

**Ethics Committee - Town of West Seneca**  
**September 8, 2014 @ 5:30 P.M.**

Members Present - George P Clifford, Chairman  
Amy L Carpenter  
Edward F Gehen Jr.  
Susan Kims  
James E Manley  
Shawn P Martin  
Jacqueline A Felser, Town Clerk  
Brad Hoppe, Attorney for the Town

Members Absent - None

The meeting was held at the West Seneca Town Hall, 1250 Union Road, West Seneca and called to order by Chairman George Clifford at 5:30 P.M.

Motion by Clifford, seconded by Kims, to recess to executive session at 5:40 P.M.

Ayes: (6) Chairman Clifford, Mrs. Kims, Mrs. Carpenter, Mr. Gehen, Mr. Manley, Mrs. Felser

Noes: (1) Mr. Martin

Motion Carried

The committee members returned from executive session at 5:55 P.M.

John G Schwartz Sr. spoke on behalf of Timothy Elling, stating he has known him for 25 years. Mr. Schwartz works for Pepperidge Farms and Mr. Elling picks up the returns and distributes the food to community centers and schools. Mr. Schwartz stated the employees call Mr. Elling "Mr. West Seneca" and he has had that name for years. When he comes into the warehouse they say, "What's up West Seneca."

Mr. Martin questioned if it was a fair statement that the majority of other West Seneca residents that do not know Mr. Elling would not call him "Mr. West Seneca."

Mr. Schwartz responded they probably would not, but it was on his bumper stickers when he ran for public office.

Mr. Manley questioned if the bumper stickers specifically said, "Mr. West Seneca."

Mr. Schwartz responded the bumper stickers said "caring for West Seneca" and "cares about West Seneca."

Mr. Gehen questioned if Mr. Elling had offered Mr. Schwartz anything for his appearance and comments at this meeting and Mr. Schwartz responded he had not.

Dan Rusin stated he is a co-worker of Mr. Elling's at Erie County Water Authority (ECWA) and President of AFSCME Local 930. He has known Mr. Elling since he started working at ECWA and his co-workers call him "Mr. West Seneca" because of his involvement in the town. Mr. Rusin stated they call him the Supervisor or Mayor of West Seneca and he is known as "Mr. West Seneca."

Mr. Gehen questioned if Mr. Rusin calls Mr. Elling by a nickname.

Mr. Rusin responded that he calls Mr. Elling "Tiny" and jokes with him about West Seneca.

Mr. Elling's attorney, Andrew Fleming, questioned how the policies and procedures are handled from a union prospective.

Mr. Rusin responded there is a policies and procedures manual the ECWA presents to them, but union employees do not feel they are bound by it because it was never negotiated and an arbitrator has always ruled in their favor.

Mr. Fleming presented a copy of a letter from the union to the employer and stated there is a code of ethics policy in place at ECWA, but as it relates to a blue collar worker the union contract is primary and the policy is secondary. The union's perspective is that it would be unenforceable.

Mr. Martin questioned if this was ever challenged with regard to receipt of gifts.

Mr. Rusin responded that it was challenged with regard to matters of discipline, but he was unaware of anything involving gifts and did not even know if there was anything about gifts in the code of ethics.

Mr. Martin commented the ECWA is a public authority and is governed by specific sections of state law concerning acceptance of gifts.

Chairman Clifford questioned if Mr. Rusin would be able to accept a gift of super bowl tickets as an employee of ECWA.

Mr. Rusin did not believe it would be a violation for him as a union employee to accept, but he was not sure of the water commissioners and did not know their regulations.

Mr. Manley questioned in what town Mr. Rusin lives. Mr. Rusin responded he lives in Buffalo. Mr. Manley questioned if anyone calls Mr. Rusin "Mr. Buffalo." Mr. Rusin responded they do not call him "Mr. Buffalo."

Chairman Clifford stated the Ethics Board will send a letter to Mr. Mansouri asking him to appear at the next meeting on October 6<sup>th</sup>.

Chairman Clifford distributed an ethics form for discussion to be developed into a complaint form.

Ed Gehen suggested that "violation of law" in the first sentence be changed to "violation of Code of Ethics." Mr. Manley also pointed out another instance under description of the violations that should be changed from "law" to "Code of Ethics."

Chairman Clifford stated the complaint form for Mississippi states it is a crime to violate the confidentiality or make false complaints and questioned if someone could be subject to any laws for making a false report.

Attorney for the Town Brad Hoppe did not believe someone could be prosecuted under the Town Code for making misrepresentations and filing false complaints; it would have to go through normal channels. He did not think there was anything that could be done with the complaint form to address that situation.

