that a Town Counsel is not procured solely on cost, his firm would save the Town money by 1) use of a request form reviewed by the Town Manager; 2) good identification of the problem needing attention; 3) Town Hall fixed office hours--would make time productive and be available by appointment with department heads to brainstorm, etc.; 4) efficiencies are realized in having answered many questions before; 5) cutting pending litigation issues; and 6) review with staff of their perceptions of current service to learn from that.

Their goal is to be the best municipal law firm in Massachusetts, not the biggest. They believe the tenor of Sudbury is compatible with the culture of their firm, which maintains the approach of always giving the best legal advice, regardless of whether is what you want to hear, and with no political games.

He does not really have a preference of courts with which to work, has appeared before all judges and enjoys the respect of all, works in the District Court, Superior Court, Land Court, Appeals Court, and Supreme Judicial Court. The vast majority of cases are tried in Superior or Land Courts.

Mr. Lehane is proposed as the primary attorney for Sudbury, Individual matters may be referred to another attorney for his expertise. Over a period of time relationships will evolve between clients and a particular attorney, and they would be sensitive to this and provide the services in the manner desired.

The firm handles an increasing number of construction contracts and has been involved in disputes, arbitration and litigation. About half of the contracts it prepares are non-AIA-format documents. They have also developed an excellent template.

Very seldom would they ask advice from a state agency; they might consult them but not ask a question of law.

The Rule of Necessity would apply in the conflict of interest situation posed by Selectman Clark. Absolute financial interest of 2 out of 3 members of the Board would require research.

The firm handles many tax foreclosures - procedure is the remedy and obtaining economies of scale by handling a number at a time. They use one particular attorney with a paralegal using standard procedures. An owner can be sued for taxes, but also foreclosure is effective.

Concerning how their relationship with town agencies will evolve, they would: become familiar with the Selectmen, staff, then department heads; establish what degree of latitude is desired for department heads to contact Town Counsel; evaluate existing cases, check with current Town Counsel, and then make recommendation on the access question; will put in place a reporting mechanism and discuss timing and format of bills. They would address any legal problem areas seen.

Mr. Lehane could not say he had knowledge of any actual failures, although he has had cases where the outcome was not always the desired one.

Responding to the Town Manager's question of whether the firm's representation of the Sudbury School Department is a conflict or an advantage, he replied it is neither. A conflict would be rare in the current climate, but if one is perceived, it would be brought to the attention of both parties.

They keep up-to-date on changes in law through Lawyer's Weekly, Advance Sheets, Legislative Session Log, etc. Client Advisory Bulletins are issued usually in two to three days.

Why should Sudbury select MHT&L over other candidates? Sudbury is precisely the type of Town they would like to represent. It is a good fit. They have a strong commitment to their clients - they maintain their practice at a high level of personal commitment. They provide the highest quality of legal services.

Mr. Lehane currently serves as Town Counsel for two other municipalities.

The Board thanked Attorney Lehane for his presentation and interest in serving the Town.

There being no further business to come before the Board, the meeting was adjourned at 5:35 p.m.

Attest: \_\_\_\_\_  
Steven L. Ledoux  
Town Manager-Clerk