

Did Belville violate state law by endorsing some H2GO candidates, accusing others of lying?

By [Johanna Ferebee](#) - October 31, 2019



The Town of Belville waded into the H2GO election but apparently broke state law while doing so. (Port City Daily photo/File)

BELVILLE — It appears the Town of Belville may have acted contrary to state law Monday when it endorsed and denounced rival political campaigns in the same press release.

In the release, attributed to Belville Mayor Mike Allen but approved by Commissioners and distributed through a contracted town employee, Allen makes allegations against current H2GO Chairman Jeff Gerken and his running mate, John Bradley, including their “willingness to lie to their customers to get elected.”

Gerken and Bradley’s stance against completing H2GO’s reverse osmosis plant was then juxtaposed against that of their campaign opponents, Barry Laub and Steve Hosmer (though they are not named) stating “the commitment of [Gerken and Bradley’s] opponents to building the plant is unquestioned.”

[Note: Gerken has generally been against the construction of the plant without outside government funding.]

The release concluded with Belville's apparent offer to concede its appeal in the ongoing lawsuit over the future of H2GO — if Gerken and Bradley's opponents are elected.

"We believe they will guarantee the plant will be finished so we can return the assets and get the construction restarted ASAP," the release reads.

The legal definition of 'endorse' is broad, meaning an individual or entity does not necessarily need to use the word itself to constitute a political endorsement. And, while Belville denies it broke the law, the town's actions appear to have violated the limits set up by state statute.

What's the law?

Elected officials can endorse political candidates in their free time. They can even call a press conference in their [front yards](#) to endorse a campaign. They can't, however, use public resources to advance political endorsements or oppositions, per [General Statute § 160A-499.3](#).

Related: [Questions about H2GO Chairman's use of the utility's fliers to counter political opponent's claims](#)

Monday's press release was issued by the town spokesperson, who is a contracted employee of the town. Though the body of the release is attributed to Mayor Mike Allen, its spokesperson confirmed it was shared with the approval of the full board.

According to §160A-499.3, "A municipality shall not use public funds to endorse or oppose a referendum, election or a particular candidate for elective office."

Asked to explain how the release was legal, Belville's spokesman, Mike McGill, provided the town's response:

"The purpose of the October 28 press release was to correct factual misstatements by H2GO Chairman Gerken regarding Belville's position with respect to the RO plant and a potential resolution of the litigation. Mr. Bradley shares a website with Mr. Gerken, so he was mentioned in the context of the factual corrections. The email we referred to in the release is found on their joint website. Finally, the press release did not ask for a vote for or against any political candidate," McGill provided in a statement.

Given the heightened legal tensions between Belville, H2GO, and the Town of Leland — the three parties in the ongoing litigation over H2GO's assets — it has become common for official releases from the stakeholders to be reviewed by legal counsel. In this case, however, it is not clear if Mayor Allen's statement was reviewed by an attorney.

Frayda Bluestein, University of North Carolina at Chapel Hill distinguished professor of public law and government, provided §160A-499.3 when given a copy of the town's press release.

“State law prohibits local governments from using public funds for this type of communication,” Bluestein wrote in an email.

Timeline

Tuesday, Port City Daily published the contents of a public records request that showed H2GO’s Chairman Gerken apparently directed the use of public resources (over 10,000 fliers, costing H2GO \$441) in order to [combat claims lodged by his political opponent](#), Hosmer. Later that evening, Gerken issued a campaign press release, proclaiming the proposed interlocal agreement that would settle the ongoing H2GO lawsuit was “[dead](#).”

In response, Belville (as a town) fired back the same night, accusing Gerken of attempting to change the narrative away from his apparent use of H2GO staff for a political reason.

Commenting as an individual, not on the Town of Belville’s behalf, McGill called for an investigation into Gerken’s actions. In 2017, Gerken accused McGill of having been involved in a similar claim. Gerken [told to WECT](#) he was concerned in May 2017 when H2GO hired McGill’s company, WaterPIO, that public resources would be used to influence the November election. This week, Gerken said he didn’t see the parallels, stating his directive to use public resources was to correct false information.

Belville’s Monday release was a rebuttal to a rebuttal, part of an escalating back-and-forth between regional players.

Belville issued a press release hours before H2GO’s Oct. 15 meeting stating it would not sign the proposed interlocal agreement Commissioners were slated to take a vote on; Commissioners didn’t take a vote; Gerken released a [three-page analysis](#) of Belville’s surprise release Oct. 18, stating it was full of falsehoods; Belville responds with its Monday release, containing political endorsements and denouncements.

The court decision Belville is [currently appealing](#) contains a legal conclusion unfavorable to the town. Judge Charles Henry ruled the November 2017 transfer of all of H2GO’s \$60 million assets to the Town of Belville then-Commissioners helped orchestrate, illegal. Plus, Judge Henry concluded Commissioners’ actions were “unreasonable,” “oppressive,” in “bad faith,” and constituted an abuse of discretion. Commissioners [violated state ethics law](#) by working around North Carolina Open Meetings Law (but not explicitly violating it), according to Henry’s order. The only sitting official this conclusion applies to is Mayor Mike Allen (the others no longer serve the board).

The release

Belville’s Monday release aims to correct Gerken’s statements shared on his campaign website and criticize the campaign’s supposed use of scare tactics in [campaign material](#). A recent campaign poster [advertising](#) the Gerken-Bradley campaign reads, “LELAND VOTERS!!! OUR H2GO VOICE IS IN DANGER!!!”

After the critique, the release goes one step further, claiming these tactics “shows their willingness to lie to their customers to get elected,” according to Belville’s release.

While the town insists it did not ask for a vote for or against any particular candidate, it does appear the release bargains with the town’s current legal position in concert with the upcoming election. “With a new H2GO Board, the lawsuit will come to a close, the assets will shift back to H2GO, and H2GO will finish the RO plant,” according to the release.

This statement means if the power shifts on H2GO’s board (anti-reverse-osmosis-plant officials hold a 3-2 majority), Belville may drop its appeal, honoring the district court’s order that the town give H2GO its assets back. H2GO cannot simply drop the suit on its own, as the utility is currently a co-plaintiff with the Town of Leland.

Referencing — but not naming — Gerken and Bradley’s opponents (Hosmer and Laub) Belville concludes in its release:

“We believe they will guarantee the plant will be finished so we can return the assets and get the construction restarted ASAP. With a new board, H2GO – and H2GO alone – will be able to bring clean water to the citizens of Leland and northern Brunswick County in less time and for far less money.”

Read the full Oct. 28 Belville press release below:

[Local Voice Mail – Statement From Belville Mayor Mike Allen Regarding Misinformation From Gerken Bradley Ca... by Johanna Ferebee on Scribd](#)