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2 **TOWN OF NORTH HAMPTON, NEW HAMPSHIRE**  
3 **SPECIAL SELECT BOARD MEETING**  
4 ***Appointed by the Rockingham Superior Court***

5 **DECEMBER 30, 2019 6:00 PM**  
6 **NORTH HAMPTON TOWN HALL**

7 ***DRAFT MINUTES***  
8

9 APPOINTED SELECT BOARD MEMBERS: Chairman Don Gould, Rick Stanton, Emily Creighton

10  
11 ALSO PRESENT: Town Administrator Bryan Kaenrath, Town Counsel Stephen Bennett  
12

13 **AGENDA**  
14

15 Chairman Don Gould explained that this is a Special Select Board appointed by order of the Rockingham  
16 Superior Court, the purpose of which is to address the application for reimbursement of legal fees by Mrs.  
17 Kilgore. He said this Board is sitting here because the three (3) regular Select Board members are all  
18 conflicted and are not able to sit.  
19

20 Chairman Gould said with him is Emily Creighton and Rick Stanton, as well as Town Administrator Bryan  
21 Kaenrath and Town Attorney Stephen Bennett. He said he would like to take a minute to thank Town  
22 Administrator Kaenrath for the good service he has given the Town, and said he will be missed.  
23

24 **HEARING CONCERNING THE APPLICATION FOR REIMBURSEMENT OF LEGAL FEES**  
25

26 Chairman Gould said the sole purpose of the Hearing, pursuant to RSA 43:4, is concerning the application  
27 of Mrs. Kilgore for reimbursement of her legal fees. He said this is not a Public Hearing and there will be  
28 no Public Comment. Only the participants, Mrs. Kilgore and/or her representative, may take part, the  
29 Town Administrator may have to give testimony, and whoever speaks will be under oath.  
30

31 **Background**  
32

33 Chairman Gould said there was a mass of material consisting of minutes of the 3 Ethics Committee  
34 Meetings, the Ethics probe itself, findings of Ethics Committee, submissions from Mrs. Kilgore and Mr.  
35 Maggiore to the Ethics Committee, a letter to Mrs. Kilgore informing her of this Hearing and her response  
36 to that letter. He said the Special Select Board also recently received advice from Town Counsel concerning  
37 a statute that may or may be relevant here, namely RSA 31-105 Reimbursement. He said the Board met  
38 with Town Counsel a few weeks ago as a non-meeting under 91-A, which was a meeting between Counsel  
39 and his clients, this Special Select Board.  
40

41 **Procedures**

42  
43 Chairman Gould said Counsel advised as to procedures to be followed tonight under RSA 43:4: no Public  
44 Comment, and all speakers under oath. He said Mrs. Kilgore can call witnesses to testify under oath  
45 confined to the issues in this case. He said they are not going to re-litigate proceedings before the Ethics  
46 Committee as that is history and not relevant to tonight. He said the issues for this Board are whether or  
47 not we have legal authority to authorize the payment of \$12,000 to Mrs. Kilgore for legal fees she incurred  
48 in connection with the Ethics Committee proceedings. To resolve that issue the Board needs to resolve  
49 some subsidiary issues.

50  
51 Chairman Gould said the subsidiary issues are: (1) does RSA 31-105 Indemnification for Damages apply;  
52 (2) whether or not Mrs. Kilgore, when she made the comment which gave rise to the Ethics Committee  
53 proceedings, was acting within the scope of her duties as a Selectperson; and (3) whether or not Mrs.  
54 Kilgore in fact paid \$12,000 to her attorney, and whether the attorney fees incurred were reasonable as  
55 required by RSA 31-105. He asked his fellow Select Board members for any comments. Mr. Creighton said  
56 she had none at this time, and Mr. Stanton said RSA 31-105 applicability it has to be by governing body  
57 and asked when the Select Board should address that. Chairman Gould said after the Hearing would be  
58 the appropriate time.

59  
60 **HEARING CONCERNING APPLICATION FOR REIMBURSEMENT OF LEGAL FEES**

61  
62 Chairman Gould opened the Hearing at 6:12 pm. He asked Mrs. Kilgore to stand and administered the  
63 Oath.

