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The License to Carry Statute.

In Garand v. Exeter, (Docket Nos. 2008-606 & 721; Issued July 31, 2009), the Supreme Court took a rare look at RSA 159:6 concerning licenses to carry concealed weapons. The Exeter Chief of Police had timely issued a detailed denial letter which included a 7 year history of contacts with the Exeter Police – specifically a number of arrests, violent behavior, a threat to kill an officer and a



history of drug use.

Instead of filing an appeal of that decision with the District Court under RSA 159:6-c, Mr. Garand filed an action in Superior Court seeking issuance of the license since, among other allegations, the Chief's letter did not state any convictions or any other valid reason for denial. The Superior Court granted the Town's Motion to Dismiss and denied Mr. Garand's motion to file late authority.

The Supreme Court affirmed the decisions by analyzing the statutory provisions in light of the prior Bleiler and Silverstein decisions (both cases handled by this Firm) and concluded that the original jurisdiction of the Superior Court is invoked under RSA 159:6-e "only to alleged derelictions of a licensing authority's ministerial duties and does not provide a means to appeal a determination that the applicant does not meet the suitability or proper purpose requirements for licensure."

In addressing Mr. Garand's belated complaint that the Police Department violated the statutory prohibition against requesting photographs or fingerprints in asking for Mr. Garand's driver's license, the Supreme Court noted that the lower court had found that such request was improper but not a ground stated for denial of the license to carry; and the Supreme Court found "no error" on this subject and expressed "no opinion as to whether the defendants violated RSA 159:6,II by requesting plaintiff's driver's license."

Accordingly, Police Chiefs and staff should continue to proceed with caution when faced with Applications to Carry Concealed Weapons under RSA 159:6; and any denial must be clearly supported with detailed rationale.

For additional information or questions, please contact **Attorney Christopher L. Boldt**.

Upcoming Events:

Local Government Center's 68TH ANNUAL CONFERENCE - NOVEMBER 18th – 20th, 2009

Donahue, Tucker & Ciandella, PLLC will be an exhibitor at the LGC Annual Conference being held November 18th–20th, 2009 at the Radisson Hotel in Manchester, NH. Please stop by to see our booth, speak with our municipal attorneys, and obtain copies of our writings of legal interest to municipalities. We will also be raffling a \$500.00 gift certificate to Wentworth by the Sea Hotel and Spa in New Castle, NH, and you are invited to participate in the raffle. Atty. John J. Ratigan of Donahue, Tucker & Ciandella will be speaking on a Conference panel on Wednesday November 18, 2009 discussing the charter form of government.

NH Supreme Court rules on Underage Voting in Primaries.

For the second time in two years, the NH Supreme Court has ruled that proposed legislation, to allow 17-year-olds, who will be 18 at the time of a general election, to vote in the preceding primary election, runs afoul of the NH Constitu-



tion. This leaves intact the current rule, pursuant to Part I, Article 11 of our Constitution, that individuals must be 18 years of age or older to vote in any election.

In 2008, the NH House of Representatives asked our Supreme Court whether an identical bill (then SB 436) violated the above minimum voting age. The Court

ruled that it did, but noted that it had not been asked to answer the question of whether the bill infringed upon the associational rights of political parties guaranteed by the First Amendment to the US Constitution. Opinion of the Justices (Voting Age in Primaries), 157 N.H. 265, 267 (2008) ("Voting Age I").

Taking the hint, the Senate sent new SB 21, containing the same language as the prior bill, to the Supreme Court, with the questions the Court had noted were not asked the first time around: (1) would the bill infringe on the associational rights guaranteed to political parties by the First and Fourteenth Amendments to the US Constitution, and (2) do those amendments provide greater protection for the associational rights of political parties than does Part I, Article 11 of the NH Constitution, essentially trumping the NH Constitution and the Court's decision in Voting Age I?

The Court ruled first that operative sections of the NH

and US Constitutions guarantee the same rights, to the same degree, so the US Constitution does not trump the State Constitution and the Court's earlier decision. The Court then looked at the burden imposed by the age limitation in the NH Constitution and determined that it is "minimal." Id. at 670. Because the burden is slight, the State must show only a "sufficiently weighty" justification for the NH Constitutional age limitation to stand. Id. The Court easily found it did, determining that setting a reasonable age limitation on voting is "unimpeachable." Id. (internal citation omitted).

