

**MINUTES
WORKSHOP
DOVER CITY COUNCIL
CITY COUNCIL CHAMBERS
THURSDAY
JANUARY 25, 2001 7:00 P.M.**

Members Present: Mayor Boc, Mayor Pro-Tem Berry, Councilors Andrews Parker, Mayberry, Schmidt and Nossiff were present. Councilors Hindle, Dunnington and Reese are absent.

1. DISCUSSION RE:

A. CODE OF ETHICS

The Mayor gave a brief history of how we came up with a Board of Ethics. He stated, we are here to discuss and improve it if we can. He then turned it over to the Board members who are present, Mr. Jim Fender, Doctor Marc Hiller and Attorney Rob Ross. Hiller introduced himself, saying he is a Doctor of Health at UNH. Fender stated in real life he is a legal counselor for the PNSY, and he has lived here many years and wanted to give something back to the community. He trains employees at the shipyard; he is also the recorder for the Ethics Board. Rob Ross has been on the Board for two years; he is an attorney here in Dover. He looks forward to developing this model here in the state and he is here to make it better. Hiller gave a brief overview of the Board stating they want to try to strengthen the Board here and throughout the state. He went on, the Board evolved from the original code of three years ago. He stated they are concerned with ethical reasoning within the city on both real matters and perceptions, as well. They want to be beyond reproach in the city, where perceptions are concerned. They also want to document and be posted on the Dover web site and to be accessible to the people of the City. Clearly over the recent months they have been attempting to balance repeating issues that often arise. They balance privacy, as well as, the right to know on ethics here in the City. They have developed a set of internal rules to help guide the Board. They have developed a set of FAQs that are also on the web site. They have met with city employees, as well as, addressed the city newsletter as far as what is ethical. They have prepared more recently a recommendation for the City Council 's consideration to be added to the Ethics Code that will provide a mechanism to withdraw a complaint in the same manner as it has been filed. They have painstakingly agreed to live by the letter of the code. No matter how good it is, they need to strive to make it better and feel such efforts should take place. Their focus has revolved around three deliberations and alternatives. The first two questions of the three are the conflict that arises between two very strong ethical imperatives; one is privacy and impartiality and the State's right to know statute. With the understanding when a complaint is brought to the Board, they need to insure the confidentiality nature of the issues of the person. They try not to allow information that is erroneous or unfounded. They do not want any misinformation, but there is a need to know what the Board of Ethics has been doing in

MINUTES
WORKSHOP
JANUARY 25, 2001
PAGE 2

terms of complaints that have been filed under the Code. They are trying to protect all parties from being unduly injured. They also try to keep things from becoming prematurely public. When should a complaint that has been filed with the board become public knowledge and when should they conduct a preliminary investigation? The third question is an issue of appellant process to further assist the Board. They have been struggling with this serious issue and have come up with a recommendation even though it has not been raised as not many avenues can be traveled without that process in the political arena. And third, how can we come up with a reasonable alternative that will not harm all parties concerned? Mr. Fender has been spending four hours per week studying this. Hiller went on, they all have spent many, many hours struggling over these issues. The Mayor asked Hiller to go through the process briefly, as stated in the Code, if someone feels they have been violated.

Nossiff asked, if a person needs to get documents, would they get them from the City? When requesting records, do you furnish the complainant with this knowledge? Hiller says they do not until the Board determines there are merits to proceed. Nossiff asked, if at that point you determine that there is merit, do you let the person know at this time? Nossiff asked if their Board has actual subpoena power. Hiller says no, and concluded by telling the rest of the process. They then report to the City Council that the Board has reviewed a case but they do not reveal the names of the parties involved. If there are findings that suggest to the Board that an ethical violation has occurred; they then prepare written reports and supply these, in accordance with the Code, to the City Council and the complainant. It then becomes or is turned over to the City Council for their determination also. He explained there is nothing to prevent the person who filed the complaint to go public. They do not respond to subsequent questions, though. Berry states there is nothing to prevent them from going public, so when does the person find out there is a complaint against them? The Mayor clarifies there are 14 days for the Board to notify the person that a complaint has been filed. If the Council feels there should be prior notification to the parties, then that should become part of the Code. The board simply serves as an agent of the Council. Hiller says they let the process work the way it was intended and not go public. Andrews Parker asked if a complaint is made against her and it has no merit, then is it their practice if they determine there is no merit that no one knows it has taken place. Hiller stated they are striving to maintain a sense of control of privacy. If they were to be instructed to go public, they would. Andrews Parker feels the person who is complained about has every right to know if the Board has received a complaint against them. Andrews Parker feels merit or no merit everyone should need to know. Hiller suggested reflection on this, as he feels they may not be aiding the person who has been complained about. Will that person build undue negative hostility towards the complainant; they want the process to be open. This is the purpose of the Board, for them to assess and decide. Mayberry has a question for Fender or Ross, that is, how do you balance out if a complaint has substance if you do not contact the person