Mrs. Carpenter suggested adding to the form, "I swear or affirm under penalty of perjury that the facts set forth in this complaint are true and correct to the best of my knowledge and belief. I also swear and affirm that I have read and understand the prohibited retaliation, confidentiality and wrongful use of act provisions." She further suggested the word "promote" in the last sentence be changed to "support." Mrs. Carpenter questioned where the complaint forms will be sent.

Chairman Clifford responded complaint forms will be submitted to the Town Clerk's office where they will be forwarded to the Ethics Committee members.

Mrs. Kims suggested they be signed in front of the Town Clerk.

Mr. Hoppe suggested the form be notarized instead of signed in front of the Town Clerk.

Mr. Manley questioned if the form will include an instruction sheet.

Chairman Clifford responded he will add instructions to the form.

Motion by Clifford, seconded by Carpenter, to accept the complaint form presented with modifications as noted.

On the question, Chairman Clifford stated he will forward the complaint form to Mrs. Felser to be made available at public meetings and on the town's website.

Ayes: All

Noes: None

Motion Carried

Chairman Clifford stated he was approached regarding the use of disclosure statements and asked for a legal opinion whether they should be done regarding town business.

Mr. Hoppe stated he will discuss this with Attorney for the Town Charles Grieco and get back to the committee.

Mr. Martin questioned who the disclosure statement will be directed to and what will be requested.

Chairman Clifford responded the disclosure statement will be directed to Ethics Committee members regarding any business they have with the town.

Mrs. Kims understood the Town of Clarence and Erie County use disclosure forms.

Mrs. Carpenter questioned if the Zoning Board, Planning Board and Town Board members will be required to complete a disclosure form.

Mr. Gehen questioned if the disclosure statement will restrict any kind of conversation the Ethics Committee can have with the public pertaining to issues they address at the meetings.

Mr. Martin stated when he worked for Erie County, the disclosure statement was basically a conflict of interest statement as to whether or not the individual or their family members did business with the county, were a vendor, had an interest in a contract made by the county, received benefits/compensation from the county, etc.

Mr. Hoppe agreed the point of the disclosure statement was to determine any conflicts of interest. He will discuss this with Mr. Grieco.

Mrs. Felser read into the record the following statement from Supervisor Meegan: "I find it very troubling an investigating body could make a determination such as the one made by the majority of the Board of Ethics, without doing all the necessary interviews and asking the appropriate questions that would at the very least bring a sense to the reader of the minutes that no stone was left unturned. After listening to the recorded meeting minutes, I was disturbed by your lack of attention to the matter at hand and that you were more concerned about other distracting issues. The only matter in front of you was Councilman Eugene Hart's willful and deliberate hiring of his first cousin. They share a Grandmother. Mr. Hart's statements of immediate concern to me are: 'I was asked by the supervisor to do her a favor and hire Daniel Walsh.' I categorically deny I ever made such a request, I knew nothing about such a statement until I read it in the meeting minutes. 'Chief Denz and Supervisor Meegan came into executive session asking for Dan Walsh to be hired.' Again, I categorically deny I ever made such a request. I, Sheila M. Meegan, made no such statement. I'm extremely disappointed by the failure of this committee to question not only myself, but also Chief Denz. Where is this favor Councilman Hart said I asked of him? What favor? Why would I ask to hire his cousin, Daniel Walsh, as a favor to me? In January, I told the Town Board and the Attorney for the Town that an employee of the Buildings and Grounds Dept who was out on Workers' Comp was approaching a year off. A few weeks following that meeting Matt English provided the Attorney for the Town a copy of a letter of past practice confirming his employment should be terminated. Hiring additional staff was not my recommendation. I did comment to Chief Denz after he made the request for a full-time janitor, 'If you want to hire someone you'll be taking his salary out of your budget.' I read the minutes from the Ethics meeting after your recommendation was tossed hand scribbled in front of me, and to say it was insulting and discrediting to my work ethic and character is an understatement. I take great pride in what I do for the residents and work tirelessly for our community everyday 24/7 and to have

this be the result of someone else's lack of judgment is absolutely shameful. I did nothing wrong and do not deserve to be sanctioned (for the record, I have completed nine hours of ethics training early in my career as a public official). You would have found this out for yourselves if you would have had the professional courtesy and had asked. Unfortunately that did not happen. I ask that you revisit your recommendation. I would be happy to appear before the Board of Ethics if you would like further clarification."

Mrs. Felser commented that she agreed with Supervisor Meegan's statement. The Ethics Committee did not ask Supervisor Meegan or Chief Denz to appear with regard to the issue with Councilman Hart, yet they asked Mr. Mansouri to appear concerning Mr. Elling's issue.

