

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

May 5, 2009

Selectman Barbara Miller
Selectman Joe Byk
Selectman Liz Thomas
Town Hall
1 Grove Street
Peterborough, NH 03458

**Re: Cease and Desist Order
Warning for violation of RSA 659:44**

Dear Selectmen Miller, Byk and Thomas:

On April 26, 2009, this Office received a complaint concerning electioneering by the Peterborough Selectmen in the Monadnock Ledger-Transcripts newspaper endorsing a candidate for Peterborough Town Clerk. On April 30, 2009, we received another complaint that Selectmen Byk and Miller electioneered on behalf of incumbent Selectman Liz Thomas as a candidate for selectman in the same local newspaper. As a result, this Office conducted an inquiry.

In the Monadnock Ledger-Transcripts newspaper on April 21, 2009, Peterborough Selectmen Joe Byk, Barbara Miller and Liz Thomas submitted a letter entitled "Select Board endorses Lenox." In that letter, the Select Board states in part, "Vote for Carol Lenox [for town clerk] because she is resourceful, efficient, demonstrates leadership and supports the town's continuous improvement efforts." This letter meets the definition of "electioneering" set forth in RSA 659:44. The letter to the editor by Selectmen Byk and Miller in the same newspaper on April 30, 2009, which endorses incumbent Selectman Liz Thomas, also meets the definition of "electioneering" set forth in RSA 659:44. Among other comments in support of Selectman Thomas, Selectmen Byk and Miller conclude their letter stating, "We urge you to vote for Liz on May 12." These letters and endorsements for Carol Lenox and Liz Thomas constitute electioneering in violation of RSA 659:44.

We received Town attorney's letter, dated April 22, 2009, stating that the Selectmen's letter endorsing a candidate for town clerk falls outside the scope of RSA 659:44. We expect that Attorney Ratigan would argue that his interpretation also applies to Selectmen Byk and Miller's endorsement of Liz Thomas. We disagree with Attorney Ratigan's interpretation of RSA 659:44.

Selectmen Miller, Byk & Thomas

Re: Cease and Desist Order

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RSA 659:44 provides:

No election officer shall electioneer while in the performance of his official duties. For the purposes of this section, "electioneer" shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.

In accordance with RSA 652:14, "election officer shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, **selectman**, supervisor of the checklist, registrar, or deputy registrar." (Emphasis added). As an election officer under RSA 659:44, selectmen are prohibited from electioneering in the performance of their official duties.

The Selectmen's endorsement of Carol Lenox for Town Clerk, as well as Selectmen Byk and Miller's endorsement of incumbent Selectman Thomas, meets the definition of electioneering as defined in RSA 659:44. We construe the purpose of these letters to influence Peterborough voters to vote for Carol Lenox for Town Clerk and to vote for Liz Thomas for Selectman at the May 12 election. Additionally, these letters to the editor in the Monadnock Ledger-Transcripts are signed "Peterborough Select Board," with each of your individual names for the Carol Lenox endorsement and Selectmen Byk and Miller's names for the Thomas endorsement. The signing of these letters demonstrates that you have made an official endorsement and engaged in electioneering on behalf of certain candidates in your official capacities as Selectmen for the Town of Peterborough. Thus, we construe this as electioneering in the performance of your official duties as Selectmen.

Because you are election officers as defined under 652:14, the letter in the local newspaper demonstrates that you electioneered to influence the votes of Peterborough voters, and the letters were signed "Peterborough Select Board" showing official selectmen actions, we find that these letters violate RSA 659:44.

Pursuant to RSA 7:6-c, as the State's chief election law enforcement officer, you are hereby ordered to **cease and desist** from engaging in any electioneering on behalf of any candidate or any measure in the performance of your official duties as selectmen for the town of Peterborough. Failure to comply with this cease and desist order may result in an enforcement action and/or prosecution in a New Hampshire Superior Court.

Selectmen Miller, Byk & Thomas
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This matter is now closed. If you have any questions, please do not hesitate to contact me.

Cease and Desist Order issued
by the authority of:

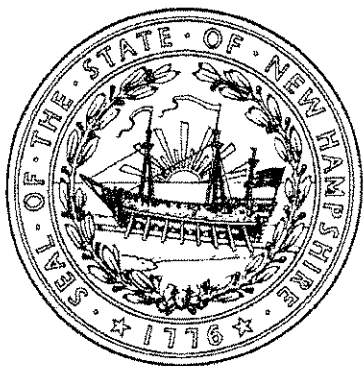
KELLY A. AYOTTE
ATTORNEY GENERAL



Anne M. Edwards
Associate Attorney General
Civil Bureau

AME/JWK/sd
363321

cc: Mary Jane Lambert



Fax Cover Sheet

New Hampshire Office of the Attorney General

33 Capitol Street
Concord, New Hampshire
(603) 271-3650

DATE:	May 5, 2009	TIME:	1:20 p.m.
TO:	Town of Peterborough Selectmen	FAX:	603-924-8001
FROM:	Anne M. Edwards, Esq.	FAX:	271-2110
Re: Cease and Desist Order; Town of Peterborough Selectmen			

Number of pages including cover sheet: 4

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