

Approved: October 25, 2011

ETHICS POLICY REVISION COMMITTEE
PUBLIC MEETING MINUTES

October 11, 2011

The meeting was called at 7:03 PM in the New Durham Town Hall by Dot Veisel, Chair.

Present: Carol Allen, Mike Gelinas, Dot Veisel, Barbara Hunter

Also Present: Mary McHale

Approval of Minutes: Chair Veisel moved for the review, additions, and omissions in the minutes of October 11, 2011. One correction is needed on page last full paragraph; it should read dissatisfied rather than satisfied. Motion to approve as the minutes as amended: Gelinas. Second: Allen. Vote: unanimously approved.

Business:

Chair Veisel distributed two letters dated October 4, 2011 and October 5, 2011 from Barton L. Mayer, Town attorney sent to Alison Webb, Town Administrator in response to two sets of questions sent from the EPRC via Webb.

After the committee read the two letters comments included:

- Regarding the October 4th letter referring to questions sent in August:
 - Question 1 was answered by quoting the entire section rather than answering the query which was if the EC has a legal right to require a written disclosure in A. (ii).
 - The reference to RSA 31:39-a was confusing. Chair Veisel felt he left the door open on that leaving the decision up to the EPRC. Gelinas stated that it meant everything that was included in the WIP. Hunter questioned since the Ethics Code was established under RSA 31:39-a and was reinstated as a policy at the Town Meeting, that it can be more stringent as a policy.
 - As a result, a future question is “If a policy isn’t adopted under RSA 31:39-a may it be more stringent.”
 - Question 2 regarding Section III Exclusions number 2 was not answered. Mayer reviewed item III number 1 B not number 2. With this misunderstanding he needs to readdress the interpretation of Section III Exclusions number 2.
 - Question 3 regarding complaints Mayer made a suggestion that when dealing with concerns with employees and elected officials, ethics should be part of the personnel policy.

- Chair Veisel said Mayer is referring to procedures for dealing with complaints stating that with employees ultimately it is the BOS responsibility because they are the hiring agency.
 - Mayer stated that if the ethics policies are to be considered a part of the personnel policies, the BOS should be responsible for taking action and disciplining an employee regarding any violation of the policy.
 - Gelinas suggested that the Ethics Policy reference that employees should follow the procedures outlined in the personnel policy and the personnel policy include that the employees would follow the Ethics Policy.
 - Confusion exists regarding dealing with elected and appointed officials.
 - Question 4 with respect to who has the authority to amend and adopt a revised ethics policy, he responded that the EPRC was vested with that authority and with its plan to hold a public hearing prior to its adoption, that is more than adequate. Gelinas stated that the authority to amend should be written in the policy.
- Regarding the October 5th letter referring to questions sent in September:
 - Question 1 relating to holding a joint hearing with the BOS. Chair Veisel stated that it looks like Mayer didn't refer to the most recent Work In Progress Policy document (WIP that was sent with the second set of questions.
 - Mayer stated "I do not believe the Committee cannot compel the BOS to participate in a specific hearing process." Chair Veisel asked if the BOS can refuse to hear a complaint. Gelinas answered in the affirmative. Hunter commented that this was one of the reasons why the Ethics Ordinance established the procedures it did so that complaints could be heard preventing one from being dismissed without being heard.
 - McHale, from the floor, said that the committee can't compel but it can request that the BOS have a hearing.
 - Gelinas emphasized that the EC doesn't have any power. Hunter commented that at least there is some power by having a concern become visible. Veisel stated that there is a legal responsibility once something is visible referencing the Right to Know Law. The committee was encouraged to attend the Local Government Center on the Right to Know Law on Thursday, November 3 at 6:30 in the New Durham Fire Station Community Room.
 - The major question as yet to be answered is, may the complainant request that the Ethics Committee be present at the hearing of the complaint and submit an advisory opinion to the Board of Selectmen before they deliberate and make their a decision.
 - The response to question 2 stated that when the EC reviews an inquiry that results in a complaint, that would not prevent the EC from participating in a joint hearing with the BOS as the committee would not be biased.
 - Question 3 to delete the part of the last sentence in the last paragraph on page one. Mayer stated that the entire sentence is reasonable and should remain intact. He felt the list in the sidebar is unnecessary; the committee felt it should stay.

- Question 4 Mayer recommended not providing a private right of action to a citizen to proceed to court, nor that should a citizen argue with department heads about an employee's conduct.
 - Gelinis asked, what about the respondent's right to be heard?

Chair Veisel summarized her understanding that the EC hears inquiries, is a sounding board requesting advice/interpretation regarding a concern held up in the Ethics Policy, act as an advisory in an interpreting capacity. She asked the committee if there is consensus as to what is now included under Section V: Inquiries. The committee reached consensus on this section.

Chair Veisel asked committee members to share their ideas as to what should be included in the complaints section. Gelinis began sharing his and it was decided to make it easier to visualize what is being proposed, that members email their thoughts to Chair Veisel so she can then email them out to members for consideration prior to the next meeting. The fact that this is a one-way communication was emphasized.

Gelinis made a motion that the committee request a joint work session with the Town attorney and the BOS. No second, Gelinis withdrew the motion. Chair Veisel made a motion to request a work session with BOS for the purpose of discussing complaints with the possibility of following up with the Town attorney. Second: Allen. Vote: all in favor.

Chair Veisel will ask Alison Webb, Town Administrator to see if a meeting with the BOS and the EPRC can take place, possibly on October 20 or 25. The purpose is to discuss their thoughts that when a complaint is submitted to them that the complainant can request the EC to attend the hearing as well as, the EC to submit an advisory opinion before the BOS deliberates and makes their decision.

Chair Veisel reported back that the Office of Public Integrity only deals with legal infractions not those dealing with ethics.

With respect to the final question In the October 5th letter, regarding the correct procedure to address a complaint against more than one Selectmen, Mayer's response was ". . . it is an excellent one, to which I do not have a real answer." Chair Veisel stated that he seems to be saying that there is no precedent and since the question came from a member of the public we should be proactive and look into including it.

Next Meeting: Tuesday, October 25, 2011 at the Town Hall at 7:00.

Adjournment: Motion – Allen. Second – Hunter. Vote unanimously in favor. Adjourned at 7:00 PM.

Respectfully submitted,

Barbara Hunter, Secretary

A video recording of this meeting is on file with the Office of Town Clerk, is available for public viewing during normal business hours, and will be retained in accordance with the New Hampshire Municipal Records Board rules established under RSA 33-A:4, or for a minimum of 24 months.