THE STATE OF NEW HAMPSHIRE

Belknap Superior Court
64 Court Street
Laconia, NH 03246
603 524-3570

NOTICE OF DECISION

DOUG LAMBERT
42 FARMER DR
GILFORD NH 03249

07-E-0140 Doug Lambert, et al v. Belknap County Convention

Please be advised that on 8/02/2007 Judge Mohl made the following order relative to:

Order-Motion to Reconsider ; Issued

(COPY ATTACHED)

08/02/2007

Dana Zucker
Clerk of Court

Court Copy (lac)

cc: THOMAS A TARDIF
JAMES CARROLL ESQUIRE

THE STATE OF NEW HAMPSHIRE

BELKNAP COUNTY **SUPERIOR COURT**

DOCKET #: 07-E-140

DOUG LAMBERT AND THOMAS A. TARDIFF
V
BELKNAP COUNTY CONVENTION

ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION

After a hearing on the merits in this case the Court ruled that the Belknap County Convention ("Convention") violated the state's Right-to-Know law, RSA Chapter 91-A, in conducting a secret ballot vote to fill the position of Sheriff of Belknap County, pursuant to RSA 661:9. See Findings, Rulings and Orders, July 17, 2007.

Petitioners have filed a motion for reconsideration asserting that the Court erred in concluding that the process for filling a vacancy in a county elected office is subject to the exception to the prohibition on public bodies meeting in non-public sessions for hiring of public employees. See RSA 91-A: 3, II (b).

While the application of RSA 91-A: 3, II (b) to the appointment of the Belknap County Sheriff for the remainder of the unexpired term by the County Delegation was not directly at issue in rendering a decision on the violation of the statute, in the Court's opinion, it was necessary to address the issue in the context of the remedy sought by the petitioners, namely the invalidation of the appointment of the Sheriff. The issue was explored at some length during the hearing on the merits, and the Court considered the

question in deciding whether to exercise its discretion to invalidate the appointment of the interim Sheriff by the Convention. See Findings , Rulings and Orders, supra at 5-6.

Petitioners contend that the person appointed sheriff by the Convention is not a "public employee" within the meaning of RSA 91-A: 3, II (b); but rather, as an elected official, the sheriff is a "public officer." Nothing in RSA Chapter 91-A draws such a distinction, and nowhere in the Right-to-Know law is there support for the petitioners' contention. That Title VI of the RSA's, encompassing multiple RSA chapters from Chapter 91 up to and including Chapter 103, is entitled "Public Officers and Employees" is of no consequence in the analysis of the applicability of RSA 91-A: 3, II (b) to the appointment of an interim Sheriff or other county officer. Interestingly, the statute governing the powers of the Sheriff is found in RSA c. 104, in Title VII of the RSA's.

That the Sheriff is an elected official, and also a county officer, see generally RSA c. 104, does not result in the conclusion that the Sheriff is not also a public employee. As the Convention notes in its objection, the Sheriff is a public employee "for all intents and purposes." The Sheriff is paid a salary with county funds, and receives benefits; the Sheriff is covered by worker's compensation, and is eligible for State retirement benefits. The Sheriff is subject to employee withholding for federal income tax purposes. That the Sheriff is excluded from the definition of a "public employee" in the State Labor Relations statute, See RSA 273-A:1, IX, the only statute cited by the petitioners, has nothing to do with this case. Parenthetically, that the legislature would exclude sheriffs from forming a collective bargaining unit is wholly understandable.

Petitioners make a number of policy arguments as to why RSA 91-A should not be construed to permit county delegations to appoint persons to fill vacancies where elected officials leave before their terms expire, in non-public session. Those arguments may be perfectly sound public policy arguments, as are the equally strong public policy arguments to support maintaining a degree of confidentiality when public bodies hire individuals for important public positions of trust. The sole and decisive point here, however, is that the Right-to-Know law, as noted in the Court's earlier decision on the merits, is clear on its face, and has no ambiguity as to whether or not these public employees, appointed under RSA 661:9, are excluded from the statute's ambit. The place for such policy debates is not before the court, but before the legislature, if it chooses to revise these portions of the Right-to-Know law. The law, as noted, does not require public bodies to conduct such hiring in non-public session; it simply permits the public body itself to determine when and if it will go into non-public session to hire public employees, as long as the body follows the procedural mandates of the statute.

Other claims are advanced by the petitioners in the Motion for Reconsideration. The petitioners allege violations of the Right-to-Know law by the Convention related to the earlier meetings of May 29, 2007 and June 11, 2007, concerning the procedures to fill the Sheriff vacancy and the first round of interviews. Neither of these matters was raised in the petition in this case, which focused solely on the Convention meeting of July 6, 2007 and will therefore not be considered here. Petitioners also assert that RSA 91-A:3 II (c), which allows for non-public sessions for matters that "would likely affect adversely the reputation of any person," applies here and precludes a non-public

session under subsection II (b) for filling the Sheriff vacancy. Petitioners do not explain how this is so, and any logical reading of the two sections suggests the two provisions are each separate and independent grounds for a public body invoking the non-public session exception, and certainly are not in conflict.

As the petitioners have failed to demonstrate that the Court's prior rulings are in error, or raise any issues not previously considered, the petitioners' Motion for Reconsideration is DENIED.

So ordered.

8-2-07
Date

Bruce E. Mohl,
Presiding Justice