

IN BOARD OF SELECTMEN
THURSDAY, APRIL 2, 1998

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

The statutory requirements as to notice having been complied with, the special meeting was called to order by Chairman Blacker at 8:00 a.m. in the Loring Parsonage, 288 Old Sudbury Road.

Town Counsel Appointment

Present: David Grunebaum, Esq.

The Board met to continue its consideration of the appointment of Town Counsel. In September, 1997, interviews had been held with eight applicants who had submitted proposals for the position, following which the Town Manager had been requested to perform reference checks on four of these firms: Pickett & Miyares, Collins & Weinberg, Paul Kenny, and Kopelman & Paige.

Town Manager Steven Ledoux reported he received no negative reports on the four applicants investigated. He mentioned his reservations concerning the firm of Collins & Weinberg because the partner, Mr. Collins, is counsel for the Police Chief's Association – a possible conflicting situation. He continued his assessment as follows: Pickett & Miyares does small towns and special counsel work, such as, in the area of zoning. Sudbury would be more of a major town for them, larger than towns to which they are accustomed. Kopelman & Paige is a large firm with many specialists. From his experience in Williamstown, they were not always responsive and could be slow in providing opinions. He consulted with Danvers concerning Paul Kenny. He is a sole practitioner, spread thin, and does not always take the time to put answers in writing. On the other hand, the detailed work he does takes a great deal of time, which we would not get from Kopelman & Paige. He concluded none of the finalists would be a bad counsel, and it was necessary to determine our expectations and look at how they would provide the services and manage their time. From the interviews, it appeared the applicants expected the Town Manager to screen matters to appropriately manage their time. Mr. Ledoux expressed his opinion this should be done in the future, whether or not new counsel is hired. If new counsel is hired, he noted the need for a transitional plan.

Selectman Drobinski provided his thoughts as follows: All of these applicants sounded wonderful; however, it was necessary to determine which would be best from a legal standpoint and from a financial standpoint. We know Paul Kenny has some great points and others which need to be worked on. The applicant most like Paul – a sole practitioner – is Mr. Weinberg. Here there is the question of vacation coverage and response time. Kopelman & Paige have a good reputation, but he questioned if we would get the service we need.

Mr. Ledoux informed that in Williamstown, using Kopelman & Paige, department heads learned to do their own research in contrast to Sudbury, where department heads are spoiled, having Mr. Kenny available. He stated, if the Town stays with Mr. Kenny, he would address the following issues: time management; Mr. Kenny's opposition to special counsel in certain circumstances – especially necessary at times since we do not have an Assistant Counsel, and written opinions.

Selectman Clark noted that Mr. Kenny has served the Town since 1976 and has done a good job. The only problems she saw were the lack of back-up and specialized counsel, as it was impossible to be expert in everything. She continued her analysis as follows: Concerning Kopelman & Paige, it would be a drastic change, the firm was too large and they could get disorganized. Collins & Weinberg was too close to what we have. Pickett & Miyares was fraught with the best characteristics – backup coverage, experience,

they recognize the need for special counsel in certain areas, price is in range. As an alternative, Pickett & Miyares appeared the best fit for Sudbury – two-person team was a good mix.

Upon invitation, Attorney David Grunebaum expressed his thoughts as follows: He has worked with every one of the applicants being considered. He worked with Paul Kenny when he was on the Conservation Commission and Personnel Board. He also took a course with Paul. He opined Sudbury has been well served by Paul Kenny for 23 years. He has found the firm of Collins & Weinberg (particularly Atty. Collins) to be abrasive. With Kopelman & Paige we would get anybody and everybody – Sudbury would be just another client. Of the three applicants, he believed that Sudbury would be best served by Judy Pickett, as she would care about the community. Sudbury would get either her or Thomas Harrington, not an associate. He stressed that Paul Kenny invests himself in Sudbury and gives the personal touch; Sudbury would get the same from Judy Pickett. Also, he mentioned that Kopelman & Paige would not recommend outside specialized counsel because they see themselves as competent for everything, while we might need or want the top in a given field. Mr. Grunebaum said he sees Town Counsel as the legal manager of other attorneys.

Selectman Drobinski said he was trying to weigh 23 years of service against other issues.

Selectman Clark said she was looking at the benefits of a solo counsel vs. a broader firm.

Chairman Blacker stated he believed special counsel should be used when the cost is evaluated, and he noted the difference in special *municipal* counsel with municipal rates vs. a firm such as Hill & Barlow where the rates were high. Attorney Grunebaum agreed that Hill & Barlow would likely do a mediocre job and their bills would be atrocious.

Chairman Blacker stated he agreed with Selectman Drobinski: Service means something, but maybe it was time for a change, as some issues were not being addressed; i.e. record keeping and reporting. Since the Board impressed upon Atty. Kenny its wishes on these matters, they still have not been done.

Town Manager Steven Ledoux noted that there were complaints concerning lack of witness preparation for an MCAD case, and Selectman Clark brought up a previous complaint from the Board of Assessors concerning a court appearance missed. She opined this might have been lack of time. Chairman Blacker reminded the Board that all of the applicants had felt it not necessary to spend so much time in the office, and perhaps time could be managed more effectively.

Selectman Drobinski queried about using both Paul Kenny and Pickett & Miyares to test the waters. All agreed that this would be a difficult position for Atty. Pickett.

Chairman Blacker suggested renewing Atty. Kenny's contract through December 31, 1998, at the same time setting out what is expected from Mr. Kenny:

1. Regularly provide list of pending litigation and status of same.
2. Keep time records.
3. Be agreeable to use of outside counsel.
4. Management of time by Town Manager.

Atty. Grunebaum put forth another alternative for the Board's consideration. He suggested, if one of the applicants has expertise in a certain field (i.e., what are J. Pickett's areas of special strength?), that firm could be appointed as special counsel. This would provide an opportunity to test the waters and relieve Atty. Kenny of responsibilities for these issues. If there were a clear delineation, this could be done. It would also give the Town another lawyer to call upon in an emergency.

All members of the Board liked this approach and discussed the possibility of special counsel for planning, conservation and/or environmental issues, concluding the most likely combination to be conservation and environment.

Atty. Grunebaum inquired whether the Town has had a contract in the past with Town Counsel. The Board agreed this should be done and basically agreed there should be no change in the benefits for Atty. Kenny.

The Board requested the Town Manager to consult with Atty. Kenny and Atty. Pickett to negotiate a retainer with Paul Kenny to serve as Town Counsel, acting as general counsel including litigation, and with Pickett & Miyares to serve as special counsel.

It was on motion, unanimously

VOTED: To engage the services of Paul L. Kenny as Town Counsel for the Town of Sudbury; and further, to engage the services of Pickett & Miyares as Special Counsel for conservation and environmental matters or other matters as the Board may determine; subject to negotiation of contracts with said firms.

Selectman Clark requested the Town Manager to return to the Board with a skeleton of a contract for the Board's consideration.

Transportation Enhancement Program Application for Bicycle and Pedestrian Facilities

In support of the above-subject matter, the Board

VOTED: To issue a letter of support to the Metropolitan Area Planning Council for the Lowell-Sudbury Rail Trail to accompany its previous letter of support for the Central Mass/Wayside Rail Trail.

(Chairman Blacker and Selectman Drobinski in favor; Selectman Clark abstaining, as she had not had adequate time to review the material.)

There being no further business to come before the Board, the meeting was adjourned at 9:15 a.m.

Attest: _____

Steven L. Ledoux
Town Manager-Clerk