

Ethics Committee Special Meeting
06/19/18
Town Offices Meeting Room 2
DRAFT MINUTES

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

Selectboard Liaisons: Mary Kehoe and Vice Chair Jaimesen Heins

Public Attendees: Linda Riell

The Chair called the meeting to order at 7:01 p.m.

Welcome to the Selectboard liaisons Ms. Kehoe and Mr. Heins and members of the public. Mr. Gadue will be a voting member until Mr. Ashooh arrives.

Review and Approve the Agenda for June 19, 2018: Mr. Gadue moved to approve the agenda. Seconded by Vice Chair Little. Hearing no comments, motion passed unanimously.

Approve the Minutes from May 15, 2018 – Vice Chair Little moved to accept the minutes. Mr. Gadue seconded the motion. Hearing no comments, the motion passed unanimously.

7:04 Mr. Ashooh arrived. Mr. Gadue became an alternate. His comments are welcome, but no longer a voting member for this meeting.

Approve the Minutes from Special May 22, 2018 at the Selectboard Meeting – Vice Chair Little moved to accept the minutes. Mr. Deming seconded the motion. Hearing no comments, the motion passed unanimously.

Chair Suskin mentioned the book “Breach of Trust” by James J. Dunn, Esq., a Burlington, VT lawyer who wrote about the ethics investigation of three Vermont Supreme Court Judges in the 1980’s. and recommended it to committee members interested in a case study of ethics in government.

Opportunity to Disclose Conflicts of Interest: Hearing none, the Chair moved on the next agenda item.

Public Comment: Hearing none at this point, Chair Suskin expressed his gratitude and congratulations to Ms. Riell on the heart-warming celebration honoring Chief Warden and his career.

Committee Discussion of Suggested Revisions to the 6/12/18 Ethics Ordinance – **Chair Suskin.** Chair Suskin handed out an outline to guide the discussion.

Do we go with the shortened format and organization in the June 12 draft? Or do we retain the format and organization of the current ordinance and the May 4 draft? The Committee decided to go with the June 12th draft and to add specific items to it such as an appearance of a conflict of interest.

Agree to delete references to aspirational guidelines? Some Committee members think the June 12th draft is only a Conflict of Interest Ordinance and there needs to be conduct guidelines. The residents want a mechanism to be heard and have their “day in court”. Recognizing that the Town Employees aspirational guidelines needs to remain in the Selectboard's hands so as not to interfere with collective bargaining, it was suggested to have a separate section addressing this issue. This section could be used as a preventative measure and an educational tool. Maybe it could be a required oath or a part of each CBC's rules of procedure. The Committee will continue to work with the Selectboard to resolve this issue.

Re-instate “appearance of a conflict of interest” or go with terms like a “seeming incompatibility” (Article A.1.) or a “perceived” conflict (Article 6). Do we need to define “seeming” or “perceived?” Committee members like the 2015 Ethics Ordinance's definition of an “appearance of a conflict of interest” and agreed to put it in the June 12th draft. Vice Chair Little will add it in. And he will confirm that Act 79 requires each town to have a conflict of interest ordinance and authorizes towns to include ethics in the ordinance if the town desires it.

Do we need “de minimis” to limit any prohibited conduct? The consensus is to leave it out. The Committee has the ability to exercise judgement if something is or is not of consequence.

Should a conflict apply to first cousins, to neighbors/friends? The Committee agreed to leave out cousin, neighbor and friends.

Article 10 – Recusal. When can a public official remain in the room following recusal? After much discussion, the Committee identified for further discussion whether:

- In a non-quasi-judicial meeting he/she must leave the room to avoid undue influence.
- In a quasi-judicial meeting, he/she may stay in the room if he/she has an interest in the agenda item. This is to ensure everyone is given due process.

The Committee agreed to delete the last line in Article 10 regarding an agreement.

Article 8 – Recusal. How can a member of the public contest a public official who chooses to participate despite having a conflict? The Committee agreed that in a quasi-judicial proceeding, if someone has an actual conflict of interest, he/she must recuse him/herself. In a non-quasi-judicial proceeding, if someone discloses an actual conflict of interest, should they automatically be required to

recuse? Can a complaint be filed if the person does not recuse? The Committee will continue to work with the Selectboard to resolve this issue.

Article A.1.c What is a “personal” conflict of interest? Article A.1.c. now says “a ‘direct impact in a non-financial way but is of significant personal importance.’” Many persons volunteer to serve on committees because the subject matter is important to them personally – when does this become a personal conflict? The Committee discussed this at length. No consensus. The Committee will continue to work with the Selectboard to resolve this issue.

Article 11 – The Ethics Committee. Any Changes to the number of members? Powers? Hearings? Sanctions? Funding? The Committee discussed the 60 day window of the person having discovered the matter or concern. How does one go about getting a decision reconciled, if a violation is found? Is that up to the CBC? The Ethics Committee could make a recommendation to the CBC. If the Town Clerk is not the clerk of the Committee, a complaint will still be filed with the Town Clerk. The Committee discussed what if the Town Charter, Open Meeting Law, or Public Records law is violated. Can a complaint be filed? One can file a complaint regarding Open Meeting and Public Records law violations with the Attorney General’s Office. How do we handle Charter enforcement? The Committee also discussed Investigation Authority. Some members are still uncomfortable with this concept. It was noted that the the ethics investigation of three Vermont Supreme Court Judges in the 1980’s, was initiated by the Judicial Conduct Board based on newspaper reports. Article 11 would give the Ethics Committee the ability to interview before probable cause is determined, as the Ethics Pro Tempore Committee’s Rules allowed. Article 11 authorizes the appointed investigator to file a separate complaint. No consensus was reached. The Committee will continue to work with the Selectboard to resolve this issue.

Suggested Best Practice: Vice Chair Little suggested potentially having all CBC members annually sign a conflict of interest statement including expectations of behavior.

The Chair thanked Mr. Heins and Ms. Kehoe for attending the meeting tonight. The Ethics Committee is on the Selectboard Agenda 6/26/18. The clerk will warn the meeting. Our next regular meeting is scheduled for June 28, 2018 at 8:30 AM in Meeting Room One at the Town Offices.

Adjourned at 9:00 pm Moved by ----- . Seconded ----- . Motion passed unanimously.

Respectfully submitted by Diana Vachon, Clerk of the Committee