**Response to SB Minutes from 05 Jun 23**

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| **Phil McDuffie**  |

 | Attachments3:31 PM (10 minutes ago) |
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| to Philip, kordscott, michael, George, me, windham.town  |

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Hello to all-I am reaching out to everyone who was listed as an attendee at the Selectboard meeting held on June 5, 2023.  For a number of reasons, I was unable to attend that meeting and discuss the letter that I wrote to the Selectboard concerning our Constable carrying a firearm during the performance of his duties.  For whatever reason, Kord seems to be under the impression that I was questioning anyone’s right carry a firearm in Vermont, and he apparently agreed to send me the Vermont statues that outlines those rights.  I think if you read my letter (attached) you will see that I was not questioning anyone’s right in Vermont to carry a firearm.  In fact, my letter completely acknowledged that right, and I’m not sure why it was mischaracterized, as such.  If you read the letter I think you will also come to the realization that I brought up a number of other issues that weren’t addressed in the meeting.So I want to share my letter in the hope that you at least understand the issues that brought me to write it in the first place.  Part of my motivation comes from an excerpt (page 9) from the 2023 Town Report- “***So we want to expand the traffic control abilities of Town Constable Jim Lawler by sending him for the training he needs so that he can issue tickets. The training will also certify him to deal with other problems.”*** This statement was made by the SB in response to the possibility that the land formerly owned by the Nature Conservancy will likely turn into a nature preserve, and could bring more traffic.I asked about this statement at the Town Meeting, and received a response from Kord something to the effect of-  “Oh we were just thinking out loud about that.  Nothing concrete.”   Hmmm, if that’s the case then I’m not sure why it was put into the Town Report, unless it was to perhaps “test the waters” for the town’s reactions. When I read this statement to the Director of the Vermont Police Academy (Ken Hawkins), he said something to the effect of  “He won’t be enforcing any laws, including traffic, unless he is a certified Level II or III police officer who’s carrying all of the personal equipment that police officers carry, and drives a fully equipped police cruiser.”Based on the last statement in the SB Minutes from June 5th, the SB appears to have investigated the training issue enough to realize that the training is provided free of charge by the Vermont Police Academy.  That was also confirmed by Ken Hawkins when I spoke with him.  Mr. Hawkins indicated that they have developed this path towards law-enforcement certification to enable smaller towns to establish what in effect would be a “one-man” police department.  However, what I don’t think the SB has realized is that the training is free only if a candidate has been vetted and sponsored by a law-enforcement agency that has their own Level III police officers.  Presumably that agency will vet the candidate’s background in the same way that they do for their own police officers.  And as you are likely aware, vetting typically entails background checks (interviews with past associates and employers), a drug test, a polygraph examination, a psychological profile exam, as well as a complete physical exam.  Whether the cooperating police agency will do this free of charge for Windham is somewhat doubtful, in my mind.  And yes, no matter who pays for, it won’t be cheap.  So, the obvious question for the SB and the town to consider is whether or not this is what we want?  Personally, I vote no.  First of all, while the training may be free, who is going to pay the constable while he or she attends a minimum of two weeks of onsite training and spends another 60 hours serving as a “probie” at the sponsoring police force?  And if they do get trained and certified, I would presume the town would be obligated to pay the individual for a full-time job (especially if the town is going to supply him or her with a police cruiser).  And then, of course, there is the issue that our constable will come up for reelection every two years. In fact, our current appointed constable is due for election, in less than one year.  So do we want to invest all of this time, effort, and money when there’s a distinct possibility he may not get elected next year?These are the questions that I would hope the SB, as well as the town’s voters, will ponder. Does Windham want, and is Windham willing to fund a “one-man” police department? That’s not what I want.   And while it is true that the SB can direct a Level II or Level III “town police officer” to perform specific law enforcement activities, The SB needs to clearly state what those responsibilities are. And on that note, I should also mention that the town’s voters can reverse any and all the SB’s decisions regarding the authority of our constable or our would be law-enforcement officer.So thank you for reading this giving me the opportunity to clarify my motivation for sending the letter and express my concerns with whatever the SB may be planning with respect to training a law-enforcement officer.  Philip McDuffie |

[see his initial letter, a PDF document}

June 16, 2023

From: Phil McDuffie

Kord,

In reviewing the minutes of the last SB meeting, it’s pretty apparent that you did not understand the intent, nor the contents, of the letter I sent to the SB, on May 19, 2023.  Nowhere in my letter did I state or imply that our Constable doesn’t have the right to carry a firearm. In fact, I stated just the opposite in my letter, and I also stated that I don’t have a problem with him carrying a gun.  That’s his right as a citizen, so please don’t send me the statutes that I’m already aware of.

