

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

MARK R. ACCIARD

v.

PHILIP V. CONSENTINO AS CHIEF OF POLICE FOR THE  
TOWN OF ATKINSON AND PHILIP V. CONSENTINO AS SELECTMAN FOR THE  
TOWN OF ATKINSON AND NOT INDIVIDUALLY

Docket No: 04-E-384

ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT

On May 10, 2005, this Court issued an Order with respect to the plaintiff's Petition for Injunction, which he filed against the defendant in July of 2004. The Order clearly stated that Philip Consentino, in his capacity as selectman while holding the position of chief of police of the Town of Atkinson, shall recuse himself from the Atkinson Board of Selectmen and shall not participate as a selectmen in discussions of and shall not deliberate or vote on any Police Department or Elderly Affairs Department matters.

The plaintiff in his Motion for Contempt claims that within days of the Court's Order the defendant violated it on numerous occasions. Specifically, the plaintiff claims that at various public meetings of the Board of Selectmen and

also during non-public sessions, Philip Consentino continued to participate in discussions in matters involving the Police Department and elderly affairs, of which he is the Director. While the plaintiff concedes that the defendant may not have voted on those matters, he argues that Mr. Consentino was always present as the issues were being discussed and on occasion participated in those discussions.

A hearing was held on the plaintiff's Motion for Contempt on August 31, 2005. Both parties appeared and testified under oath. The plaintiff produced a series of minutes for both public and non-public sessions of the Board of Selectmen since the Court's Order of May 10, 2005. The Court has reviewed those minutes and they clearly support the plaintiff's position with respect to the defendant's actions. The defendant is shown as being chairman of all of the non-public meetings, which the minutes suggest dealt with police issues. They do not reflect the fact that he surrendered his position as chairman and left the room as these issues were being discussed. With respect to the minutes of the public hearings, they show the same conduct on the part of the defendant.

The defendant testified that it was his belief

that he could participate in matters as a selectman involving the Police Department or Elderly Affairs so long as he did not vote on any issue under consideration. In support of his position, he points to that portion of the Court's May 10, 2005 Order which requires him to refrain from any participation in any matter that would benefit himself, his wife or his son.

It is difficult for the Court to believe that the defendant did not understand all of the terms of its May 10, 2005 Order. Mr. Consentino testified that his attorney explained the Order to him. The Order clearly prohibits any participation or deliberation on any police or elderly affairs matters so long as Mr. Consentino is a selectman. The portion of the Order that the defendant references deals with other matters, not Police Department and Elderly Affairs issues.

From the defendant's demeanor it is clear that he believes that because he was elected as a selectman he can do or say anything as long as neither he nor his family directly benefit from his involvement of the issues under discussion. Philip Consentino has lived in the Town of Atkinson for over 50 years and has served in many capacities. Apparently, he concludes that that entitles him to consider Atkinson "his

town." While no doubt over the years Mr. Consentino has done a lot of unpaid work for the betterment of the Town, he has to recognize that because he has chosen to serve in more than one capacity, there are certain rules that he must follow. The fact that the Atkinson Code of Ethics Committee has apparently blessed Mr. Consentino's conduct is irrelevant when the issue is the violation of a Court Order.

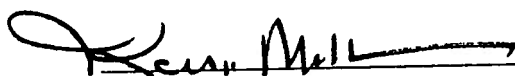
Because the Court finds that Philip Consentino has willfully ignored its past Order, it GRANTS the plaintiff's Motion for Contempt. However, no sanctions shall be imposed at this time. In order to avoid future sanctions, the defendant is reminded of the specific provisions of the Court's May 10, 2005 Order, which the Court expects he will now follow to the letter. That means he must leave the room when police or Elderly Affairs issues are being discussed by the Board of Selectmen. It also means he cannot discuss these issues on an informal basis with other selectmen outside of the selectmen's meetings.

The plaintiff has requested that the Court reconsider reimbursement of attorney fees which he initially waived. While that request is reasonable, the Court will not honor it at this time. However, if in the future the Court finds that the defendant has again violated its Order, then

the matter of reimbursement of the plaintiff's attorney's fees  
will be reconsidered.

So ordered.

September 6, 2005  
Date

  
KENNETH R. McHUGH,  
Presiding Justice