

**Ethics Committee
Special Meeting 09/28/18
Town Offices 7 AM Meeting Room 1**

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

Public Members: Linda Riell arrived at 7:33am

Call to order at 7:10 AM

Review and Approve the Agenda for September 28th, 2018: Motion by Mr. Deming to approve the agenda as is. Seconded by Mr. Ashooh. Motion passed unanimously.

Approve Minutes from July 16, 2018: Motion by Mr. Ashooh to approve the agenda as is. Seconded by Mr. Deming. Motion passed unanimously.

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

Public Participation and Comments: Hearing none, moved on to next agenda item.

Review the Town Attorney's Recommendations – Lee Suskin

The Committee reviewed the draft Conflicts of Interest Ordinance (entitled “As vetted by Town Counsel”) that the Selectboard had considered at their September 25, 2018 meeting.

The Town Counsel draft commented upon and revised some sections of the draft that the Ethics Committee had submitted to the Selectboard two weeks prior.

- **Probable Cause:** The draft as vetted by the Town Counsel recommends amending Article 11.C.3.a. to enable the committee to consider whether there is “reasonable likelihood” that a violation has occurred instead of whether there is “probable cause” that a violation has occurred. With this change, there is no need to include a definition of probable cause. The Committee defined “reasonable likelihood” as more likely than not. The Committee agreed with this change to Article 11.C.3. and the deletion of the probable cause definition.
- **Advisory Opinions:** The draft as vetted by the Town Counsel includes the Town Counsel’s recommendation to strike Article 11.B.2., authorizing the Committee to issue Advisory Opinions, suggesting that the Committee offer an educational forum instead. The Chair reminded the Committee that both

the UVM Legislative Research Service and City Ethics strongly highlighted the importance of advisory opinions. The Committee discussed Town Counsel's recommendation. A committee member who provides an advisory opinion would clearly need to recuse him or herself if a complaint is subsequently filed. The ordinance needs to be clear that an advisory opinion would not bind the full committee. In response to a comment from Ms. Riell, it also must make clear that a member of the public may request and receive an advisory opinion.

MOTION: Chair Suskin made a motion to address these concerns by moving to amend Article 11.B.2. to read:

"The Ethics Committee is authorized to appoint one or more of its members or other qualified persons to provide non-binding official guidance about the ordinance to public officials or members of the public. If the public official who believes that he or she acted in a manner consistent with any such guidance is subsequently found in violation of the ordinance, the Ethics Committee may take such reliance into account when determining the appropriate sanction." Motion passed unanimously.

Posting on the website: The draft as vetted by the Town Counsel includes the Town Counsel's recommendation that the decision of what gets posted on the website should remain in the Town Managers jurisdiction. The Committee decided to not raise an objection to this recommendation.

De Minimis Definition: Article 4.D. The draft as vetted by the Town Counsel includes a lengthy new definition of de minimis." The Committee reviewed the two definitions. The committee's recommended definition is shorter, clearer, and, with the addition of the word "conduct" meets the needs of the ordinance while conforming with the Judicial Conduct Code definition of *de minimis*. The Committee agreed to recommend that the Selectboard adopt the following definition.

"De minimis" means an insignificant interest of conduct that could not raise a reasonable question as to a public official's impartiality."

MOTION: Ms. Webster moves to recommend that the Selectboard include the Committee's version with the addition of the word conduct.

Seconded by Mr. Ashooh. Motion passed unanimously.

Mandatory Recusal: Article 8. The Town Manager raised a concern that Article 8 violates the law. He had received advice from a VLCT attorney that members of a committee cannot require one of its members to recuse, citing a 1928 Vermont Supreme Court decision, *Bennington v. Booth*. The Committee reviewed that decision, noting that it prohibited a Selectboard from telling an elected Town Clerk how to file records. The Committee agreed that members cannot required an elected member to recuse. The Committee also noted that nothing in the Supreme Court case indicates that members cannot require an appointed member to recuse, if the Selectboard authorizes members to do so in the ordinance. Chair Suskin moved to amend the last sentence of Article 8. Mr. Deming seconded. After additional discussion, Chair Suskin moved to amend last sentence of Article 8 to read:

“After the steps listed above have been taken, a public body may vote to require a member of that public body who had been appointed to his/her position to recuse, and any member who is the subject of such a vote shall recuse himself or herself in accordance with the vote.”

Seconded by Mr. Ashooh. Motion passed unanimously.

Selectboard issues: Chair Suskin stated that two issues were raised at the last Selectboard meeting.

1. The Chair had objected to the inclusion of *Article 11.D. Funding* in the draft as vetted by the Town Counsel. The Committee prefers that the Selectboard fund the Committee through the budget. The Committee recommends the current funding language remain in the ordinance in case the Selectboard does not fund the Committee through the budget.
2. Dr. Parker raised concerns with Article 4 C. 4 in the draft as vetted by the Town Counsel: “A conflict of interest does not exist solely because two public officials are members of the same Town Board, Commission, or Committee.” The Committee believes this concept has value. The Committee agreed to articulate their concerns in the memo to the Selectboard, and to cite as examples a DRB applicant, a respondent in an Ethics complaint, and BCA tax appellant.

MOTION: Mr. Ashooh moved to adjourn at 8:15 AM. Seconded by Chair Suskin.

| Motion passes unanimously.

Respectfully submitted by Diana Vachon, Clerk of the Committee