

Peru councilors to be represented by town attorney: Covell defamation lawsuit looms

Written by JEFF MEYERS, Staff Writer
Thursday, April 19, 2007

PERU — Councilors being sued by Peru Town Supervisor Donald Covell can use the town's attorney for representation during any upcoming proceedings on the issue. Covell, through Albany attorney Salvatore Ferlazzo, served summons to Councilors Cortland Forrence, Thomas Powers and Peter Glushko, former Councilor Roger Bonner and former Town Attorney Dennis Curtin to appear in Clinton County Supreme Court.

The summons cite several incidents in which the five defendants allegedly said or published "defamatory statements" that Covell claims hurt his businesses, Frosty Springs Bottling Co. and Covell's Tree Farm and Nursery.

ACTING AS OFFICIALS

During this week's meeting, Town Attorney Donald Biggs told the council that he had thoroughly researched the lawsuit and concluded that most of the allegations stem from the councilors' actions as elected officials. Citing state law and a resolution passed by the council a year ago, Biggs said it was his opinion that the defendants were eligible for town-supported legal representation.

Covell asked Biggs if the councilors would have the same privilege if they were acting not as town officials but as private citizens when making the alleged defamatory statements.

"Based on my review (of the summons), all of the actions that were alleged were done so while acting as employees of the town," Biggs said, adding that anyone has the right to challenge his decision.

Covell asked if the town would be liable to pay legal expenses beyond trial costs if the defendants were found guilty.

Biggs explained that in a civil trial, such as this, defendants are not found guilty but can be found liable and subject to a financial penalty.

The resolution brought forward by Powers Monday evening covered only the defendants' defense, he said. The issue of liability costs could be covered at a later date.

CONFLICT UNAVOIDABLE

Covell also wondered if there was a conflict of interest because three of five council members voting were named in the lawsuit. Biggs said conflicts were unavoidable because the lawsuit was brought against sitting elected officials and that no one else had the authority to vote on the matter.

Powers said he felt it was disturbing that public officials could be sued for voicing a difference in opinion.

The council moved 4-1 to pass the resolution. Covell voted no, stating that he did not believe the town should be responsible for legal costs in what he felt were personal matters.

PUBLIC COMMENTS

The lawsuit refers to several instances in 2006, including statements made at public meetings and, in one case, a press conference held by the councilors to express their displeasure over Covell's leadership. The report identifies statements made at that press conference and published in the Press-Republican as "false and substantially untrue" and also suggests that the men (including Curtin) were acting as private citizens and not as town employees.

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Later in Monday's meeting, Covell asked Bonner — who attended as a town resident — a question about an unrelated issue. Bonner said he would not respond to anything Covell said because of the pending lawsuit.

Before paying bills, the council, including Covell, moved into executive session to discuss an issue of litigation; Powers noted that it was in regard to the pending lawsuit.

There was no further mention of the issue when the council returned to the table.