MINUTES
WORKSHOP
JANUARY 25, 2001
PAGE 3

or the accused. Mr. Fender states that he deals with communication issues as well as sexual harassment issues in his day job as well. They are trying to be sensitive to the good name of every city employee. They do not really want to get involved. They have found an imbalance of power in the complaints that have come to them from employees of city government. If they made this process known to the person complained about, and complainants felt afraid of reprisal, then they may not come. Rosemary Zurawel, an absent member of the Board has said when they get a complaint; they literally put their personal lives on hold. There have been many valid explanations and once they have conveyed the explanation, there is a need to protect reputations.

Mayberry says he feels sometimes the complaint has been filed with the Ethics Board, then the complainer goes straight to the press. Would the Board be accepting of this? Fender stated the Council created the Board so the Board goes by what ever is in the code. Mayberry is frustrated in the appeals process, in his opinion, not allowing a person who has had allegations against them to be able to speak. What happens twenty years from now in an investigation? Mayberry has wanted an ordinance on this issue and has waited almost 5 months for it but he has been asked to hold it back. The Mayor asked, is there anything in the law that requires an appeal process, if not we need to amend it. Fender defers to member Ross. Ross does not feel there is but he does not think there has to be. They have come up with a recommendation that has a process after there is a certain period of time to respond to the perception; they would have another hearing on the petition for reconsideration. Mayberry asked if that was automatic or would the Board vote on it? Ross says it is automatic. The Mayor commented, the City's legal counsel, Rob Ciandella, says it is not required under law, there is nothing in the Charter that states this. Ross responds, he feels there is an appellant process to the Council. Then the Council can review the process and make the final determination. Nossiff says the label is not important. The problem is that the person is not entitled to a new hearing before the Council. The Council does not have a definitive way to give resolution to solve the problem; they can only place it on file, and it is very unclear. Hiller and the Board feel the reason is, if in fact it comes back through an appellant process to the Council, from the Board's opinion, then they are doing what they were created to do. That brings it back into the political arena whether they are or are not perceived. Nossiff contests this, saying the Ethics Board is denying the person who is complained about an opportunity for a hearing to explain, and the individual is entitled to a new hearing. Because the danger of having the Board be the judge, jury and executioner gives them too much authority by a board that was not even elected. This is a very serious situation. They need to err on the side of extreme caution, as reputations are at stake. The Mayor disagrees with Nossiff, saying the reason we have the Board is to take the issue away from the Council and out of the political arena. He stated in the past, councils have traditionally had a 5-4 split. If you were in the minority, then nothing got done. The Mayor agrees with the process. Nossiff interrupts, in the instance of lawyers, a city person should get the same treatment as a lawyer does. They get a hearing before NH Supreme Court. Why shouldn't any person get this right also?

MINUTES
WORKSHOP
JANUARY 25, 2001
PAGE 4

Andrews Parker says the background of our current Ethics Board is of very high caliber, she was a student of Hiller's and she knows he is phenomenal. Nossiff's concern is he would like two independent boards to make a similar determination. Andrews Parker disagrees and feels this could be too great a decision for maybe a new councilor. She doesn't feel the Ethics Board has as much pressure on them as they are appointed and don't have to do any favors for people. Schmidt states, he takes issue with judge, jury and executioner as Nossiff has stated. The Council actually has the option of deciding about the impropriety, even if it is only a perception; they have the final option of placing it on file. Such issues are beyond his professional qualifications as he is not an expert on Ethics and he feels the Board is. You never get your reputation back because some people don't believe you. This is a situation without an ironclad guarantee.

