

BAY COUNTY ELECTION COMMISSION
PORTSMOUTH TWP. CLARITY
OCTOBER 17, 1991

THE BAY COUNTY ELECTION COMMISSION MET ON THURSDAY, OCTOBER 17, 1991 IN THE COMMISSIONER'S GROUND FLOOR CONFERENCE ROOM FOR THE PURPOSE OF CLARITY HEARING ON PETITIONS SUBMITTED RECALLING SIX PORTSMOUTH TOWNSHIP OFFICIALS. CHAIRMAN DONER INDICATED THE MEETING HAD BEEN NOTICED IN ACCORDANCE WITH THE OPEN MEETINGS ACT. THE MEETING WAS CALLED TO ORDER AT 3:05 P.M. WITH THE FOLLOWING MEMBERS AND GUESTS IN ATTENDANCE.

ROLL CALL: JUDGE PAUL DONER, CHAIRMAN
GEORGE MULLISON, PROSECUTOR
BARBARA ALBERTSON, CO. CLERK

OTHERS
PRESENT: CYNTHIA A. LUCZAK, SECRETARY
DONALD KRZEWINSKI, PETITIONER
ED BRISTOW, BAY CO. RESIDENT
JOHN MCQUILLAN, ATTORNEY
JUDY BUKOWSKI, TWP. CLERK
HENRY BRANDT, CO. TREASURER
JAMES BANASZAK, TRUSTEE
DALE DAVIS, TRUSTEE
CHARLES PAWLAK, TRUSTEE

PURSUANT TO THE OPEN MEETINGS ACT, CHAIRMAN DONER REQUESTED PUBLIC COMMENT. WITH NO ONE WISHING TO ADDRESS THE COMMISSION, THEY RETURNED TO THEIR REGULAR ORDER OF BUSINESS.

ATTORNEY JOHN MCQUILLAN APPEARED TO REPRESENT THE TOWNSHIP OFFICIALS AT THIS CLARITY HEARING. IT WAS HIS POSITION, THE ENTERING INTO A CONTRACT BETWEEN THE COUNTY OF BAY AND PORTSMOUTH TOWNSHIP FOR SEWER FACILITIES EXCLUDED THE RIGHT TO RECALL UNDER ACT 342. THE PETITION ALLEGED TOWNSHIP MEMBERS DID NOT COMPLY WITH MCLA SECTION 41.724 (4) AS AN INCREASED PROJECT COST IN EXCESS OF 10%, REQUIRED A SPECIAL ASSESSMENT HEARING TO BE HELD. MR. MCQUILLAN PROVIDED A HISTORY TO COMMUNICATIONS BETWEEN LEGAL COUNSEL AND BOND COUNSEL IN THESE DISCUSSIONS. UPON REVIEW, IT WAS THE REALIZATION OF LEGAL COUNSEL, A SPECIAL HEARING WAS NOT NECESSARY THUS A WRIT OF MANDAMUS WOULD NOT BE FILED AGAINST THE TOWNSHIP. AS PORTSMOUTH TOWNSHIP HAD ENTERED INTO THE CONTRACT AGREEMENT WITH BAY COUNTY UNDER ACT 342, THEY WERE EXEMPT FROM FOLLOWING THE SPECIAL ASSESSMENT GUIDELINES UNDER MCLA 41.735. WITH NO LEGAL DUTY TO HOLD THE PUBLIC HEARING, SHOULD NOT BE RECALLED. THE

PUBLIC OFFICIALS HAD NOT SHOWN ANY MISCONDUCT IN OFFICE, CITING CASE LAW TO SUPPORT THAT CONTENTION. THE PETITION WORDING STATING THE TOWNSHIP OFFICIALS DID NOT COMPLY WITH STATUTE, WAS INCORRECT IN MR. MCQUILLAN'S OPINION AND LACKED A BASIS FOR RECALL. FURTHER, THAT THE NUMBER OF PETITION WORDS TOTALED 345 WHICH EXCEEDED THE 200 WORD STATUTORY LIMIT.

DONALD KRZEWSKI WAS OFFERED AN OPPORTUNITY TO ADDRESS THE BOARD AT THIS TIME. HE THANKED THE ELECTION COMMISSION FOR INSTRUCTING PAT DUGGAN "TO ALLOW HIM HIS DAY IN COURT, AND NOT ALLOW LEGAL TECHNICALITIES TO STOP IT FROM HAPPENING". MR. KRZEWSKI CITED CASE STATUTES STATING IT WAS PERMISSIBLE TO FILE PETITIONS CONTAINING MORE THAN 200 WORDS FOR THE CLARITY HEARING.

