

COUGHLIN, RAINBOTH, MURPHY & LOWN
ATTORNEYS AT LAW • PROFESSIONAL ASSOCIATION

Rec. 7/19/18
2 Weare Road
Bob



TIMOTHY C. COUGHLIN**
MICHAEL P. RAINBOTH*†
KENNETH D. MURPHY*
BRADLEY M. LOWN*†
JAMES E. COUGHENOUR, JR.*†
BRIAN W. BUONAMANO*

June 22, 2018

Ms. Linda Blood
Mr. Robert Wadleigh
Mr. Norman DeBoisbriand
Town of Kensington
Board of Selectmen
95 Amesbury Road
Kensington, NH 03833

Re: David Macek – Adult Softball Program

Dear Sirs and Madame:

This office represents David Macek in connection with matters pertaining to his leadership of the Kensington Adult Softball Program.

I have had a chance to review the one page report of the auditor and the undated letter to my client from the three of you informing him that the Adult Softball Program will not be run through the “town or the Recreation Revolver due to the finding in the audit.” I have also read the minutes of the April 16, 2018 selectmen’s meeting and your letter to my client of June 6, 2018.

First, after having carefully read the audit report, it is notable for what it does not contain. It does not contain any allegation of wrongdoing, and it does not contain any finding of wrongdoing, intentional or otherwise. It simply comments on the quality of the documentation of the Adult Softball Program and the advisability of having a “formal policy” adopted by the Town.

Your undated letter to my client notifying him that the Adult Softball Program will no longer be run a “through the town or the Recreation Revolver” appears to indicate that this decision was the result of the “finding” by the audit and the possibility of Town liability. As noted above, the only “finding” made by the audit was that the record-keeping could have been better and that a formal policy should be in place.

The minutes of the selectmen’s meeting of April 16, 2018 indicate that one or more of you was “concerned” about the “adult softball money not being used solely for adult softball.” As noted above, there is no evidence for this, no facts alleged or found by the auditor, and no basis for concluding this. The remaining portion of the minutes of that meeting simply address the advisability of having the Adult Softball Program run through the “recreation revolver” fund, and issues pertaining to that.

Then, on June 6, 2018, without any explanation, any finding, any factual basis or any legal conclusion, the three of you signed a letter accusing my client of "Misappropriation of Town Funds" and the letter goes on to indicate that the three of you "have lost confidence in" my client's ability to "support the Town and Board in these endeavors."

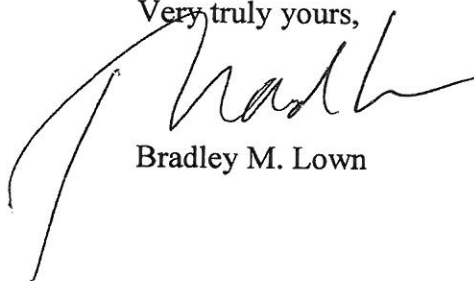
In the roughly six weeks between the minutes of the April 16th meeting in the June 6th letter, what happened? On what possible basis would the three of you conclude that there had been any "Misappropriation of Town Funds"? I understand that Donna Carter recently appeared before you in an attempt to clear her good name, and not one of you retracted any allegation against her.

Mr. Macek has lived in your town for 16 years and has devoted his considerable talents and energy to the Adult Softball Program, among other things. He is well known as a reputable man of great integrity and selflessness. Your careless allegation of "Misappropriation of Town Funds" needs to be retracted, publicly and in writing. The purpose of this letter is to ask that you do so at your next meeting. It would be appropriate, for example, to simply state that the audit found that the record-keeping was not perfect and could have been done better, and that the Town should have had a formal policy, but you must publicly admit that there is no evidence of any "Misappropriation of Town Funds" and that there is no evidence of any misconduct or wrongdoing by my client. If you choose not to do so, my client has instructed me to commence suit against the Town of Kensington for defamation.

The New Hampshire Supreme Court has defined defamation as consisting of the twin torts of libel and slander; you have done both. You have intentionally or negligently communicated false statements in reckless disregard of the falsity of the statements, and my client's reputation has been sullied and damaged. See *Duchesnaye v. Munro Enterprises, Inc.*, 125 N.H. 244, 250, 480 A.2d 123 (1984).

I look forward to receiving your written retraction and correction as well as evidence that you have done so publicly at a meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bradley M. Lown", written over a large, sweeping flourish that extends to the left and underlines the signature.

Bradley M. Lown

BML:lal

cc: David Macek