Since my first letter didn’t elicit a meaningful response, I will try to restate my primary concern. I, as well as a growing number of our fellow citizens, am worried about the financial liability that the town (i.e. us taxpayers) will face in the event that our Constable uses a weapon in the performance of his duties.  And yes, I am aware that the VLCT offers insurance to our town employees, including our constable.  But this insurance is basically there to protect employees from acts of omission and errors in performance of their duties.  If you look closely at the policy, you will see a section where the insurance coverage becomes null and void for any employee who acts outside of their “limits of authority” or breaks a law.  If our constable uses a gun in any manor during the performance of his duties, the insurance company will almost certainly argue that by Vermont statute, he was not an authorized law enforcement officer, and hence, he was acting outside of his limit of authority; consequently, they will very likely withdraw their coverage, unless it is clearly obvious that he was acting solely in self-defense.  But that’s a high hurtle to achieve in this day and age of wrongful-death lawsuits.  If you don’t believe me, check with your (our) lawyer.

What I was hoping to get in response to my letter was at least an acknowledgement that I brought up a number of issues that deserve further consideration.  It’s not only the liability aspect that concerns me, it also affects the character of the town, and how citizens feel about interacting with a constable who’s knowingly carrying a weapon in their presence.  Our constable, who was appointed by you, is the only constable in Windham that I’m aware of who has chosen to openly carry a gun. Whether he knows it or not, he is making a statement to everyone in town, and now that the cat is out of the bag, the SB can’t claim “We weren’t aware that he carried a gun” and hope to get off the liability prize table that litigating lawyers love to chase in times of opportunity.

 But obviously, I didn’t get the response I was hoping for. However, I will still offer a potential solution to at least the liability aspect of this dilemma that I hope would enable Windham to keep out of the crosshairs of litigation, should an incident with a firearm occur.  Because believe me, if an incident ever does occur, you can bet there will be litigation.

So here’s my proposal for your consideration-

1. The SB issues a declaration of some sort (Policy? Details are TBD) that specifically states that the Town of Windham does not authorize or condone the carrying of a firearm or lethal weapon by the Constable during the performance of his or her duties.  The document can add several of the points I raised in my previous letter for justification of the policy. It can also include the exception when the Constable is called upon to “dispatch” an animal who presents a risk to the town’s citizens.
2. The Constable signs an Acknowledgement of the SB policy, which is witnessed and notarized.

I’ve taken a first-cut at how that acknowledgement could possibly be worded.  Naturally, it needs to be reviewed by a legal eagle with the intent to provide the town with as much immunity as possible, but here’s my first cut at it-

***Acknowledgement of Self-Indemnity by the Constable***

***I hereby acknowledge that the Town of Windham does not authorize or condone the carrying of a firearm, or any other lethal weapon, by the town’s Constable during the performance of his or her duties.  I also acknowledge that as a citizen of Vermont, it is my right to carry a firearm at any time I choose and for any reason I choose.  Therefore, should I decide to carry a lethal weapon during the performance of my duties as Constable, I do so under my solemn rights as a citizen of Vermont, and absolve the Town of Windham from any and all liabilities associated with the use of said weapon.   Any legal or civil proceedings arising from my use of a weapon, regardless of whether it was used during the performance of my duties as Constable, will fall upon me to bear in all manner, as an individual citizen-as is the case for any citizen in Vermont who uses lethal force or the threat of lethal force against another person.***

I hope to attend the next SB meeting and would like to bring up this proposal.  If it is too late to get it on the agenda, I will simply mention it or read it during my 3-minute allotment of time.

Thank you for your time and consideration.

Phil McDuffie