

DEFENDED MUNICIPAL BOARD MEMBER'S FREE SPEECH RIGHTS AGAINST CLAIMS OF PRE-DECISION BIAS

A Developer commenced an Article 78 proceeding challenging, among other things, members of a village board of trustees' right to deliberate and vote on a project about which the members expressed personal opinions. The project was a controversial development project and prior to their election, board members had expressed their views on the project, both before and during their campaigns for office. Hodgson Russ represented the board of trustees and its members when the developer argued that the expression of opinions and signing a petition against a project were examples of bias requiring the board members to recuse themselves. Supreme Court, Monroe County agreed and annulled the determination, finding that the board members had a prohibited conflict of interest, and enjoined them from any deliberations or voting with respect to the project. The Fourth Department reversed, holding that mere expressions of opinion, absent more, are not enough to demonstrate bias. Elected, public officials should be free to express their views to their constituents, especially during their run for election. This is a seminal case that clarifies that the mere expression of opinion does not require disqualification of board members.

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