



CITY OF DOVER

ETHICS COMMISSION - MINUTES

Meeting Type: **Non-Public Session**
Meeting Location: **City Council Conference Room, City Hall**
Meeting Date: **Wednesday, December 11, 2013**
Meeting Time: **5:30 pm**

1. CALL TO ORDER

Mr. Lariviere called the meeting to order at 5:40 pm.

2. ROLL CALL

Present: Brendan Licata, Rose Forcillo, Herman Stolzenburg, Dana Lariviere.

3. NON-PUBLIC SESSION PURSUANT TO RSA 91A:3II(c)

Mr. Lariviere moved to enter into non-public session pursuant to RSA 91A:3(c), the reason to enter into non-public session is matters which if discussed in public is likely to adversely affect any person other than a member of this public body, unless the person requested a public meeting. To his knowledge they have not requested a public meeting.

The motion was seconded by Ms. Forcillo.

Roll Call Vote: 4/0.

Mr. Lariviere confirmed that the members received a copy of the Ethics complaint.

All members acknowledged that they received the packet.

Mr. Lariviere said he wish to divide it into two discussions. 1. Procedural, process, and standing issues. 2. Merits of the claim.

Mr. Lariviere said they have received four complaints: One primary complaint and three supporting complaints. He said they are basically the same, but the primary complaint is from a non-resident of Dover and the three supporting complaints are from Dover residents.

Mr. Lariviere discussed if a non-resident could submit a claim, which would normally preclude someone from entering a complaint. He asked the members to put that aside and assume the person did have standing to enter a complaint. He discussed the second issue that the complaints are against members of the School Board and an employee of the School Board. He said their rules state that they discuss complaints against the City Council and organizations that are under the Council's appointments.

The members agreed.

Mr. Lariviere said they have no jurisdiction over an employee.

The members agreed.

He said under those circumstances the Ethics complaint would fail.

The members agreed.

Mr. Lariviere said the City Charter clearly states the Ethics Commission shall preside over those matters including the School Board and its appointments, which causes an issue. He said in prior instances they have been told to let the School Board deal with their own Ethics Complaints. He asked the members to presume to take the Charter at its face and have standing to be able to consider this complaint.



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Mr. Lariviere said there are three areas where there are concerns: Ethics Commission doesn't have standing, the gentleman filing the complaint doesn't have standing, and they weren't certain that they are able to rule on this complaint. He said they would still take a look at this if something is not proper. He proposed to look at what they were provided.

The members agreed.

Mr. Lariviere moved on to the merits of the claim. He said it is his intention to treat all the complaints as one, because they are all on the same subject matter. He did, however, ask for a separate vote on each complaint to make sure that they are clear. He said there were eight areas of alleged misconduct:

Article X of the Dover City Charter

1. Conflicts of interest (C10-2)
2. Disqualification from decision making process (C10-3)
3. Private use of city property (C10-4)
4. Misuse of information (C10-7)

Chapter 22 of the City Code

1. Conflicts of Interest (22-2)
2. Representation of private interests before City agencies (22-3)
3. Required disclosure by Council Members; recusal (22-4)
4. Required disclosure by Officers and Employees; recusal (22-5)

Mr. Lariviere said one other area of concern is that the Ethics Commission has a time frame under which it can consider claims. He said it was 180 days from when the incident happened. He said these all happened last year.

Ms. Forcillo asked what took so long.

Mr. Lariviere agreed. He said the most recent incident happened December 17, 2012. The Code said it has to be within 180 days, but there is also some language that is a little unclear. He read it to the members: "All complaints shall only allege facts involving alleged ethical violations occurring during the one hundred eighty (180) calendar days prior to the filing of the Ethics Complaint, or the term of the present City Council, whichever is longer." He said he interpreted that to mean during the term of the present City Council, but it could mean during the term of the then present City Council. He said this is another area where it's a stale claim.

Ms. Forcillo asked when the latest they could have filed a claim.

Mr. Lariviere said he felt it would have been June 2013.

Mr. Lariviere said the only facts of the claim are included in the gentleman's letter. He said it doesn't state the specific activity that led somebody to come to the conclusion that it was a violation. He believed it had to do with the individuals on the School Board that caused an investigation, which are approved, to conduct a third party review of the allegations made by the City Councilor regarding the Superintendent and School Board Chairperson. He said he isn't clear why that is a violation of Chapter 22-2, which is conflict of interest. He read that section to the members: "No elected or appointive officer or employee of the city, shall take part in a decision concerning the business of this city, or engage in any business, or transaction, in which they or a member of their family, directly or indirectly, has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer, nor shall they have any financial or other private interest, directly or indirectly, which is in conflict with the



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proper discharge of their official duties.” He said the facts weren’t laid out in the complaint that somebody had an improper financial interest.

Mr. Licata said he didn’t see any financial gain by any member on which this complaint is filed against.

Mr. Lariviere he didn’t see any personal gain from anyone that should have been disclosed.

Mr. Licata said he only saw the request for reimbursement of \$1,000 personal attorney services related to this investigation.

Ms. Forcillo said he asked for it and the School Board gave it to him. She asked where there was an ethics violation in that.

Mr. Lariviere said they haven’t connected the dots. He said he was struggling to find where they might have cut a deal. He referred to the Chapter 22-4 statement: “A Councilor with a conflict of interest shall recuse himself or herself from further participation in the matter.” He said on its face it’s tough to understand why someone should recuse himself.

Ms. Forcillo said the person didn’t see any conflict.

Mr. Lariviere said the conflict of interest was not adequately explained. Therefore, he doesn’t see the need for someone to recuse themselves if they haven’t adequately explained the conflict of interest.