64  
65 **Statement of Mrs. Kilgore**

66 Mrs. Kilgore provided a copy of her cancelled check to confirm payment as was requested. She said she  
67 wanted to clarify potential conflicts of interest in tonight's proceedings, and read Section 4.01 of the Town  
68 of North Hampton Code of Ethics in that regard. She said she had concerns whether Mr. Stanton could  
69 impartially participate in this case, and Mr. Stanton said he believed that he could. Mrs. Kilgore asked the  
70 same of Chairman Gould. Chairman Gould said her objection based on a conflict of interest is noted for  
71 the record, and if she intends to pursue that the proper place is with the courts. He said he respectfully  
72 disagrees that he is biased and is quite confident he can act in an unbiased manner.

73  
74 Mrs. Kilgore asked if she could address a question to Town Counsel. Chairman Gould ruled that out of  
75 order, and said the purpose of her testimony is to present her case and not to engage in conversation  
76 with counsel. He asked Mrs. Kilgore if she wanted to say anything in support of her application to be  
77 reimbursed in the amount of \$12,000.

78  
79 Mrs. Kilgore listed the reasons she felt she should be reimbursed: (1) the complaint filed claimed she was  
80 acting in her official duties as a Selectwoman; (2) to be charged in violation of the Code of Ethics, Section  
81 4.02, the code requires Town officials to be acting in their official status; (3) the opinion of Mr. Janos, a  
82 member of the Ethics Committee, that the complaint did not meet the criteria of Section 4.02; (4) the  
83 complaint alleged she was acting in her official Select Board duties; (5) at the conclusion of the meeting  
84 of May 16, 2019 the Ethics Committee voted to move forward with formal charges of violation of the Code  
85 of Ethics, Section 4.02, which requires her to be acting in her official capacity.

86  
87 Mrs. Kilgore stated that she was the only party denied legal representation, even though Section 4.04  
88 requires that the Ethics Committee retain all legal rights provided under the law. She said she was also

89 denied the ability to examine the members of the Ethics Committee for conflicts of interest, and had  
90 conflicts with the Code of Ethics itself. She stated that the other two (2) parties in the proceedings  
91 benefitted from the advice of Town Counsel as follows: (1) the Complainant was provided pre-complaint  
92 consultation services by Town Counsel; (2) the Ethics Committee was also provided those services; (3)  
93 there were many unanswered questions as to due process throughout the proceedings; and (4)  
94 correspondence from my counsel submitted in writing was not afforded representation in meetings or  
95 hearings, adding to the cost of her legal representation.

96

97 Mrs. Kilgore said in the opinion of Town Counsel, she was never in any danger of being assessed legal fees  
98 or fines, since neither the Ethics Committee nor the Select Board has the authority to do so under these  
99 circumstances. Mrs. Kilgore said criteria to be met per RSA 31:105 is limited to a claim or judgement  
100 resulting in accidental injury to a person. She said defamation of her character is doing irreparable damage  
101 to her reputation, career, her ability to hold future Town offices, and her general standing in this and  
102 other communities, and stated that she is due reimbursement for the legal fees she incurred in order to  
103 defend and protect herself and her reputation.

104

105 Mrs. Kilgore said she was charged by the Complainant and the Ethics Committee of violating Section 4.02  
106 of the Code of Ethics acting in her official capacity, even though her right to free speech under the First  
107 Amendment is preserved under Section 7.01 Self-Enforcement. She said the Ethics Committee eventually  
108 found that she was not in violation of Code of Ethics Section 4.02 as evidence did not support that. She  
109 said in closing, her high legal fees are a result of a lack of understanding by the Ethics Committee of the  
110 rules in the Code of Ethics, and by the Chairman's refusal to allow her attorney to speak on her behalf.  
111 She requested she be reimbursed for these reasonable legal fees because it was alleged she was acting in  
112 her official capacity.

113

114 **Questions:**

115 Ms. Creighton asked Mrs. Kilgore why she responded to her 2 colleagues on the Board, and to the press,  
116 that she was not acting in her capacity as a Selectwoman. Mrs. Kilgore said the press asked questions  
117 about something that happened at a meeting, and she was speaking about her feelings and not in her  
118 official capacity. Ms. Creighton asked why she felt she needed legal counsel, and Mrs. Kilgore said it was  
119 a serious matter to her and she needed assistance with the Code.

