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VERMONT PUBLIC
SERVICE BOARD

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November 3, 2015

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

(1)

Re: Docket No. 8585

Dear Mrs. Hudson:

By letter dated October 30, 2015 and filed in the above-referenced matter, the Department of Public Service analogizes the Irasburg Select Board's appointment of its town moderator, Ron Holland, to represent it in this proceeding to a corporation's designation of an officer or employee to represent it *pro se* before the Board. I write to explain why the Department's analogy is inapt and to reiterate the request for the Select Board to demonstrate that its appointment of Dr. Holland, a nonattorney third party representative, is lawful and valid.¹ In making this request, I want to emphasize that my client welcome the Town's participation in this docket.

Response
re: L

Board Rule 2.201(B) allows any individual to appear before it without an attorney. This is known as *pro se* representation. The Board's rule gives it the discretion to permit nonattorneys to appear before it on behalf of entities that are not individuals in a specified list of circumstances. One of those circumstances is the appearance of a corporation through "an officer thereof or by an employee designated in writing by an officer thereof." PSB Rule 2.201(B). The Department suggests that like a corporation, the

¹ The town moderator, while an elected official, is not a member of the Select Board and has no authority to act on its behalf. See 17 V.S.A. § 2658 (setting forth duties of a town moderator). Therefore, as to the Select Board, Dr. Holland is a third party. If Dr. Holland were appointed to fill the select board seat vacated by Robin Kaye, the deficiency in his appointment would be cured.

Irasburg Select Board may appoint Dr. Holland as its nonattorney representative because he is the town moderator and is closely affiliated with the town.²

The Department's theory is not supported by the law. Rule 2.201(B)'s authorization for a corporate *pro se* representative reflects the statutory authorization in § 3.02(1) of Title 11A, which grants corporations the right to appear in legal proceedings through a nonattorney representative, provided certain conditions are met.³ No analogous statute exists for a Vermont select board or their members to make such an appointment. Rule 2.201(B)'s silence on whether a municipal legislative body, like the Irasburg Select Board, may appear through a nonattorney representative can be explained by the absence of a statute empowering the legislative body to do so.

Even if a corporation lacked express statutory authorization, the Department's comparison between a corporation and a municipal legislative body reveals the need for a basic civics lesson. Under the Vermont Constitution, the members of a local select board, like the Irasburg Select Board here, are vested with the public trust and are ultimately accountable to the people they are elected to serve. Vt. Const. art. 6.⁴ The Irasburg Select Board is the legislative body obligated by Vermont law to carry out the affairs of the Town of Irasburg, and its members are elected by the voters in the community. 24 V.S.A. § 872(a); 17 V.S.A. § 2646.

In contrast, a corporation is a private business enterprise formed by a voluntary association of individuals. 11A V.S.A. § 3.02. It "has the same powers as an individual to do all things necessary and convenient to carry out its business and affairs." *Id.* A corporation, like other private business enterprises, may conduct its business in private whereas Vermont's select boards may not. Select boards are obligated by Vermont's Open Meeting Law to conduct open meetings with proper advance notice. 1 V.S.A. § 312. Thus, unlike a corporation's officers or employees who may meet at any time to discuss business in private, a quorum of select board members may not unless they

² Letter from Aaron Kisicki, Department of Public Service to Susan M. Hudson, Clerk of the Board, Oct. 30, 2015.

³ Section 3.02(1) provides three conditions for the appearance of a nonattorney representative: "(A) the proposed nonattorney representative is authorized to represent the corporation; (B) the proposed nonattorney representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court; and (C) the proposed nonattorney representative shares a common interest with the corporation." 11A V.S.A. § 3.02(1).

⁴ Article 6 provides: "That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them."




follow the proper procedures. Violations of the Open Meeting Law are punishable as misdemeanors and subject the offending public official to fines. 1 V.S.A. § 314(a).

It is significant that the Irasburg Select Board has already publicly admitted to having violated the Open Meeting Law at least once in connection with its participation in this proceeding.⁵ In fact, given the broad definition of "meeting" under the Open Meeting Law⁶, the attendance of two of three members of the Select Board in their official capacities at the prehearing conference for the purpose of discussing this proceeding and requesting a site visit may have been subject to the Open Meeting Law.⁷ Whether their attendance at the prehearing conference was properly warned is a matter for the Irasburg Select Board, its voters, and the Town's counsel to determine.

It is important to emphasize again that my client has no objection to Irasburg's participation in this matter or its representation by a duly authorized nonattorney. It remains questionable, however, whether the Irasburg Select Board's appointment of a nonattorney representative who is not a member of the Select Board is lawful. The Board, the parties, and the people who elected the Select Board's remaining members should have confidence that the actions the Select Board has taken respect to this proceeding are legally valid and will not prejudice the proper administration of justice for all involved.

Thank you for your attention to this filing.

Very truly yours,



Leslie A. Cadwell

Cc: Attached Service List

⁵ Another violation may have occurred on October 6, 2015 when a quorum of members of the Irasburg Select Board met privately with Annette Smith, Dr. Holland, and other selected members of the public in a conference room at the Department of Public Service before the prehearing conference in this docket.

⁶ "Meeting" is defined by the Open Meeting Law to mean "a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action." 1. V.S.A. § 310(2).

⁷ Tr. 10/6/2015 at 3, 9-10, 11-12.



STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8585

Investigation into Meteorological Tower at 700)
Kidder Hill Road in Irasburg, Vermont)

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