

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

No. 06-E-056

Carol Grant

v.

Town of Atkinson,
Board of Selectmen

ORDER

Petitioner Carol Grant brings the instant action to remove Atkinson Selectmen Fred Childs and John Sapia from office pursuant to RSA 42:1-a(1) (Supp. 2006). The court received testimony and exhibits on this matter during a bench trial that spanned November 2, 3, and 6, 2006. After considering the evidence, the arguments of Mrs. Grant, who appeared *pro se*, the arguments of counsel for the Selectmen, and the applicable law, the court finds in favor of the respondents for reasons outlined herein.

RSA 42:1 (Supp. 2006) states the following:

Every town officer shall make and subscribe the oath or declaration as prescribed by part 2, article 84 of the constitution of New Hampshire and any such person who violates said oath after taking the same shall be forthwith dismissed from the office involved.

Part 2, Article 84 of the New Hampshire Constitution, in turn, commands the following:

Any person chosen governor, councilor, senator, or representative, military or civil officer, (town officers excepted) accepting the trust, shall, before he proceeds to execute the duties of his officer, make and subscribe the following declaration, viz. –

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as ___ according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

This official oath “furnishes in terms the true measure” of a town officer’s legal liability. Waldron v. Berry, 51 N.H. 136, 147 (1871). In this case, Mrs. Grant forwards five theories as to how Selectmen Childs and Sapia failed to discharge their duties “agreeably to the rules and regulations ... of the state of New Hampshire” during the course of late 2005 and early 2006. She argues that, as a consequence of these perceived violations, the Selectmen must be dismissed from office.

Mrs. Grant’s first claim is that Selectmen Childs and Sapia violated their oaths by refusing to act on matters related to Atkinson’s police and elderly affairs departments while in office. Specifically, she points to events occurring at the November 7, 2005, meeting of Atkinson’s Board of Selectmen. On that evening, the third member of the Board, Philip Consentino, announced a *de facto* policy on behalf of the selectmen that “there would be no more discussion of police or elderly affairs at selectmen’s meetings.” Ex. 12, Mins. of 11/07/05 Mtg. Mr. Consentino’s decree came in response to an order of this court, see Acciard v. Consentino, Rockingham Cty. Super. Ct., No. 04-E-384 (Sept. 6, 2005) (Order, McHugh, J.), finding that conflicts of interest necessitated Mr. Consentino’s leaving the room whenever business pertaining to the police department or elderly affairs program came before the Board.¹

On November 23, 2005, Mrs. Grant submitted a request to be heard at the selectmen’s next meeting, scheduled for November 28. Her request expressed a desire to be heard regarding the “Selectmen’s responsibility towards Atkinson’s elderly.” Ex. 16. Although she initially received a letter from the Board stating that the selectmen would be unable to hear her because of Judge McHugh’s order, Mrs. Grant was in fact given time to speak at the November 28, 2005, meeting. See Ex. 18, Mins. of 11/28/05 Mtg. She initially spoke regarding a Vietnam War memorial in town. Id. Later, when Mrs. Grant ventured on to speak about the responsibilities of the selectmen toward Atkinson’s elderly, she was ordered to cease speaking and leave the meeting.

Similarly, at a November 14, 2005, meeting of the Board, Atkinson Budget Committee Chair Mark Acciard addressed the selectmen regarding the manner in which they had been conducting meetings. When he referenced a police expenditure, Selectman Sapia informed him that the discussion could no longer proceed.

On these facts, Mrs. Grant implies that the selectmen committed a misdemeanor under RSA 643:1, which penalizes “Official Oppression,” by refraining from “perform[ing] a duty imposed on [them] by law or clearly inherent in the nature of [their] office.” What Mrs. Grant has failed to show, however, is a specific duty that Selectmen Childs and Sapia failed to perform. She has presented no evidence that an actual police or elderly affairs issue was not acted

¹ At the time of the court’s order, Selectman Consentino also served as Atkinson’s part-time Chief of Police, and as Director of the town’s Elderly Affairs Department. Mr. Consentino has since stepped down from the Board of Selectmen.

upon during November 2005, or at any other time, as a result of Messrs. Childs and Sapia failing to object to Mr. Consentino's "policy." While she may have been denied the ability to speak at length about the selectmen's obligations to the elderly in general terms, the Board was not obligated by law to entertain her pontification as to their duties. Thus, finding no evidence that a duty of the board was not performed, that a particular vote was not taken, or that an actual police or elderly affairs issue was not addressed as a result of the selectmen's actions, the court finds that Mrs. Grant's first claim fails.