M.C.L.A. 168.952 REFERRED TO SUBJECT MATTER STATING "THERE IS NO SUBJECT MATTER RESTRICTION ON PEOPLE'S RESERVE RIGHT TO RECALL ELECTED OFFICIALS". FURTHER, "IT IS ONE THAT CAN BE DETERMINED ONLY AFTER THE ELECTORATE PROCESS IS COMPLETED AND THE ELECTORATE HAS MADE ITS WILL BE KNOWN". MR. KRZEWSKI FELT THE PETITION WORDING WAS CLEAR AND EXPLAINED THE MISCONDUCT.

JUDGE DONER REVIEWED THE FACTS PRESENTED REGARDING THE EXCESSIVE COST OF THE SEWER PROJECT AND THE NECESSITY TO HOLD A PUBLIC HEARING ON SUCH PER STATE STATUTE.

MR. KRZEWSKI EXPLAINED TO JUDGE DONER, THE TOWNSHIP WAS OBLIGATED UNDER M.C.L.A. 41.724 (A) TO COMPLY TO THE PROPERTY OWNERS OF THE SPECIAL ASSESSMENT DISTRICT AND HOLD A PUBLIC HEARING TO SPEAK AND FILE OBJECTIONS SHOULD THEY CHOSE TO DO SO. HE FELT THE OPINIONS OF TOWNSHIP RESIDENTS WERE BEING MISREPRESENTED, TOWNSHIP RESIDENTS VOICED OBJECTIONS TO THE PROJECT AT MEETINGS HELD PREVIOUSLY. REVIEWED WERE THE CIRCUIT COURT PROCEEDINGS HELD IN FRONT OF JUDGE WILLIAM CAPRATHE. A DISCUSSION OF ACTUAL COSTS TO BE ASSESSED IN THE SPECIAL DISTRICT AND TOTAL PROJECT COST, WAS HELD.

JUDGE DONER RESPONDED THE ELECTION COMMISSION WAS NOT TO DETERMINE IF MR. KRZEWSKI WAS RIGHT OR WRONG, ONLY TO DECIDE IF THE PETITION BEFORE THEM MET THE STATUTE REQUIREMENTS FOR CLARITY. CHAIRMAN DONER QUESTIONED HOW MR. KRZEWSKI DISAGREED WITH THE OPINIONS OF TWO LEGAL REPRESENTATIVES AS TO PUBLIC HEARING REQUIREMENT.

MR. KRZEWSKI STATED HE HAD DISAGREED WITH THE OPINIONS OF LEGAL COUNSEL, AS THE ISSUE HAD NEVER BEEN TESTED IN COURT, IT WAS ONLY A LOCAL PRACTITIONER'S OPINION AND NOT TO BE APPLIED ONLY TO THE SPECIAL ASSESSMENT DOLLAR VALUE.

MR. MCQUILLAN RESPONDED, THE ISSUE WAS NOT THE AMOUNT OF THE ASSESSMENT INCREMENTAL INCREASE BUT WHETHER OR NOT A PUBLIC HEARING WAS NECESSARY TO DISCUSS THE RESULT OF SUCH AN INCREASE. THE STATUTES MR. KRZEWSKI CITED REQUIRED A PUBLIC HEARING, THE STATUTES MR. MCQUILLAN REFERRED TO STATED THAT WAS NOT THE CASE UNDER ACT 342.

CLERK ALBERTSON ASKED MR. KRZEWSKI IF MS. TOBER HAD ADVISED HIM OF THE 200 WORD LIMITATION AT THE TIME OF FILING THE PETITION. HE RESPONDED, THE 200 WORD LIMIT MUST BE COMPLIED WITH WHEN PLACING THE MATTER ON THE BALLOT OR WITHIN A 48 HOUR PERIOD, BEFORE BEING DONE BY THE CLERK. CLERK ALBERTSON QUESTIONED IF THIS WORDING COULD BE REDUCED TO THE 200 WORD LIMIT AND STILL BE CLEAR TO THE ELECTORATE. THE OTHER COMMISSION MEMBERS REVIEWED THE STATUTE NUMBERED M.C.L.A. 168.966.

CHMN. DONER INTERPRETED THE STATUTE TO CONCUR WITH THE STATEMENT MADE BY MR. KRZEWSKI, THAT THE PETITION WORDING COULD BE CONDENSED PRIOR TO PLACEMENT ON THE BALLOT. FURTHER, THAT THE ELECTION COMMISSION NOT BE AUTHORIZED TO DENY A PETITION BECAUSE IT EXCEEDED THE 200 WORD LIMITATION. IT WAS JUDGE DONER'S OPINION THE PETITION COULD NOT BE DENIED FOR THAT REASON ALONE. THE INTENT OF THE PETITION LANGUAGE HAD NOT BEEN CLEAR TO THE JUDGE UNTIL HE HAD HEARD A DETAILED EXPLANATION FROM THE PARTIES INVOLVED AT THIS CLARITY HEARING. SHOULD THE WORDING OF THE PETITION BE SUBMITTED TO AN ELECTOR, THEY SHOULD BE ABLE TO UNDERSTAND IT. JUDGE DONER FELT THE LANGUAGE OF THE PETITION DID NOT ACHIEVE THAT GOAL AND HE INTENDED ON VOTING ACCORDINGLY.