120

121 Mr. Stanton asked Mrs. Kilgore if she voiced an opinion when the Chairman of the Ethics Committee said  
122 there would be no representation. Mrs. Kilgore said her opinion was voiced quite a bit by her attorney  
123 during the whole proceedings. Mr. Stanton stressed that everybody there subscribed to that rule of no  
124 counsel being allowed to present, and Mrs. Kilgore said the Code itself grants her due process under law  
125 and upholds her first-amendment rights. Mr. Stanton said that was not his question.

126

127 Chairman Gould said during her presentation, Mrs. Kilgore read from RSA 31:105 and asked if they were  
128 to understand that she was basing her entitlement to reimbursement and indemnification on that RSA.  
129 Mrs. Kilgore said she had not read the complete details and referred to Town Counsel's opinion. Chairman  
130 Gould said he understood, but asked for the legal basis for her claim, since this Board needs a legal basis  
131 in law for authorizing the payment of \$12,000 to a private citizen. Mrs. Kilgore said she guessed it was  
132 RSA 31:105, as it could have done irreparable harm to her.

133

134

135

136 Chairman Gould explained that RSA 31:105 deals with indemnification and permits a municipality to  
137 indemnify people for their legal fees, assuming certain conditions are being met. He said the fees must be  
138 reasonable and the person has to have been acting in the course of his/her duties as an officer of the  
139 Town. Chairman Gould asked Mrs. Kilgore if at the Ethics Committee Meeting, both in written statement  
140 and orally, she stated she was not speaking as a Selectwoman. Mrs. Kilgore replied that she had made  
141 that statement. Chairman Gould said letters submitted by Mr. Bottomley and Ms. Schultz in her support  
142 also both stated she was not acting in her capacity as a Selectwoman and Mrs. Kilgore agreed.

143  
144 Chairman Gould said during the proceedings before the Ethics Committee Mrs. Kilgore was asked on  
145 several occasions by the Chair of the Committee whether or not she would be willing to either retract her  
146 statement or engage in mediation to greatly shorten the proceedings and she refused. Mrs. Kilgore said  
147 that was correct. Chairman Gould said he had no more questions at this time. He asked the Town  
148 Administrator to testify with regard to RSA 31:105, which says a Select Board may indemnify a person if  
149 the Board had previously adopted an indemnification policy, and asked him whether or not the North  
150 Hampton Select Board has at any time adopted an indemnification policy pursuant to RSA 31:105.

151  
152 Chairman Gould administered the Oath to the Town Administrator, and asked him if he had made an  
153 attempt to find out if the North Hampton Select Board has ever adopted such a policy under RSA 31:105.  
154 Town Administrator Kaenrath said they had investigated the issue and said there found no evidence to  
155 support that the Select Board voted at any time to adopt an indemnification policy as required by RSA  
156 31:105. Chairman Gould asked Mrs. Kilgore if she had any questions for the Town Administrator on that  
157 specific subject. Mrs. Kilgore said the Town Administrator is saying the Town had not adopted such a  
158 policy to the best of his knowledge and there was no recent history to suggest it.

159  
160 **Witnesses**  
161 Chairman Gould asked Mrs. Kilgore if she had any witnesses to speak to the issues, namely RSA 31:105,  
162 the reasonableness of the fees, and whether she was acting in the scope of her duties. Mrs. Kilgore called  
163 Ms. Laurel Pohl, and Chairman Gould administered the Oath. Chairman Gould asked that she limit  
164 comments to the issues, and not rehash the Ethics Committee proceedings.

165  
166 Ms. Pohl said Mrs. Kilgore should not be held responsible for which law she needs to quote, and said she  
167 does not read RSA 31:105 the way it seems to be applied here. She said this Board has the ability to  
168 indemnify her, and need only ask 3 questions: (1) was she acting in the scope of her office, (2) was it  
169 necessary for her to hire an attorney, and (3) are the legal fees reasonable. She said the answer to question  
170 1 is clearly yes, as it was related to Select Board business and was conducted in public. The answer to  
171 question 2 is that the code only applies to officers/officials of the Town, and in Mr. Maggiore's complaint  
172 he recognized her as being in her role as an officer. For question 3, yes the legal fees are reasonable.

