



Nashua Bar Hears Loeb

Manchester Union Leader Publisher William Loeb, second from left, addressed the Nashua Bar Association's May meeting. From left: former Nashua District Court Judge Kenneth F. McLaughlin of McLaughlin & Berrigan, Nashua Bar president; Thomas J. Leonard of Leonard, Prolman & Leonard, Bar secretary-treasurer, and James A. Nadeau of Janelle, Nadeau & Jette, Bar executive vice president.

Municipal Representation Conflicts

Opinion of the NH Bar's Ethics Committee
Municipal Representation Conflicts, 5/20/80.

I. Question: I sit as an alternate to our Planning Board. We have a clear and often repeated understanding that I give no legal advice to the Board, and that I sit only as a citizen. I do not nor have not represented the Town in any fashion. Other members of the Board, especially a contractor, occasionally step down and represent their clients or themselves before the Board.

(a) Would I be ethically barred from appearing before other town bodies such as the Board of Selectmen on behalf of a client?

No (Qualified): Assuming that no properly adopted town ordinance exists which places you in a "conflict of interest" role, it is the opinion of this Committee that you and/or a member of your office may appear before a town body on behalf of a client on a matter totally unrelated to your functions as a Planning Board alternate. However, you should carefully consider the advisory opinion of the NH Supreme Court Professional Conduct Committee, dated Feb. 7, 1975 and published in 1 New Hampshire Law Weekly at 251, on March 12, 1975 for discussion of the application of Canon 5 and Canon 9 of the Code of Professional Responsibility.

(b) Would I be ethically barred from appearing before the Zoning Board of Adjustment on behalf of a client?

Yes. It is the opinion of this Committee that the similarity of the matters which come before a Zoning Board of Adjustment and a Planning Board of a town is sufficiently significant so as to place you in a position that there would be a likelihood of a violation of Canon 5 and Canon 9. It is highly possible that your governmental functions could be perceived by the public to give you an advantage when appearing before such a Board, which advantage could result in compromising influences effecting your judgment and loyalties EC 5-1. Further, the

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issue of "appearance of impropriety" Canon 9 is obvious.

(c) Would I be ethically barred from appearing before the Planning Board on behalf of a client?

Yes - This is the most apparent and clearest example to deal with, and the Committee finds that such representation on your part is a direct violation of Canon 5 and 9.

II. Question: May a partner, associate or employee of a law firm, whether corporate or otherwise, represent a client before any administrative board hearing, court or other process of a town in which the law firm or partnership represents the town on a continuing basis?

No. The Committee is of the opinion that such representation would constitute a direct violation of Canon 5 and 9 of the Code of Professional Responsibility.

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PEOPLE

'New' Lawyer Is 71

One of the state's "new" lawyers admitted to the Bar May 28 (see photo, centerspread) was Charles T. Hepburn Jr., 71, who is retired in Sugar Hill after a lifetime of practice in Philadelphia. "It didn't seem right not to be able to practice here if I wanted to," Hepburn said, so he took the Bar exam. "I have no idea what I'll do with this," he added, "but something useful may come out of it."

Hepburn probably won't set up an active practice. When asked by the Littleton Courier if any of his four children are lawyers, "Charlie" replied: "There are plenty of lawyers in the world. What the profession needs is more clients!"

Summary of Superior Ct. Opinion

A municipality may not empower its planning board to exercise plat and subdivision jurisdiction under RSA 36 while reserving a general power to the city council to negate the planning board's actions by reexamining or reviewing the board's conclusions on their merits.

Ehrenberg v. City of Concord, 1/16/80. Solloway, Hollis & Soden and Stephen M. Duprey for plaintiff; McLane, Graf, Raulerson & Middleton and Jack B. Middleton for defendant.

SOUTER, J. Plaintiffs claim the city council committed error in denying plaintiffs' petition to extend and construct certain utilities required for their property development. Plaintiffs maintain the majority of the city council relied on considerations other than the technical and financial aspects of providing the requested utilities and that this constituted failure to observe the law, action in excess of jurisdiction and an abuse of discretion.

Defendant claims that the city council's jurisdiction over utilities' provisions is a power to legislate and to set policy which was not abridged by the grant to the planning board's jurisdiction. Defendant claims this power may validly be used to control or guide municipal growth based on different responses to the same issues which undoubtedly the planning board must and did consider.

The councilors questioned whether planned unit developments (PUD's) were per se desirable. A zoning ordinance provides that the planning board may approve a proposal to construct a PUD in Concord when the proposal satisfies the criteria set out in the ordinance. By enacting this ordinance two years before this case arose, the city council itself had settled the question of the per se desirability of PUD's. Plaintiffs' proposal raises questions addressed to the discretionary authority of a number of city officials. But such questions may not be answered by questioning anew whether it is possible to find a PUD desirable in Concord now. To take this position is to refuse to exercise discretion on a subject which the law entrusts to reasoned discretion. Such a refusal constitutes an abuse of discretion.

If Council members believe PUD's should not be allowed in Concord, the appropriate way to express those views in official action is by voting on an amendment to the present zoning ordinance, subject to the provisions of RSA 31:63.

Those councilors who sought to consider the desirability of the growth entailed by the PUD proposal took upon themselves the same responsibilities given the planning board. RSA 36:29 provides that once a planning board shall expressly have acquired platting jurisdiction such jurisdiction shall be exclusive.

