

Re: New Legislation.

TOWN BOARD POWER SUPERSEDES TOWN MEETING POWER

The general conception of town government is that of government by the people. That is not the case, however, it is government by the people only in part.

Pursuant to town laws, Chap. 60, enacted in 1984, the voters have only those powers allotted them by law, under s. 60.10, and that is all, such as: levying taxes, giving village powers to the board, authorizing land or building purchase, appropriating money for certain civic causes etc., in general, ordinary affairs of the town.

When it comes to public policy decisions, such as on the mining issue, which directly affects residents of the Town, the voters are powerless. The power for these decisions rests in the town board, pursuant to the following statutes:

- Stat. 60.22 General powers and duties. The town board:
- (1) CHARGE OF TOWN AFFAIRS. Has charge of all affairs of the town not committed by law to another body or officer or to a town employe.
 - (2) CHARGE OF ACTIONS. Has charge of any action or legal proceeding to which the town is a party.

Until these laws are repealed and the power put in the hands of the voters of the town, the townspeople of northern Wisconsin are defenseless in the face of the onslaught of the mining corporations. They are at the mercy of the town board and the mining corporations.

Mining corporations excel in coercing local elected officials into their camp and control; and in so-doing, under the present laws, banish voter opposition. Stat. 60.22 (1) and (2) emasculate the power of the people. Our experience in the Town of Grant proves this out.

Please bear with me for the details of the Town of Grant experience. First, in 1987, the mining company, Kennecott Corp., managed to get control of the Town Board of Grant through threats of annexation of its property to Ladysmith and threats of court suit if the Town refused to let Kennecott use its land as it wished.

The scaled down version was also a selling point.

Once Kennecott had the Town Board under its control, with the present laws, there was no action the voters could take to by-pass the stranglehold Kennecott had on Town of Grant.

Back in 1982, the voters of the Town, under the old town laws, had passed a moratorium resolution prohibiting metal mining. The Town Board however, paid no heed to that town meeting action, and in the fall of 1987 proceeded to negotiate with Kennecott for mine start-up. (The City initiated negotiation, with the Town and County Boards coerced into joining the City.)

The Town Board, in order to get the unwanted 1982 moratorium out of the way, hired the same attorney as was hired to negotiate with Kennecott, to deliver an opinion that the 1982 moratorium was invalid. This opinion was sprung as a surprise on the town's voters at their April 1988 annual town meeting. Not knowing what else to do, the voters, by a large majority, passed another identical moratorium against mining, to confirm the 1982 moratorium.

All was ignored; and the final terms of the Local Agreement with Kennecott exempted the corporation from County zoning for metal mining, and canceled out the moratoriums on the strength of Atty. Thiel's opinion.

To make such terms legal, Kennecott drafted a bill that authorized a local impact committee to negotiate with a mining company and exempt the company from local ordinances, approvals and resolutions. It was hung on the budget bill without local notice or hearings and passed. Stats. 144.838(1)(g) and 144.839.

Although the final Agreement is disasterous and most of the testimony was against the Local Agreement, the Town Board (as did the City and the County) voted Aug.1, 1988 to approve the Local Agreement immediately after the Town hearing on it.

The people were helpless. There was no governmental avenue through which they could work, even though the majority were against what was happening.

All that was left was some kind of court action. So the Churchills, in the interest of the majority vote, filed for a declaratory judgment on the validity of the 1982 moratorium. Kennecott Corp. intervened and along with the Town Board asked for a summary judgment instead. Thereupon, the circuit court judge dismissed the case on the allegations that the 1982 annual meeting was improperly noticed and, in his judgment, made invalid all business conducted at that meeting, including the moratorium. The merits of the moratorium were left untouched. We took it to the Appeals Court and are waiting for the final decision.

At the Master Hearing, The Hearing Examiner, David Schwarz accepted the Local Agreement, as did the DNR, as a valid document, and refused to take any testimony on the contents of or on the questionable events leading up to its ratification.

So this document, negotiated in closed sessions, with \$60,000 donated by Kennecott for local negotiation costs, that by-passes local zoning for metal mining, rules out town meeting moratorium resolutions, squelches freedom of speech of the local elected officials over the life of the Mine, which can operate for 40 years and beyond, is NOT being challenged at all by the Hearing Examiner nor the DNR.

So, with all governmental options exhausted, a group of citizens, and a couple of County Board members are now filing for a declaratory judgment on the validity of the Local Agreement, focusing on Sec. 31, which states that the Participating Governments and the parties negotiating the Agreement will not oppose the Mine - (definition of which implies any mining activity associated with the Mine over the life of the mine - Local permit is for 40 years.)

Our hope is pinned on Sec. 36 of the Agreement which states that a court ruling which invalidates Sec. 31 voids the Local Agreement. Sec. 31 violates the Wis. Constitution Article I, Sec. 3, which states that no laws are to be made that infringe on freedom of speech. (the Local Agreement is a local law.) Furthermore, Sec. 31, restricts the rights of present and future elected officials to act in the best interest of their constituents.

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A few comments on Stat. 60.22(2) which gives the town board charge of any action or legal proceeding to which the town is a party.

This law also acts contrary to the best interests of the townspeople. It prohibited any input from the voters of the Town of Grant as Party to the Master Hearing. Only the Town Board was represented.

The same with the two court cases requesting declaratory judgments. The voters have no power to stop the Town Board from contesting the cases, and spending tax dollars to defeat the wishes of the voters.

Kennecott's managing to get ss. 144.838(1)(g) and 144.839 passed on the 1988 budget bill was just so much gravy on the already battered down local voter power, under ss. 60.22(1)(2).

Repealing SS. 144.838(1)(g) and 144.839 is a must; but even more important is the need of laws that put the basic power of decision-making on public policy issues and court actions at the local level, into the HANDS OF THE VOTING PUBLIC, WHERE IT BELONGS! Until that is done, voters of potential mining towns are powerless in the face of the mighty mining corporations.

In Conclusion

We see the following legislation as basic to a policy of town governments (local People) determining their own fate relative to mining:

1. The voters must be in charge of public policy decisions, such as mining, NOT the town board.
2. The voters must be in charge of actions and legal proceedings in which the town is a party, NOT the town board.
3. SS. 144.838(1)(g) and 144.839 must be repealed.
4. No local approval of or conditional land use permit for a mining proposal shall be made before the completion of the hearings on the EIS and the permit application.
5. Stat. 144.836 must be revamped if public testimony is to have any weight.

* Must be two separate hearings on the EIS and the permit application. (Many people were unaware that the two ^{were} covered under one hearing.)

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* Public testimony must have as much weight as the contested case hearing in making the final decisions.

(Ordinary people do not have the funds to compete with the mining companies in a contested case - legal fees and scientific studies. Furthermore, decisions should NOT rest only on so-called scientific testimony. There are many other factors to be considered that cannot be judged by computer models and test tube experiments.)

Briefly, the power must be put back in the hands of the people.

Evelyn Churchill