The petitioner's second and fourth theories are interrelated inasmuch as they involve the Selectmen's complicity in what Mrs. Grant perceives as Mr. Consentino's effort to stifle citizens' freedom of speech and right to petition the government for a redress of grievances. See U.S. CONST., amend. I. She first points to the April 18, 2005, meeting of the Board, at which Mr. Consentino refused to discuss with Mr. Acciard the Selectmen's authorization of the purchase of an SUV for the police department. She states that Selectmen Childs and Sapia raised no objection to this action, thereby "condoning, enabling, and allowing" a violation of the law.²

Similarly, Mrs. Grant complains that on December 27, 2005, she attempted to read a prepared statement to the Board outlining a complaint against Mr. Consentino in his capacity as Chief of Police. Again, the Board cut the meeting short. In what appears to be a botched effort to move the meeting into an executive session, the television crew was also ordered to cease broadcasting the Board's meeting. A loud confrontation between Mr. Consentino and Mrs. Grant ensued; she was ultimately escorted out of the town hall by a police officer. Mrs. Grant maintains that Selectmen Childs and Sapia had a responsibility to stop Mr. Consentino's behavior, which entailed a violation of this court's orders, and to adjudicate her complaint against the Chief.

The court disagrees. It was not incumbent on Selectmen Childs and Sapia to provide a route for redress to citizens affected or offended by Mr. Consentino's contemptuous disregard of Judge McHugh's orders. Indeed, Mr. Acciard implicitly recognized this when petitioning this court to preclude Mr. Consentino's participation in certain Selectmen affairs in the first place, and when (successfully) bringing a motion to find Mr. Consentino in contempt. Messrs. Childs and Sapia appropriately attempted to go about their duties as selectmen as best they could in light of Mr. Consentino's behavior.

Additionally, the First Amendment does not impose any affirmative obligation on the government to listen to, and respond to, a particular citizen's grievances. Minn. State Bd. for Cmty. Colleges v. Knight, 465 U.S. 271, 286-87 (1984). It merely precludes the government from barring citizens from bringing such complaints in a manner that comports with reasonable procedures. See id.;

² Counsel for the Selectmen failed to question Mrs. Grant's standing to raise these complaints on behalf of another individual; despite this, the court finds no violation on the part of Selectmen Childs and Sapia.

Smith v. Arkansas State Highway Employees Local 1315, 441 U.S. 463, 464-465 (1979). Turning to this case, the Board of Selectmen has a right to control the conduct of its meetings. The behavior of both Mr. Consentino and Mrs. Grant necessitated the Board's decision to cut its December 27, 2005, meeting short. Accordingly, the court finds that Selectmen Childs and Sapia did not violate their oaths by declining to take action on Mrs. Grant's complaint that night. Nor did this act effect a chilling of Mrs. Grant's free speech rights; she was free to declare her opinions of the Chief and Selectmen outside the town hall.

Mrs. Grant's third claim may be dealt with summarily. Here, she protests the Selectmen's June 6, 2005, threats to withhold a special town meeting unless a citizen-petitioned warrant article regarding Atkinson's library capital reserve fund was withdrawn. Mrs. Grant concedes that the warrant article in question was in fact withdrawn by the individual who had submitted the petition, rendering this complaint moot. Furthermore, had the Board refused to call the special town meeting in question, remedy for that failure was to be found in RSA 39:9. That statute states: "If the selectmen unreasonably neglect or refuse to warn a meeting . . . a justice of the superior court, upon application in writing of 25 or more voters or of 1/6 part of the voters of such town, may issue a warrant for such meeting[.]"

Mrs. Grant's fifth and final claim involves the Board's failure to take a formal vote to transfer an appropriation within the town budget from the police department's operating fund to a line-item in the budget for police vehicle purchases. This appropriation enabled the town to lease an SUV for the police department. The court finds this action permissible under RSA 32:10, and also notes that part *b* of that statute states that "neither the budget committee nor other citizens shall have any authority to dispute or challenge the discretion of the governing body in making such transfers."

Having found no violations of the law – and thus the oath of office – on the part of Selectmen Childs and Sapia, judgment is entered for the respondents. Mrs. Grant's petition under RSA 42:1-a(1) is **DENIED**. This order constitutes the court's findings of fact and conclusions of law. Any of the parties' requests for findings and rulings not granted herein, either expressly or by necessary implication, are hereby denied or determined to be unnecessary for resolution of this matter in light of the court's decision. See Harrington v. Town of Warner, 152 N.H. 74, 85-86 (2005). Mrs. Grant shall inform the clerk's office if she needs any of the videos submitted as exhibits at trial returned.

So **ORDERED**.

1-17-07
DATE



ROBERT E.K. MORRILL
Presiding Justice