173  
174 Ms. Pohl asked if Chairman Gould and Mr. Sanders could be impartial adjudicating Mrs. Kilgore's request.  
175 She asked that this matter be settled once and for all and save the Town further embarrassment. She said  
176 if this goes to the Supreme Court, the Town will likely lose and incur additional legal fees putting the  
177 burden on taxpayers.

178  
179 Mrs. Kilgore asked to call Mr. Frank Ferraro, who was administered the Oath by Chairman Gould.

180  
181 Mr. Ferraro said he will make a statement and address RSA 31:105 after that. He said in 4 Ethics  
182 Committee complaints filed, 2 were dismissed without a hearing. He said Mrs. Kilgore endured 3 public  
183 meetings when she was clearly exercising her First Amendment rights, and the Committee should have

184 dismissed the complaint at their first meeting. Chairman Gould interrupted Mr. Ferraro, and said he did  
185 say that they were not going to rehash the Ethics Committee as it is not relevant, and asked if he wanted  
186 to address the RSA 31:105.

187  
188 Mr. Ferraro said he sees the indemnification of Mrs. Kilgore for legal fees as an award of attorney's fees  
189 as in a civil case, and said it is allowed in Civil Rights violations. He said her First Amendment rights were  
190 violated by having to endure 3 public meetings, her civil rights were violated, and she had to retain counsel  
191 to protect those rights. Mrs. Kilgore was exonerated and should be awarded her legal fees. He said it was  
192 not a case of indemnifying a municipal executive for injury or property damage as stated in RSA 31:105.

193  
194 Chairman Gould asked Mr. Ferraro if he had some legal authority for the proposition that a Select Board  
195 can make an award of legal fees. Mr. Ferraro said the Select Board is empowered to pay invoices, and this  
196 is essentially an invoice for attorney fees incurred by Mrs. Kilgore. Chairman Gould said it does not sound  
197 logical that anybody who submits an invoice should just be paid. Mr. Ferraro said in the case legal action  
198 was brought by the Town; Chairman Gould said it was not brought by the Town but by Mr. Maggiore. Mr.  
199 Ferraro said this is someone who incurred an expense because of a Town action and is looking to be  
200 reimbursed.

201  
202 Mrs. Kilgore asked to call Casey O'Kane as a witness and the Oath was administered by Chairman Gould.  
203 Chairman Gould asked Mr. O'Kane to confine his comments to what is relevant here, the application of  
204 RSA 31:105, and said we do not want to hear any more about what went on at the Ethics Committee.

205  
206 Mr. O'Kane said he thought the discussion of 31:105 is misplaced here, and said indemnification is  
207 generally an agreement reached before the fact to indemnify/insure someone from harm that might arise,  
208 which is not the case here. He said an easier way of resolving the issue is by relying on the general  
209 authority the Board has here to manage the prudential affairs of the Town under RSA 41:8.

210  
211 Mr. O'Kane said he would address why Mrs. Kilgore needed an attorney, and said first there is Mr.  
212 Maggiore's request of Town Counsel on how to file an Ethics Complaint. He said there were many cases  
213 where the Town, the Ethics Committee, Town Counsel used information in a way that was uniformly  
214 adversarial to Mrs. Kilgore. Chairman Gould said they were rehashing the Ethics Committee again and  
215 asked Mr. O'Kane to move on. Mr. O'Kane said Mrs. Kilgore needed an attorney because there was an  
216 attorney working against her.

217  
218 Chairman Gould disagreed and said the Town and the Ethics Committee relied on the advice that was  
219 given to them by Town Counsel on how to proceed, but to characterize his activities as being adversarial  
220 was inaccurate. Mr. O'Kane said the written findings of the Ethics Committee were also drafted by Town  
221 Counsel, and provided no basis for why Mrs. Kilgore had not violated the Code of Ethics, only saying that  
222 she was exonerated. He reiterated that he thought the Board should just rely on their general powers to  
223 manage the prudential affairs of the Town and said he did not think RSA 31:105 was relevant.

