

IN BOARD OF SELECTMEN  
TUESDAY, SEPTEMBER 23, 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 8:30 a.m. at the Fire Department Headquarters, 77 Hudson Road.

Town Counsel Interview - Kopelman and Paige, P. C.

Present: Leonard Kopelman, Joel B. Bard, and David J. Doneski, Attorneys, Kopelman and Paige; and Assistant Town Manager Terri Ackerman.

Appearing for interview for the position of Town Counsel were the above listed attorneys from the firm of Kopelman and Paige, 31 St. James Avenue, Boston, MA 02116-4102.

Following introductions, Town Manager Steven Ledoux provided a background of the Town's solicitation for Town Counsel services and invited the applicants to tell the Board about themselves, their firm and their proposal of services.

Atty. Leonard Kopelman reviewed the start of his firm and how it had evolved to its present-day organization of 39 lawyers, all dealing 100% in municipal law except one, and acting as Town Counsel for 104 towns. In the beginning, municipal practice was much simpler, but as laws and agencies became more complex, he determined that expanding the firm to have attorneys who specialize in every area, as they do now, would better serve their clients. He noted there is a division of work, but much cross-training. Because of the firm's reputation, they are often called in by a town when a problem reaches a crisis state.

Prepared questions were asked alternately by Board members and Town Manager. Some responses of the applicants follow.

The goal of the firm is to save towns money. They can do this by achieving economies of scale (research for one town can be applied to another with the same or similar question); they have a top litigation team; all offices are networked and share research; and they have the largest municipal library.

Kopelman and Paige would like to add Sudbury to the towns it serves because growth continues to add economies of scale for all of its towns, allowing them to keep costs down and add more experts as needed to staff. They have needed to increase rates \$5 per hour every other year. Also they believe Sudbury has a good reputation and is well represented by its officials.

As to courts preferred and noteworthy cases, experience is broad, but they have more Appellate cases. Mr. Kopelman cited a West Boylston Planning Board civil rights case they stepped in and won in Supreme Judicial Court and then proceeded to sue the insurance company. This obtained an important ruling for communities. Mr. Bard also noted many cases including constitutional questions and regulatory actions.

They have helped to file remedial legislation and will also provide training in relation to state regulations. New laws and regulations are disseminated to clients through memorandums to the Selectmen with copy to appropriate department heads. They provide a quarterly report on planning and labor matters.

To control the requests for town counsel services from departments, they recommend use of their request for opinion forms, with the Manager approving all requests, then probably allowing departments to follow up directly with them.

Relative to spending two full days per week in Sudbury, they can do this in two ways as outlined in their proposal. However, two problems can occur: too many "what if" questions, and the department head losing independence in making decisions.

As an example of its approach to risk management and settling cases, Atty. Doneski responded that in land use and construction, mediation is used to keep costs down; and boards are helped in going over specifications and contracts with use of E Mail assisting in this process. They have three fulltime lawyers working on construction contracts and use no AIA contracts. Atty. Doneski spoke of winning matters with the Attorney General. Towns may now award to one of the three lowest bidders, not necessarily the lowest.

The Town would have a choice of the team it wants. As Sudbury's point person, they are proposing Joel Bard.

Atty. Bard described how they try prepare witnesses by meeting with them, sometimes scripting questions, etc.

Chairman Blacker thanked the applicants for coming and advised them of the projected schedule for completing the interview process.

Town Counsel Interview - Keegan, Werlin & Pabian, LLP

Present: H. Theodore Cohen, Craig A. MacDonnell, and Cheryl A. Blaine, Keegan, Werlin & Pabian; and Assistant Town Manager Terri Ackerman.

Appearing for interview for the position of Town Counsel were H. Theodore Cohen, Craig A. MacDonnell, and Cheryl A. Blaine, attorneys from the firm of Keegan, Werlin & Pabian, 21 Custom House Street, Boston, MA 02110-3525.

Following introductions, Town Manager Steven Ledoux provided a background of the Town's solicitation for Town Counsel services and invited the applicants to tell the Board about themselves and their firm.

