

**Ethics Committee Regular Meeting
April 25, 2018
Town Offices in Meeting Room 1
DRAFT MINUTES**

Attendees: Lee Suskin Chair, Tom Little Vice Chair, Mike Ashooh, Bill Deming, Gwen Webster, Pete Gadue Alternate, Diana Vachon Clerk

Chair Suskin called the meeting to order at 7:03PM.

Public Attendees: Tom Tompkins, Sara Tompkins, Jerry Storey, Selectboard Chair. Chair Suskin welcomed committee members and the public.

Motion to Approve the Agenda of April 25, 2018: Mr. Little moved to amend #8 to read "Vermont Legislative Research Service," to move the VLRS item to #6 and to then approve the agenda. Seconded by Ms. Webster. Motion passed unanimously.

Opportunity to Disclose and Conflicts of Interest: No conflicts were disclosed.

Motion to Approve the Minutes of March 28, 2018: Moved by Mr. Little. Seconded by Ms. Webster. Motion passed unanimously

Public Comments: The public was invited to comment on anything not on the agenda tonight. Hearing none, the Committee proceeded to the next agenda item.

Vermont Legislative Research Service – Update

Mr. Ashooh introduced Brandon Arcari, a student at UVM who proceeded to give an update on the work of the student team at VLRS. The team has done its research, drafted a full report and provided it to the UVM faculty advisor for his review. The report includes a table and chart of other municipal ordinances from other New England states, New York, New Jersey and Texas. VLRS will send the report to Mr. Ashooh for circulation to the committee. Mr. Ashooh and Mr. Suskin will meet with the VLRS team to discuss. Committee members who wish to join that meeting should let Mr. Suskin know so that he can warn the meeting.

Committee Discussion of Suggested Revisions to the Ethics Ordinance. Vice-Chair Little led the discussion. Mr. Little provided with the committee with an April 25 re-draft of the ordinance. He asked committee members to label comments on the draft with their name and date on the document itself.

Mr. Little also provided the committee with his April 25 "Overview of Key Decisions Inherent in Revising Ethics Ordinance". The overview addresses five key decision points: Scope, Committee membership, Alternate Roles for the Committee, Subpoena Power and the Burden of Proof. The overview is attached to these minutes.

Mr. Little suggested that the Committee develop a re-draft of the ordinance based on its review of the memorandum and then send that draft to the Selectboard with a request for feedback on whether the committee is heading in the right direction.

The Vice Chair led a discussion of the decisions points in his memorandum.

1. Scope – The re-draft should make clear that complaints for violations of the ordinance are limited to violations of conflicts of interest, misuse of gifts, misuse of confidential information and similar actions.

Mr. Deming questioned whether certain provisions were needed in that each committee could have its own rules. The committee discussed whether it would be best if the Selectboard included in the ordinance a common set of rules for each committee to adopt. Ms. Webster suggested that the ordinance include a comprehensive procedure that every committee should follow. Possibly, the Selectboard should establish in the ordinance ethical guidelines that all CBCs should include in their rules. The ordinance should make clear that any ethical guidelines in the ordinance should apply to all CBCs.

2. Membership - The Committee agreed that the membership should be expanded to add an additional alternate member.

3. Alternate Roles – The Committee discussed without resolution whether it has a role in policing ethical conduct of public officials or whether it should simply be an arbiter of complaints filed by members of the public against public officials.

4. Subpoena Power – The committee raised concerns with whether the committee could be legally authorized to issue subpoenas as well as what the committee could do if a public official refused to respond to a subpoena.

5. Burden of Proof. The committee agreed that the complainant needed to establish probable cause as defined in the current ordinance in order for the committee to proceed. The committee discussed without resolution whether the burden of proof for a finding of a violation should be “preponderance of the evidence,” as used in most court civil proceedings, or “substantial evidence,” as commonly used in administrative proceedings.

Next Steps: Selectboard Chair Jerry Storey joined the meeting. Committee members expressed their desire to receive input from the Selectboard. Mr. Storey stated his desire that the revision be a collaborative effort. He offered to place the ordinance revision on their May 22 agenda for discussion with the committee. He also stated the Selectboard’s intention to appoint at their May 8 meeting one or two of its members to be liaison(s) with the committee. The committee agreed to do so between May 8 and May 22 and rescheduled its May meeting to May 15 to accomplish this. The Vice Chair was designated to complete a revised draft of the ordinance, share it with the members, and then, based on any additional feedback, to prepare another revised draft for sharing with the Selectboard.

8. Other Business – No other business was discussed.

9. Adjournment – Motion to adjourn by Mr. Little. Seconded by Mr. Ashooh. Motion passed unanimously. The meeting adjourned at 9:04 PM.

Respectfully submitted by Chair Lee Suskin and Diana Vachon Clerk.

Memorandum

To: Shelburne Ethics Committee
From: Thomas A. Little, Vice Chair
Re: Overview of Key Decisions Inherent in Revising Ethics Ordinance
Date: April 25, 2018

I found these key decision-points in the redlined draft we are now reviewing:

1. **Scope.** The new draft clarifies that the Committee's authority is to hear conflict of interest and gift-related complaints, and not broader "ethical conduct" complaints. The current ordinance contains broad but aspirational (I think) ethical conduct standards, but does not give the Committee authority to hear complaints about them. The complaints filed in the last 15 months have mostly been about these broad ethical conduct standards. I believe we need to clarify and perhaps tighten the focus of the ordinance.
2. **How many members should be on the Committee?** The new draft proposes to add an alternate member. Lee proposes possible mediator, ombudsperson and investigator roles for Committee members under certain circumstances; do we need more members? (I am not prepared to support all of those additional roles yet.)
3. **Alternate Roles?** Should the Committee have the authority to appoint one of its members, or someone not on the Committee, to function as an investigator; ombudsperson; mediator?
4. **Should the Committee have subpoena power?**
5. **What should be the burden of proof for a complainant at a hearing?**

There may well be additional key decision-points.

My thinking is that we should get the working draft in somewhat better shape, and share it with the Selectboard, together with a cover memorandum. And then have the Selectboard give us directional guidance so that we can complete the drafting. By directional guidance I mean, 'are we generally on the right track, or not?' And, if not, what guidance can the Selectboard give us?