

At a term of Supreme Court held in and for the County of Jefferson, in the City of Watertown, New York on the 2nd day of August 2021

PRESENT: HONORABLE JAMES P. McCLUSKY
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON

DANIEL B. PETERSON

Petitioner,

-VS-

TOWN OF ALEXANDRIA, NEW YORK

Respondent.

MEMORANDUM
DECISION
AND
ORDER

Index No. EF2019-0197

RJ No. 22-19-0081

Petitioner brought this proceeding pursuant to General Municipal Law §4 (GML §4) and General Municipal Law §51. The claims under General Municipal Law §51 were previously dismissed.

Pursuant to GML §4 Petitioner provided affidavits from more than twenty-five freeholders of the Town of Alexandria (the Town) averring that they believed the Town's moneys were being unlawfully or corruptly expended. As previously noted by this Court the GML §4 was established in 1879 and is overdue for review by the State Legislature. The New York State Comptroller's Office now undertakes the issues covered under GML §4. However, since the Legislature has not changed the law this Court believed it necessary to appoint an expert as authorized by that section.

Petitioner has the burden to establish that the moneys of the Town are being unlawfully or corruptly expended or are being appropriated for purposes to which they are not properly applicable or are being improvidently squandered or wasted. *GML §4*

The Court received the expert's report and allowed time for the Town to have their own expert review the matter and respond. Petitioner thereafter brought an Order to Show Cause seeking the appointment of a receiver to run the Town and to restrain the Town officers in various aspects of their duties. *GML §4*, however, is limited in the relief it affords.

It appears that the Petitioner is under the mistaken belief that because the Court appointed the expert, the Court must accept all the expert's findings. There are problems with the expert's report. The expert did not review the Town's latest audits. In addition, the expert believes that changes made as a result of those audits were unauthorized alterations by the Town Officials, whom the expert believed were acting fraudulently. The replies filed by the Town show that this is not the case.

The Court appointed expert started with the audit of 1999 rather than the audits of years 2013, 2014, 2015, or 2016. During the latter years the Town, based on auditors' recommendations, correctly and legally changed allocations of various expenses.

The report also faults the Town for not collecting fees for sewer services from some vacant lots within the district. The New York State Comptroller has ruled that the Town cannot collect sewer fees on vacant lots. The Town, after receiving the Comptroller's report, corrected this issue. The Town conceded that they made an error in collecting fees from some landowners. However, this does not equate to a violation under *GML §4*. The terms used by the Legislature when creating this law over 100 years ago clearly

sought to avoid "unlawful and corrupt" spending – as opposed to expenditures based on bad policy or as a result of a mistaken belief of what is allowable by law.

As to specific individuals not being charged the proper amount for sewer services, the Court finds the Town has satisfactorily explained the individual cases and demonstrated that no favoritism, nepotism, or improper benefits were conferred upon those Town residents.

After having reviewed the appointed expert's report and the Town's expert's report, along with all the documents submitted under the New York State Courts Electronic Filing system under Index No. EF2019-00000197 the Court finds that the Petitioner has failed to prove a violation of General Municipal Law §4. It is therefore

ORDERED that the motion brought by Order to Show Cause is denied; and it is further

ORDERED that the petition is dismissed.

September 28, 2021
Watertown, New York
ENTER



JAMES P. McCLUSKY
Supreme Court Justice