224  
225 Chairman Gould said before they end the hearing and go into deliberations, in the hopes of avoiding any  
226 further painful consideration of this sordid history that has transpired, would Mrs. Kilgore consider  
227 withdrawing her request for indemnification. Mrs. Kilgore asked on what basis, and Chairman Gould said  
228 he was asking in an attempt to avoid further difficult deliberations. He said no matter what the Board  
229 decides, people will be unhappy, and said he was trying to avoid that as Chairman Pinette had done during  
230 the Ethics proceedings to either mediate or retract your statement and end this right now, and say you

231 would like to withdraw with prejudice. Mrs. Kilgore said she would not withdraw her request for  
232 reimbursement of \$12.

233  
234 Chairman Gould ended the hearing at 7:14 pm, and said they would take a short break and be back in 2  
235 minutes to begin deliberations.

236  
237 **Hearing Deliberations by Board Members**  
238 Chairman Gould said they were ready to begin deliberations, and said it was now up to the Board to  
239 discuss this and make a decision. He said the issues are (1) does RSA 31:105 apply, (2) whether or not Mrs.  
240 Kilgore was acting within the scope of her duties as a Selectperson when she made her comments to the  
241 press, (3) and whether the legal fees are reasonable. He said he felt they should cover all 3 of them, even  
242 if they think the first issue is a dispositive, in the event this is appealed to the Supreme Court.

243  
244 Ms. Creighton said she was looking at RSA 31:105 in terms of the scope of Mrs. Kilgore's duties, and said  
245 there is no way she can dissociate her speaking to the press about a meeting and her speaking as a civilian.  
246 She said the press recognized her as a Selectwoman and she did as well. As far as RSA 31:105, she said she  
247 did not feel comfortable addressing that, but added that nothing was found in the records. Town  
248 Administrator Kaenrath said that is correct, and according to the review they were able to do in the short  
249 amount of time available, there is no evidence to suggest that occurred.

250  
251 Ms. Creighton said whether or not an indemnification policy needs to be adopted by the Select Board is a  
252 whole other issue that needs to be addressed. She said at the same time she cannot help stepping in the  
253 shoes of the person who feels they have been damaged in one way or another, but understands the Town  
254 cannot pay everyone who has a problem and hires a lawyer. She said the legal fees seemed to her to be  
255 reasonable.

256  
257 Mr. Stanton said if there is no record of the Town accepting 31:105 it is important and is the basis for  
258 granting a financial award. He said he had a problem with "by reason of negligence or other act resulting  
259 in accidental injury to a person". He said he sees nothing that demonstrates there was negligence  
260 involved, and there was certainly no personal injury: reputation injury was possible but had not been  
261 established and said he has difficulty with that sentence in the statute.

262  
263 Mr. Stanton said as to whether or not Mrs. Kilgore was acting as a Select Board member, she stated twice  
264 that she was not. He said he felt some of it was due to knowing you have the right to freedom of speech  
265 and can say anything you want, but by calling somebody a name in a Town opens you up to the Ethics  
266 Code, so if you use your first amendment rights you won't be found guilty of an ethics charge. He said you  
267 can't have it both ways and felt Mrs. Kilgore was acting as a Select Board member.

268  
269 Mr. Stanton said as far as the fees being reasonable, he would never have paid that amount nor agreed  
270 to it. He said Mrs. Kilgore's attorney had just joined the bar and was a relatively new lawyer, and said he  
271 did not know that they get \$275/hour. He said there was no financial penalty from the ethics violation,  
272 and he did not feel the attorney fees were reasonable in his personal opinion.

273  
274 Chairman Gould said in answer to whether the RSA applies, the answer is clearly no. He said they received  
275 an opinion from Town Counsel saying that in order for it to apply there must have been a prior vote of the  
276 Select Board to adopt an indemnification provision, and based on the testimony of the Town  
277 Administrator there has been no such vote. He said it was clear in his judgment that it does not apply, and  
278 said he does not believe this Board or any Select Board has the authority to just start issuing checks to

279 private citizens because they incurred legal fees as there has to be some statutory basis. He said I conclude  
280 that RSA 31:105 does not apply.