Mayberry asked Mr. Ross his time frame on what they could do to create an appeals process. Ross stated the Board has not discussed this. Hiller says the Board will put a proposal together if that is the request of the Council but the Council is the architect of the Code. They develop recommendations from their end and they would need 4-6 weeks to develop a proposal to bring to the Council. Mayberry says he appreciates the Board taking all their time as volunteers and they do a great service to the City. He wants to know a little more about the right to know process and how it should be handled. Mike Joyal states this is not the position of the City Manager's office or himself, they contacted their attorneys last fall and section 22-17 of the Code - states "various hearings the Board conducts require a hearing according to..." after a complaint is filed, There is a preliminary hearing to determine if the complaint has merit. **RSA 91-a** states: a person must be notified. The Board has issues with this, which is to protect the privacy of the complainant. The second part is 22-22, they do in fact go to a final hearing if there is merit to the complaint and this gives them the opportunity of having it heard in public. Do City employees have a separate route or is everyone funneled through the Board. Fender makes a couple of points saying they have given scrupulous due process to everyone. He speaks for all Board members, the Council can do what they want to do about an appellant procedure but they act according to the code. He went through the procedures they have followed to this point in the recent complaint. Nossiff does not want to seem ungrateful to the good job of the Board; but what they are trying to do in the case of the recent family that came before them does not feel that way. The problem is there is no mechanism for exoneration. Do you believe that the Council or some other independent council should not have that independent authority to exonerate? Hiller says for all the options they have examined that the best they have come up with was having a meaningful very specific and detailed reconsideration by the Board itself. If the council wants to establish or create an Ethics Appeals Board, that is up to them. Their concern is not to have it go back into the political arena. All that is legal is not necessarily ethical and all that is ethical is not necessarily legal. Nossiff says, in the event there is an appeals board, would the Ethics Board keep the minutes and would these matters be transferred back to the Ethics Board? Fender stated he does suppressed minutes and they are sealed and turned over to the City Clerk. Mayberry asked if the complaint is shredded or is it kept on file in the City

MINUTES
WORKSHOP
JANUARY 25, 2001
PAGE 5

Clerk's office. Fender replied it is kept on file. The Mayor asked the Board to come up with some other options by their March meeting on what their viable options are. Andrews Parker says in regard to notification of a complaint with no merit, should they bring this and any more of their issues to the City Manager by Friday.

Nossiff feels this is a sore spot. The Mayor thinks this should be addressed in the form of an ordinance at the next meeting stating if a complaint is dismissed, the person should be notified. This would be an ordinance and he asked Joyal to draft it to say whenever they receive notice, if the Board dismisses it or not, the person will receive notification. The Mayor went on, the appeals process seems like a separate issue and can be addressed in March with thoughts from the Board along with their opinion on the motion to reconsider.

On another issue, a complaint can be made against an employee but the Council cannot do anything against an individual employee as stated in the Code. He asked, could we take out about the Ethics Board being involved with a complaint against an employee as the Charter states: "neither the Council nor any of its members".....(see C5-8 of City Charter). They cannot interfere with the hiring or firing of a city employee. Joyal clarified they can bring the issue up to the City Manager but they can't take or order any action against a City employee. Andrews Parker asked, if we do put an appeals process in place, would somebody from the past be able to come back and be able to know about it? The Mayor feels they would have the power to do that. Berry wants to know if a complaint has been filed against him but he does not want to know who the individual is, so he won't feel any anger or retaliation towards that person. Mayberry disagrees and feels he would want to know so he can balance it out with whatever the situation is. Berry feels if they have any conflicts, they would need to get them out there beforehand. One of the things the Board is concerned about is people in power, such as someone being appointed to the Planning Board, etc. If there are conflicts that are easily defined, then they should be stated beforehand. Hiller agrees with Berry. Mayberry has a question on how many complaints have been logged in a year without merit. Fender replied 2 or 3 a year. The Mayor concluded saying how they all appreciate what the Ethics Board does.

2. ADJOURNMENT

The Mayor moved for adjournment, seconded by everyone, all in favor.

Judy Gaouette
CITY CLERK