PROSECUTOR MULLISON STATED HE FELT THE 200 WORD LIMIT STATUTE WAS CONTRADICTORY VERSUS THE AUTHORITY OF THE BOARD BECAUSE A CONDENSATION OF WORDS COULD BE ALLOWED WITHOUT ELECTION COMMISSION APPROVAL FOR THE BALLOT. MR. MULLISON INDICATED THE STATUTE SHOULD BE INTREPRETED BY THE COMMISSION TO SUBMIT A PETITION WITHIN THE 200 WORD LIMITATION. IT WAS MR. MULLISON'S OPINION, THE PETITION LANGUAGE WAS UNACCEPTABLE FOR TWO REASONS. ONE, THE REASONS STATED BY JUDGE DONER AND SECONDLY, AN INTREPRETATION OF THE TWO STATUTES, SHOULD REQUIRE MR. KRZEWSKI TO SUBMIT A STATEMENT WITHIN THE 200 WORD LIMIT.

CHAIRMAN DONER ADDED THE VARIOUS PETITIONS WOULD BE CONSIDERED BY ONE MOTION AS HAD BEEN DONE IN THE PAST.

MOTION #1: CHAIRMAN DONER MOVED THAT PETITIONS FOR RECALL OF H. BRANDT; R. PAWLAK; C. PAWLAK; J. BANASZAK; J. BUKOWSKI & V. GATZA, BE REJECTED FOR THE REASON THEY DO NOT MEET

MOTION #1: THE CLARITY STANDARDS SET FOURTH IN THE STATUTE THAT SETS UP THE CLARITY MEETING. BARBARA ALBERTSON SUPPORTED THE MOTION AS MR. MULLISON RECOMMENDED AN AMENDMENT.

MR. MULLISON FELT ANOTHER REASON, INDEPENDENT OF THE FIRST REASON, THAT IT EXCEEDED THE 200 WORD LIMITATION.

AS MAKER OF THE ORIGINAL MOTION, JUDGE DONER WOULD NOT ACCEPT THE AMENDMENT OF MR. MULLISON. IT WAS HIS DESIRE TO VOTE ON THE AMENDMENT SEPERATE DEALING WITH STATUTE.

MR. MULLISON ADDED, HE DID NOT FEEL THE STATUTE WAS WRITTEN INCORRECTLY, BUT THAT THE ELECTION COMMISSION COULD NOT INTERPRET THE 200 WORD LIMIT STATUTE IN CONJUNCTION WITH THE OTHER STATUTE FOR CLARITY.

MOTION #2: CHAIRMAN DONER STATED THE AMENDMENT OF 200 WORD LIMITATION WAS MOVED ABOVE. BARBARA ALBERTSON SUPPORTED THE MOTION TO AMEND AS CHAIRMAN DONER INDICATED A SEPERATE VOTE ON THE AMENDMENT WOULD BE TAKEN. APPROVAL OF THE AMENDMENT WOULD COMBINE THE AMENDMENT MOTION WITH THE ORIGINAL MOTION. REJECTION OF THE AMENDMENT, VOTE WOULD BE TAKEN ON THE MOTION AS ORIGINALLY PRESENTED BY JUDGE DONER.

ROLL CALL: 2 YEAS-ALBERTSON & MULLISON, 1 NAY-DONER.

MOTION #1: CHAIRMAN MOVED TO REJECT THE RECALL PETITIONS AS THEY DID NOT MEET THE CLARITY STATUTE. ALSO, THAT THE WORDING EXCEEDED THE 200 WORD LIMITATION AS INTERPRETED BY THE COMMISSION. BARBARA ALBERTSON HAD SUPPORTED THE MOTION PREVIOUSLY AND IT WAS CARRIED BY ROLL CALL OF 3 YEAS, 0 NAYS.

CHAIRMAN DONER STATED HIS POSITION ON THE 200 WORD LIMITATION HAD NOT BEEN CHANGED, HE SIMPLY FELT A SUFFICIENT BASIS FOR THE MOTION TO REJECT.

MOTION #3: BARBARA ALBERTSON MOVED TO ADJOURN THE CLARITY HEARING. CHAIRMAN MULLISON SUPPORTED THE MOTION AND IT WAS CARRIED BY UNANIMOUS VOICE VOTE, 3 YEAS, 0 NAYS.

RESPECTFULLY SUBMITTED

BARBARA ALBERTSON
BAY COUNTY CLERK