281  
282 Chairman Gould said in answer to the question whether or not Mrs. Kilgore was acting in the scope of her  
283 duties, she said she was not, several witnesses said she was not, and I conclude that she was not. In answer  
284 to whether or not the fees were reasonable, he said he came to the same conclusion as Mr. Stanton but  
285 for different reasons. He said Mrs. Kilgore could have ended this on day one, and would not have incurred  
286 those fees, had she agreed to mediation or to retract her statement. He reminded his fellow Board  
287 members and the public, that while it was true Mrs. Kilgore was found not to have violated the Code of  
288 Ethics, the Ethics Committee also determined that her charge of sexism was not accurate and Mr.  
289 Maggiore's conduct was not sexist. He said it could have been easily ended without legal fees.

290  
291 **Decisions of Board Members**

292  
293 Chairman Gould said the Board would now take a separate vote on each of the three issues.

294  
295 *(1) Does RSA 31:105 apply in this case?*

296  
297 **Motion:** That RSA 31:105 does not apply to this case.

298 **Motioned:** Mr. Stanton

299 **Seconded:** Chairman Gould

300  
301 Discussion: Ms. Creighton said she thought some parts of the RSA do apply.

302  
303 **Vote:** Motion approved 2-1, motion carries; RSA 31:105 does not apply to this case.

304  
305 *(2) Was Mrs. Kilgore acting within the scope of her duties as a Selectperson when she made the "sexism"*  
306 *comment to the newspaper?*

307  
308 **Motion:** To move that Mrs. Kilgore was acting within the scope of her duties when she responded to the  
309 reporter.

310 **Motioned:** Ms. Creighton

311 **Seconded:** Mr. Stanton

312  
313 Discussion: Chairman Gould said he was a little nonplussed by the conclusions of his fellow Board  
314 members that Mrs. Kilgore was acting within the scope of her duties, given her admission and testimony  
315 that she was not. Ms. Creighton said she was speaking as a Select Board member about a specific Select  
316 Board issue. Chairman Gould said there are clearly instances where officers engage in activity not part of  
317 their normal duties, and the law has to make the distinction between the two.

318  
319 **Vote:** Motion approved 2-1, motion carries; Mrs. Kilgore was acting within the scope of her duties when  
320 she made the comment.

321  
322 *(3) Are the fees claimed by Mrs. Kilgore reasonable?*

323  
324 **Motion:** That the fees claimed by Mrs. Kilgore in the amount of \$12,000 for legal representation are  
325 reasonable.

326 **Motioned:** Mr. Stanton

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327 **Seconded:** Ms. Creighton

328

329 Discussion: Chairman Gould said he was again in the minority, as he did not think the fees were  
330 reasonable.

331

332 **Vote:** Motion failed 2-1, with 1 abstention; motion does not pass.

333

334 **Motion:** That the fees claimed by Mrs. Kilgore in the amount of \$12,000 were not reasonable.

335 **Motioned:** Chairman Gould

336 **Seconded:** Mr. Stanton

337

338 Discussion: Ms. Creighton said she had difficulty determining whether the fees were reasonable or not,  
339 and did not feel able to make that decision.

340

341 **Vote:** Motion approved 2-0, with 1 abstention; motion carries; the fees claimed by Mrs. Kilgore in the  
342 amount of \$12,000 were not reasonable.

343

344 Chairman Gould said that ends the deliberations and ends the work of the Special Select Board, but they  
345 will have to meet again to approve the minutes. He said they will also need to have a written opinion  
346 drafted and the decision delivered to Mrs. Kilgore. Town Administrator Kaenrath said the minutes would  
347 be ready within a week and asked if the Board wished to have Town Counsel draft the findings. Mr.  
348 Stanton said Town Counsel has sat in on this meeting and felt Town Counsel should do the first draft to  
349 be circulated to them for their comments.

350

351 Chairman Gould said Town Counsel will make an initial draft of the discussion, provide it to the Interim  
352 Town Administrator to circulate to us, provide our comments separately to Town Counsel through the  
353 acting Town Administrator, and Town Counsel will provide a final draft for our approval. He suggested  
354 allowing 2 weeks before the next meeting, and Town Administrator Kaenrath said he would take care of  
355 finding a date.

356

357 **ADJOURNMENT**

358

359 Mr. Stanton made a motion to adjourn the meeting which was seconded by Ms. Creighton.

360

361 Chairman Gould polled the Board and the motion to adjourn was approved by a vote of 3-0, and the  
362 meeting adjourned at 7:42 pm.

363

364 Respectfully submitted,

365 Patricia Denmark, Recording Secretary