

# The State of New Hampshire

SULLIVAN, SS.

SUPERIOR COURT

No. 220-2014-cv-07

Robert Logan, et al.

v.

Village District of Eastman

## O R D E R

Robert and Geraldine Logan sued the Village District of Eastman for violations of the Right to Know Law (RSA 91-A). The Village District concedes it violated the law in some respects, and the court finds for the Logan's in those instances. Other claims by the Logan's are denied by the District and do not amount to violations of the statute. On these matters, the court finds for the District.

### 1. Non-Public Sessions

The Logan's contend first that the District's Board of Commissioners did not comply with RSA 91-A when it met in nonpublic sessions, including those on January 19, 2012, February 7, 2012, and February 15, 2012. At the hearing on the complaint, the District admitted the board did not comply with the Right to Know law when it entered nonpublic meetings without citing an exemption that warranted closing it to the public, and without taking a roll

call vote. See RSA 91-A:3, I(b). In addition, the Board sealed the minutes of nonpublic sessions without taking a recorded vote. See RSA 91-A:3, III.

The court finds for the Logan's on this claim.

2. Informational Forums

Under the auspices of the Eastman Community Association, informational forums on the issue of whether the Village District should purchase the Eastman Sewer Company were held on November 17, 2012 and July 24, 2013. Two of the three board members attended the first forum. One commissioner, Duncan Wood, made a presentation as a member of a panel. The other, Commissioner William Sullivan, sat in the audience and spoke as well. Only one board member attended the second session.

The Logan's contend the attendance of two board members at the first forum constituted a "meeting" as defined in RSA 91-A:2, I. However, it is evident from the testimony that Commissioner Sullivan attended as a private citizen. Commissioner Wood testified that the panel decided which of its members would respond to comments from the audience, including those from Commissioner Sullivan. Though it takes two board members to make up a quorum of the board, the mere fact that two commissioners were present at an informational meeting did not constitute a "convening" of a quorum of the board and did not establish that their attendance was for

the purpose of "discussing or acting upon" the sewer company acquisition in their capacity as board members. RSA 91-A:2, I.

Based on the foregoing, the attendance of one or more board members at the informational conferences did not constitute a meeting of the board. Since these gatherings were not meetings within the meaning of RSA 91-A, I find for the Village District on this claim.

3. January 9, 2013 Village District Meeting

The Logan's third challenge is to the result of the Village District Meeting on January 9, 2013, at which the members of the District voted to acquire the sewer company. They make the general argument that the events cited above made the district meeting a "fruit of the poisonous tree" and contend the members were provided with incorrect information prior to the vote. They ask the court to set aside the district vote.

RSA 91-A:8, III permits a court to invalidate a public body's action "taken at a meeting held in violation of" RSA 91-A. There is no evidence that the Village District Meeting was a "meeting" as defined in the statute. Moreover, the statute does not govern the content of the discussion at meetings, but only ensures that such proceedings be public to the extent possible.

On this claim, the court finds for the Village District.

4. Remedy

The Logan's request orders (a) enjoining the board from future violations of RSA 91-A, (b) requiring the board to undergo remedial training in the requirements of the Right to Know law, and (c) terminating the District's acquisition of the Eastman Sewer Company.

The decision to acquire the sewer company was made at a district meeting that presented no violation of the Right to Know law. Accordingly, the request to set aside the vote from the meeting is denied.

The court finds it unnecessary to enjoin future violations or to order board members to undergo training in the law. The Village District made it clear through its counsel and the district commissioners who testified that it understands it violated the statute with respect to the nonpublic sessions. It also represented through its counsel that while it is willing to accept an order that its members receive training in the law's requirements, it will undergo the training whether the court orders it or not. I accept these representations and find an order is unnecessary to accomplish future compliance with the law.

The final issue is whether the Village District should pay the Logan's costs. RSA 91-A:8, I permits the court to award costs against the public body, "provided that the court finds that such lawsuit was necessary in order to enforce compliance with the

provisions of this chapter or to address a purposeful violation of this chapter." The Village District argues it learned it was not complying with RSA 91-A in March 2013 when a resident of the district, Phillip Schaefer, called the violations to the attention of the board. The District contends it has been complying with the law ever since, and thus prior to the filing of the Logan's complaint in January 2014.

However, in its Answer to the Complaint the District took the position that it did not violate RSA 91-A with respect to the nonpublic sessions. See Answer to Complaint ¶¶ 3-5, pp. 7-8. (document no. 5). Even though the District acknowledged candidly at the start of the evidentiary hearing that it did violate the law with respect to nonpublic sessions, the posture of the case is such that the complaint was necessary to bring the District to that point. Accordingly, the Logan's are awarded their reasonable costs.

#### Conclusion

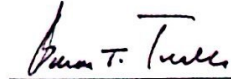
For the foregoing reasons, the court finds the Village District violated RSA 91-A with respect to nonpublic sessions, but it did not breach the statute in connection with the informational forums or the Village District Meeting.

No injunction or remedial order is required. The Logan's are awarded their costs in an amount to be determined by the clerk of

court.

SO ORDERED.

Date: April 18, 2014



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Brian T. Tucker  
Presiding Justice