Motion by Clifford, seconded by Kims, to receive & file Supervisor Meegan's statement.

Ayes: (4) Chairman Clifford, Mrs. Kims, Mrs. Carpenter, Mr. Gehen

Noes: (3) Mrs. Felser, Mr. Manley, Mr. Martin

Motion Carried

Chairman Clifford responded to Supervisor Meegan's statement that she was given a "hand scribbled" recommendation and stated he felt it was important that after the Ethics Committee meeting that evening she received their recommendation and it was provided to each of the council members. In the future, if she would like something typewritten and more professional the committee can look into it. He had heard comments that the Ethics Committee was not proceeding quickly enough on the matter and this was why he decided to give her the committee's findings in writing in case she wanted to address it with the public at their meeting, but she chose not to.

Mrs. Felser stated her vote for all the board members going for ethics training had nothing to do with the issue with Councilman Hart. Training is always good and it was not meant as a punishment to the other board members to go for ethics training.

Chairman Clifford agreed and asked that this be shared with Supervisor Meegan.

Mrs. Carpenter agreed there was no intent to punish anyone.

Mr. Gehen felt the committee did its due diligence with this issue and it wouldn't have mattered if Supervisor Meegan said something different from Councilman Hart since he came forth and made some admissions. Mr. Gehen thought the committee made a very reasonable and fair decision.

Mr. Martin stated he provided Mr. Hoppe with a copy of Judge Devlin's decision and the Ethics Committee voted to clearly violate the Open Meetings Law by going into executive session at this meeting. He suggested the Ethics Board receive some training on the Open Meetings Law.

Mrs. Felser agreed with the committee members having training and stated although Mr. Martin is an attorney, they are guided by the Attorney for the Town. If Mr. Hoppe had advised them not to go into executive session, she would have voted against it.

Chairman Clifford stated the Ethics Board is conducting its meetings in accordance with the town's Code of Ethics and the members all signed the Code of Ethics.

Mr. Hoppe stated after reading Judge Devlin's decision it is his opinion when the Ethics Board is deliberating an issue it can be done in executive session; however, the hearing itself and any questions asked of the witness needs to be done in public.

Chairman Clifford stated Attorney for the Town Charles Grieco had previously advised the Ethics Board to meet in executive session.

Mr. Martin stated he raised the issue at that time also and Mr. Grieco may not have seen the decision. Judge Devlin's decision is now available and he encouraged everyone in the room to read it.

Chairman Clifford questioned if the decision is retroactive to a certain date.

Mr. Hoppe responded the decision was rendered in mid June 2014. He further noted he was present at the August meeting of the Ethics Board and they were in executive session for deliberations only.

Chairman Clifford thought the Ethics Board should follow the town's Code of Ethics with respect to confidentiality until such time as it is amended.

Mr. Manley questioned if Judge Devlin's decision superseded the town's Code of Ethics.

Mr. Hoppe stated this is a trial court level decision so it may not be precedential; however, he thought the 4<sup>th</sup> Department Appellate Division will at some point weigh in on this issue. The decision came from the 8<sup>th</sup> judicial district and the town is located within the 8<sup>th</sup> judicial district, so it is something to take notice of and consider.

Mr. Gehen stated if the law says the hearings should be held in public they should abide, but if it is unclear he thought personnel issues should be discussed in executive session.

Chairman Clifford asked for a copy of the decision to discuss at the next meeting.

Motion by Manley, seconded by Gehen, to approve minutes from the August 11, 2014 meeting.

On the question, Chairman Clifford stated he is not going to open any more minutes that are sent to him electronically because there were viruses attached to the minutes he received. He would like to receive a hard copy instead.

Mrs. Felser responded the minutes were sent as a group email and no one else had a problem with them.

Ayes: (6) Mr. Manley, Mr. Gehen, Mrs. Carpenter, Mrs. Kims, Mr. Martin, Mrs. Felser

Noes: None

Abstentions: (1) Chairman Clifford

Motion Carried

Mrs. Felser stated she self-appointed herself as secretary to the Ethics Board and there is nothing in the Town Code that states the Town Clerk is secretary. Since they elected a chairman, she felt they should elect a secretary also.

Motion by Carpenter, seconded by Clifford, to appoint Shawn Martin as secretary to the Ethics Board.

Mr. Martin declined the nomination.

Chairman Clifford stated they will discuss appointment of a secretary at the next meeting.

Motion by Gehen, seconded by Manley, to adjourn the meeting at 6:40 P.M.

Ayes: All

Noes: None

Motion Carried

The next Ethics Committee meeting was scheduled for Monday, October 6, 2014 at 5:30 P.M.

Respectfully submitted,



Jacqueline A Felser  
Town Clerk