Mr. Lariviere then referred to Chapter 22-5, and said it said basically the same thing for the employee; Superintendent of Schools should have recused herself. He said the same thing applies.

Mr. Lariviere said the only area he felt had merit, but wasn’t explained enough in the letter, is if the School Board was voting to investigate something and spend City funds that were related to their employee. He didn’t feel the Superintendent should participate in those discussions. He said he was reaching for that. He felt part of what they’re saying is that the meetings...

Ms. Forcillo said you have to assume that they found no fault with the Superintendent, and if that is true then why should the Superintendent pay for it. She said the City should be protecting our employees.

Mr. Lariviere referred to the letter and said the key was the statement “On November 5, 2012, at what Strafford Superior Court has determined was an illegal nonpublic meeting...” He said there aren’t a lot of facts.

Ms. Forcillo said it sounds like a lot of gossip.

Mr. Lariviere said based on the facts in the claim he didn’t feel he had enough information. He said they can only work from what is in the claim.

Mr. Licata said if a copy of the Strafford County ruling had been provided they could have used it as part of their consideration.

Mr. Lariviere referred to the comments regarding Charter 10-7, misuse of information by Person A.

Ms. Forcillo asked if the \$1,000 was the financial gain. She asked about the comments regarding an election.

Mr. Lariviere said it wasn’t clear to him. He said there isn’t enough facts.

Mr. Stolzenburg asked what the complainant’s connection was.

Mr. Lariviere said he didn’t know. He doesn’t live in Dover, doesn’t own a business in Dover, and isn’t a vendor to Dover. He said he didn’t have standing.

Ms. Forcillo asked she would like to know that.



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Mr. Lariviere said Mr. Clay said the Board went into an illegal non-public discussion, made decisions, and as a concerned citizen he wants this to end. He doesn't know his motivation. He might not have standing, but if there is something here we should have a look at it.

They talked about the statement that the illegal behavior influenced the outcome of an election.

Mr. Lariviere said there was nothing in the complaint to support this claim. He said the minutes have been made public. He said they're saying the Board member should have recused himself during the meeting, but it doesn't say why.

Ms. Forcillo said she wanted to know why he was upset about this, and that wasn't put in the letter.

Mr. Lariviere asked the members to look at the complaint in its entirety. He said they're struggling to find the merits that support the claim efficiently. He asked if they agree on that. The members agreed.

Mr. Lariviere said no evidence has been provided that supports to claim. The members agreed.

Mr. Lariviere said he felt they also believed that they questioned on whether the gentleman had standing as the City Code indicates.

Mr. Licata asked how they knew he wasn't a resident.

Mr. Lariviere said the gentleman didn't certify it on the complaint under certifications. He didn't initial that section.

The members agreed.

Mr. Lariviere said it was unclear to him if he did it in a timely manner; within 180 days. He said the other issue is that they are strictly under the Council and not School Board.

He felt the best way to characterize this is: despite the fact that the Commission has issues with his standing, if they put all the procedural and process issues aside, and look at the merits of the case as if it were under their purvey they still would not find sufficient reason to bring this to a hearing.

The members agreed.

Mr. Stolzenburg said that isn't to say that there isn't enough evidence out there.

Mr. Lariviere said it regards what was provided to the Commission

Mr. Lariviere moved to the other three complaints from Mr. David Kenny, Mr. David Scott, and Mr. Alfred Rozumek. He felt his review showed that they are identical in all respects to Mr.

Clay's complaint. He said the only distinction is that they are all residents of the City of Dover.

He felt it best to take a vote on each of the complaints. He'll draft the understanding that even putting aside the standing issues; they found no need to pursue the case based on the merits, because there was no proven ethical issue. He said he will also note regarding the tampering with evidence that if there was evidence of a crime he would refer it to the Police Department.

He discussed the comment "voting to authorize the investigating attorney to alter the original report..." He doesn't say what was altered. They don't have the proof.



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Regarding Mr. Clay's complaint, Mr. Lariviere asked if they were in agreement that while they believe he didn't have standing, it wasn't timely, and they question whether or not they have purvey over the School Board or its employees, putting that aside they believe they should dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe an ethical violation may have occurred. He asked for a vote.

Vote: 4/0.

Mr. Lariviere referred to Mr. Kenny's complaint. Presuming they put aside all the functional and process issues, on the merits of the claims do they agree that the action the Commission should recommend is to dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe an ethical violation may have occurred. He asked for a vote.

Vote: 4/0

Mr. Lariviere referred to Mr. Rozumek's complaint. Presuming they put aside all the functional and process issues, on the merits of the claims do they agree that the action the Commission should recommend is to dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe an ethical violation may have occurred. He asked for a vote.

Vote: 4/0

Mr. Lariviere referred to Mr. Scott's complaint. Presuming they put aside all the functional and process issues, on the merits of the claims do they agree that the action the Commission should recommend is to dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe an ethical violation may have occurred. He asked for a vote.

Vote: 4/0

Mr. Lariviere asked the other members if they had any other comments or mitigating factors that should be discussed regarding the complaints that have been filed.

No response.

Mr. Lariviere asked the other members if they are comfortable that they have given a free and fair hearing to these matters.

The members agreed.

Mr. Lariviere discussed with the other members about whether or not to seal the minutes.

Mr. Lariviere moved to adjourn the nonpublic session and reenter public session; seconded by Mr. Stolzenburg.

Vote: 4.0

Mr. Lariviere moved to seal the minutes for the nonpublic session pursuant to RSA 91-A:3III, 1. because divulgence of the information likely would affect adversely the reputation of a person other than a member of this body.

The motion was seconded by Mr. Stolzenburg.

Vote: 4/0.



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Mr. Lariviere moved to adjourn; seconded by Ms. Forcillo.
Vote: 4/0.

4. ADJOURNMENT