Thus, the Supreme Court seems to have answered, for good, whether underage voters may vote in primaries, and this time it left no tantalizing threads hanging, for the Legislature to pick up.

For additional information or questions, please contact **Attorney Katherine B. Miller**.

Conducting a Web Site Legal Audit.

Municipal websites are a useful tool in communicating to residents. Along with the benefits, however, come risks demonstrated with the recent case filed against the Town of Epping, alleging violations of constitutional rights for failure to allow a resident the right to link his website into the Town's. Sutcliffe v. Town of Epping, 80-2587, Slip Op. (1st Cir. Sept. 17, 2009). While the First Circuit Court of Appeals ultimately ruled in favor



of the Town, the case shows the potential for litigation that websites pose for municipalities.

The most successful websites are highly dynamic; the

content is not only interactive, but constantly growing, and therefore changing. Conducting a legal audit of your website is a good tool to identify risk and marginalize risk through proactive changes to the website. Key issues to review on a website are content such as original content, linking and framing, and third party content (community bulletin boards and e-mail). Other areas include a review of copyright and trademark

Conducting a Web Site Legal Audit Cont.

issues, defamation and user privacy. The inclusion of disclaimers and terms of use as well as a privacy policy, are important components to marginalize legal risk associated with websites. The disclaimer and terms of use are important in establishing the relationship between the website and its users. The terms of use policy should include the site's policy as to linking and prohibited uses. The privacy policy should provide notice to users about the type of information collected, how much

information is used, and to whom it is disclosed.



Performing such a review of your website helps identify areas of potential liability before litigation arises, and provides the opportunity to place the Town in the best

possible legal position by posting proper terms of use, disclaimers and privacy policies, should a legal demand be made.

For additional information or questions, please contact **Attorney Douglas M. Mansfield**.

2009 Legislative Changes for Planning Board Activity.

Several amendments were adopted at the 2009 legislative session which will have a direct impact on Planning Board activity. These amendments include:

House Bill 156 authorizes planning boards to require third party review and inspection. The bill amends RSA 676 by adding a new section; the new section went into effect on August 9, 2009. The bill expands on the existing authority of the Planning Board to charge applicants for special investigative studies and specifically authorizes the planning boards to hire third party consultants, such as engineers, as part of the planning board review process or the subsequent construction process and to have the reasonable expenses for such consultants reimbursed by the applicant. However, the bill makes sure that the applicant

has available to them upon request copies of consultant bills and such bills must contain reasonable task descriptions of the services performed. The bill also makes the consultant responsible for the prompt reporting to the Planning Board or appropriate municipal official of a perceived construction defect or deviation from the approved plans.

Senate Bill 93 amends RSA 674:39 by allowing subdivision and site plans approved on or after July 1, 2005 and before July 1, 2009 to reach substantial completion within six years rather than four and thereafter be permanently exempt from subsequent changes in local land use regulations. This legislation reflects that the current economic climate makes it difficult to reach the statutory milestones and the legislation

makes efforts to offset those impacts by expanding the timeframe in which milestones can be reached. Further, for subdivision and site plans approved on or after January 1, 2007 and before July 1, 2009 the legislation allows 36 months after the



date of approval to achieve active and substantial improvement. The effective date of this statute is June 12, 2009.

House Bill 43 amends RSA 674:36 (II)(a) authorizes planning boards to waive subdivision and site plan regulations for reasons other than the "unnecessary hardship" stan-

dard. It now allows waivers to be made where there are specific circumstances of a project, or special conditions of the land involved wherein granting the waiver will properly carry out the spirit and intent of the regulations. When such waivers are granted, the law requires that the Board properly document the rationale in recorded minutes, and the waiver can only be granted by a majority vote of the Planning Board. The effective date of this statute is September 29, 2009.

For additional information or questions, please contact **Attorney Sharon Cuddy Somers**.

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