



City of Dover, NH Ethics Commission
City Hall
288 Central Avenue
Dover, NH 03820

Notification of Sworn Ethics Complaint

Respondent(s):

Rocky D'Anrea
Amanda Russell
Betsy Andrews Parker
Jean Briggs Badger

Primary Complainant:

Jeffrey Thomas Clay
53 Mallard Drive
Alton, NH 03809

Additional Complainant(s):

Alfred Rozumek	David N. Scott	David Kenny
21 Governor Sawyer Lane	220 Back Road	15 Governor Sawyer Lane
Dover, NH 03820	Dover, NH 03820	Dover, NH 03820

RE: Ethics Complaint Dated 11/18/13

Dear Mr. Clay:

On November 18, 2013 Mr. Clay ("Complainant") swore an Ethics Complaint against the listed Respondents at the City Clerk's office in the City of Dover, a copy of which is attached. Subsequently, on December 9, 2013 three additional Complaints, materially and substantially identical to Mr. Clay's Complaint were filed by Mr. Rozumek, Mr. Kenny and Mr. Scott ("Additional Complainants"), copies of which are attached.



In accordance with Chapter 22-13 of the Dover Code, the Complaints were forwarded to the Ethics Commission.

On December 11, 2013, the Ethics Commission met to conduct an initial screening of the Complaints.

During the screening process, several issues were reviewed with respect to the authority of the Commission to act upon the Complaint(s), the standing of the Complainant(s), and the timeliness of the Complaint(s).

As to the authority of the Commission to act upon the Complaint: The City Code sets forth under Article I 22-1 that the Ethics Commission shall have jurisdiction over the "...Mayor, Deputy Mayor and all Councilors and the positions of ward election officials and charter commission members..." and "...all positions appointed by the Mayor and Council or the City Manager, including appointment to the Housing Authority, but not employees". Further, Section 22-12 A states "The activities of all elected officials and members of all boards, commissions, committees and subcommittees whose members are appointed by the City Council shall be within the scope of authority of the Ethics Commission."

As three of the Respondents are or were members of the School Board, and the fourth Respondent was an employee of the School Board, it is the Commission's finding that under the City Code, the Commission lacks the requisite authority to hear the Complaint.

However, under the City Charter Article XI, C-11-4 the Charter specifically states that the Ethics Commission will "...investigate complaints filed against members of the City Council, School Board, and members of standing city boards and commissions."

Given the conflict between the provisions of the City Code and the City Charter, the Commission decided that the most fair and prudent course of action was to set aside our concern over our authority to hear the Complaint and to continue our review "as-if" our scope of authority was as set forth under the Charter, and we would continue to act under the operating parameters otherwise set forth in the City Code.

The next issue considered was that of the standing of the Primary Complainant. Section 22-13 A of the City Code states: "Complaints shall only be received from residents of Dover, property owners in Dover and vendors who engage in business with the City of Dover." Given that Mr. Clay did not certify in his Complaint that he was either a resident, business owner, or vendor to the City of Dover, the Commission finds that Mr. Clay lacks the requisite standing to raise a complaint under the City Code.

However, given that the Complaints lodged by the Additional Complainants were materially and substantially identical to those raised by Mr. Clay, and the Additional



Complainants certified that they are residents of the City of Dover, the Commission decided to proceed with its review “as-if” all Complainants had met the standing requirements as set forth.

A further issue considered was the timeliness of the Complaint(s). Section 22 13 B of the City Code states that “All complaints shall only allege facts involving 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...”. As the latest date of alleged ethical violation was December 17, 2012, and the term of the City Council in effect at the time of the formulation of the Ethics Commission has long since expired, the Commission finds that the Complaint alleges acts that were well outside the timeframe set forth, and thus the Complaint was not filed in a timely manner.

However, the Commission recognizes that the language of the Charter could conceivably be construed to mean that the Council term could mean the “then-current” Council, in which case the Complaints would be timely.

Once again, in an overabundance of caution and with the stated intent to be as fair and open as possible, the Commission decided to review the Complaint(s) on its merits “as if” it were timely and appropriately filed.

The only “evidence” provided in support of the Ethics Complaint(s) was a two-page letter authored by Mr. Clay in which he sets forth alleged violations of Chapter 22-2, 22-4 and 22-5. No further evidence or additional material was provided in support of the Complaint(s).

The burden of proof rests with the Complainant, and the standard of proof for the Ethics Commission to use in deciding matters before the Ethics Commission shall be clear and convincing evidence. Clear and convincing evidence is defined in New Hampshire law as that evidence that establishes a factual conclusion to be highly probable, rather than merely more probable than not. It requires the party having the burden of proof place in the trier of fact an abiding conviction that the truths of his/her factual contentions are highly probable. Otherwise he/she has failed to prove it and is not entitled to relief.

Notwithstanding the previously outlined issues with regard to the authority of the Commission to act upon the Complaint(s), the standing of the Complainant(s), and the timeliness of the Complaint(s), and respectfully retaining the right to assert those provisions, the Commission has determined by unanimous vote to take the action as set forth below.

Dismiss the Complaints, each separately and collectively based upon the finding:



Under Section 22-13C-5 of the Dover Code – Failure to “...state sufficient facts for establishing a reasonable basis to believe that an ethical violation may have occurred.”

Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dana Lariviere".

Dana Lariviere
Chairman
City of Dover Ethics Commission

Encl.

Cc: Ethics Commission