

Conservative justices raise concerns about requiring Huebsch to turn over personal communications

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Conservative members of the state Supreme Court raised concerns that requiring former PSC Commissioner Mike Huebsch to turn over personal communications could open a Pandora's box for other public servants, including judges.

Opponents of a high-voltage transmission line between Dubuque, Iowa, and Middleton that the PSC approved sought Huebsch's personal smartphone and any other phone he had used ahead of the agency giving its OK to the project. They wanted to look for encrypted messages, arguing he must've engaged in improper communications with the parties involved.

Justice Rebecca Bradley during yesterday's hearing called the request a "fishing expedition." Fellow conservative Pat Roggensack was dismissive of arguments over more than 200 phone calls between Huebsch and a lobbyist for one of the companies involved in the Cardinal-Hickory Creek transmission line. She said, "people have a lot of phone calls," adding that didn't provide sufficient proof to suggest impropriety on Huebsch's part.

Justice Brian Hagedorn noted the case has implications for numerous public officials, including judges and members of the state Supreme Court. Hagedorn said he's friends with an attorney who clerked for him and they're in the same fantasy football league, which the justice has won two years running. The attorney has appeared before the court.

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What environmental groups are seeking would open him up to parties seeking

records of any personal communications with the lawyer looking for improper ex parte communications about a case — which he said don't exist. He didn't name the friend.

“This is a dramatic intrusion,” Hagedorn said.

Barrett Van Sicklen, arguing on behalf of groups such as the Driftless Area Land Conservancy and the Wisconsin Wildlife Federation, argued the groups weren't seeking just a few friendly text messages.

“We're talking about hundreds and thousands of actual communications with the party that is litigating,” he said.

Huebsch, a former GOP Assembly speaker who served as Administration secretary under former Gov. Scott Walker, was a member of the Public Service Commission for five years. He left his post in February 2020.

The commission in 2019 unanimously approved a new \$492 million high-voltage transmission line between Dubuque and Middleton. Opponents sought to have Huebsch and Chair Rebecca Valcq recused from the application, but those requests were denied. Valcq served as an attorney for the majority owner of American Transmission Company, another group involved in the line.

Opponents argued that they had created an unconstitutional “appearance or bias and lack of impartiality.”

After resigning from the PSC, Huebsch started a consulting group and applied to be CEO of Dairyland Power Cooperative, which had appeared before the commission while he was serving. The company was also involved in the transmission line project.

As part of their challenge of the commission's approval of the line, they wanted information about Huebsch's application. Huebsch moved to quash the subpoena, and a Dane County judge denied the request.

The case went before two appellate courts. In August, they dismissed the case as moot after opponents dropped their subpoenas.

But they issued a new one in late August. Huebsch went to the state Supreme Court, which agreed to hear the case.

The three liberal justices raised procedural concerns with the case after they had dissented from the court's decision to accept it.

Justice Ann Walsh Bradley said she's never seen a case before the Supreme Court that challenges a subpoena to testify without having first raised the issue at the circuit court level. She said that raises significant concerns about the impact for other cases in the state court system.

"It is absolutely law 101 that if you want to not have to testify, you go before the circuit court," she said, adding parties can then appeal if they lose.

Attorney Ryan Walsh, representing Huebsch, countered the line opponents had argued that subpoenas to testify can't be challenged.

"They're wrong," Ann Walsh Bradley said to laughs in the court. "Give me another softball."