Atty. H. Theodore Cohen stated he had been a member of the firm since 1997, has been an attorney specializing in municipal law for 25 years, and has served as Town Counsel for Reading since 1972 (reappointed every five years). When working for the firm of Tyler and Reynolds, Mr. Cohen served as Town Counsel for Reading, Brookline, Carver and Duxbury, as well as special counsel for other towns. About half of the firm of sixteen attorneys work in municipal law. In addition to municipal and environmental/land use law, the firm works heavily in the fields of public utilities, telecommunication and energy law.

Sudbury's services would be headed by Mr. Cohen, who would oversee everything. The core team would be comprised of Cheryl Blaine, Matthew Mitchell, Nancy Kaplan and Richard Kanoff. Other attorneys would provide expertise in various areas.

Atty. Cohen also has a real estate practice which has handled the lease and sale of Town property.

Atty. Cheryl Blaine reviewed her background as a chemist and lawyer, followed by an overview of the firm by Atty. Craig MacDonnell, who heads the litigation group. Mr. MacDonnell stressed the group would provide seasoned experience in many different areas and service at a moment's call. Throughout the evolution of the firm, the environmental field has always been a focus, as well as tax, employment, and municipal law, and they offer a full range of corporate, real estate and commercial law services.

As to fees, they can offer predictable expenses, with a flat rate of \$100 per hour. They are flexible in negotiating an alternate fee structure if desired.

Atty. Cohen noted the firm had had experience in the issue of deregulation of the electric industry and has been helping towns to aggregate for a lower rate; members of the firm are close to this issue and often appear before the DPU. They are capable of advising ways to save the Town money in this area.

Responses to questions, in part, were as follows:

Concerning experience with construction contracts, they have been involved in the entire process with school construction in Reading. They do not use the standard AIA forms, but modify them. It is Reading's policy to take out the arbitration clause (dispute resolution now becoming more viable), and they modify for warranties, etc. They review all bonds and oversee everything.

On the question of risk management, their approach is to become involved from the beginning. Their policy is to have boards make own decisions; however, they are aware that some decisions are more likely to lead to litigation and those matters would be discussed to make boards aware of them. They have been successful in keeping actions regarding Appeals, Planning, and Conservation to a minimum. They resolve matters if possible. Conclusion: meet often with boards and flag problems early in the process.

Noteworthy: Reading has been in the forefront in litigating adult zoning issues.

Atty. Cohen's favorite forum is Town Meeting. He enjoys land use, construction, zoning, and planning aspects, as well. He has just completed new subdivision regulations. Among its successes, he mentioned a Falmouth zoning case which established the principal that a Planning Board could deny a subdivision because of the condition of off-site roadways; another case which established that Planning Boards could charge fees for consultants, etc.; and work with Woburn waste problems. However, he believes his principal success is having very little litigation in Reading, because boards are counseled properly.

The only town the firm represents is Reading; therefore service is personalized. He estimated spending 1000-1300 hours per year for Reading. He stated they were not clock watchers; they will make sure the work is done correctly and completely; and they will work closely with the town to make sure fees do not get out of hand. Reading is on a retainer basis, but everything goes through the Town Manager. Chairmen do call them directly as authorized.

As to spending two days in Sudbury, they would do so, but Mr. Cohen did not think it would serve a purpose. They would attend any meetings when needed, are available by telephone, FAX, and E Mail. He believed it better to be in their office to have access to materials and get the answer back quickly.

Quite frequently, he consults with state agencies and seeks clarification, believing his role is to give complete advice. If disagreement occurs, the town would be advised of that and what direction should be taken. At time, he has challenged state agencies. In general, Mr. Cohen has established relationships with and uses state agencies as a resource. Two lawyers in the firm are registered lobbyists.

Memorandums are sent immediately to clients regarding new laws. They obtain information through Lawyers Weekly, advance sheets, MMA publications, seminars and bar associations.

He described a conservation issue as a failure where the Commission took an aggressive stance. They were successful in Superior Court, but the Appeals Court ruled there were not sufficient records to support the Conservation Commission's action.

Mr. Cohen noted they have been involved in submitting comments regarding landfill closure procedures to the DEP.

Chairman Blacker thanked the applicants for coming and advised them of the projected schedule for completing the interview process.

There being no further business to come before the Board, the meeting adjourned at 10:40 a.m.

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