

Lawsuit follows sheriff's departure

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New Hampshire Sunday News

22 hours, 15 minutes ago

David Lovejoy, the political rival whose complaint ultimately forced Dan Linehan to resign Tuesday as Rockingham County sheriff, plans to sue him and is aggressively working to become his successor.

Lovejoy's lawsuit, which will be filed tomorrow, names Linehan -- who was forced by the state Attorney General's Office to resign or face arrest for illegally leaking Lovejoy's annulled criminal record to the media during last year's election -- and two others.

Also named are the ex-sheriff's former top deputy, Mark Peirce, who also was required to resign or face criminal charges, and Karen Dandurant, a former Portsmouth Herald reporter who wrote a pre-election article that mentioned Lovejoy's annulled simple assault conviction. Rockingham County also was named in the lawsuit.



The case is sure to raise First Amendment questions. The investigation has already led one lawmaker to file legislation to form a commission to review the state's criminal annulment statute.

LOVEJOY "It's not about sour grapes. It's not about vindication," said Lovejoy, of Hampton. "It's just a shame this had to happen, that two people stooped to this level."

Lovejoy lost in 2008 to Linehan, the incumbent Republican who served 13 years as sheriff and 24 years before that as a state trooper, 82,749 to 61,885 votes. Lovejoy has never served in law enforcement, he said, but until last year was involved with security and investigation in a private company for about 15 years.

"I'm contacting each (county delegate) individually to make them aware that I lost this election due to crimes being committed by my opponent. The only way to right a wrong is to appoint me to fill the term," said Lovejoy, a registered Democrat and manager of a Hampton-based cleaning and restoration business.

It is a misdemeanor in New Hampshire under RSA 651:5, XII to disclose or communicate the existence of a person's record of arrest or conviction if it has been annulled.

Lovejoy's lawsuit, which will be filed tomorrow by Concord attorney Charles G. Douglas III in Rockingham County Superior Court, seeks unspecified damages and "enhanced compensatory damages for the wanton, malicious and oppressive nature of the defendants' conduct toward (Lovejoy)."



LINEHAN

Source of trouble

Lovejoy's complaint stems from an Oct. 27, 2008, Portsmouth Herald article that was still available in the newspaper's online archive yesterday, in which Dandurant wrote about the sheriff's race.

The article states: "A record provided to the Herald said Lovejoy was involved in a case of simple assault and was convicted in 1989. Lovejoy said the case was annulled and thrown out of court by the judge."

It also quotes Lovejoy saying: "My wife made allegations of spousal abuse during divorce

proceedings. Then my wife admitted in court she fabricated the allegations and the charge was dropped by Judge Douglas Gray."

Douglas said he filed a right-to-know request to obtain the attorney general's investigative file on the leak, which might result in more defendants being named in the lawsuit.

"(The lawsuit) will include multiple counts of invasion of privacy, public disclosure of private facts, a count for intentional infliction of emotional distress, that (Linehan and Peirce) did this to inflict pain on Lovejoy days before the election," Douglas said.

"Ms. Dandurant will be sued for defamation, and then she and everyone else will be sued for invasion of privacy, putting (Lovejoy) in a false light as a criminal when in fact he had no criminal record. Due to the annulment, it's as if it never happened," Douglas said.

Douglas said the Attorney General's Office was concerned about releasing information regarding Lovejoy and his annulled criminal record in Tuesday's press release, which detailed the negotiated disposition with Linehan and Peirce.

"(The Attorney General's Office) talked to me about that and we agreed that, essentially because (Lovejoy) was going to be filing a civil suit, it would be OK to list his name," Douglas said. "There's no way he could have sued anonymously."

Disagreement with AG

Concord attorney Michael Ramsdell, who represents Linehan, said he didn't understand why Attorney General Michael A. Delaney focused only on Linehan and Peirce when the evidence pointed to others as more responsible for the leak who were not charged.

"I certainly raised that question," said Ramsdell, a former state associate attorney general.

According to the attorney general's news release on Linehan's resignation, Peirce directed a staff member to provide the information to Electra Alessio, a reporter with the Carriage Towne News, of Kingston, and it was further disclosed to at least another reporter, with Dandurant writing the article for the Portsmouth Herald.

"The investigation also revealed that it was Sheriff Linehan's intent and request that the annulled information be disclosed or communicated to Ms. Alessio," Delaney said in the news release.

Ramsdell sent the attorney general a letter in September outlining the U.S. Supreme Court cases he would rely on to prove the annulment law an unconstitutional restriction on free and political speech. He sent another letter Oct. 13 detailing reasons why he believed the charges wouldn't have prevailed in court.

"The evidence does not support proof beyond a reasonable doubt that Sheriff Linehan was the person who 'disclosed or communicated the existence' of the annulled record," Ramsdell wrote.

According to Ramsdell, Linehan admitted that he believed Lovejoy was an unfit candidate for sheriff and said voters deserved to be aware of Lovejoy's criminal history. Linehan also cited political considerations for not wanting to be named as the source of the leak and admitted he was unaware of portions of the annulment statute, Ramsdell said.

"Linehan's a stand-up guy. He feels badly he was unaware of the statute and admitted to the attorney general that had he been aware of it, he would never have had a discussion with anyone about an annulled conviction," Ramsdell said in an interview.

In his resignation letter to the county delegation, Linehan said that despite Ramsdell's belief that

he would be exonerated, he was resigning because a "prolonged disagreement with the attorney general's office potentially would cripple the sheriff's office's ability to function as cohesive law enforcement unit."

Delaney's press release made it clear he believed the evidence would convict Linehan and Peirce, who, as a condition of their disposition, had to relinquish their police certification, as well as resign from the sheriff's department.

"This type of criminal behavior will not be condoned, especially by those members of society who are sworn to uphold the law," Delaney said.

Media sources and reports

Delaney said his office was not in violation of the law when it disclosed Lovejoy's annulled record to media outlets in the news release. "In order to carry out our function, information needs to be disclosed, and the law would allow for that," Delaney said.

"There's the doctrine of necessity that would require us to discuss the case in connection with prosecution," Delaney said, adding that Lovejoy gave his consent before he was named in the release.

Asked why the media were not charged for disclosing the annulled conviction, Delaney said: "Based on the investigation, we felt it was appropriate to dispose of the case the way we did. It was clear based on our investigation that the sheriff and major had disclosed to the media, and the media had received the information from law enforcement sources."

Delaney declined to offer an opinion on the law's constitutionality.

Howard Altschiller, executive editor of the Portsmouth Herald, said no one from his newspaper spoke with the Attorney General's Office regarding the investigation.

"They did reach out to talk to (Dandurant). She did not talk with them because as a matter of policy we don't discuss our sources," Altschiller said. Dandurant, who could not be reached for comment, has since left the Portsmouth Herald, but the newspaper will continue to represent her, Altschiller said.

Altschiller said he and others in the media, as well as some attorneys, have asked state Rep. Jim Splaine, D-Portsmouth, to file legislation forming a study committee to review the annulment statute.

The law was written in 1976, pre-Internet, he said, and has broad implications relative to the First Amendment as well as to archival storage online.

"What this law seems to imply is someone could run for public office, have a criminal history," Altschiller said, making it clear he was not speaking about Lovejoy, "and if they have a criminal case annulled, the press, the public and their political rivals could face prosecution for talking about it.

"So, there seems to me to be an important First Amendment issue and important right-to-know issues."