

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

GEORGE R. AYDELOTTE,

Plaintiff,

vs.

TOWN OF SKYKOMISH; CHARLOTTE  
MACKNER; HENRY SLADEK; and  
DARRELL JOSELYN,

Defendants.

No. 08-2-28689-4 SEA

SUMMARY DECISION

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THIS MATTER came before the undersigned for trial without jury. Trial commenced March 14, 2011 and concluded on March 15, 2011. The court considered the evidence submitted at trial, argument of counsel, and having been duly advised, the court concludes that Defendants Charlotte Mackner, Henry Sladek, and Darrell Joselyn violated the Municipal Officers Code of Ethics, RCW Chapter 42.23.

The specific provisions applicable to this cause of action are RCW 42.23.030 and RCW 42.23.070. They are as follows:

No municipal officer shall be *beneficially interested*, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

RCW 42.23.030 (emphasis added).

- (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.
- (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.
- (3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
- (4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

RCW 42.23.070.

It is undisputed that the named Defendants were municipal officers during the period in question and that the above referenced statutory provisions apply. The contract in question is the Settlement Agreement reached between the Town of Skykomish and the Burlington Northern Santa Fe Railroad (“BNSF”).

### Issues at Trial

The sole questions for trial were whether the named Defendant officials had a beneficial interest in the Settlement Agreement that was entered into on July 28, 2007 and whether they received any compensation, other than from the municipality, for a matter connected with their role as city councilmember.

The court answers both questions in the affirmative.

### Brief Background

In approximately 1991, the State of Washington Department of Ecology (“Ecology”) listed the BSNF Former Maintenance and Fueling Facility on its Hazardous Site List after it became aware of petroleum contamination in 1989. The Facility is located in the Town of Skykomish and was found to be among the sites in Washington with the highest level of concern and assigned a rank of 1, with a high priority for further investigation (*see* Consent Decree). Over the years, Ecology and BSNF entered into numerous agreed orders that would govern the clean-up and remediation of the site by BSNF. Eventually, Ecology and BSNF entered into a Consent Decree which was filed and entered in the Superior Court *Ex Parte* Department by Commissioner Carols Velategui on October 19, 2007. The Consent Decree contained specific measures for cleaning up the environmental damage, including damage to private property of individual homeowners or businesses. The Town is not a party to the Consent Decree.

On or about July 28, 2007, the Town of Skykomish entered into a formal Settlement Agreement with BNSF. Admitted into evidence was a document (ex. 17) indicating that an offer by BNSF was made to the Town as early as September, 2005. Each of the Defendant officials was involved in the negotiation and/or approval of the Settlement Agreement.

Charlotte Mackner was the mayor and was actively involved in the settlement negotiations between BNSF and the Town of Skykomish. Henry Sladek and Darrell Joselyn were town council members and both voted to approve the Settlement Agreement.

While settlement discussions between the Town and BNSF were occurring, BNSF was also approaching individual property owners in order to obtain access to certain property for clean-up. BNSF individually negotiated settlement agreements with these property owners which also included the three Defendant officials. The individual settlement agreements offered various levels of compensation for inconvenience, property damage, access, release of future claims, and other costs associated with the clean-up. In addition, each of the Defendant officials, as part of their individual settlement agreements agreed to: 1) support a “conditional point of compliance” for groundwater (a lesser standard on the hierarchy of water quality) by sending a letter to Ecology stating such support; 2) keep the individual settlement agreement confidential; and 3) not oppose the Consent Decree. The settlement agreement of Darrell Joselyn specifically included a payment of \$5,000.00 thirty days after the consent decree was approved and entered. The dates of the individual settlement agreements are: a) Darrell Joselyn, November 29, 2004 with continued discussions through 2008 for additional compensation; b) Henry Sladek, July 27, 2005; and c) Charlotte Mackner, May 12, 2006 with continued discussions through 2007. The admitted exhibits contain a copy of the individual settlement agreements and copies of letters sent by the Defendant officials to Ecology as required by their settlement agreements.

The Town of Skykomish sent an official letter to the Department of Ecology supporting the proposed “conditional point of compliance” on August 21, 2007. The letter was signed by Mayor Charlotte Mackner.

It is undisputed that none of the elected officials publicly disclosed their private discussions with BNSF or the fact that they had entered into private settlement agreements with BNSF.

#### Violation of the Code of Ethics

After considering all of the evidence admitted at trial, the court finds that there was a violation of the statutory code of ethics by the Defendant officials. The Defendant officials each had received compensation from BNSF as part of their private settlement agreements, and each had agreed not to oppose the “conditional point of compliance” or the consent decree. Thus, when the final Settlement Agreement came before them in their official capacity, they had a financial interest in seeing that the Settlement Agreement be approved since they would continue to receive additional compensation upon its approval. None of the Defendant officials disclosed the terms of their individual settlement agreements and none sought to recuse themselves from the vote. Although Mayor Mackner did not vote on the Settlement Agreement, she was the Town’s representative for negotiations and she was the person who signed the Settlement Agreement.

#### Penalties

In accordance with the statutory penalty (RCW 42.23.050), any contract made in violation of the chapter provisions is null and void. Therefore, the court declares that the subject Settlement Agreement between the Town of Skykomish and BNSF is null and void. Each official is sanctioned in the amount of \$500.00.

The court recognizes the disparate levels of legal knowledge and sophistication between BNSF representatives and each council member and does not believe that the Defendant officials willfully violated the Ethics Code. The court finds that the penalties imposed are sufficient and declines to remove them from office.

Conclusion

The court is inclined to adopt Plaintiff's proposed findings of fact and conclusions of law. The court directs Plaintiff's counsel to confer with opposing counsel and submit such proposed findings of fact and conclusions of law consistent with this court's decision and if such findings are contested to set a hearing for presentation.

IT IS SO ORDERED this 16th day of March, 2011

A handwritten signature in black ink, appearing to read 'Mary Yu', is written over a horizontal line.

Judge Mary Yu

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 08-2-28689-4  
Case Title: AYDELOTTE VS SKYKOMISH TOWN OF ET AL  
Document Title: ORDER  
Signed by Judge: Mary Yu  
Date: 3/16/2011 2:56:02 PM

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Judge Mary Yu

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