A municipality, therefore, may not empower its planning board to exercise plat and subdivision under RSA 36 and at the same time reserve a general power to the city council or some other body to negate the planning board's actions by reexamining or reviewing the board's conclusions on their merits.



Bar Admits 53 New Lawyers on May 28 ...

Fifty-three new lawyers were admitted to the NH Bar in ceremonies at the Supreme Court May 28.

Speaking at the ceremonies were Supreme Court Chief Justice William A. Grimes, Associate Justice John W. King, Claremont District Court Judge Albert D. Leahy Jr. and NH Bar President Jack B. Middleton of Manchester.

Front row, left to right: Supreme Court Justice David A. Brock and Charles G. Douglas 3d; Grimes; and these new admittees: Charles P. Bauer of Manchester, Maureen E. Dunnigan of Manchester, Hedy P. Grant of Manchester, Kevin R. Bruno of Wood-ale, Margaret H. Nelson of Concord, Helen J. H. Forsyth of

Concord, James D. Forsyth 3d of Exeter, Paul J. Twomey of Manchester, Gary T. Brooks of Norwich Vt., Dorothy F. Silver Bedford, Susan B. Carbon of Barnstead, Priscilla E. Porch Wolfeboro, Francis E. Hartig of Rochester, Robert A. Olson Concord and Joan S. Bucklin of New London; Supreme Court Justice Maurice P. Bois and Atty. Martin L. Gross of Concord chairman of the Board of Bar Examiners.

Second row, left to right: new admittees Robert C. Levine Wakefield, Margaret L. Popkin of Berlin, Deborah K. Dickinson Concord, Felicity T. Lavelle of Concord, Jack S. White of Nashua, Richard C. Nelson of Concord, David A. Garfunkel of Manchester.

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Professional Responsibility. See the Advisory Opinion of the NH Supreme Court Professional Conduct Committee, dated Feb. 7, 1975, and published in 1 New Hampshire Law Weekly at 251 on March 12, 1975.

III. Question: May an attorney represent a town board or town on a specific case by case

basis not reaching a level of a continuing relationship when at the same time the attorney represents a client against the town or board on an action totally unrelated or separate from the one requested to represent the town? (Emphasis supplied).

No. This is a particularly sensitive issue, particularly in the context of the human and group dynamics necessarily involved, and the standards of Canon 9, "appearance of the professional impropriety". As expressed by the

Professional Conduct Committee, a law firm and/or lawyer's association with the municipality may make the firm and/or lawyer privy to some information which could influence the outcome of the matter a correspondingly raise a question of confidence and trust. It matters not that one case may be against the Board of Adjustment and another might be performing a specific assignment for the Board of Selectmen. Town boards are. *Concluded on next page*

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... In Ceremonies at the Supreme Court

Rita N. Calamari of Lancaster, Alethea L. Froburg of Berlin, Roger F. Murray 3d of Wolfeboro, J. Paul Kolodziej of Manchester, Margaret D. Bowden of Concord, John V. Daly of Campton and Jeffrey B. Levine of Derry; King and Middleton.

Third row, left to right: new admittees Peter J. Duffy of Manchester, Thomas S. Tudor of Hill Air Force Base, Ut., Shelley A. Simpson of Claremont, Charles D. Burkam of Concord, Anthony F. Simon of Manchester, Martha Van O. Gordon of Concord, Brian T. Tucker of Concord, Francis F. Lane Jr. of Keene, David K. Fulton of Portsmouth, Stanley H. Robinson of Franklin, Steven G. Shadallah of Salem, Stuart M. Holber of Haverhill, Mass., and Julia

Brown of Hampton; and Leahy.

Back row, left to right: new admittees Donald E. Mitchell Dover, Irvin D. Gordon of Concord, Michael J. Carroll Newfields, Marc B. Hathaway of Newport, Edward Gruhl of Deerfield, Timothy T. Taylor of Lebanon, Rodkey Craighead Jr. of Concord, James R. Starr of Manchester, Thomas C. Csatori of Hanover, Frederick C. Betley of Manchester and Charles J. Hepburn Jr. Sugar Hill.

Eleven-by-fourteen inch prints of this photo may be ordered writing photographer Bill Finney in Hopkinton 03301 before June 1 and enclosing \$10.

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departments are not autonomous and, in the usual case, funding comes through the town's general budget. Fees paid for legal services would therefore be derived from the general resources. In most instances it may be true that there is little probability of a lawyer being privy to cross information which would or could influence the outcome of the matters on which

he is employed, however, the absolute confidence of the commonwealth is of paramount concern in these matters, and, the highly visible and potentially notorious nature of governmental legal representation could easily be postured to the disadvantage of the firm, the lawyer and/or our profession. The Committee acknowledges the existence of possible situations where the conflicts are so remote that Canon 9 will not be violated.

The Ethics Committee, which issues opinions on the Code of Professional Responsibility, is chaired by Michael R. Callahan of Concord. Committee members are Arthur Connelly, Robert B. Field Jr. and Joseph Millimet of Manchester, Paul A. Gruber of Lisbon, Arthur W. Hoover of Rochester, William A. Ingram of Whitefield, Walter Mitchell 3d of Laconia, Robert H. Reno of Concord and Wilfred L. Sanders Jr. of Hampton.

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